

## PARTNER’S DUTY OF CARE — WHETHER A PARTNER’S STATUTORY DUTY OF CARE CAN BE DISCLAIMED VIA PARTNERSHIP AGREEMENT?

By Gabriel F. Alonso<sup>1</sup>

**RBD: Shannon Med. Ctr. v. Triad Holdings III, L.L.C., — S.W.3d —, No. 14-18-00638-CV, 2019 WL 6606406 (Tex. App. — Houston [14<sup>th</sup> Dist.] Dec. 5, 2019).**

### *Summary*

In *Shannon Med. Ctr. v. Triad Holdings III, L.L.C.*, the appellant, Shannon Medical Center (“Shannon”) and the appellee, Triad Holdings III, L.L.C. (“Triad”) are general partners in Regional Cancer Treatment Center, Ltd. (“the Partnership”).<sup>2</sup> The partnership operates its cancer treatment center on premises leased from Shannon’s subsidiary, Shannon Real Estate Services, Inc. (“SRES”).<sup>3</sup> Except for this partnership, Triad and Shannon are competitors.<sup>4</sup>

The Partnership received notice from its landlord, SRES, that it would not renew the Partnership’s five-year lease upon its expiration unless Triad agreed to change the Partnership’s name to “Shannon Regional Cancer Treatment Center, Ltd.”<sup>5</sup> Triad declined.<sup>6</sup> Three days before the lease expired, Bryan Horner, who is both Shannon’s CEO and SRES’s president, sent the partnership a lease amendment executed on behalf of Shannon as managing partner of the Partnership and SRES which almost doubled the Partnership’s rent.<sup>7</sup> The increase in rent was purportedly to reimburse SRES for “specialized tenant improvements it made to the building for

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<sup>1</sup> Gabriel F. Alonso is a May 2021 J.D. Candidate at South Texas College of Law — Houston.

<sup>2</sup> *Shannon Med. Ctr. v. Triad Holdings III, L.L.C., — S.W.3d —, No. 14-18-00638-CV, 2019 WL 6606406, at \*1 (Tex. App. — Houston [14th Dist.] Dec. 5, 2019).*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Shannon Med. Ctr.*, 2019 WL 6606406, at \*2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

the Partnership’s use.”<sup>8</sup> However, Shannon knew SRES had not modified the building and that the “specialized tenant improvements” had been part of the building’s original construction since 1988.<sup>9</sup>

For several years, Shannon and Triad have been the only general partners with Shannon serving as the managing general partner.<sup>10</sup> Shannon has made continued attempts to dissolve the Partnership and take control over the cancer treatment center.<sup>11</sup> Upon failure of voting approval of 75% of the partnership units needed to dissolve the partnership in accordance with the Partnership Agreement, Shannon filed suit for judicial dissolution on the basis that it was not reasonably practicable to carry on the Partnership’s business in conformity with its governing documents.<sup>12</sup>

Triad counterclaimed individually and additionally brought a derivative action on behalf of the partnership for Shannon’s breach of the statutory duty of care.<sup>13</sup> In accordance with the jury’s verdict, the trial court rendered judgment denying Shannon’s request for judicial dissolution and awarded the Partnership actual damages in the amount of excess rent that Shannon bound the partnership to pay SRES.<sup>14</sup> Shannon was also ordered to pay Triad’s and the Partnership’s attorneys’ fees and expenses.<sup>15</sup>

On appeal, The Fourteenth Court of Appeals of Texas (“the Court”) addressed Shannon’s challenge to the jury’s findings that Shannon breached its statutory duty of care.<sup>16</sup> Shannon’s argument pertinent to this discussion is that the duty of care was contractually disclaimed by the

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Shannon Med. Ctr.*, 2019 WL 6606406, at \*1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at \*3.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at \*3.

partnership agreement and therefore, Shannon maintains that it could not have breached a duty it did not owe.<sup>17</sup>

### *Analysis*

The Court begins with the declaration that “as a matter of law . . . the duty of care cannot be disclaimed.”<sup>18</sup> The Court points to the Texas Business Organizations Code in support of its decision.<sup>19</sup> Section 152.206 obligates a partner to conduct the partnership’s business “with the care an ordinarily prudent person would exercise in similar circumstances.”<sup>20</sup> Additionally, the partner must discharge its duties “in good faith” and “in a manner the partner reasonably believes to be in the best interest of the partnership.”<sup>21</sup> The Court then looked at section 152.002(b)(3), which provides that “A partnership agreement or the partners may not eliminate the duty of care under Section 152.206. . . .”<sup>22</sup>

The Court reasoned that the Partnership Agreement in this case may authorize contracts between the Partnership and a partner or their affiliates, but a partner entering into these contracts must still comply with the duty of care charged by the statute.<sup>23</sup> The Court concluded that The Partnership Agreement entered into between Shannon and Triad could not alter this obligation and did not purport to do so.<sup>24</sup>

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<sup>17</sup> *Id.* at \*5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; See TEX. BUS. ORGS. CODE ANN. §§152.206, 153.003.

<sup>20</sup> TEX. BUS. ORGS. CODE ANN. § 152.206(a).

<sup>21</sup> *Id.* § 152.204(b).

<sup>22</sup> *Id.* § 152.002(b)(3).

<sup>23</sup> *Shannon Med. Ctr.*, 2019 WL 6606406, at \*5.

<sup>24</sup> *Id.*

Furthermore, the Court also rejected Shannon’s objection that the duty-of-care question presented to the jury did “not adequately address the partnership agreement and the alterations of the statutory duty of care.”<sup>25</sup> The Court found that the jury instructions accompanying that question sufficiently tracked the language of the statute.<sup>26</sup> The instructions made it clear that “[a] partner does not violate a duty or obligation merely because the partner’s conduct furthers the partner’s own interest” and that “a[n] error in judgment does not by itself constitute a breach of the duty of care.”<sup>27</sup> The Court concluded by affirming the trial court’s ruling and holding that the trial court did not abuse its discretion in overruling Shannon’s objection because the jury charge correctly reflects both the governing law and the Partnership Agreement Terms.<sup>28</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; See Tex. Dep’t of Human Servs. v. E.B., 802 S.W.2d 647,649 (Tex. 1990) (op. on reh’g) (no abuse of discretion where controlling question was accompanied by instructions tracking the statute’s language).