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Case Law Update

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Case Law Update: A Survey of Recent Texas Partnership and LLC Cases

Selected Cases from the Past Year Excerpted from More Comprehensive Paper Included in Program Materials
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Existence of General Partnership

Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P., No. 11-12667 (298th District Court, Dallas County).

The jury in this case found that the plaintiff and defendant formed a partnership under the statutory five-factor test despite written communications declaring that a partnership would not be formed prior to fulfillment of certain conditions. The daily proceedings of the trial were heavily covered by The Texas Lawbook, and the verdict (which included findings of a partnership, breach of duty of loyalty, and $319 million in damages) was widely reported. Although some of the press coverage indicated that this case applied the law in a new or unprecedented fashion, the following recent cases, as well as numerous cases in years past, illustrate that disputes regarding "inadvertent partnerships" are not uncommon.

Box v. Dallas Mexican Consulate General, Civil Action No. 3:08-cv-1010-O, 2014 WL 1012449 (N.D. Tex. Mar. 14, 2014).

Box, a licensed real estate broker, worked with the Dallas Mexican Consulate General ("Consulate") in its search for a new location in Dallas. Box found a building for the Consulate to purchase, but the building was part of a three-building complex that the owner refused to subdivide. Box alleged that Consulate officials agreed to enter into a joint venture arrangement with Box whereby Box and possibly a third-party investor would buy the complex, subdivide it, and sell the building to the Consulate. Ultimately, the Consulate purchased the building from a third party. Box sued the Consulate contending that the Consulate breached the parties' joint venture agreement. The Consulate argued that it was immune from suit, but Box relied on the commercial activity exception to sovereign immunity. Subject matter jurisdiction based on the commercial activity exception depended on the existence of the joint venture, and the court analyzed whether a joint venture between Box and the Consulate existed. The court applied Texas law to the issue of whether a joint venture was formed and set forth the common-law elements of a joint venture as well as the factors in the Texas Business Organizations Code that indicate the existence of a partnership. The court stated that a joint venture must be based on an express or implied agreement and is a question of law for the court. In addition to the intention of the parties, the court identified the elements of a joint venture as: (1) a community of interest in the venture, (2) an agreement to share profits, (3) an agreement to share losses, and (4) a mutual right of control or management of the enterprise. The court stated that joint ventures are normally indistinguishable from partnerships on the question of formation, and both are governed by the rules applicable to partnerships. The Texas Business Organizations Code sets forth the following five factors indicating the existence of a partnership: (1) receipt or right to receive a share of profits of the business; (2) expression of intent to be partners in the business; (3) participation or right to participate in control of the business; (4) agreement to share or sharing losses of the business or liability for claims by third parties against the business; and (5) agreement to contribute or contributing money or property to the business. Tex. Bus. Orgs. Code § 152.052(a). The court stated that the "most important factors" are the sharing of profits and control over the business. The court also noted that courts must examine the totality of the circumstances, that no single factor is determinative, and that the evidence in support of the factors is to be considered on a "continuum." The court discussed Box's affidavit and concluded that it was not clear whether Box formed a joint venture with the third-party investor or the Consulate or both. The court stated that the party seeking to prove the existence of a joint venture bears the burden of proof and must present evidence that both parties expressed an intent to be partners. Box did not show any expression by the Consulate of an intent to enter into a joint venture with Box. The court acknowledged that the absence of this factor was not determinative, but the court found Box failed to present

evidence on the remaining factors as well. Because a joint venture between Box and the Consulate was never formed, the formation of the joint venture was not commercial activity that would except this claim from the general statutory sovereign immunity enjoyed by the Consulate, and the court was required to dismiss the claim.

Varosa Energy, Ltd. v. Tripplehorn, No. 01-12-00287-CV, 2014 WL 1004250 (Tex. App.–Houston [1st Dist.] Mar. 13, 2014, no pet. h.) (mem. op.).

