

Lessons Learned in Joint Venture Relationships

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1. Introduction

A joint venture is a collaboration between two or more entities, created to achieve a single purpose. Broadly, joint ventures can be separated into two categories, equity or contractual. In an equity joint venture, the joint venturers form a separate legal entity that they collectively own and operate. On the other hand, in a contractual joint venture, no separate legal entity is established.

Equity joint ventures are an enticing vehicle for companies to achieve certain business objectives. There are a number of advantages to entering into an equity joint venture. Parties can more easily spread the capital needs, costs, and risks of a project among the joint venture members. Pooling resources can lead to synergies and make it easier to obtain third party financing. Also, the status of common owners creates a higher level of accountability among the joint venturers.

On the other hand, establishing an equity joint venture may be disadvantageous in certain circumstances. A company may have the resources to achieve its goals individually and would prefer shorter term or more limited assistance from another party. Further, the company may find the rigidness, potential liability, and tax consequences of an equity sharing arrangement unappealing. In that circumstance, a contractual joint venture may be beneficial. The name of the agreement, however, is not dispositive as to the relationship that is formed. Courts will examine the facts surrounding the agreement to determine how to define the relationship. Therefore, parties can unintentionally form a joint venture.

If parties decide to form an equity joint venture, they must carefully draft the organizational documents and ensure compliance with their documents. Importantly, the joint venturers must properly define the purpose of the joint venture. Defining the purpose too broadly can cause the joint venturers to owe additional or expanded duties to each other that were not contemplated.

Given the high possibility for uncertainty surrounding the formation and operation of joint ventures, disputes are commonplace. Recent case law from across the United States provides glimpses into common areas of dispute among joint venturers. By examining some of these cases and analyzing them under Texas law, we can identify and solve issues that arise in all phases of the joint venture relationship. Understanding potential points of contention will allow the drafter to, among other things, ensure proper

formation of the joint venture and properly define the scope and purpose of the joint venture.

2. Overview of Relevant Joint Venture Law in Texas

When disputes arise in a Texas joint venture relationship, the legal standards used to resolve the dispute will largely be determined by the type of joint venture that exists. Moreover, the type of joint venture will exclude certain areas of the law from discussion. For example, where the parties have formed a contractual joint venture, the Texas courts will likely apply principles of contract law to reach their result, but ignore principles of partnership law. On the other hand, where the parties have formed an equity joint venture by establishing a limited liability company (LLC), for example, courts will likely apply the statutory and common law surrounding LLC's to reach its decision.

a. Joint Venture Formation

Texas law is unsettled as to the rules that courts should apply to determine if parties have formed an equity joint venture. The Texas Supreme Court stated in *Ingram v. Deere*, "We see no legal or logical reason for distinguishing a joint venture from a partnership on the question of formation of the entity."¹ The Texas Business Organizations Code (TBOC) prescribes the rules and factors for determining whether a partnership exists, and *Deere* indicates that courts should utilize these rules to determine if a joint venture has been formed. However, after *Deere*, some lower courts have ignored the Supreme Court and analyzed joint venture formation under a common law four element test.² At least one of these cases has analyzed joint venture formation under an amalgamation of the five factor and four elements tests.³ Even though the decision in *Deere* should hold precedent over the lower courts, it could be argued that the statement in *Deere* was dicta. Thus, it is unclear whether Texas courts will apply the five factor test, the four element test, or both.

The TBOC defines "partnership" as, "an association of two or more persons to carry on a business for profit." The name used to describe the association, whether it be "partnership," "joint venture," or something else, will not affect how the relationship is defined.⁴ The TBOC lists five factors that courts should consider when deciding if a relationship fits the definition of partnership. The factors are: (1) sharing of profits of the business; (2) expressions of an intent to be partners; (3) participation in the control of the business; (4) agreement to share in the losses of the business; and (5) agreements to contribute money or property to the business.⁵ Common law required proof of all five

¹ *Ingram v. Deere*, 288 S.W.3d 886, 894 (Tex. 2009).

