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(1) Susan's Status with respect to JFM

Susan is the executor of the former partner, Frank's, estate. She is not a partner, nor does she have management rights in the partnership.

Under Texas law, there is a partnership when 2 or more people carry on a business for profit whether they intend to form a partnership or not. There is no writing requirement in order to form a valid Texas general partnership. Thus, Jean, Frank, and Mary formed a general partnership despite not having any written record or recording.

Partners in a general partnership share in profits, have equal management rights, and are joint and severally liable for the obligations of the partnership. No interest in a partnership is transferrable, except the financial interest (i.e. the right to profits). A partner's interest in a partnership terminates upon death of the partner. That partnership interest cannot be transferred via testate or intestate transfers. A partnership requires unanimous votes of all of its partners in order to admit another partner. There is no evidence to suggest that Jean and Mary approved Susan as a partner. Thus, Susan cannot obtain the right to partnership management in place of Frank.

(2) Declaratory Judgment

JFM and Jean are likely to prevail in the suit for declaratory judgment that Susan is not entitled to participate in management of JFM. JFM and Jean are likely to lose in the suit for declaratory judgment that Susan is not entitled to inspect JFM's financial records.

As discussed above, the only interest that is transferrable by a partner is that partner's financial interest in the partnership (i.e. right to share of profits). Upon death of a partner, that partner's interest in the partnership terminates. Frank's management interest in the partnership cannot be transferred via intestate or testate transfers. Although Susan is the executor of his estate, she has no right to manage JFM. In order to obtain those rights she would need to get unanimous approval of both Mary and Jean, which she has not. Thus, JFM and Jean are likely to prevail in the suit for declaratory judgment that Susan is not entitled to participate in management of JFM.

As executor of Frank's estate, Susan is likely able to obtain access to the financial records. Frank as a partner had the right to access the partnership's financial records, and that right is transferrable especially upon his death. At Frank's death, his interest in the partnership is terminated. However, his estate is entitled to obtain Frank's financial share in the JFM partnership. In order to determine Frank's financial interest in the JFM partnership (i.e. his monetary contributions, his unpaid profits, etc.) it would be necessary for the executor, Susan, to obtain access to those financial records. Thus, JFM and Jean are unlikely to prevail in the suit for declaratory judgment that Susan is not entitled to gain access to JFM's financial records.

(3) Mary's Duties as Partner

Mary owes to JFM and to other partners the duty of care and the duty of loyalty.

Under Texas law, partners in a general partnership owe the partnership and other partners the duty of care. The duty of care is the good faith and ordinary care and prudence by a partner when conducting partnership activity.

Under Texas law, partners in a general partnership owe other partners the duty of loyalty. The duty of loyalty is the good faith and reasonable belief that conduct by a partner is in the best interest of the partnership. A partner violates the duty of loyalty when they directly compete with their partnership and other partners. In this case, Mary signed a lease to start up an independent drycleaner business unknown to Jean and JFM. This is clearly in direct competition with JFM who is in the business of operating another drycleaning operation, "Sweetwater Cleaners".

(4) Injunctive Relief

JFM and Jean are entitled to the injunctive relief that they seek.

As discussed in (3) above, partners owe the partnership and other partners the duty of loyalty. And that duty of loyalty is violated when another partner directly competes with the partnership's business.

In a claim against Mary by JFM and Jean, for her violation of the duty of loyalty the courts can issue an injunction that would effectively prevent her from directly competing with the partnership.

However, if Mary had already started up the business then they could also obtain a constructive trusts on the profits of Mary's independent business.

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1. What is Susan's legal status with respect to JFM•

Under general partnership law, when a partner conveys his interest in the partnership to another, the transferee gets the right to distribution from the partnership and the right to inspect the records. The transferee does not get to become a partner, nor does she get any management rights. In a general partnership, the partners have joint and several unlimited liability, and therefore, it would not be fair to allow someone the other partners do not trust to become a general partner and have the ability to subject them to liability. Due to the great responsibility and liability that general partners may face, it requires a unanimous vote of the partners to allow a new partner to join the partnership. Here, Susan is a transferee of Frank's partnership interest, due to Frank's death. She does not take Frank's place as partner. Instead, she only receives the ability to take his distributions from the partnership and the right to inspect the records. She does not get any management rights or partner status.

2. Are JFM and Jean likely to prevail in the suit for declaratory judgment•

a. Inspection of the financial records.

The rights of a transferee of a partnership interest to inspect partnership records can be found under Texas law. Pursuant to Texas partnership law, a person who has received a transfer of partnership interests has a right to inspect the records of the partnership. In this case, Susan, as Frank's only heir, has received Frank's partnership interest. This interest entitles her to receive any property that Frank would receive if Frank still retained his partnership interest. Due to her receipt of Frank's partnership interest, Susan has a right to inspect the records. Therefore, JFM and Jean are not likely to prevail in their declaratory action seeking to prevent Susan from inspecting the partnership's financial records.

b. Participation in the management.

