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Summary of In Re: Cay Clubs, 130 Nev., 130 Nev. Adv. Op. 92

Adam Wynott
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In Re: Cay Clubs, 130 Nev., 130 Nev. Adv. Op. 92 (Dec. 4, 2014)[1]

PARTNERSHIP-BY-ESTOPPEL DOCTRINE

Summary

The Court concluded that NRS 87.160(1) may impose partnership liability on a joint venture based on the partnership-by-estoppel doctrine and that the statute may apply to any claim that relies on the doctrine's element of reasonable reliance. The Court clarified the statute's meaning, stating that a partnership by estoppel requires (1) consent, manifested expressly or impliedly from the liable party's conduct; (2) credit, not limited to financial credit, given by one party to the other; (3) and reasonable reliance by one party on the other party's representation of a partnership or joint venture.

Background

Cay Clubs sold condominiums at the Las Vegas Cay Club. Jeffrey Aeder (Aeder), through JDI Loans, LLC and JDI Realty, LLC (JDI), provided financial support for the development of Cay Clubs' properties. Cay Clubs represented that the properties would be developed into a luxury resort, with the financial support and expertise of the JDI entities. Based on these representations, the Appellants (purchasers) entered into purchase agreements with Cay Clubs and Flamingo Palms Villas, LLC, which the purchasers have alleged is controlled by Cay Clubs.

The purchasers brought suit claiming that Cay Clubs disingenuously abandoned the planned development. The suit claimed that Aeder and the JDI entities engaged in misrepresentation, securities violations, deceptive trade practices, civil conspiracy, and fraudulent conveyances of money.

Aeder and JDI filed a motion for summary judgment, claiming no genuine issues of material fact existed. After a hearing, the district court granted summary judgment and awarded costs in favor of Aeder and JDI. On March 6, 2014 the Court issued a panel opinion affirming in part, reversing in part, and remanding for further proceedings. The Court granted an en banc reconsideration of the panel opinion in order to fully address the partnership-by-estoppel doctrine.

Discussion

The parties' argument on appeal

The parties based their arguments on differing interpretations of NRS 87.160(1), specifically the meaning of the terms "partnership" and "given credit." The Court chose to clarify other terms found in the statute as to give a full and fair reading of the statute as enacted by the Legislature. Additionally, the parties disagreed about whether application of the statue is limited to claims arising from contract law.

[1] By Adam Wynott

NRS 87.160(1)'s meaning

The Court attempted to clarify and uphold the Legislature's intent when it passed the statute. The Legislature enacted NRS 87.160(1) to codify the common law partnership-by-estoppel doctrine. The Court followed the statutory interpretation precedent by (1) interpreting the statute by its plain meaning, giving each word its appropriate effect;[2] (2) looking only to the language of the statute, unless an ambiguity exists;[3] and (3) construing the law "to effectuate its general purpose to make uniform the law of those states which enact it."[4]

The term "partnership" in NRS 87.160(1)

The applicability of partnership liability in this matter relies on the meaning of the term "partnership." Aeder and JDI argued that their relationship with the purchasers constituted a joint venture and not a partnership, which would have excused them from partnership liability. The purchasers contended that they entered into a relationship with Aeder and JDI that constituted a partnership.

The Court determined that, despite the distinctions between a partnership and a joint venture, partnership law applies to joint ventures.[5] Thus, the partnership-by-estoppel doctrine defined by the statute applies to a joint venture.

The term "consents" in NRS 87.160(1)

A partnership by estoppel exists where a party "represents himself or herself, or consents to another representing him or her to any one, as a partner."[6] Aeder and JDI argued that the statute requires an express communication of consent. The purchasers argued that consent can be implied from the conduct of the parties.

