JOINT ADVENTURE - RELATIONSHIP DISTINGUISHED FROM THAT OF EMPLOYER-EMPLOYEE

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Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol36/iss4/14
JOINT ADVENTURE — RELATIONSHIP DISTINGUISHED FROM THAT OF EMPLOYER-EMPLOYEE — The taxpayer had an arrangement whereby he planned to furnish the Russian Government with shrapnel shells by farming out the various stages of manufacture to several different companies. A Canadian corporation, also having a contract for furnishing shrapnel, made arrangements with the taxpayer whereby the latter cancelled his contract and went in with the Canadian corporation. Under this arrangement the taxpayer was to furnish his manufacturing arrangement, plans, tools, gauges, drawings, etc., and to get fifteen per cent of the profits on the present contract and five per cent of the profits on future contracts of a similar nature. An American corporation was formed to put the plan in effect, the taxpayer being a director and general manager. The principal contract was completed and the goods delivered. Shrapnel on another contract were completed but they exploded before delivery. After much litigation the Canadian court, King's Bench Division, found the Canadian corporation liable to the taxpayer on the first contract, and that it could not set off the loss suffered on the second contract. In an appeal from a finding by the tax board that the taxpayer's profits were "income" within the taxing statute, it was held that the relationship was that of joint adventure, and not that of employer-employee, as contended, and therefore the profits were assessable at the lower figure as "net capital gain," instead of "income." First Mechanics National Bank of Trenton v. Commissioner of Internal Revenue, (C. C. A. 3rd, 1937) 91 F. (2d) 275.

The relative synonymy of the relationships of joint adventure and partnership has resulted in the application of partnership law, rules and cases in the evolution of the law of joint adventure. A joint adventure has been defined as a "special combination of two or more persons, where in some specific venture, a profit is jointly sought, without any actual partnership or corporate designation." Schouler, Personal Property, 5th ed., § 167 (a) (1918). It has been defined as a quasi-partnership. Worms v. Lake, 198 App. Div. 776, 191 N. Y. S. 113 (1921). See Mechem, "The Law of Joint Adventures," 15 Minn. L. Rev. 644 (1931), in which the author concludes that there is no law of joint adventure, but that joint adventures are merely a particular type of partnership. Practically the same conclusion is reached in 35 Mich. L. Rev. 297 (1936).
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In partnership law the usual approach is to find there is not a partnership if some other relationship can be found which will adequately give effect to the intentions of the parties; and the same method of decision is usually followed in joint adventure cases. In the principal case the approach of the court seems to be the reverse, with a finding of a joint adventure notwithstanding several missing elements. The general rule is that all parties to a joint adventure should share both the profits and the risks. Although in some cases there is a joint adventure predicated upon little more than a sharing of the profits, the general rule is that other elements must be present. Sharing of losses has been said to be one of the most important tests; however, a number of cases have upheld joint adventures when loss-sharing was absent. It is common knowledge that the employer has control over and directs

1 Rowley, Modern Law of Partnership, § 102 (1916); 2 ibid., § 975.


It should be pointed out that there is no real reason why it should be a conclusive test, and furthermore, that, if sharing of losses is considered in an all-inclusive sense, there can often be a sharing of losses in the employer-employee relationship; e.g., if an employee works on a commission he may lose the value of his
the actions of the employee. When both parties have nearly equal power in the
determination of the manner in which the business will be consummated, there
is strong evidence of a relationship other than employer-employee, viz. joint
adventure or partnership. In determining the existence of this power of
management or proprietorship, the actual conduct of the parties may be con­sidered, unless the existence of such power is one of the main issues of the
case. Here the joint adventure was with a corporation. While there have been
decisions that a corporation cannot enter into a partnership, it has been held
that a corporation can enter into a joint adventure since the reason for the
partnership limitation is missing. The right to an accounting is a common
feature of a partnership, and to some extent, of a joint adventure. In the prin­cipal
case the Canadian court had allowed an accounting, but such a test is of
minor value. The taxpayer did not receive a salary, which fact is some evi­
dence of a relationship other than employer-employee, but, of course, it is not
too weighty, since commission employments are commonplace. It is submitted
that the principal case was rightly decided, for the reasons that there were
sufficient elements present for joint adventure and that the employer-employee
relationship would not sufficiently give effect to the evident intent of the parties
as to the taxpayer’s right to direct the manufacture.

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(1921). If an employer fails in marketing a marketable patent of the employee’s, the
latter may lose the value of his patent. Foster v. Callaghan & Co., supra.

10 Domandich v. Doratich, 165 Wash. 315, 5 P. (2d) 310 (1931); Dempsey
(1928); Denny v. Guyton, 327 Mo. 1030, 40 S. W. (2d) 562 (1931).

11 Neville v. D’Oench, 327 Mo. 34, 34 S. W. (2d) 491 (1931).

v. Biber, 184 Cal. 637, 194 P. 1037 (1921).


14 A contractor or an employee who is to get a specified per cent of the profits
may be entitled to an accounting. Weldon v. Brown, 84 App. Div. 482, 82 N. Y. S.
1051 (1903); Kent v. Universal Film Mfg. Co., 200 App. Div. 539, 193 N. Y. S.
838 (1922) (dicta).

15 There may be a joint adventure although one of the parties receives a salary.
Elliott v. Murphy Timber Co., 117 Ore. 387, 244 P. 91 (1926).