§§ 7-114 and 7-115 (Reissue 2012) and § 3-310(P) and Neb. Ct. R. § 3-323(B) of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by this court.

JUDGMENT OF PUBLIC REPRIMAND.

BROOK VALLEY LIMITED PARTNERSHIP, A NEBRASKA LIMITED PARTNERSHIP, AND BROOK VALLEY II, LTD, A NEBRASKA LIMITED PARTNERSHIP, APPELLEES, V. MUTUAL OF OMAHA BANK, FORMERLY KNOWN AS NEBRASKA STATE BANK OF OMAHA, A STATE BANKING INSTITUTION, AND OMAHA FINANCIAL HOLDINGS, INC., A NEBRASKA CORPORATION, SUCCESSOR TO MIDLANDS FINANCIAL SERVICES, INC., A NEBRASKA CORPORATION, APPELLANTS.

825 N.W.2d 779

Filed February 1, 2013. No. S-12-039.

1. **Judgments: Appeal and Error.** In a bench trial of a law action, the trial court's factual findings have the effect of a jury verdict, which an appellate court will not disturb on appeal unless clearly wrong. And an appellate court does not reweigh the evidence but considers the judgment in the light most favorable to the successful party and resolves evidentiary conflicts in favor of the successful party.
2. **Prejudgment Interest: Appeal and Error.** An appellate court reviews de novo whether a court should award prejudgment interest.
3. **Conversion: Property.** Conversion lies only for serious interference with possessory interests in personal property, not real property.
4. **Conversion: Words and Phrases.** Conversion is any unauthorized or wrongful act of dominion exerted over another's property which deprives the owner of his property permanently or for an indefinite period of time.
5. **Contracts: Ratification: Words and Phrases.** Ratification is the acceptance of a previously unauthorized contract.
6. **Ratification: Agents.** Ratification of an agent's unauthorized acts may be made by overt action or inferred from silence and inaction.
7. ____: ____. Retention of benefits secured by an agent's unauthorized act with knowledge of the source of such benefits and the means by which they were obtained is a ratification of the agent's act.
8. **Ratification.** Whether there has been a ratification is ultimately and ordinarily a question of fact.
9. **Ratification: Pleadings: Proof.** Because ratification is an affirmative defense, the burden of proving ratification rests on the party who pleaded it.

10. **Partnerships: Ratification.** In cases where a partner's act is not within the scope of the partnership's business and is not authorized by the partners, a transaction is still binding on the partnership if it is ratified by those partners who would have had the power to authorize the act.
11. **Principal and Agent: Property.** "Money received to the use of another" under Neb. Rev. Stat. § 45-104 (Reissue 2010) indicates that the money is received on behalf of another person, such as an agent receiving money on behalf of his principal.
12. **Prejudgment Interest: Claims.** Prejudgment interest may only be recovered under Neb. Rev. Stat. § 45-103.02(2) (Reissue 2010) when the claim is liquidated. A claim is liquidated when there is no reasonable controversy as to both the amount due and the plaintiff's right to recover.

Appeal from the District Court for Sarpy County: DAVID K. ARTERBURN, Judge. Affirmed in part, and in part reversed and remanded with directions.

Thomas J. Culhane and Patrick R. Guinan, of Erickson & Sederstrom, P.C., L.L.O., for appellants.

Michael J. Mooney, of Gross & Welch, P.C., L.L.O., for appellees.

WRIGHT, CONNOLLY, MCCORMACK, and MILLER-LERMAN, JJ., and SIEVERS, Judge.

CONNOLLY, J.

I. SUMMARY

Prime Realty, Inc. (Prime), acted as general partner for two limited partnerships, Brook Valley Limited Partnership (BVLP) and Brook Valley II, LTD (BVII) (collectively the partnerships). Unbeknownst to the partnerships' limited partners, Prime took out two loans from Nebraska State Bank of Omaha (the Bank) and, by deed of trust, secured the loans with the partnerships' property. The Bank ultimately sold the collateral and applied the proceeds to the loans. The partnerships sued the Bank for conversion. The partnerships alleged that the loans were for a nonpartnership purpose. As such, they alleged that under the partnership agreements, Prime lacked authority to offer the partnerships' property as collateral without the limited partners' consent (which Prime did not have). So the Bank allegedly converted the partnerships' property when it sold the collateral and applied the proceeds to the loans.