² See e.g. *Stutz Rd. Ltd. P'ship v. Weekley Homes, L.P.*, 2015 Tex. App. LEXIS 11440 (Tex. App. Dallas Nov. 4, 2015); *Pitts & Collard, L.L.P. v. Schechter*, 369 S.W.3d 301 (Tex. App. Houston 1st Dist. 2011).

³ *Metroplexcore, L.L.C. v. Parsons Transp., Inc.*, 743 F.3d 964, 972-975 (5th Cir. Tex. 2014).

⁴ Tex. Business Organizations Code § 152.051.

⁵ Tex. Business Organizations Code § 152.052.

factors to find the existence of a partnership. However, under the TBOC, the courts look at the totality of the circumstances, using the factors as a guideline.⁶ Courts give added weight to whether there was a sharing of profits and/or a sharing of control of the business.⁷ In *Deere*, the court noted that the identified factors seem to serve as a “proxy for the common law requirement of intent to form a partnership by identifying conduct that logically suggests a collaboration of a business’ purpose and resources to make a profit as partners.” While the court declined to give a number of factors needed, it did provide that “proof of all or some of the factors is required to establish a partnership”. Evidence of none of the factors will preclude the recognition of a partnership under Texas law.⁸ The court held that even conclusive evidence of only one factor will also normally be insufficient to establish the existence of a partnership. However, conclusive evidence of all 5 factors establishes a partnership as a matter of law.

According to some Texas courts, the four essential elements of a joint venture are: (1) a community of interest in the venture; (2) an agreement to share profits; (3) an agreement to share losses; and (4) a mutual right of control or management of the enterprise.⁹ If one of these elements is not found, no joint venture exists. Underlying all four elements is the requirement that the parties intend to form a joint venture. Given the uncertainty in the law, one should analyze whether a joint venture exists under both the four element test and the five factor test. The Fifth Circuit citing earlier Texas cases has stated its view that, “The principal distinction between a joint venture and a partnership is that a joint venture is usually limited to one particular enterprise.”¹⁰

b. Usurping Joint Venture Opportunities

If it is clear that an equity joint venture exists and the dispute arises out of this relationship, Texas courts will apply the law surrounding the entity type that underlies the equity joint venture. In Texas, an equity joint venture may be formed as a partnership, corporation, or LLC, with LLC’s and partnerships being the most common joint venture entities. In many cases, the rights and duties of the parties will be determined contractually in the organizational documents, regardless of the entity type. However, where the agreement is silent or the law establishes extra-contractual rights and duties, the statutory and common law principles of the entity type will control.

With regard to LLC’s and partnerships, the TBOC provides that Company Agreements or Partnership Agreements may modify the duties and related liabilities that

⁶ *Deere*, 288 S.W.3d at 896.

⁷ *Id.*

⁸ *Id.* At 898

⁹ *Smith v. Deneve*, 285 S.W.3d 904, 912 (Tex. App. Dallas 2009) citing *Ayco Dev. Corp. v. G.E.T. Serv. Co.* 616 S.W.2d 184, 186 (Tex. 1987).

¹⁰ *Metroplexcore*, 743 F.3d 964, 972.

a member, manager, or partner has to the LLC or partnership.¹¹ As such, regardless of the entity chosen to form a joint venture, where co-venturers engage in an existing business that is similar to the business contemplated by the joint venture, recent case law shows that it would be prudent for practitioners to make a conscious effort to carefully define the scope and the extent to which each co-venturer may be liable to the joint venture or other co-venturers for competing with or misappropriating a joint venture opportunity.

