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## Summary of In Re Cay Clubs, 130 Nev. Adv. Op. 14

Kelsey Bernstein  
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TORT LAW: PARTNERSHIP-BY-ESTOPPEL

**Summary:**

The Court determined five issues: (1) Whether the partnership-by-estoppel statute may impose liability when there is representation of a joint venture rather than a partnership; (2) Whether consent may be manifested expressly or may be fairly implied from conduct; (3) Whether the phrase “given credit” is limited to the extension of financial credit; (4) Whether the reliance on the representation of a partnership or joint venture must be reasonable; and (5) Whether the statute may impose liability in claims that do not sound in contract.

**Disposition:**

First, under NRS 87.160(1)<sup>2</sup>, partnership-by-estoppel claims may apply when there is sufficient representation of a joint venture rather than a formal partnership. Second, the consent required for partnership-by-estoppel can be manifestly expressed or may be fairly implied from the liable party’s conduct. Third, the meaning of the phrase “given credit” in the statute is not limited to the extension of financial credit. Fourth, there is a reasonable reliance requirement for a partnership-by-estoppel claim. Fifth, the statute may impose liability in claims, such as tort claims, that do not sound in contract.

**Factual and Procedural History:**

Cay Clubs appeared to be a business that sold and developed condominiums at a resort called Las Vegas Cay Club. Appellants, purchasers of these condominiums, allege that Cay Clubs inflated the condominiums’ value by advertising that it would develop Las Vegas Cay Club into a luxury resort. To induce potential buyers to purchase the condominiums, Cay Club’s marketing materials represented that it was in a partnership with JDI entities. The purchasers believed that JDI entities would provide the expertise and resources to execute the Las Vegas Cay Club’s transformation.

Appellants claim that after selling the condominiums at Las Vegas Cay Club, Cay Clubs disingenuously abandoned the plan to improve the resort and left the purchasers with “worthless property.” Appellants filed suit against approximately 40 defendants, including Cay Clubs and JDI entities. The claims included, but were not limited to, fraudulent misrepresentation, deceptive trade practices, and fraudulent conveyances of money. Appellants also claimed JDI

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<sup>1</sup> By Kelsey Bernstein

<sup>2</sup> NEV. REV. STAT. 87.160(1) (2013) states:

When a person, by words spoken or written or by conduct, represents himself or herself, or *consents* to another representing him or her to any one, as a partner in an existing partnership or with one or more persons not actual partners, the person is liable to any such person to whom such representation has been made who has, on the faith of such representation, *given credit* to the actual or *apparent partnership*, and if the person has made such representation or consented to its being made in a public manner the person is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(emphasis added)

entities were liable under NRS 87.160(1), Nevada's partnership-by-estoppel statute, for the wrongdoings of Cay Clubs.

After answering Appellant's complaint, JDI entities filed a motion for summary judgment. After a hearing, the district court granted the motion in favor of JDI entities on all asserted claims against them, including the partnership-by-estoppel claim under NRS 87.160(1). In this appeal, Appellees challenge the district court's grant of summary judgment.

### **Discussion:**

As long as other conditions are met, NRS 87.160(1) provides that a person may incur partnership liability where there is a holding out of that person as a partner, with the consent of that person being held out, and another person gives credit to the purported partnership upon believing in the representation. Appellees appeal the lower court's grant of summary judgment disagreeing with the interpretation of the statute. Accordingly, the Court engages in de novo review of the matters raised.

#### *NRS 87.160(1)'s meaning*

The Court's ultimate goal in interpreting statutes is to effectuate the Legislature's intent. Therefore, the interpretation of NRS 87.160(1), Nevada's partnership-by-estoppel statute, is guided by the following rules set out by the Legislature: (1) the law of estoppel applies to NRS 87.160(1), (2) this court is not to apply "[t]he rule that statutes in derogation of the common law are to be strictly construed," and (3) the statutory scheme that contains NRS 87.160(1) "must be interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."<sup>3</sup>

#### *The term "partnership" in NRS 87.160(1)*

The parties disagree about whether the term "partnership" should be interpreted to include not only a formal partnership but also a "less formal but collaborative profit-oriented relationship, such as a joint venture." A partnership is "an association of two or more persons to carry on as co-owners a [ongoing] business for profit"<sup>4</sup> whereas a joint venture's collaboration is limited to a specific business objective. Despite the distinction, Nevada case law provides that the principles of partnership law also apply to joint ventures<sup>5</sup>, and other jurisdictions have concluded the same. Therefore, partnership-by-estoppel doctrine applies when the subject of the representation is either a formal partnership or a joint venture.