The primary issues are whether (1) the statute of limitations has run; (2) the Bank converted the partnerships' property and, if so, the amount of damages; (3) the partnerships ratified the loans; and (4) the district court properly awarded prejudgment interest. We conclude that the partnerships filed their complaint within 4 years from the Bank's sale of the collateralized lots, so their complaint was timely. We conclude that the Bank converted the partnerships' property when it applied the sale proceeds to loans, though the court improperly awarded damages in the full amount of the proceeds applied to the loans because a portion of the first loan served a partnership purpose. Also, the partnerships did not ratify the loans. Finally, we conclude there was a reasonable controversy regarding the amount due and the partnerships' right to recover on the first loan, but not the second. So prejudgment interest was proper only on the amount the Bank applied to the second loan.

II. BACKGROUND

Midlands Financial Services, Inc., was the holding company and parent corporation of the Bank. During this litigation, the Bank merged into Mutual of Omaha Bank. And Omaha Financial Holdings, Inc., Mutual of Omaha Bank's holding company, acquired Midlands Financial Services. So Mutual of Omaha Bank and Omaha Financial Holdings have stepped into the shoes of the Bank and Midlands Financial Services in this litigation. For convenience, we will refer to these entities collectively as "the appellants."

1. The Partnerships

The partnerships' principal purpose was to develop, own, and sell real estate in Sarpy County, Nebraska. The limited partners were not involved in the partnerships' day-to-day operations. Instead, Prime, as the general partner, was in charge of the partnerships' operations. James McCart was Prime's president.

The partnerships' partnership agreements were essentially identical and provided broad power to the general partner to act in the best interests of the respective partnership. But following this broad grant of power, the agreements imposed

limitations on the general partner's authority. Specifically, the agreements provided:

> Notwithstanding any other provision of this Agreement to the contrary, the General Partner shall not, *without the prior written consent of all the Limited Partners*, . . . do any of the following:
>
> . . . .
>
> (e) Possess any property; or assign the rights of the Partnership in specific property, *for other than a Partnership purpose*[.]

(Emphasis supplied.) The record shows that the Bank had copies of the partnerships' agreements and that it knew about this restriction of the general partner's authority.

2. The Loans

In July 2000, Prime applied for and received a loan from the Bank for $1,000,133. The stated purpose of the July loan was to consolidate and renew several prior loans to various entities and advance business capital. As collateral for the loan, Prime executed a deed of trust for 18 real estate lots owned by BVII. The Bank received purported signed consent forms from BVII's limited partners authorizing the transaction.

But the record shows that each consent form was a fraud and that the limited partners had not consented to the transaction. Moreover, the consent forms' fraudulent nature was readily apparent—the signature lines were askew, indicating that the signatures were "cut and paste[d]" onto the form; several of the forms contained different fonts within the form; and the signatures were on separate pages from the property description. Furthermore, the signatures were dated months before the July loan and were not notarized.

Nevertheless, the Bank authorized the July loan and accepted the deed of trust collateralizing BVII's lots. The record shows that the July loan consolidated and renewed several prior loans from the Bank to Prime ($35,040), McCart ($274,046), BVII ($250,040), BVLP ($50,030), and Spring Valley XI Joint Venture ($180,924), another business entity. Additionally, from the July loan, the Bank provided "new" money in the form

of a check payable to Prime and Heartland Title Services (Heartland) for $209,960.

In October 2000, the Bank became aware of "suspicious activity" regarding McCart's financial dealings, both personally and for businesses he was involved in. The Bank discovered that McCart had been "kiting" checks. In the words of one of the Bank's former officers, McCart had been "making deposits — or drawing checks on one bank while — and making deposits from another bank, playing the float and sometimes not having money." The federal government indicted McCart for check kiting, to which he eventually pleaded guilty. As a result of his check kiting, McCart overdrafted on Prime's checking account at the Bank for over $2.7 million.

The Bank confronted McCart on how he planned to cover the overdraft. McCart proposed, and the Bank agreed, that the Bank "loan" Prime additional money in the exact amount of the check kite ($2,721,328.47). And as collateral for the October loan, McCart (for Prime) pledged the same BVII lots from the July loan. Other property was later added as additional collateral, including two tax lots owned by BVLP. The record shows that the Bank did not obtain consent from the limited partners of BVLP or BVII regarding the October loan. The record also shows that although the October loan was labeled a "loan," the plan was always to sell the collateralized properties to repay the Bank for the $2.7 million overdraft.