3. Recent Case Law Discussing Formation Disputes

Parties should seek to have their private agreements, written or oral, conclusively establish the desirable type of joint venture. Unfortunately, in some instances, actions speak louder than words. Courts may examine the extra-contractual behavior of the parties to determine the true relationship that has been established. Contractual joint venturers may unwittingly enter into an equity joint venture. Alternatively, a joint venture that appears to be a separate entity may, in fact, just be a strictly contractual relationship between the parties. This abrupt shift in how the relationship is defined affects both the joint venturers and third parties by creating unforeseen liabilities.

a. Implied Equity Joint Venture - *Veilleux v. Central Rigging & Transfer, LLC*

As *Veilleux v. Central Rigging & Transfer, LLC* underlines, parties can unwittingly enter into an equity joint venture.¹² In this case, Veilleux, the plaintiff, suffered serious injuries on his worksite, and sought damages from three separate entities, Central Rigging, Central Auto, and Central Construction. Central Rigging and Central Auto motioned for summary judgment claiming that they were not responsible parties. The Superior Court of Connecticut denied their motion, stating that there were genuine issues of fact as to whether a joint venture existed between the three entities.

Veilleux was an employee of GDS Contracting. GDS rented an aerial lift from Central Construction. On September 8, 2006, a Central Construction employee delivered the lift and asked for Veilleux's help in removing the lift from the flatbed trailer. While Veilleux was assisting, the Central Construction employee improperly raised the trailer, causing the lift to fall off and onto Veilleux.

Seemingly, only Central Construction would be liable for the employee's actions under the doctrine of respondeat superior. However, according to the court, the interactions between the three entities imputed the formation of an implied joint venture. The three entities conducted business under the name of "Central Group" and under their own names. They were each wholly owned by Robert Greco. They had the same bookkeeper. They routinely shared employees and equipment. On the day of the

¹¹ Tex. Business Organizations Code §§ 101.401, 152.002, 153.152(a)(2).

¹² *Veilleux v. Cent. Rigging & Transfer, LLC*, 2015 Conn. Super. LEXIS 171 (Conn. Super. Ct. Jan. 26, 2015).

incident, the Central Construction employee was driving a truck labeled “Central Rigging” and pulling a trailer labeled “Central Auto.” Also, in 2006, all Central Construction employees were placed on the payroll of Central Auto to avoid higher workers’ compensation premiums. The defendants claimed that the entities compensated each other for the use of employees and equipment, but no accounts were produced showing such payment. Various documents intertwined the entities. For example, an OSHA questionnaire completed by Greco after the accident listed “Central Rigging/Central Construction Services” as the company’s name. Further, the employment application form for all three companies bore the name “Central Group.”

Under Connecticut law, as in most jurisdictions, a joint venture can be expressed or implied. Five elements must be proven to establish an equity joint venture: (1) there is an agreement between two or more persons to carry on an enterprise for profit; (2) the parties intend to be joint venturers; (3) each party contributes financing, skill, knowledge, or effort; (4) each party has some degree of joint control over the venture; and (5) the parties share profits and losses. Connecticut courts do not necessarily require a showing of joint control to find the existence of a joint venture. Further, as in Texas a joint venture may exist in Connecticut even though the agreement does not explicitly provide for the sharing of losses.

The Veilleux court held that a genuine issue of fact existed as to whether the Central companies had implicitly formed a joint venture, and, thus, whether Central Auto and Central Rigging could be held liable for damages. The Central companies implicitly agreed to carry on a common enterprise for profit. Sometimes, they represented that they were operating as Central Group, and not separate entities, showing an intention to conduct business together. They shared employees and equipment without seeking compensation for such use. In doing so, they contributed skill and effort to the joint venture. Also, they were owned by Greco who, in at least one instance, acted on behalf of multiple Central companies, at one time. Because Connecticut does not require evidence of joint control or a sharing of losses, this evidence was sufficient to rule for the plaintiffs.

i. Analysis Under Texas Law

Under Texas law, a court would likely find that no joint venture could have been formed and award summary judgement in favor of the Central companies. However, a court could likely find that a joint enterprise exists, and, thus, find Central Rigging and Central Auto liable for Veilleux’s injuries.