The Court looked to the plain language definition of the term, which states it can be "express[ed]" or "implied."[7] The statute is modelled after the Uniform Partnership Act (UPA), in the comments to that Act, a reader is directed to caselaw that provides consent may be implied in the presence of reasonable facts.[8]

Thus, the Court rejected the argument that consent required express communication and stated that consent, for the purposes of the statute, may be manifested expressly by words or be reasonably implied from conduct. Because consent can be implied from conduct, the Court stated the manifestation of consent is a factual question to be resolved by the court below.

The phrase "given credit" in NRS 87.160(1)

Partnership-by-estoppel doctrine requires that one party be given credit by another. Aeder and JDI argued that credit is limited to providing financial credit. The purchasers argued that

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[2] *Davis v. Beling*, 128 Nev. ___, ___, 278 P.3d 501, 508 (2012).
[3] *State, Div. of Ins. V. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).
[4] NEV. REV. STAT. § 87.040(1)–(2), (4) (2013).
[5] *Radaker v. Scott*, 109 Nev. 653, 658, 855 P.2d 1037, 1040, 1041 (1993).
[6] NEV. REV. STAT. § 87.160(1) (2013).
[7] BLACK'S LAW DICTIONARY 323 (8th ed. 2004).
[8] UNIF. P'SHIP ACT § 16, 6 U.L.A. 661–62 cmt. (1914).

credit means a belief in the representation of a partnership and detrimental reliance on the existence of that partnership.

The Court looked to the plain language definition of the term, which states it can be the "belief" or "trust" in a person regarding financial support.[9] The Court determined that an ambiguity existed because this definition could lead to more than one reasonable interpretation. The Legislature used the UPA as a framework to construct the statute, so the Court looked to other jurisdictions interpretations for guidance. The Court found that numerous jurisdictions favored a broader interpretation of "given credit," notably *Pinnacle Port Cmty. Ass'n v. Orenstein*,[10] which determined that for the purposes of a partnership by estoppel, credit is not limited to financial credit but rather refers to a detrimental reliance on the partnership by one party.

Thus, the Court rejected the narrow definition of credit as limited to actual extension of financial credit. The more expansive definition of credit allows the protections of the statute to extend beyond those with the means to extend financial credit. Because credit can be any transaction between two parties, the Court stated that the existence of credit is a factual question to be resolved by the court below.

The reasonable reliance requirement

The prerequisite for a partnership by estoppel is the reasonable reliance of one party on the representations of partnership by another. NRS 87.160(1) does not explicitly state the necessity of reasonable reliance. However, the Court stated that a reasonable reliance standard is necessary for the proper application of the statute.

The Court reasoned that not requiring reasonable reliance would lead to potential abuse of the statutory protections by those who knew or should have known that a party's representations were untrue.

Thus, the Court ruled that a reasonable reliance by one party on the representations of another is a necessary element to establish a partnership by estoppel. The Court stated that the existence and reasonableness of a party's reliance on representations is a factual question and must be resolved on remand.

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

The parties disagreed about the application of the statute to this claim. Aeder and JDI contended that the statute only imposed liability on parties for causes of action that sound in contract. The purchasers responded that the statute applies to any cause of action that includes the reliance upon a representation of a partnership.

Thus, the Court determined that the statute is not limited to claims arising from contract. Rather, it is applicable to all claims that implicate the reasonable reliance element required for partnership by estoppel. Because the purchasers made claims based on their reliance upon Aeder and JDI's representations, the statute is applicable.

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[9] BLACK'S *supra*, at 396.
[10] 872 F.2d 1536, 1540–41 (11th Cir. 1989).

A review of our determinations about NRS 87.160(1)'s meaning

In summary, the Court reiterated that a partnership by estoppel may arise under a joint venture and the statute imposes partnership liability where a party "consents" to the partnership and one party has "given credit" to the partnership based on the others representations. The Court made several clarifications regarding the statute's meaning and application: (1) the consent to a representation may be reasonably implied from the conduct of a party; (2) credit is not limited to the extension of financial credit, rather it concerns the belief or trust given to the representation of a partnership; (3) the claimant must have reasonably relied on the representation; and (4) the statute is applicable to any claim that implicates the reasonable reliance element.

