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

LLCs, LPs and PARTNERSHIPS 2017

Sponsored by UTLaw CLE Austin, Texas July 13, 2017

Presentation by:

Professor Elizabeth S. Miller Baylor University School of Law Waco, Texas

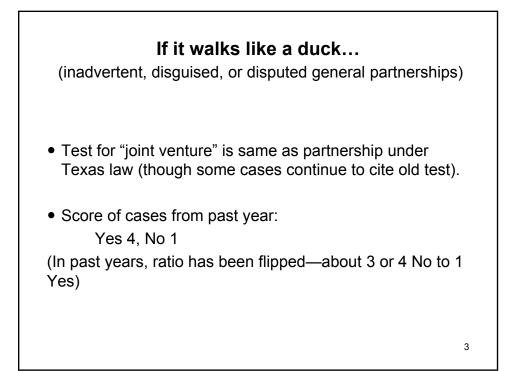
If it walks like a duck...

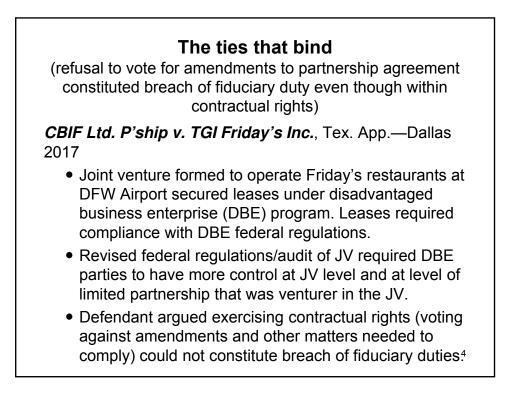
(inadvertent, disguised, or disputed general partnerships)

- 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.

2

1





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.

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.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

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

Also available as part of the eCourse <u>2017 LLCs, LPs, and Partnerships eConference</u>

First appeared as part of the conference materials for the 26^{th} Annual LLCs, LPs and Partnerships session "Case Law Update"