As discussed above, Texas courts will either apply the rules of partnership formation or a four element test to determine if an equity joint venture has been established. Under both of these tests, a Texas court would probably rule that no joint venture exists. Applying the five factor test, there is insufficient evidence to show that

the parties had a joint venture arrangement.¹³ They did not share profits. There was no evidence that the Central companies pooled profits and divided them among themselves. Second, there was not a clear expression of intent to form a partnership. The parties use of an assumed name, “Central Group,” is not enough to show the parties intended to form a joint venture.¹⁴ Third, there was no agreement to jointly share in the losses or liabilities. Based on these three factors, the evidence heavily favors a finding that no joint venture was formed under the five factor test.

Similarly, under the four element test, a Texas court is unlikely to find that a joint venture was established. As mentioned above, no agreement existed between the Central companies to share profits or losses. These are two elements of the test. Because they are not satisfied, no joint venture is likely.

ii. Practical Pointers and Takeaways

It is essential to understand the framework of every business relationship that the client enters into. Closely related entities may wrongfully assume that their separate legal status protects them from each other’s liabilities. However, if their actions impute the elements of equity joint venture formation, courts may require that they share those liabilities.

Central Auto and Central Rigging could have avoided this unforeseen liability. Assuming the Central entities did not desire to enter into an equity joint venture, they should have used business practices that highlighted their autonomy. Rather than sharing equipment and employees, the entities should have entered into rental agreement and service agreements. The entities should have operated under their legal names, rather than under the Central Group name. Further, Greco should not have simultaneously acted in the name of multiple entities. If the Central companies had understood the legal effect of their interactions, they could have avoided unintentionally forming an equity joint venture.

b. Joint Venture Agreement but no Equity Joint Venture - Bank of England v. Rice (In re Webb)

If parties enter into a written joint venture agreement that seemingly creates a partnership between the two parties, one should not assume that such an agreement creates a separate operating entity. For example in *Bank of England v. Rice*, The United States Eighth Circuit Court of Appeals upheld a bankruptcy court’s ruling that certain property was included in the bankruptcy estate of an individual, even though that property was listed as collateral to secure a loan from a bank to a joint venture.¹⁵

¹³ See *Westside Wrecker Serv. v. Skafi*, 361 S.W.3d 153 (Tex. App. Houston 1st Dist. 2011) (discussing each factor, in depth).

¹⁴ See *Ben Fitzgerald Realty Co. v. Muller*, 846 S.W.2d 110 (Tex. App. Tyler 1993).

¹⁵ *Bank of England v. Rice (In re Webb)*, 742 F.3d 824 (8th Cir. Ark. 2014).

In this case, Dudley and Peggy Webb, husband and wife, executed a joint venture agreement to operate a rice farming business, in Arkansas under the name “Dudley R. Webb, Jr. Farms Joint Venture”. The agreement specified that each of them would have a 50% interest in the business and that each would contribute their skills and effort to “the partnership.” Yet, the agreement also stated that the agreement should not be construed “to create a partnership of any kind.” The Joint Venture obtained multiple loans from Bank of England. In connection with the loans, the Bank obtained a perfected security interest in the Joint Venture’s rice and equipment. Subsequently, the Webbs jointly filed a Chapter 7 bankruptcy petition. In their bankruptcy schedule, the couple listed bushels of rice and equipment that the Bank alleged was the property of the Joint Venture and, thus, should not be included in the bankruptcy estate.