Later in 2000 and during 2001, the Bank sold off many of the collateralized lots and applied the proceeds to Prime's loans. As of June 28, 2002, the collective balance remaining on the loans was $144,935.35. The district court made factual findings regarding the sales of the various lots and how the Bank applied those proceeds to the loans. The court apparently made those findings from the Bank's discovery responses.

3. Procedural History

In 2004, the partnerships sued the Bank, alleging conversion, breach of fiduciary duty, failure to comply with commercially reasonable standards, and collusion. Several limited partners testified regarding their business relationships with

Prime and McCart. They also testified to their lack of knowledge regarding the reasons for the Bank's loans to Prime and the collateralization of the partnerships' property. Several of the Bank's former officers testified regarding their knowledge of McCart's check-kiting scheme, the circumstances surrounding both loans, and how the Bank processed the lot sales. The partnerships offered expert testimony demonstrating that any purported consent forms from the limited partners were fraudulent and that the Bank had not complied with commercially reasonable banking standards in processing the loans.

Following trial, the court determined that the partnerships lacked standing to sue the appellants and dismissed the case. We reversed the court's decision on appeal.[1] On remand, the court addressed the merits of the case and first determined that the partnerships' sole cause of action was essentially an action for conversion. After evaluating the evidence, the court concluded that the Bank had converted the partnerships' property:

> The Bank's actions of encumbering [the partnerships'] property with Deeds of Trust resulted in a conversion. The partnerships were permanently deprived of their interest in the encumbered lots on the dates the lots were sold and proceeds of the sales were applied to the payoff of the July and October loans pursuant to the Deeds of Trust.

The court jointly awarded the partnerships $2,267,056.86 in damages and also awarded $2.8 million in prejudgment interest. The appellants moved for a new trial and to alter or amend the judgment. The court overruled the appellants' motions.

III. ASSIGNMENTS OF ERROR

The appellants assign, consolidated and restated, that the court erred in:

(1) concluding that the statute of limitations did not bar the partnerships' conversion claim regarding the July loan;

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[1] See *Brook Valley Ltd. Part. v. Mutual of Omaha Bank*, 281 Neb. 455, 797 N.W.2d 748 (2011).

(2) concluding that the Bank, through its encumbering and sale of the partnerships' lots, had converted the partnerships' property;

(3) concluding that the partnerships had not ratified the July and October loans;

(4) calculating damages and, specifically, failing to award damages for the July loan based only on that portion which was for a nonpartnership purpose, and granting judgment jointly to the partnerships; and

(5) awarding prejudgment interest.

IV. STANDARD OF REVIEW

[1] In a bench trial of a law action, the trial court's factual findings have the effect of a jury verdict, which we will not disturb on appeal unless clearly wrong. And we do not reweigh the evidence but consider the judgment in the light most favorable to the successful party and resolve evidentiary conflicts in favor of the successful party.[2]

[2] We review de novo whether a court should award prejudgment interest.[3]

V. ANALYSIS

1. Statute of Limitations

Although the appellants devote the first portion of their brief to discussing whether the deed of trust securing the July loan was void or voidable, we read their argument as essentially arguing that the partnerships' action regarding the July loan (but not the October loan) was time barred. The appellants note that the statute of limitations for conversion is 4 years, that the loan occurred in July 2000, and that the partnerships did not sue the Bank until August 2004. So the appellants argue the statute of limitations has run.

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[2] See *Davenport Ltd. Partnership v. 75th & Dodge I, L.P.*, 279 Neb. 615, 780 N.W.2d 416 (2010).

[3] See, e.g., *Blue Valley Co-op v. National Farmers Org.*, 257 Neb. 751, 600 N.W.2d 786 (1999).

[3] The appellants are correct that under Nebraska law, the statute of limitations for a conversion claim is 4 years.[4] But we have explained that a conversion is "any distinct act of dominion wrongfully exerted over another's *personal property* in denial of or inconsistent with his rights therein."[5] In other words, "conversion lies only for serious interference with possessory interests in personal property, not real property."[6]

The making of the July loan, by itself, did not constitute a conversion. Instead, and as the court recognized, the alleged conversion was complete when the Bank wrongfully retained the proceeds from the sale of each lot.[7] The earliest sale of any lot collateralized under the July loan was December 14, 2000. The partnerships filed their complaint on August 6, 2004, less than 4 years from that date. The partnerships' complaint was timely.

