

Partnership Decisions Require a Majority Agreement

In the recent case of *Jarvis v. Jarvis Partnership*, Jarvis Properties was a limited partnership that owned a two parcels of land. Its two general partners, brothers Todd Jarvis and James Jarvis, each owned a 50 percent interest in the partnership, which is less than the majority consent required to act on behalf of the Partnership under California Corporations Code, § 15904.06(a). The general partners could not agree on what to do about the parcels, and their partnership agreement did not address the question of what occurs in the event of a decision-making deadlock. Therefore, they turned to the courts.

James Jarvis filed actions for partition by sale of the parcels, naming Todd Jarvis and Jarvis Properties as defendants. Todd hired a lawyer to represent him in the partition actions, and he also hired a separate lawyer, William Roscoe, III, to represent the Partnership.

James objected to having Roscoe represent the Partnership, and he filed a motion to disqualify Roscoe on the ground that Roscoe was not authorized to act by the requisite majority of the general partners. James was concerned that Roscoe was not acting in the best interests of the Partnership and would run up unnecessary litigation costs and deplete the partnership's limited assets, to the detriment of the Partnership.

James filed a motion to disqualify Roscoe from representing the Partnership because Roscoe lacked authority from a majority of the general partners to represent the Partnership. James stated that Todd selected Roscoe to represent the Partnership over his express objection, and that Roscoe had taken the position that his representation of the Partnership is to be directed solely by one general partner (Todd), and in direct contravention of the direction of the other equal general partner (James).

Citing Corporations Code section 15904.06(a), James argued that because there was more than one general partner, Roscoe needed the authority of a majority of the general partners.

Under the California Uniform Limited Partnership Act of 2008 (ULPA), a limited partnership is an entity distinct from its partners. A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Lack of clarity over who is authorized to oversee the engagement of the attorney for a partnership places the lawyer in a position where he or she cannot follow one partner's instruction without violating the other partner's instruction. It is not a conflict of interest, because the lawyer has only one client, the partnership.

It is, instead, a conflict of authority within the partnership over who oversees and instructs the partnership's lawyer. The lawyer's duty of loyalty requires the lawyer to act

at a client's direction. A lawyer cannot act without the client's authorization. Nor can the lawyer take over the decision making for a client absent authority to do so.

The partnership agreement governs relations among the partners and between the partners and the partnership, and if the partnership agreement is silent, the ULPA governs such relations. The motion to disqualify was based on section 15904.06(a), which is part of the ULPA. It provides that each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

The Appellate Court understood the term "majority" to mean more than 50 percent. Neither Todd nor James alone constituted a majority of the general partners sufficient to decide matters relating to the Partnership, including the selection of counsel and the conduct of the litigation. Thus, neither the partnership agreement nor the applicable UPLA statutes resolved the issue of whether Roscoe's representation of the Partnership was authorized or lawful.

The California Corporations Code provides a mechanism for breaking corporate deadlocks. When a *corporation* "has an even number of directors who are equally divided and cannot agree" on the management of corporate affairs so that the corporation's "business can no longer be conducted to advantage" or there is "a danger that its property or business will be impaired or lost," section 308(a), authorizes a court to appoint a "provisional director" to break the deadlock, regardless of the terms of the articles or the bylaws and whether or not an action for involuntary winding up or dissolution of the corporation is pending. An action for such appointment may be brought by any director or by the holders of not less than one third of the voting power in the corporation. The provisional director "acts as a 'tiebreaker' when a deadlock exists.

There are no comparable provisions in the ULPA that authorizes a court to appoint a provisional general partner in the case of a deadlocked limited partnership.

In the Appellate Court's view, James raised legitimate points regarding Roscoe's duty of loyalty, not as between multiple clients, but as to his representation of the Partnership. Since Todd selected Roscoe, was paying Roscoe, and was directing the litigation, there is the appearance that Roscoe may advance Todd's interests over James's interests, which may not necessarily be in the best interests of the Partnership.

The Appellate Court concluded the trial court did not err when it granted the motion to disqualify Roscoe as the attorney under the circumstances in that case.

LESSONS:

1. Always have a written partnership or co-ownership agreement when two or more persons own real property.

2. The agreement should include terms regarding what occurs in the event of a decision-making deadlock by the owners/partners.