The bankruptcy court held a hearing to determine the ownership of the property under Arkansas law. Dudley testified that he did not differentiate between his property and the Joint Venture’s property. He explained that the Joint Venture was created to help establish credit for his wife and provide her with an interest in the farming operations. The Webbs reported the income from farming operations on their individual tax return, rather than on a partnership tax return. Property was never formally transferred to the Joint Venture. Further, the Joint Venture was not registered with the Arkansas Secretary of State. Based on this evidence, the bankruptcy court held that the disputed property should be included in the bankruptcy estate and the Eighth Circuit affirmed this ruling holding that because the joint venture agreement was ambiguous, the bankruptcy court rightfully examined the parties’ actions to determine that a joint venture or partnership was not formed.

i. Analysis Under Texas Law

A court applying Texas law to the facts of *Rice* would also likely find that the Webbs did not form a joint venture, despite entering into a joint venture agreement. Based on the facts discussed above, a Texas court would likely find that neither the five factor test nor the four element test is satisfied. Thus, the bank loses its security interest in the property.

However, unlike Arkansas, Texas law does not require a finding that the joint venture agreement is ambiguous before examining the extra-contractual behavior of the parties. In fact, a written and executed joint venture agreement is just a factor to be considered in determining whether a joint venture actually exists.¹⁶ Thus, even if the joint venture agreement unambiguously stated that the parties formed a partnership, under Texas law, a court would also likely find that no equity joint venture existed, based on the actions of the Webbs.

¹⁶ Ingram v. Deere, 288 S.W.3d 886, 900 (Tex. 2009).

ii. Practical Pointers and Takeaways

As this case demonstrates, third parties should not simply rely on written agreements to verify that an equity joint venture has been established. Further due diligence is required to assess the validity of the agreement. If the Bank had performed a rudimentary investigation, it would have realized that the legal requirements for the formation of a joint venture were not met. None of the property that Bank held as collateral was properly titled in the name of the Joint Venture. The Joint Venture never registered with the State. The Webbs never reported any Joint Venture profits or losses on their tax returns, which the Bank had the opportunity to examine. By ignoring these red flags, the Bank effectively loaned money to a shell company.

Potential joint venturers should take heed of this case, as well. Parties to a joint venture agreement should ensure that no ambiguities exist in the document. Other than in the case of a general partnership, with an equity joint venture, a separate legal entity should be formed and filed with the secretary of state. However, where no formal entity is established the joint venture agreement should clearly state the rights and duties of the parties. And, if a general partnership is intended this should be specified to avoid ambiguity. If the parties do not wish to owe each other the fiduciary duties of partners, the agreement should clearly state this and no other section of the agreement should contradict this desire.

4. Recent Case Law Discussing Usurpation of Corporate Opportunities

Joint venture parties are often competitors in the same industry or the existing business of one of the co-venturers may compete with the contemplated business of the joint venture. Disputes usually arise after the joint venture is formed and one party identifies and pursues a business opportunity that the other co-venturer views as an opportunity that should have been offered to the joint venture. More often than not, resolving misappropriation of corporate opportunity disputes turns on how narrowly the parties have defined the scope of the business and the extent to which each co-venturer may compete with the joint venture. Given that it is easier to broaden, as opposed to narrow, the scope and purpose of the contemplated business after formation, co-venturers should make an effort to mitigate potential disputes at the time of formation by either modifying the activities that constitute a breach of fiduciary duty or by carefully defining the scope and purpose such that it reflects the intent of both parties. The following cases are examples of how language in the joint venture agreement impacts the courts analysis in a breach of fiduciary duty claim (misappropriation of corporate opportunity) and provide guidance for practitioners to consider while drafting joint venture agreements

a. In re Mobilactive Media, LLC

In re Mobilactive Media, LLC, was a Delaware Chancery Court case involving Terry Bienstock (“Bienstock”), the plaintiff, and Silverback Media PLC (“Silverback”), the defendant, formed Mobilactive Media LLC (“Mobilactive”) as part of a joint venture to pursue and take advantage of mobile marketing opportunities in North America.¹⁷ The Mobilactive company agreement, executed by both parties in February of 2007, broadly stated that the business purpose of the company would be to “license, develop, own, and market technology, content and application for the purpose of enabling and enhancing interactive video programming and advertising content.” Further, the parties agreed that “Mobilactive and its subsidiaries would be the only means through which [either party] would engage in the business and that any future opportunities for new or expanded business that [either party] learned of would be presented to the Mobilactive as an opportunity for it to undertake on the terms set forth in this Agreement.”

