

CASE LAW UPDATE: A SURVEY OF RECENT TEXAS PARTNERSHIP AND LLC CASES

LLCs, LPs and PARTNERSHIPS 2017

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If it walks like a duck...

(inadvertent, disguised, or disputed general partnerships)

- Whether a general partnership was created (so as to result in duties among partners, buyout on withdrawal, personal liability of partner, or some other consequence of partnership relationship) is a frequently litigated issue.
- Five statutory factors considered under BOC: (1) receipt or right to receive a share of the profits; (2) expression of an intent to be partners; (3) participation or right to participate in control; (4) sharing or agreeing to share losses or liabilities; and (5) contributing or agreeing to contribute money or property. Proof of all factors not required, but proof of only one ordinarily insufficient.

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If it walks like a duck...

(inadvertent, disguised, or disputed general partnerships)

- Test for “joint venture” is same as partnership under Texas law (though some cases continue to cite old test).
- Score of cases from past year:
Yes 4, No 1
(In past years, ratio has been flipped—about 3 or 4 No to 1 Yes)

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The ties that bind

(refusal to vote for amendments to partnership agreement constituted breach of fiduciary duty even though within contractual rights)

CBIF Ltd. P'ship v. TGI Friday's Inc., Tex. App.—Dallas 2017

- Joint venture formed to operate Friday's restaurants at DFW Airport secured leases under disadvantaged business enterprise (DBE) program. Leases required compliance with DBE federal regulations.
- Revised federal regulations/audit of JV required DBE parties to have more control at JV level and at level of limited partnership that was venturer in the JV.
- Defendant argued exercising contractual rights (voting against amendments and other matters needed to comply) could not constitute breach of fiduciary duties⁴

The ties that bind

(refusal to vote for amendments to partnership agreement constituted breach of fiduciary duty even though within contractual rights)

CBIF Ltd. P'ship v. TGI Friday's Inc., Tex. App.—Dallas 2017

- Defendant's requested jury instruction that "contractual rights supplant fiduciary duties" was properly refused.
- Court: Contracts "do not exist in a vacuum" and "contractual rights do not operate to the exclusion of fiduciary duties"—where contractual rights and fiduciary duties "overlap, contractual rights must be exercised in a manner consistent with fiduciary duties"
- Held: Evidence supported jury's findings of breach of fiduciary duty.

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The ties that bind

(refusal to vote for amendments to partnership agreement constituted breach of fiduciary duty even though within contractual rights)

CBIF Ltd. P'ship v. TGI Friday's Inc., Tex. App.—Dallas 2017

- Those who knowingly participate in a breach of fiduciary duty are liable for breach as joint tortfeasors.
- Relationship between partners is "fiduciary in character and imposes "obligation of loyalty...and of utmost good faith, fairness, and honesty...."
- Knowledge of breach can be inferred from objective manifestations.
- Good-faith belief that entitled to take actions based on governing documents not a defense.

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