The summary judgment in favor of Aeder and the JDI entities

The purchasers argued that Aeder and JDI failed to prove the absence of genuine issues of material fact. The purchasers claimed that they relied on the representations of a partnership between Cay Clubs, Aeder, and JDI when entering into the purchase agreements. Aeder and JDI relied on the parol evidence rule to bar any evidence outside the four corners of the purchase agreement. They claimed that the purchase agreement contained an integration clause and contended that without additional evidence no genuine issue of material fact existed. Additionally, Aeder and JDI claimed that the purchasers did not give any credit to the partnership between Cay Clubs, Aeder, and JDI.

The parol evidence rule and the purchasers' evidence

Aeder and JDI argued that the parol evidence rule barred the evidence that the purchasers relied on. They cited the language of the purchase agreement and its intent to integrate the agreement into the final contract. The Court found that the agreement was silent about the issue of a partnership.

After examination of the parol evidence doctrine, the Court ruled that the evidence could be examined, because the rule does not bar evidence that explains a matter on which the contract is silent and does not contradict other terms.[11] Thus, the Court ruled that the parol evidence rule did not bar the evidence presented by the purchasers.

The genuine issues of material fact

Aeder and JDI relied on the parol evidence argument and made no other objection to the admissibility of the purchasers' evidence. Thus, the Court ruled that all the evidence introduced before the district court could be examined for determination about the existence of genuine issues of material fact.[12]

Regarding a partnership between Cay Clubs, Aeder, and JDI, the purchasers submitted as evidence marketing materials produced by Cay Clubs that referred to a partnership with JDI for profit purposes. The Court determined that these materials created a genuine issue of material fact about the existence of a partnership.

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[11] *Ringle v. Bruton*, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004).
[12] *Walen v. State*, 100 Nev. 192, 195–96, 679 P.2d 248, 250 (1984).

The Court examined whether Aeder and JDI consented to such a representation of a partnership. Deposition testimony from Aeder stated that he reviewed these types of materials for Cay Clubs. Additional evidence showed a working history between Aeder and Cay Clubs' previous development projects. The Court determined that this showed a working relationship between the two parties. The Court determined that the totality of the evidence created a genuine issue of material fact.

The purchasers submitted affidavits stating that they had relied on the representations made and believed the partnership provided them the financial support and expertise to accomplish the goals of the property development. Aeder and JDI argued that this did not amount to the purchasers giving credit to the partnership. However, the Court determined that a genuine issue of material fact existed as to this point.

The Court looked at the totality of the evidence, including the marketing materials and the affidavits of the purchasers. The Court determined that, based on the representations made by Cay Clubs, Aeder, and JDI, the purchasers relied on the purported partnership when inquiring about the purchase of condominiums.

Based on the evidence above, the Court found that the district court erred in granting summary judgment to JDI. Under the statute JDI may be liable for claims made by the purchasers. However, the Court found that the purchasers had not offered evidence sufficient for the Court to analyze Aeder's role in any partnership or joint venture. Thus, the district court did not err in granting summary judgment in Aeder's favor.

Conclusion

The Court concluded that NRS 87.160(1) contains the partnership-by-estoppel doctrine, which can be applied to a joint venture. The consent required may be express or implied. The statute's phrase "given credit" means a trust or belief in a representation of a partnership. And in order to prevail on a partnership-by-estoppel claim the harmed party must have reasonably relied on the representation of a partnership. Lastly, the statute may be applied to any claim that is based on the reasonable reliance element and is not limited to contract claims.

Based on the clarification of the meaning of NRS 87.160(1) and a review of the evidence, the Court concluded that genuine issues of material fact remained. The Court found that the district court did not err in granting summary judgment in favor of Aeder. However, the Court found that the district court erred in granting summary judgment to the JDI entities. Thus, the Court reversed the orders granting summary judgment and awarding costs in favor of the JDI entities and remanded the matter to the district court for further proceedings.