After the parties executed the Mobilactive company agreement, Bienstock pursued campaigns and business opportunities on behalf of the Mobilactive, but each was met with limited success. During that time, Silverback made numerous attempts to buyout Bienstock, but he instead advised Silverback’s board of directors that he intended to continue “honoring and implementing the existing agreement” between the parties. After Bienstock rebuked Silverback’s buyout offers, Silverback embarked on a strategy whereby it acquired numerous companies within the mobile marketing industry. As a result, in August of 2010, Bienstock filed suit alleging that Silverback had violated the joint venture agreement and breached its fiduciary duties by pursuing the acquisitions without presenting the opportunities to Mobilactive.

Under Delaware law, the relationship of co-venturers is fiduciary in nature and imposes upon all the participants the utmost good faith, fairness, loyalty and honesty in dealing with each other with respect to the enterprise. The doctrine of misappropriation of corporate opportunity represents only one of the broad fiduciary duties and requires proof that: 1) an opportunity is within the corporation’s line of business; 2) the corporation has an interest or expectancy in the opportunity; 3) the corporation is financially able to exploit the opportunity; and 4) by taking the opportunity for his own, the corporate fiduciary is placed in a position inimical to his duties to the corporation.

In determining whether Bienstock satisfied the first element, the court focused on the broad description of the business purpose in the Mobilactive company agreement and concluded that all but one of the acquisitions, individually pursued by Silverback, fell within Mobilactive’s line of business. Likewise, the court determined that Mobilactive had an interest in the Silverback acquisitions by fixating on the specific term in the Mobilactive company agreement expressing that the parties intended the joint venture

¹⁷ In re Mobilactive Media, LLC, 2013 Del. Ch. LEXIS 26 (Del. Ch. Jan. 25, 2013).

to be the exclusive vehicle for new business opportunities. Despite disagreement over Bienstock and Mobilactive financial capabilities, the court determined that Silverback had a contractual obligation, parallel to its fiduciary duty, to present corporate opportunities to Mobilactive and therefore it was unnecessary to consider Mobilactive's financial condition. Finally, the court concluded that Silverback's acquisitions and subsequent sale of its entire business for \$100 million undoubtedly placed it in a position unfavorable to Mobilactive and as such Silverback violated its fiduciary duties by usurping corporate opportunities.

b. Cass JV, LLC v. Host Int'l, Inc.

In *Cass JV, LLC v Host Int'l Inc.*,¹⁸ the court relied on the language in the joint venture agreement restricting both the scope and purpose of the contemplated business of the joint venture in its finding that a co-venturer, pursuing an opportunity outside the joint venture, was not competing with or misappropriating an opportunity from the joint venture. In this case, Host and the Regional Airport Authority of Louisville ("Airport Authority") entered into a 10 year Food and Beverage Concession Agreement ("Initial Concession Agreement") for the operation of concessions at the Louisville International Airport. Shortly after, Host partnered with Cass and formed CS Host Joint Venture ("Joint Venture") to operate its food and beverage concession facilities at the Airport. The Joint Venture Agreement provided that it would terminate no later than September 30, 2010 or upon termination of the Initial Concession Agreement.

The Joint Venture agreement limited the scope to a single transaction and the purpose "to the development and operation of several food and beverage concession facilities at the Airport under a sublease from Host, and under any franchise or license agreement entered into by the joint venture in connection with a sublease from Host." Additionally, the parties agreed that each could "engage in and have an independent interest in other business ventures of every nature and description, independently or with others, except for business ventures which compete, or may compete... with the joint venture."