2. Conversion

[4] Conversion is "any unauthorized or wrongful act of dominion exerted over another's property which deprives the owner of his property permanently or for an indefinite period of time."[8] To prove that the Bank's actions were "unauthorized" or "wrongful," the partnerships had to prove that the loans were for a nonpartnership purpose. This is because Prime had authority to pledge the partnerships' property for a partnership purpose, but did not have authority to do so for a nonpartnership purpose without the consent of the limited partners. The appellants argue that the partnerships failed to prove that the loans were for a nonpartnership purpose.

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[4] See, Neb. Rev. Stat. § 25-207 (Reissue 2008); *Upah v. Ancona Bros. Co.*, 246 Neb. 585, 521 N.W.2d 895 (1994), *disapproved in part on other grounds, Welsch v. Graves*, 255 Neb. 62, 582 N.W.2d 312 (1998).

[5] *Polley v. Shoemaker*, 201 Neb. 91, 95, 266 N.W.2d 222, 225 (1978) (emphasis supplied).

[6] *Woodring v. Jennings State Bank*, 603 F. Supp. 1060, 1065 (D. Neb. 1985). See, also, 18 Am. Jur. 2d *Conversion* § 15 (2004).

[7] Cf. *Zimmerman v. FirsTier Bank*, 255 Neb. 410, 585 N.W.2d 445 (1998).

[8] *Farmland Serv. Co-op v. Southern Hills Ranch*, 266 Neb. 382, 392, 665 N.W.2d 641, 648 (2003).

(a) The October Loan Was for a Nonpartnership Purpose

We conclude that whether the loans served a partnership purpose is a factual finding, which we review for clear error.[9] Regarding the October loan, the court determined that the partnerships proved that the loan was for a nonpartnership purpose. The record shows that the sole purpose for the loan was to cover McCart's $2.7 million overdraft from his check-kiting scheme. This obviously had nothing to do with either limited partnership's purpose to develop, own, and sell real estate in Sarpy County. So under the partnership agreements, Prime did not have authority to pledge the partnerships' property as collateral for the October loan. And because the Bank's actions were similarly unauthorized and wrongful, it converted the partnerships' property when it sold the lots and applied the proceeds to the October loan. The court's determination was not clearly wrong.

(b) The July Loan Was for Both Partnership and Nonpartnership Purposes

The more difficult question is whether the partnerships proved that the July loan was for a nonpartnership purpose. The record shows that the purpose of the July loan was to consolidate and renew prior loans from the Bank to several entities and to advance business capital. The July loan consolidated prior loans to Prime ($35,040), McCart ($274,046), BVII ($250,040), BVLP ($50,030), and Spring Valley XI Joint Venture ($180,924). From the July loan, the Bank also issued a check payable to Prime and Heartland for $209,960 as "new" money. The court found that "[t]he only benefit provided to the partnerships was approximately $300,000.00 of debt reduction by virtue of the July loan. The remainder went to other entities." So the court found that the July loan—other than the portion renewing the partnerships' prior loans—was for a nonpartnership purpose.

The court's finding that renewal of the prior BVII loan was for a partnership purpose was obviously not clearly wrong.

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[9] See *Davenport Ltd. Partnership, supra* note 2.

But an issue arises regarding the renewal of the BVLP loan. The court reasoned that because the renewal of the BVLP loan benefited BVLP, it served a partnership purpose. But remember that Prime pledged *only BVII property as collateral* for the July loan. Thus, the inquiry should have been whether renewing the prior BVLP loan served BVII's purposes. As explained in more detail later in this opinion, we are remanding this cause with directions to modify the judgment regarding the July loan. The purpose of renewing the BVLP loan is a factual finding which the court must make on remand.

The question remains whether the renewal of the other three prior loans and the check payable to Prime and Heartland were also for a partnership purpose. The appellants argue that the court erred in finding they were not. The appellants argue that it was the partnerships' burden to prove a nonpartnership purpose, which they failed to do. In support of this contention, the appellants point to evidence that the payment to Heartland was to clear title to the collateralized BVII lots. The appellants also claim that the other entities benefited by the July loan might have borrowed money from the Bank to lend to BVII and that BVII might have been paying off its debts.

The appellants' latter assertion is speculation. That could have been the case, but the record does not support such a conclusion. There is evidence, however, that the check payable to Heartland and Prime was to clear title to BVII lots. If that were the purpose of that portion of the July loan, then that would qualify as a partnership purpose.

