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

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2019 LLCs, LPs and PARTNERSHIPS

July 18 & 19, 2019
Austin, Texas

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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

Yee v. Anji Technologies, LLC, No. 05-18-00662-CV, 2019 WL 2120290 (Tex. App.—Dallas May 15, 2019, no pet. h.) (mem. op.).

The court of appeals held that an oral partnership agreement was not enforceable because the agreement could not be performed within one year and the partial performance exception did not apply. However, the would-be partner's claims for quantum meruit, promissory estoppel, and enforcement of an oral agreement entered into at the time of termination of her employment were not barred.

Wendy Yee was employed by Anji Technologies, LLC ("Anji") as a senior vice president for several years. After Anji terminated her employment, Yee sued, claiming she was entitled to (1) fifty percent of Anji's profits from 2012 through 2015 under an oral partnership agreement and (2) fifty percent of Anji's profits from a certain project under an oral agreement made when her employment was terminated (the "Alcara agreement"). Yee asserted claims for breach of contract, promissory estoppel, breach of fiduciary duty, and quantum meruit.

Anji moved for summary judgment on all of Yee's claims on the ground the partnership agreement did not comply with the statute of frauds. The trial court granted summary judgment on all of Yee's claims. The court of appeals affirmed the trial court's summary judgment as to the claims for breach of the partnership agreement and breach of fiduciary duty because the oral partnership agreement was unenforceable under the statute of frauds. The court of appeals reversed the trial court's summary judgment on the claims for quantum meruit, promissory estoppel, and breach of the Alcara agreement because those claims were not barred by the statute of frauds.

The court of appeals concluded that the summary-judgment evidence showed that both Yee and Anji anticipated that the oral partnership agreement—under which Yee would provide certain services, the owner of Anji would be responsible for all aspects of software and technical support, and Yee and Anji would split the profits—would take much longer than a year. Anji had been in business five years already, and the purpose of the partnership was to increase Anji's client base and workforce. Yee knew profits were to be reinvested in the partnership, and she had made a personal decision not to seek any distribution of profits for five years. Thus, the court held that Anji met its burden of establishing that the statute of frauds barred Yee's claims for breach of the partnership agreement and breach of fiduciary duties arising from the agreement.

Yee claimed that the partial-performance exception to the statute of frauds applied in this case, but the court held that she failed to raise a fact issue as to whether work she allegedly performed for no compensation and personal funds she allegedly spent on Anji's costs and expenses were unequivocally referable to the partnership agreement.

Although the partnership agreement was unenforceable based on the statute of frauds, the court of appeals held that Yee's claims for quantum meruit (under which she sought to recover the reasonable value of the goods and services she provided to Anji) and promissory estoppel (under which she sought to recover out-of-pocket expenses) were not barred by the statute of frauds. Thus, the court of appeals reversed the trial court's summary judgment against Yee on those claims.

Additionally, there was nothing about the oral Alcara agreement—which the parties allegedly entered into at the time Yee was terminated and under which Yee would be paid fifty percent of the profits from a project that

had just been completed—that would suggest it could not be performed within one year. Thus, Anji should not have been granted summary judgment on that claim.

Hammerhead Managing Partners, LLC v. Nostra Terra Oil & Gas Co., PLC, Civil Action No. 3:18-CV-1160-N, 2019 WL 1403363 (N.D. Tex. Mar. 27, 2019).

The court dismissed the plaintiff's breach-of-fiduciary-duty claim because the plaintiff's complaint contained only conclusory allegations of the elements of a joint venture and did not identify any other special relationship giving rise to a fiduciary duty.

Hammerhead Managing Partners, LLC ("Hammerhead") held a working interest in a tract of land known as the Pine Mills Oil Field. Hammerhead sued the other two working interest owners asserting various claims after they entered into a joint operating agreement without including Hammerhead. The court granted the defendants' motion to dismiss several of Hammerhead's claims, including the claim for breach of fiduciary duty. In that regard, the court explained:

> Hammerhead alleges that Defendants Cue and GFP owed fiduciary duties to Hammerhead because they formed a joint venture under Texas law. The Court notes that merely pleading that the parties share an undivided interest in Pine Mill is not by itself sufficient because working interest owners in the same tract of land do not automatically owe each other fiduciary duties. *Zimmerman*, 409 S.W.2d at 614.
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> A joint venture exists when there is, among other things, an agreement to share profits and losses and a mutual right of control or management of the venture. *Pitts & Collard, L.L.P. v. Schechter*, 369 S.W.3d 301, 319 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The Complaint does not contain factual allegations supporting the existence of a joint venture, and instead contains only a conclusory recital of the elements of a joint venture. Compl. at 21. And Hammerhead identifies no other special relationship, other than co-tenancy in the Pine Mills tract, that gives rise to a fiduciary relationship.

In a footnote, the court commented that the court found it interesting that Hammerhead sought to be part of and bound by the joint operating agreement when the joint operating agreement itself disclaimed any partnership.

Fredieu v. W&T Offshore, Inc., No. 14-16-00511-CV, 2018 WL 5556065 (Tex. App.—Houston [14th Dist.] Oct. 30, 2018, pet. filed).

In the course of addressing application of a nine-factor test for determining whether an injured plaintiff was a borrowed employee at the time of his injury (such that workers' compensation benefits under the Longshore and Harbor Workers' Compensation Act ("LHWCA") would be his sole remedy), the court discussed the *Ingram* totality-of-the-circumstances test for determining the existence of a partnership.

In discussing the nine-factor test for determining LHWCA borrowed-employee status from *Ruiz v. Shell Oil Co.*, 413 F.2d 310 (5th Cir. 1969), the court referred to the test as a totality-of-the-circumstances assessment. The court then noted that "Texas law also employs a multi-factor, totality-of-the-circumstances approach to address determinations in certain circumstances," including "determining the existence of a partnership based on five factors identified in the Texas Revised Partnership Act." (The court cited *Ingram v. Deere*, 288 S.W.3d 886, 898 (Tex. 2009) and Tex. Bus. Orgs. Code § 152.051(b) for this proposition.) In analogizing to *Ingram*, the court observed:

> Our analysis is informed by *Ingram*'s discussion of legal sufficiency review in an analogous totality-of-the-circumstances situation, which provides some measure of guidance for the inquiry here. According to *Ingram*, legal sufficiency review of a jury determination based on a multi-factor test involves consideration of evidence along a "continuum" and a "spectrum."
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> At one end of this spectrum, "an absence of any evidence of the factors will preclude the recognition of a partnership under Texas law." *Ingram*, 288 S.W.3d at 898. "Even conclusive evidence of only one factor normally will be insufficient to establish the existence of a partnership." *Id.* "On the other end of the spectrum, conclusive evidence of all of the . . . factors will establish the existence of a partnership as a matter of law." *Id.* "The challenge of the

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

First appeared as part of the conference materials for the
28th Annual LLCs, LPs and Partnerships session
"Case Law Update"