The dispute between the parties arose when Host submitted a new bid to the Airport for a concession agreement that would commence in 2010, following the expiration of the Initial Concession Agreement. Rather than partner with Cass to service the new agreement, Host instead decided to form a new joint venture with Tinsley Family Concession, Inc. to operate its Airport concession facilities going forward. As a result, Cass filed suit alleging that Host had breached the contractual and fiduciary duties it owed to Cass by virtue of the Joint Venture agreement.

Under Kentucky law, co-venturers are fiduciaries and owe one another a duty of good faith, loyalty, candor, due care, and fair dealing. Specifically, the duty of loyalty

¹⁸ *Cass JV, LLC v. Host Int'l, Inc.*, 2014 U.S. Dist. LEXIS 111770 (W.D. Ky. Aug. 12, 2014).

imposes on any partner in a joint venture the duty to refrain from competition with the joint venture and share the business opportunities clearly related to the subject of its operations.

In analyzing the claims asserted by Cass, the court emphasized that it would look to the language of the Joint Venture agreement to determine whether Host breached any express fiduciary or contractual duties. Specifically, the court found that the language unambiguously restricted the Joint Venture to a single transaction whereby Cass was to service the Initial Concession Agreement for a ten year term. Furthermore, the court noted that the Joint Venture agreement gave no indication that the parties intended to bind themselves beyond the ten year term. As such, the new concession agreement would not constitute a competing business because the new concession agreement would not take effect until the Initial Concession Agreement had terminated.

Finally, the court concluded that, by the well-defined terms of the Joint Venture agreement, the new concession agreement would not interfere with the business of or constitute a misappropriation of opportunity because it was clear that the Joint Venture was established to service only the Initial Concession Agreement.

c. Analysis Under Texas Law

It is well settled in Texas that co-venturers owe fiduciary duties to one another in dealings within the scope of a joint venture. Texas courts will give deference to the language in a joint venture agreement to determine the extent to which co-venturers may compete with or pursue opportunities outside the joint venture.¹⁹ Nonetheless, it is clear that one of the central elements in the analysis for a breach of fiduciary duty owed to co-venturer is the language in the joint venture agreement executed by the parties.

d. Pointers and Takeaways

These cases discussed above reveal the courts willingness to broadly interpret ambiguous terms in the joint venture agreement and thus offer useful guidance for practitioners drafting joint venture agreements. Specifically, practitioners should note that failing to define the extent of the exclusivity of the joint venture or broadly drafting scope and purpose provisions clearly opens each venturer to a common law interpretation of their intent. Likewise, contractual obligations that bind the co-venturers to present corporate opportunities to the joint venture clearly ease the burden for a co-venturer alleging a breach of fiduciary duty. Ultimately, where the business of the joint

¹⁹ See *Vaquero Petroleum Co. v. Simmons*, 636 S.W.2d 762 (Tex. App. Corpus Christi 1982) (court deferred to the terms in the agreement that limited the scope and purpose of the joint venture in holding that a co-venturer did not compete with or usurp corporate opportunity from the joint venture by pursuing an oil and gas prospect outside the joint venture after the term expired).

venture potentially overlaps with the existing business or foreseeable future projects of one of the co-venturers, carefully drafting a narrow scope and precise purpose for the contemplated business of the joint venture as well as addressing the extent to which each individual co-venturer may pursue opportunities separate from the joint venture will help.

5. Conclusion

The above cases exemplify common traps for joint venturers. First, the parties must understand the relationship that they are forming. If the parties wish to form an equity joint venture, their written agreements and actions must exemplify this desire. Second, better assist their clients at avoiding disputes the scope and purpose of the relationship must be properly defined. Otherwise, the parties may create unforeseen duties and liabilities. By clearly addressing these common issues, drafting attorneys will once that decision is made.

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About Debra Gatison Hatter



For over 20 years, Debra Gatison Hatter has focused her practice on corporate transactions, including mergers and acquisitions, joint ventures, strategic partnerships, financings, corporate governance, structuring and general business matters.

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