But the court determined that the portion of the July loan other than the renewal of the partnerships' prior loans did not serve a partnership purpose. And we cannot say, based on this record, that the court was clearly wrong in that determination. The record shows that the Bank made these loans to various separate business entities. The court could reasonably have found, based on the testimony, that the consolidation and renewal of prior loans for business entities other than BVII was a nonpartnership purpose.[10]

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[10] Cf. *Freidco of Wilmington, etc. v. Farmers Bank, etc.*, 16 B.R. 835 (D. Del. 1981).

For example, one former officer of the Bank testified in response to the partnerships' direct examination as follows:

> Q. And the July loan, you just told me, was for payment of Prime . . . notes, Spring Valley notes, notes of people other than [BVLP or BVII], didn't you?
>
> A. I don't know that I said that, but yes.
>
> . . . .
>
> Q. So that's not a partnership purpose for [BVLP or BVII], is it?
>
> A. No.
>
> Q. All right. So you needed —
>
> A. I don't know. I say "no" too quickly. I don't know because some of those other loans, money could have gone in through Prime to fund deals on [BVII]. We didn't look at those.

Although the witness backtracked, the court could have concluded from this testimony that payment to other nonpartnership entities was a nonpartnership purpose.

The partnerships' expert witness on banking standards also seemed to suggest that payment to nonpartnership entities was a nonpartnership purpose:

> Q. [W]hat did you notice about the deeds of trust? From whom did they come with reference to the borrower on the loans?
>
> A. The deeds of trust — the notes were for Prime . . . and the real estate — some of the real estate in question were the [partnerships], which Prime was the general partner on the first note of two million — I'm sorry, 1,000,133 dated in July of 2000.
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> That note paid off a [BVII] note of 250,000 and a [BVLP] note of 50,000, *and the rest of the proceeds paid off personal notes, Prime . . . notes*.

(Emphasis supplied.) The court could infer from this testimony that the majority of the July loan served a nonpartnership purpose.

The record also shows that McCart was guilty of kiting checks and that McCart had an interest in each of the other entities, in one form or another. In addition to his obvious

interest in loans to himself personally and to Prime, McCart (through Prime) had an interest in both Spring Valley XI Joint Venture and Heartland. Although McCart's suspicious activity apparently only came to light in October 2000, after the July loan, the court could have concluded that the July loan money was used for a nonpartnership purpose—to fund McCart's check-kiting scheme. Furthermore, although the records contain testimony from the Bank's former officers that the "new" money was meant to pay Heartland to clear the title on the collateralized BVII lots, that explanation is undermined by Prime's being a payee on the check.

In sum, the court determined that the October loan and a majority of the July loan were for nonpartnership purposes. Those factual findings are not clearly wrong. So the Bank's accepting the partnerships' property as collateral, followed by the sale of the property and application of the proceeds to the loans, was an "unauthorized or wrongful act of dominion exerted over" the partnerships' property.[11] The Bank's actions permanently deprived the partnerships of their property. This was a conversion.

3. Ratification

Nevertheless, the appellants argue that even if its actions were improper, the limited partners' subsequent acts ratified the July and October loans. So the appellants argue that they cannot be liable for conversion.

[5-9] Ratification is the acceptance of a previously unauthorized contract.[12] Ratification of an agent's unauthorized acts may be made by overt action or inferred from silence and inaction.[13] Further, retention of benefits secured by an agent's unauthorized act with knowledge of the source of such benefits and the means by which they were obtained is a ratification of

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[11] See *Farmland Serv. Co-op, supra* note 8, 266 Neb. at 392, 665 N.W.2d at 648.

[12] See *Stolmeier v. Beck*, 232 Neb. 705, 441 N.W.2d 888 (1989).

[13] *Bank of Valley v. Shunk*, 215 Neb. 25, 337 N.W.2d 118 (1983); *Kresha v. Kresha*, 211 Neb. 92, 317 N.W.2d 776 (1982).

the agent's act.[14] And whether there has been a ratification is ultimately and ordinarily a question of fact.[15] Because ratification is an affirmative defense,[16] the burden of proving ratification rested on the appellants.[17]

The appellants argue that the partnerships ratified the July and October loans through later transactions involving some of the limited partners. Specifically, the appellants argue that some of the limited partners borrowed money from the Bank to buy some of the collateralized lots. When a dispute arose about the repayment of those loans, those limited partners entered into settlement agreements with the Bank in March and April 2004. The agreements released those limited partners' claims against the Bank arising out of the July and October loans. The agreements also assigned to the Bank those limited partners' rights to any judgment obtained against the Bank by the partnerships in exchange for the Bank's discharging those limited partners' loans. The appellants argue that because those limited partners entered into the settlement agreements knowing the circumstances surrounding the July and October loans, they therefore ratified those loans.

