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Franklin Construction Company

February 2002

Franklin Business Associations Code
(Uniform Partnership Act)

§ 203. Property Acquired by Partnership

Property acquired by a partnership is property of the partnership and not of the individual partners.

§ 204. What Constitutes Partnership Property; Acquisition

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(b) Property is acquired in the name of the partnership by a transfer to either of the following:

(1) The partnership in its name.

(2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

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§ 306. Partner's Liability

(a) Except as otherwise provided in [this chapter] all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

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§ 401. Partner's Rights and Duties

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(b) Each partner is entitled to an equal share of the partnership profits and, subject to § 306 . . . , is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner that gives rise to a partnership obligation under subdivision (c) or (d) constitutes a loan to the partnership that accrues interest from the date of the payment or advance.

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§ 404. General Standards of Partner's Conduct

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subdivisions (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property or information, including the appropriation of a partnership opportunity.

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

Stilwell v. Trutanich
Franklin Court of Appeal (1995)

Plaintiff, owner of a seafood company, sued defendants, the owner and the captain of a fishing vessel, for an accounting after breach of an alleged joint venture agreement. The trial court dismissed the suit on the motion of defendants, finding that there was no joint venture but, rather, that the arrangement was nothing more than a charter by plaintiff of defendants' vessel without captain or crew. Plaintiff appeals the dismissal.

A joint venture is an undertaking by two or more persons jointly to carry out a single enterprise for profit. It has been stated that a joint venture is a partnership formed for the accomplishment of a single project. Indeed, our supreme court has held that the relationships of joint venturers among themselves are governed by the partnership laws of the State of Franklin. *Mellor v. Brightman,* Franklin Supreme Court (1986).

The elements of a joint venture are: (a) a community of interest in the subject of the undertaking; (b) a sharing in profits and losses; (c) an equal right or a right in some measure to direct and control the conduct of each other and of the enterprise; and (d) a fiduciary relationship between and among the parties.

A community of interest may exist although the property forming the capital of the venture is not jointly owned by the parties and although one party has contributed money, another property, and another skill to the enterprise. Although it is usual to provide for an equal sharing of profits and losses, the parties may agree to an unequal distribution of the profits, or they may agree that all the parties shall participate in the profits and only certain of them in the losses. In addition, the omission of a provision for the sharing of losses in a joint venture is immaterial since, in the absence of agreement, the law implies a provision that the losses are to be shared among the parties in the same proportion as the profits were to have been divided.

The parties to a joint venture can agree to have unequal control of operations. While in the absence of a special agreement one joint venturer cannot bind the others, they may by agreement grant authority to one or more of the joint venturers, which would not be implied from the relationship alone.

Interpreted in light of these rules, the complaint in this case adequately establishes the existence of a joint venture. It pleads and incorporates a written joint venture agreement to which one of the defendants was an undisclosed principal. The agreement is denominated "Joint Venture Agreement" and refers to the business relationship between the parties. It contemplates the making of a single voyage into Mexican waters to catch, transport, and sell seafood products. It designates the percentage of the net profits each party shall receive.

The complaint further alleges that the voyage referred to in the agreement was completed, that the venture suffered losses, and that said losses were borne by plaintiff, who was not reimbursed therefor. Although the agreement is silent on the manner in which the losses of the venture are to be apportioned, the law implies an obligation on the part of the joint venturers to bear losses in the same proportion as they agreed to divide the profits.

The fact that the defendants had no right to direct their joint venturer in making the voyage, procuring the seafood, and selling the products does not negate the existence of a joint venture agreement because, by written agreement, they delegated their authority.

Reversed.

Kovacik v. Reed

Franklin Supreme Court (1996)

In this suit for dissolution of a joint venture and for an accounting, defendant Reed appeals from a judgment that plaintiff Kovacik recover one-half of the losses of the venture, plus prejudgment interest, and declaring that Reed was obligated to return one-half of the amount Kovacik had invested as capital in the joint venture.

Kovacik told Reed he (Kovacik) had the opportunity to do kitchen remodeling work for a builder who was refurbishing a number of low-income dwellings. He said he had about $10,000 to invest and that, if Reed would become his job superintendent and estimator, Kovacik would share the profits on the job with Reed on a 50-50 basis. Reed agreed and commenced the work on various projects. As the work proceeded, it became clear that it was unprofitable, and the builder for whom the work was being done fell seriously in arrears. At the end of the project, the Kovacik/Reed venture had suffered significant losses.

Reed's only contribution to the venture was his own labor. Kovacik provided all the venture's financing. The parties had never discussed apportionment of any losses that might accrue to the venture and, despite periodic requests by Kovacik that Reed "put up some money to get us out of the red," Reed had consistently refused to contribute any money.

Kovacik also claimed that, by failing to file mechanic's liens against the properties, Reed had breached a fiduciary duty of care as a joint venturer to preserve Kovacik's claims for the delinquent amounts, thereby eroding Kovacik's capital investment.

The trial court concluded as a matter of law that, as joint venturers, Kovacik and Reed were bound to share the losses in the same proportion as they had agreed to share the profits; that Kovacik was therefore entitled to recover from Reed one-half of the losses; and that Reed, having breached his duty of care to Kovacik, was liable to Kovacik for one-half of the amount advanced by Kovacik to the venture.

It is the general rule that in the absence of an agreement to the contrary the law presumes that partners or joint venturers intended to participate equally in the profits and losses of the common enterprise. This is true irrespective of any inequality in their contributions to the venture.

In cases in which the above stated general rule has been applied, each of the parties contributed capital consisting of either money or land or other tangible property, or else was to receive compensation for services rendered to the common undertaking, which was to be paid before computation of the profits or

losses. Where, however, as in the present case, one partner or joint venturer contributes the money capital as against the other's skill and labor, all the cases hold that neither party is liable to the other for contribution for any loss sustained. Thus, upon loss of the money, the party who contributed it is not entitled to recover any part of it from the party who contributed only services.

The rationale is that where one party contributes money and the other contributes services, then in the event of a loss each would lose his own capital—the one his money and the other his labor. Another view of it would be that the parties, by their agreement to share equally in the profits, agreed that the value of their respective contributions of money and labor were equal. Accordingly, upon incurring the loss of both money and labor, the parties have shared equally in the loss.

We also find as a matter of law that Reed's failure, if any, to file mechanic's liens did not rise to the level of gross negligence or reckless misconduct such as would constitute a breach of a partner's duty of care. It appears that, as between the parties, Kovacik was charged with the management of the enterprise. If anything, it is the duty of the managing venturer to take action against debtors of the venture to preserve and recover assets of the joint venture. Moreover, in the absence of an agreement to do so, there is no obligation on the part of one joint venturer to protect the other from loss of investment, to take steps to assist the other to recover the investment, or to reimburse him personally for advances made in the conduct of the joint business.

Indeed, if the parties here were successful in recovering what the delinquent builder owed them, Kovacik would not have a superior claim to the entire amount. The money so recovered would belong to the joint venture. It would go into the coffers of the joint venture to be used first to pay the debts and obligations of the joint venture; then, if there were a resultant profit, 50% of the profit would be paid to Reed; and only the balance would go to Kovacik toward recoupment of his investment.

We reverse and remand for entry of judgment in accordance herewith.