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JOINT ADVENTURE - FIDUCIARY RELATION OF PARTIES THERETO

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JOINT ADVENTURE — FIDUCIARY RELATION OF PARTIES THERETO — Defendant corporation and one Goldberger, the testator of the plaintiff, entered an agreement to carry on a trading account in the stock of a certain brewery over a limited period of time. By the terms of the agreement both were to contribute 50,000 shares of the stock, which were to be held by the corporation, and all purchases and sales of the stock by the corporation were to be deemed made in behalf of the account. Defendant corporation was to receive twenty per cent of the net profits for its services and the rest was to be equally divided. During the period, defendant corporation made sales of the brewery stock for its sole benefit and the plaintiff seeks an accounting of these transactions. *Held*, Goldberger and defendant corporation were joint adventurers. Therefore the corporation was under a fiduciary duty to Goldberger and must account to him for profits resulting from its breach of this duty by dealing in the stock for its individual benefit. *Trounstine v. Bauer, Pogue & Co.*, (D. C. N. Y. 1942) 44 F. Supp. 767.

A joint adventure is usually defined as an association of two or more persons to carry out a single business enterprise for profit.[1] It is really a species of partnership [2] and the courts have generally applied partnership law in dealing with it.[3] The only departures from this practice may be attributed to the more limited duration of a joint adventure.[4] This distinction would seem of some importance in determining the rights and duties of the members inter sese. The fiduciary duties of partners are said to result from the high degree of trust and confidence involved in the relationship.[5] Since the joint adventure is of such limited duration, there would seem to be some justification for saying that the members deal more at arms length with each other. Nor is the trust element so strong, since the authority of one member to bind the others is generally held to be much more restricted in joint adventures than in partnerships.[6] However, the courts have not made any such distinctions. The fiduciary duty of a joint adventurer has been found violated in a variety of situations where recovery could not be predicated on the violation of an express provision of the contract between the parties. Thus a joint adventurer has been required to account for a secret profit realized from the sale of land to the association.[7] Likewise an accounting was required when one joint adventurer, for his individual benefit, secretly renewed a lease to property, which was held under a lease by the association.[8] An accounting was also required when one joint adventurer, in buying out the interest of another, failed to disclose an agreement to sell the property at a considerable profit.[9] In another case a constructive trust was imposed on property secretly purchased by one joint adventurer after the association had agreed to buy it.[10] The unavoidable conclusion to be drawn from such cases is that the fiduciary relationship existing among joint adventurers is identical with that

[1] 2 ROWLEY, MODERN LAW OF PARTNERSHIP, § 975 (1916); Soulek v. City of Omaha, 140 Neb. 151, 299 N. W. 368 (1941).

[2] See Mechem, "The Law of Joint Adventures," 15 MINN. L. REV. 644 (1931), denying that there is any difference of legal consequence between the two forms of associations.

[3] Alexander v. Turner, 139 Neb. 364, 297 N. W. 589 (1941); Zeibak v. Nasser, 12 Cal. (2d) 1, 82 P. (2d) 375 (1938); 35 MICH. L. REV. 297 (1936).

[4] Thus, ordinarily, one joint adventurer may sue another at law instead of going into equity for an accounting. (But availability of relief at law does not cut off the right to equitable relief.) Hurley v. Walton, 63 Ill. 260 (1872); see 33 MICH. L. REV. 436 (1935). And it has been held that there is no mutual agency between joint adventurers in the absence of an express or implied agreement providing for it since the venture ordinarily does not require acts of agency. MECHEM, PARTNERSHIP, 2d ed., § 16 (1920); see, Wrenn v. Moskin, 226 App. Div. 563, 235 N. Y. S. 405 (1929); Keyes v. Nims, 43 Cal. App. 1, 184 P. 695 (1919).

[5] 1 ROWLEY, MODERN LAW OF PARTNERSHIP, § 341 (1916).

[6] See the latter part of note 4.

[7] Lane v. Wood, 259 Mich. 266, 242 N. W. 909 (1932); Church v. Odell, 100 Minn. 98, 110 N. W. 346 (1907).

[8] Meinhard v. Salmon, 249 N. Y. 458, 164 N. E. 545 (1928).

[9] Johnson v. Peckham, 132 Tex. 148, 120 S. W. (2d) 786 (1938).

[10] Horne v. Holley, 167 Va. 234, 188 S. E. 169 (1936), noted in 23 VA. L. REV. 622 (1937).

existing among partners.[11] This would seem to support the result reached in the instant case, since it is well established that a partner who individually engages in a business which competes with the firm's business must account to the firm for profits.[12]

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[11] In addition to the cases already cited, see Whatley v. Cato Oil Co., (Tex. Civ. App. 1938) 115 S. W. (2d) 1205; Kitzman v. Postier & Kruger Co., 204 Minn. 343, 283 N. W. 542 (1939); Johnson v. Ironside, 249 Mich. 35, 227 N. W. 732 (1929).

[12] Reber v. Pearson, 155 Mich. 593, 119 N. W. 897 (1909); Todd v. Rafferty's Admrs., 30 N. J. Eq. 254 (1878); In re Bast's Appeal, 70 Pa. St. 301 (1872).