

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

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

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I. Introduction

This paper summarizes recent Texas cases involving issues of partnership and limited liability company law. This paper only includes cases that have appeared since the paper for last year's program was prepared. Case law surveys that include cases from prior years are available on Professor Miller's profile page at the Baylor Law School web site.

II. Recent Texas Cases Involving Partnerships

A. Creation/Existence of General Partnership

Palasota v. Doron, No. 10-16-00326-CV, 2018 WL 2054511 (Tex. App.—Waco May 2, 2018, no pet. h.) (mem. op.).

The court reversed the trial court's summary judgment that a partner's wife was a partner in a partnership between her husband and son and rendered summary judgment in favor of the wife that she was not a partner because there was no more than a scintilla of evidence that the wife was a partner considering the five factors indicating a partnership under the Texas Business Organizations Code and the totality of the circumstances.

The plaintiff contracted with Brazos Valley Services and its partners, Ricky J. Palasota, Sr. and Rick J. Palasota, Jr. When the contract was breached, the plaintiff sued the partnership and obtained a default judgment. The plaintiff added Ricky, Rick, and Ricky's wife, Elaine, as individual defendants. Rick and Ricky filed bankruptcy while the plaintiff was attempting to collect on the judgment against the partnership. Elaine and the plaintiff each filed motions for summary judgment on the issue of whether Elaine was a partner in the partnership, and the trial court granted summary judgment in favor of the plaintiff. Elaine appealed.

The court of appeals began its analysis by pointing out relevant provisions of the Texas Business Organizations Code, which provides that an association of two or more persons to carry on a business for profit as owners creates a partnership, regardless of whether they intended to create a partnership or whether the association is called a "partnership." Tex. Bus. Orgs. Code § 152.051(b). Further, the statute states that the factors indicating that persons have created a partnership include: (1) receipt or right to receive a share of the profits of the business; (2) expression of an 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 also noted the "totality-of-the-circumstances" test adopted by the Texas Supreme Court in *Ingram v. Deere* and guidance provided by the supreme court for applying the test. The plaintiff relied on bankruptcy schedules of Rick and Ricky in support of the plaintiff's motion for summary judgment but "made no effort to distinguish the relevant factors in the Business Organizations Code to be considered in determining whether Elaine was a partner in Brazos Valley Services." Ricky did not identify Elaine as a partner in his bankruptcy schedules, and he identified the debt to the plaintiff as a community debt, but not a debt for which Elaine was jointly liable. Rick Jr. listed Elaine as a partner in an unnamed partnership with Rick and Ricky, but listed only Ricky as a co-debtor on the debts of Brazos Valley Services and stated that he and his father each owned a 50% interest in Brazos Valley Services. The court concluded that this evidence was "no more than a mere scintilla to establish that Elaine was a partner in Brazos Valley Services. There was no evidence regarding profits of the partnership, control of the partnership, Elaine's agreement to participate as a partner, or any contributions made by Elaine to the partnership. The evidence relating to liabilities based on the bankruptcy schedules is nothing more than a surmise to show that Elaine was liable for any debt as a partner rather than potentially liable as a spouse of the partner." Considering the statutory factors under the totality of the circumstances, the court held that the trial court erred by granting the plaintiff's traditional motion for summary judgment and failing to grant Elaine's no-evidence motion for summary judgment. Thus, the court reversed and rendered judgment in favor of Elaine.

Gobezie v. Castillo, No. 05-16-00841-CV, 2018 WL 1044271 (Tex. App.—Dallas Feb. 26, 2018, no pet. h.) (mem. op.).

There was sufficient evidence to support the existence of a partnership in which the defendant was a general partner and thus personally liable for the partnership's obligation to the partnership's customer where the defendant signed a business formation agreement to form a limited liability company that was never formed and two weeks later signed and filed an assumed name certificate identifying the defendant as an owner of a general partnership.