[10] But the court found that the partnerships (through the limited partners) had not ratified the July and October loans, and we determine that factual finding is not clearly wrong. Even assuming that the limited partners who entered into the settlement agreements had ratified the July and October loans, *the partnerships* did not ratify them: "In cases where a partner's act is not within the scope of the partnership's business and is not authorized by the partners, the transaction is still binding on the partnership if it is *ratified by those partners who would have had the power to authorize the act*."[18]

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[14] See *D & J Hatchery, Inc. v. Feeders Elevator, Inc.*, 202 Neb. 69, 274 N.W.2d 138 (1979).

[15] See *Tedco Development Corp. v. Overland Hills, Inc.*, 200 Neb. 748, 266 N.W.2d 56 (1978).

[16] See *Bauermeister v. McReynolds*, 253 Neb. 554, 571 N.W.2d 79 (1997).

[17] See, e.g., *Schuelke v. Wilson*, 255 Neb. 726, 587 N.W.2d 369 (1998).

[18] J. William Callison & Maureen A. Sullivan, Partnership Law and Practice § 8:19 at 214 (2012) (emphasis in original) (emphasis supplied).

The appellants argue only that a "majority" of the limited partners ratified the act. But the partnership agreements required *all* of the limited partners' consent to authorize the loans. So there could be no ratification based only on the actions of a majority of the limited partners.[19] A contrary conclusion would lead to the absurd result that a majority of limited partners could ratify an unauthorized transaction and render the partnership liable for it when that act could not have been authorized without the consent of each and every limited partner. The appellants' argument has no merit.

4. Damages

In calculating damages, the court found that the appellants had applied $1,064,600.73 to the July loan and $1,202,456.13 to the October loan, for a total of $2,267,056.86 in damages. The court entered judgment against Mutual of Omaha Bank, as the Bank's successor, for the full amount. The court also entered judgment against Omaha Financial Holdings for the amount applied to the October loan, because the Bank had assigned the October loan to Midlands Financial Services, Omaha Financial Holding's predecessor.

The record supports the judgment amount for the October loan, and so the court was not clearly wrong in that determination. But we remand the cause with directions for the court to modify the judgment regarding the July loan. First, the July loan's renewal of the prior BVII loan served a partnership purpose and so applying sale proceeds for that amount to the July loan was not a conversion. So the court must reduce the July loan judgment. Second, as discussed earlier, the court improperly reasoned that renewing the prior BVLP loan served a partnership purpose because it benefited BVLP. But only BVII property served as collateral for the July loan, so the question is whether renewing the prior BVLP loan served BVII's purposes. On remand, the court should make that finding and adjust the July loan judgment if needed. Finally, we note that the partnerships (as different limited partnerships)

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[19] See *id.*

are separate entities.[20] The court is ordered to award separate judgments to the partnerships based on the ownership of the properties sold to cover the July and October loans.

5. Prejudgment Interest

The appellants argue that the court erred in awarding prejudgment interest because the partnerships' claims were not liquidated as required under Neb. Rev. Stat. § 45-103.02 (Reissue 2010). Specifically, the appellants argue that there was a reasonable controversy over both the partnerships' right to recover and the amount of any such recovery. Not surprisingly, the partnerships take the opposite stance and argue that their claims were liquidated or, alternatively, that prejudgment interest was proper under Neb. Rev. Stat. § 45-104 (Reissue 2010).

The parties dispute the proper legal framework for addressing the award of prejudgment interest. The appellants contend that §§ 45-103.02 and 45-104 are not alternate routes to recover prejudgment interest, but that the reasonable controversy requirement must be met regardless whether the case is a type enumerated in § 45-104.[21] The partnerships, on the other hand, contend that §§ 45-103.02 and 45-104 are alternate routes to recover prejudgment interest and that if the case is a type enumerated in § 45-104, whether there is a reasonable controversy is irrelevant.[22]

We see no need to resolve this issue because we conclude this case is not a type enumerated under § 45-104. So regardless which approach is correct, whether prejudgment interest is proper depends on whether this case presented a reasonable controversy. Section 45-104 provides, in relevant part:

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[20] See, Neb. Rev. Stat. §§ 67-294 and 67-409 (Reissue 2009); *Richards v. Leveille*, 44 Neb. 38, 62 N.W. 304 (1895).