#### *The term "consents" in NRS 87.160(1)*

The parties disagreed over the extent of consent required under NRS 87.160(1)- whether it must be explicit or if it may be implied from one's conduct. Following *Black's*

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<sup>3</sup> NEV. REV. STAT. 87.040(1)-(2), (4) (2013).

<sup>4</sup> NEV. REV. STAT. 87.060(1) (2013).

<sup>5</sup> *Radaker v. Scott*, 109 Nev. 653, 658, 855 P.2d 1037, 1040 (1993).

*Law Dictionary* (stating that consent may be expressed verbally or implied by conduct)<sup>6</sup> and the Uniform Partnership Act comments (holding that consent may be implied when the facts make the implication reasonable),<sup>7</sup> “consent” under NRS 87.160(1) may be manifested either by express words or by conduct from which consent can be reasonably implied.

*The phrase “given credit” in NRS 87.160(1)*

The parties disagree on whether “given credit” is limited to the extension of financial credit or can include a claimant’s belief and detrimental reliance on the representation of a partnership’s existence. While this phrase represents a statutory ambiguity, several other jurisdictions have held that “given credit” is not limited solely to financial credit. The Court rejected JDI entity’s assertion that a revision of the 1997 version of the UPA, upon which NRS 87.160(1) was based, implied it was limited to financial credit since the revision itself stated it continued the same principles from the previous version.

Furthermore, to limit “given credit” to financial credit would “severely limit who could utilize partnership-by-estoppel doctrine [because] NRS 87.160(1) would only benefit claimants with the financial resources and expertise to extend financial credit to a purported partnership.” Therefore, the phrase “given credit” includes giving credence to the representation of a partnership by detrimental reliance on the representation, which includes, *but is not limited to*, the extension of financial credit.

*The reasonable reliance requirement*

Like other jurisdictions, Nevada’s partnership-by-estoppel doctrine includes a reasonable reliance requirement – often necessitating an exercise of due diligence to ascertain facts. Without this requirement, the doctrine “would lack an objective limitation to prevent it from being abused by people who knew, or reasonably should have known, that the representation of the partnership or joint venture was untrue.”

*NRS 87.160(1)’s applicability to claims that do not sound in contract*

The parties disagree on whether liability under NRS 87.160(1) is limited to claims that sound in contract. Because appellant’s claims are based in tort, such an interpretation would preclude appellee’s liability under the statute. However, under Nevada law, partners in a partnership are jointly and severally liable for injuries caused by a partner’s actions within the ordinary course of business, and this liability extends to tortious acts. The premise that detrimental reliance can exist in contractual matters, in which a party relies on the existence of a partnership to a contract, but not in tortious matters, because a victim does not rely on a partnership’s existence in sustaining an injury, is insufficient. Because NRS 87.160(1) already requires a reliance element, the statute’s application does not turn on whether the cause of action sounds in contract.

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<sup>6</sup> BLACK’S LAW DICTIONARY 323 (8th ed. 2004).

<sup>7</sup> Uniform Partnership Act § 16, 6 U.L.A. 661-62 cmt. (1914).

*A review of our determinations about NRS 87.160(1)'a meaning  
See “disposition”.*

*The summary judgment motion in favor of JDI entities*

The Court then reviewed the district court’s grant of summary judgment in favor of JDI entities based on a lack of genuine issues of material fact.

*The parol evidence rule and the purchasers’ evidence*

JDI entities attempted to rely on the parol evidence rule to exclude evidence of a partnership proffered by the condominium purchasers. However, because the purchase agreement on which JDI relies is silent about the existence of a partnership between Cay Clubs and JDI, the parol evidence rule did not prohibit evidence regarding the representations of a partnership or joint venture.

*The genuine issues of material fact*

Additional evidence offered by the purchasers submitted in response to the summary judgment motion demonstrate genuine issues of material fact. The marketing materials used by Cay Clubs, including materials from the Cay Clubs website, show several representations of a “profit-oriented relationship” between Cay Clubs and JDI entities. Other evidence established a genuine issue of material fact about whether JDI consented to the presentation of a partnership or joint venture.

Multiple purchasers submitted affidavits stating that they relied on the representation of a partnership between Cay Clubs and JDI entities when purchasing their condominiums, demonstrating a genuine issue of material fact regarding the purchasers’ detrimental reliance.

**Conclusion:**

The district court erred in granting the summary judgment motion in favor of appellees JDI entities as to their liability under NRS 87.160(1). Appellants, purchasers of Cay Clubs condominiums, demonstrated genuine questions of material fact with regards to the existence of a partnership between Cay Clubs and appellees, appellees’ consent to this partnership representation, and the appellant’s reasonable reliance on this representation when purchasing the condominiums. Therefore, the order granting summary judgment is reversed and remanded to the district court for further proceedings.