The plaintiff sought to hold Tripplehorn and Aspen Development Company, LLC ("Aspen") liable on a contract executed by Rollings on the basis that Rollings and Tripplehorn, on behalf of Aspen, formed a joint venture. The court concluded that the evidence supported the jury's finding that the parties formed a joint venture under the judicial four-element definition of a joint venture: (1) a community of interest; (2) an agreement to share profits; (3) an agreement to share losses; and (4) a mutual right of control or management of the enterprise. The evidence showed a community of interest because Rollings and Tripplehorn agreed that each of them would pay half the purchase price of a rig that Rollings would refurbish and to which Tripplehorn would hold title. Then the parties would find a purchaser, and Tripplehorn would convey title to the purchaser. The evidence showed an express agreement to share all profits and losses, and a sharing of control was shown by Rollings' control of the refurbishment and responsibility for purchasing and selling the equipment while Tripplehorn held title and thus controlled whether to enter into a transaction for the sale of the equipment. Although the evidence supported the finding of the existence of a joint venture, an improper judgment was not caused by the trial court's disregard of the finding because the contract entered into by Rollings was only an obligation of Rollings and not an obligation of the joint venture.

MetroplexCore, L.L.C. v. Parsons Transportation, Incorporated, 743 F.3d 964 (5th Cir. 2014).

In this contracting dispute, MetroplexCore LLC ("MetroplexCore"), a Texas environmental engineering firm, sued Parsons Transportation Group, Inc. ("Parsons"), an Illinois general contracting firm that contracted with Harris County to design, build, and operate a Houston-area transit system. In an initial bid, Parsons included MetroplexCore as a "team member." Parsons did not win the bid, but several years later, after the initial contractor was unable to proceed, Harris County awarded Parsons (who had a new set of subcontractors) the contract for the remainder of the projects. After a few months, MetroplexCore notified Parsons that MetroplexCore believed it was entitled to a share of the profits. Parsons denied that it had an agreement with MetroplexCore, and MetroplexCore filed suit. In this appeal, MetroplexCore argued that the district court erred in granting Parsons' motion for summary judgment on the issue of the formation and existence of an enforceable joint venture. The court of appeals first set forth the common-law elements of a joint venture: (1) a community of interest in the venture; (2) an agreement to share profits; (3) an agreement to share losses, and (4) a mutual right of control or management of the enterprise. The court cited Texas case law and the definition of a partnership in Section 152.051(b) of the Texas Business Organizations Code as authority for the common-law elements of a joint venture and the proposition that a joint venture is governed by the rules applicable to a partnership. The court next set forth the five statutory factors for determining whether a partnership has been created: (1) receipt or right to receive a share of profits of the business, (2) expression of intent to be partners in the business, (3) participation or right to participate in control of the business, (4) agreement to share or sharing losses of the business or liability for claims by third parties against the business; and (5) agreement to contribute or contributing money or property to the business. Tex. Bus. Orgs. Code § 152.052(a). The court noted that the statute provides that an agreement to share losses is not necessary to create a partnership and that simply showing the right to share or sharing in gross returns or revenue is not enough by itself to show a partnership. Tex. Bus. Orgs. Code § 152.052(b)(3), (c). The court stated that the right to share profits and control of the business are generally considered the most important factors in establishing the existence of a partnership. The court acknowledged that MetroplexCore produced evidence of a "community of interest," as defined by Texas courts, but the court stated that this factor alone was insufficient to create a partnership or joint venture. With respect to profit sharing, MetroplexCore argued that there was an agreement to share the profits in 90% and 10% shares based on a letter stating that MetroplexCore would "participate in the contract to a minimum 10% level," but the court stated that the evidence did not make it clear whether MetroplexCore was entitled to 10% of the profits or 10% of some of other feature, such as workload or management responsibility. Further, Parsons produced evidence that it had profit-sharing joint-venture agreements with other collaborators and did not have a similar contract with MetroplexCore. Even if there were a fact question on the profit-sharing element, more evidence was needed to establish the existence of a joint venture, and the court

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