[21] See, *Cheloha v. Cheloha*, 255 Neb. 32, 582 N.W.2d 291 (1998); *Records v. Christensen*, 246 Neb. 912, 524 N.W.2d 757 (1994).

[22] See, *Fitzgerald v. Community Redevelopment Corp.*, 283 Neb. 428, 811 N.W.2d 178 (2012); *BSB Constr. v. Pinnacle Bank*, 278 Neb. 1027, 776 N.W.2d 188 (2009).

> Unless otherwise agreed, interest shall be allowed at the rate of twelve percent per annum on money due on any instrument in writing, or on settlement of the account from the day the balance shall be agreed upon, *on money received to the use of another and retained without the owner's consent, express or implied, from the receipt thereof*, and on money loaned or due and withheld by unreasonable delay of payment.

(Emphasis supplied.) The parties dispute whether this case involves "money received to the use of another and retained without the owner's consent."

[11] The meaning of a statute is a question of law,[23] and absent any indication to the contrary, we give statutory language its plain and ordinary meaning.[24] "[M]oney received to the use of another" under § 45-104 indicates that the money is received on behalf of another person,[25] such as an agent receiving money on behalf of his principal.[26] That is not the case here. The Bank received money in its own name and converted it to its own use. We conclude that this case does not fall under any of the enumerated categories of § 45-104.

[12] Section 45-103.02(2) provides, in relevant part, that "interest as provided in section 45-104 shall accrue on the unpaid balance of liquidated claims from the date the cause of action arose until the entry of judgment." Prejudgment interest may only be recovered under § 45-103.02(2) when the claim is liquidated.[27] A claim is liquidated when there is no reasonable controversy as to both the amount due and the plaintiff's right

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[23] See, e.g., *In re Estate of Fries*, 279 Neb. 887, 782 N.W.2d 596 (2010).

[24] See, e.g., *In re Interest of Christopher T.*, 281 Neb. 1008, 801 N.W.2d 243 (2011).

[25] See *Fitzgerald, supra* note 22. See, also, *Investors Ins. Corp. v. Dietz*, 264 Or. 164, 504 P.2d 742 (1972); *Meade v. Churchill*, 100 Or. 701, 197 P. 1078 (1921); *Coyle v. Brasic*, No. 95 C 6788, 1996 U.S. Dist. LEXIS 11129 (N.D. Ill. Aug. 1, 1996) (unpublished memorandum opinion and order).

[26] See *Cheloha, supra* note 21.

[27] See *Fitzgerald, supra* note 22.

to recover.[28] The appellants assert that a reasonable controversy existed regarding both of these requirements.

Regarding the July loan, we agree that a reasonable controversy existed concerning the amount due and the partnerships' right to recover. Based on the distribution of the July loan money, it was unclear whether the July loan served a partnership purpose. The court was required to weigh conflicting evidence and determine whether the July loan served a partnership purpose. As such, prejudgment interest on the amount applied to the July loan was improper.

But regarding the October loan, we conclude that there was no reasonable controversy concerning the amount due and the partnerships' right to recover. There was no reasonable dispute about the amount due—it was a simple matter to determine how much money the Bank applied to the October loan. There was also no reasonable dispute about the partnerships' right to recover—there was only one purpose for the October loan, to cover McCart's check kite, and that was not a partnership purpose. This was clearly a conversion, and for an undisputed amount. As such, prejudgment interest at 12 percent per annum was proper on that amount.

VI. CONCLUSION

We affirm the court's judgment regarding the October loan. We also affirm in part the court's judgment regarding the July loan, but reverse the judgment in part and remand the cause so that the court may adjust the July loan judgment in accordance with this opinion. We direct the court to enter separate judgments as to each plaintiff partnership. Finally, we affirm the court's granting of prejudgment interest regarding the October loan, but reverse the court's granting of prejudgment interest regarding the July loan.

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

HEAVICAN, C.J., and STEPHAN and CASSEL, JJ., not participating.

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[28] See, *id.*; *Cheloha, supra* note 21.