Castillo bought a car from a business identified in various documents in the transaction as "Pro life Garland," "Prolife Auto," and "Prolife-MJMD," and Castillo never received the paperwork to obtain legal title to the vehicle. Castillo sued Gudaye Gobezie d/b/a Prolife Auto Garland. Gobezie claimed that the evidence was insufficient to support a judgment against her, but Castillo testified as to numerous instances in which she dealt with Gobezie in connection with the purchase of the vehicle, and the evidence included an assumed name certificate showing Gobezie was one of two owners of "Prolife Auto Garland," a general partnership operating at the location where Castillo purchased the vehicle. There was also evidence of a civil complaint filed by Gobezie against two other individuals in which Gobezie alleged that those two individuals convinced her to invest in a business to buy used cars and resell them at a profit. The complaint had attached a business formation agreement in which Gobezie agreed to contribute to a limited liability company in exchange for a 20% interest. There was no evidence the LLC was ever formed, but two weeks after the agreement was signed, Gobezie signed the assumed name certificate for Prolife Auto Garland.

The court pointed out that Tex. Bus. Orgs. Code § 152.051(b) provides that, in general, an association of two or more persons to carry on a business for profit as owners creates a partnership, regardless of whether they intended to create a partnership. The court also listed the five factors that indicate the creation of a partnership: right to receive a share of the business profits, expression of intent to become partners, right to participate in control of the business, agreement to share business losses or liability to third parties, and agreement to contribute or contribution of money or property to the business. The court concluded that a reasonable factfinder could have determined that Gobezie was a partner in Prolife Auto Garland, the business from which Castillo purchased the vehicle. As a partner in this general partnership, Gobezie was thus jointly and severally liable for the partnership's failure to provide title to the vehicle purchased from the partnership. The court rejected Gobezie's argument that the judgment against her in this case was barred by a judgment in the other lawsuit between Gobezie and the two other individuals who were parties to the business formation agreement mentioned above. The judgment in the other lawsuit declared Gobezie not competent to enter into business agreements with the other two individuals and declared the assumed name certificate for Prolife Auto Garland null and void, but the court in this case held that collateral estoppel was not established because there was no privity between the two individuals in the other suit and the purchaser of the vehicle in this suit.

Harun v. Rashid, No. 05-16-00584-CV, 2018 WL 329292 (Tex. App.—Dallas Jan. 9, 2018, no pet. h.) (mem. op.).

The court of appeals affirmed the trial court's judgment awarding Sharif Rashid actual damages, exemplary damages, and attorney's fees on his claim for breach of a partner's fiduciary duty.

Mohammed Harun was in the restaurant business, and Rashid was a technical analyst. In November 2008, Harun was interested in opening a new restaurant in Irving, and he approached Rashid to see if he might provide funding for the venture. Rashid was interested and invested approximately \$60,000. Ultimately, the two had a falling out. Harun removed Rashid as a signatory on the restaurant's bank account and blocked his access to the restaurant premises. Rashid sued, alleging the existence of a partnership to operate the restaurant and a breach of fiduciary duty by Harun. At trial, the court entered a judgment awarding Rashid actual damages of \$36,000 (the difference between Rashid's investment of \$60,000 and the amount that Rashid had been repaid), exemplary damages of \$36,000, attorney's fees of \$79,768.64, pre-judgment and post-judgment interest, and costs.

Harun challenged the legal and factual sufficiency of the evidence establishing the existence of a partnership. The court noted that, in determining whether a partnership has been created, several factors are considered, including "(1) the parties' receipt or right to receive a share of profits of the business; (2) any expression of an intent to be partners in the business; (3) participation or right to participate in control of the business; (4) any agreement to share or sharing losses of the business or liability for claims by third parties against the business; and (5) any agreement to contribute or contributing money or property to the business." Proof of each factor is not necessary to establish a partnership, and the factors are reviewed under a totality of the circumstances.

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