

# **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 duties<sup>4</sup>

### **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)

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- 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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## Title search: Case Law Update: A Survey of Recent Texas Partnership and LLC Cases

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26<sup>th</sup> Annual LLCs, LPs and Partnerships session  
"Case Law Update"