Regarding the rights that a transferee gains through a transfer of a partner's rights under the partnership, this must be determined under Texas law. Unless there is a partnership agreement that states otherwise, it requires unanimous consent of the partners to allow a new partner to join the partnership. A person cannot become a partner from merely receiving the interest that a partner has in the partnership. A transferor retains the rights to management, while the transferee gets distribution rights. Here, there is

no partnership agreement to substitute Texas law. Therefore, Susan cannot become a partner with management rights simply because she received Frank's interest in the partnership. To become a partner, both Jean and Mary would have to consent. This seems unlikely as Jean is seeking a declaratory judgment to prevent Susan from becoming a partner. Jean is likely to prevail in the declaratory judgment regarding Susan's desire to participate in the partnership's management.

3. What duties does Mary owe JFM and the other partners•

The issue here is what duties are owed between partners in a general partnership. Partners under Texas law owe one another the fiduciary duties of loyalty, care, and good faith. The duty of good faith requires a partner to act in the best interests of the partnership. The duty of care requires that the partners act as a reasonably prudent person regarding the partnership and its partners. There are several components of the duty of loyalty. The duty of loyalty prohibits a partner from competing with the partnership, engaging in self-dealing with the partnership, or usurping a partnership opportunity. A partner may self-deal or take advantage of a partnership opportunity as long as they disclose to the partnership and the partnership consents to the activity. In this case, Mary is seeking to compete with the partnership by opening a dry cleaner independently from the partnership. As the partnership itself runs a dry cleaning company less than a block away, opening another dry cleaner would be clearly competitive with the operations of the partnership. Such competition is not permitted and would violate her duty of loyalty to the company.

4. Are JFM and Jean entitled to the injunction they seek•

JFM and Jean seek an injunction to prohibit Mary from opening Rolling Plains Dry Cleaners. As mentioned in section 3, Mary has a duty of loyalty under Texas partnership law that prohibits her from competing with partnership business. As the partnership owns a dry cleaning company, and Mary seeks to open a competing dry cleaning company less than a block away, it would violate Mary's duty of loyalty to open the dry cleaner. Under these circumstances, the court should grant JFM and Jean's injunction to prohibit Mary from breaching her duty to the partnership. If the court were to deny the injunction, and she were to open the dry cleaner, the partnership could seek damages.

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1. Susan's legal status with respect to JFM is that she is entitled to any partnership distributions which Frank would have been entitled to, but she is not entitled to participate in the business. Under Texas law, a person can become a partner in a general partnership only with the unanimous consent of the other partners. A partner's interest in the partnership is considered that partner's personal property and can be transferred. Upon such a transfer, absent a unanimous vote of the other partners, the transferee only becomes entitled to any distributions from the partnership.

Here, Frank died in April 2011 as a general partner in JFM Company. Susan inherited his partnership interest in JFM as his only heir. This entitles Susan to any distributions from the partnership that Frank would be entitled to receive. But, because Jean and Mary did not both consent to her being admitted to the partnership, she is not entitled to participate in the business. Thus, because Jean and Mary did not consent to Susan's admission into the partnership, Susan only received from Frank a right to receive any partnership distributions and did not become a full partner.

2. JFM and Jean are likely to prevail in the suit for declaratory judgment with regard to Susan's right to participate in the management of JFM but not with regard to Susan's right to inspect JFM's financial records. Under Texas law, each partner in a general partnership has a right to participate in the partnership business. However, as stated above, a transferee of a partnership interest does not become a partner, but rather simply holds a right to receive any partnership distributions. As such, absent consent from both Jean and Mary making Susan a full partner in JFM, Susan has no right to participate in the management of JFM. But, because Susan holds a right to receive distributions from the partnership, she is entitled to inspect the financial records of JFM. Thus, because Susan has no right to participate in the management of the business because she is not a partner, but she is entitled to inspect the partnership financial records as the holder of a right to distributions, JFM and Jean will prevail in their suit for a declaratory judgment with regard to Susan's management rights, but not for her right to inspect JFM's financial records.

3. Mary owed JFM and the other partners a duty of loyalty and a duty of care. Under Texas law, a partner in a partnership is a fiduciary with regard to the partnership and the other partners. As a fiduciary, each partner owes both the partners and the partnership two fiduciary duties: a duty of care and a duty of loyalty. As for the duty of care, each partner must act with the amount of skill and care as a reasonably prudent person. As for the duty of loyalty, each partner cannot usurp partnership opportunities or directly compete with the partnership.

Here, Jean, Frank, and Mary formed JFM Company, a general partnership, and operated a dry cleaning business as part of that partnership. Several months after forming the partnership, Mary signed a lease for a building located less than a block away from partnership's business. In the window of the newly leased building, Mary put up a sign that stated a dry cleaning business would be coming soon. Because this is the exact same type of business that the partnership is engaged in, and in the same locality that the partnership engages in its business, Mary has violated her duty of loyalty. This direct competition with the partnership is prohibited. At the very least, she was required to present this opportunity to the partnership and given the partnership a sufficient time to act on it before engaging in this venture. Regardless, because Mary would be directly competing with the partnership, she has violated her duty of loyalty by opening up a competing dry cleaners less than a block away from the one operated by the partnership.

4. Jean and JFM are entitled to the injunction they seek. As stated above, Mary violated her duty of loyalty by opening up a competing dry cleaners in close proximity to the one operated by the JFM partnership. Because Mary violated her duty of loyalty, Jean and JFM, as the parties to whom she owed that duty, will be able to obtain the injunction to prevent Mary from opening that business.

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