

LIABILITY OF A PARTNER—WHEN CAN YOU COLLECT FROM THE PARTNER IF THE PARTNERSHIP DOES NOT PAY?

By Erica J. Reyes*

Am. Star Energy & Mineral Corp. v. Stowers, 457 S.W.3d 427 (Tex. 2015).

In this case, a judgment creditor sought to collect the judgment from individual partners after the insolvent partnership judgment debtor could not pay.¹ The trial court found that American Star's claim was precluded by the statute of limitations, and the Amarillo Court of Appeals affirmed.² The issue in this review is "whether Texas Partnership law requires a plaintiff seeking to enforce a partner's liability for a partnership debt to sue the partner within the limitations period on the underlying claim against the partnership."³ The Supreme Court holds that the limitations period against an individual partner does not begin until the final judgment against the partnership is entered.⁴

FACTS

The four respondents to this suit formed S & J Investments (S & J) in 1980 to invest in and manage oil and gas properties.⁵ S & J executed an agreement with American Star Energy and Minerals Corporation (American Star), the other party to the suit, that governed the operation of the oil and gas properties.⁶ Ten years later, American Star sued S & J for breach of the agreement, and American Star prevailed on these claims.⁷ S & J's attempts at appealing the decision were not successful.⁸

S & J owes American Star \$227,884.46 on the judgment American Star procured in the early 1990s.⁹ S & J was undercapitalized, and its assets could not satisfy the judgment when American Star attempted to collect.¹⁰ American Star brought this action in 2010 seeking a judgment against the individual partners.¹¹ The Partners argued that the four year statute of limitations had run on the underlying breach of contract case, and therefore, American Star could not go after them individually.¹² The trial court ruled that the limitations period began when the underlying cause of action accrued, and the court of appeals affirmed the trial court's decision.¹³ American Star sought supreme court review.¹⁴

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¹ Am. Star Energy & Minerals Corp. v. Stowers, 457 S.W.3d 427 (Tex. 2015).

² *Id.* at 428

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 428–29.

⁹ *Am Star Energy*, 457 S.W.3d at 429.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

ANALYSIS

In Texas, a partnership is an “entity distinct from its partners.”¹⁵ Texas adheres to the entity theory of partnership.¹⁶ Under this theory, a partnership can do in its own name almost everything an individual can do, such as enter into contracts, own property, sue, and be sued.¹⁷ Despite the entity theory, a partner is still jointly and severally liable for the obligations of the partnership.¹⁸ This feature of the Texas partnership conforms with the aggregate theory of partnership.¹⁹ The Texas Revised Partnership Act “imposes even on this aggregate feature an entity aspect.”²⁰ A judgment against a partnership is not in and of itself a judgment against an individual partner.²¹ A creditor must obtain a separate judgment against the individual partner. The creditor may not seek a judgment against a partner without first obtaining a judgment against the partnership.²² The court concedes that this is arguably the most confusing aspect of partnership law.²³

The applicable statute of limitations does not expressly dictate when a suit against an individual partner must be brought.²⁴ The Partners argue that American Star could have sued them in the original suit against the partnership, and because they could have done so, the cause of action accrued upon the breach of the underlying agreement.²⁵ Conversely, American Star argues that the Partners had no obligation until the judgment against the partnership became final, and thus, the limitations period did not begin until 2009.²⁶ The original action was against S & J. The Partners were not named individually, so they had no obligation to pay the judgment yet. When a partnership obligates itself to pay a sum or perform a service, the individual partners cannot be immediately called on to pay the sum, even though they are liable.²⁷ The claim must be litigated, a judgment must be secured against the partnership, and the ninety-day satisfaction period must have passed before an individual partner can become personally liable.²⁸ In a way, the partners are guarantors of the partnership, rather than being directly liable.²⁹ Furthermore, the Legislature considers a collection action a separate action from the original cause of action.³⁰ The Supreme Court ultimately holds “[i]n light of a partnership’s status as a separate entity and the statutory prerequisites to proceeding against a partner. . . that the cause of action against a partner does not accrue until a creditor can proceed against a partner’s assets—that is, generally at the expiration of the ninety-day satisfaction

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Am. Star Energy*, 457 S.W.3d at 430.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 431.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 432.

period.”³¹

The Partners argue that the judgment against a partner must be based on the same claim as the underlying case.³² They argue that this collection suit is really a suit on the breach of contract suit, and the limitations period should have begun when the underlying cause of action accrued.³³ The Court swiftly rejects this, stating that this suit is to enforce liability not the underlying agreement.³⁴ The Court also notes that federal courts have reached the same conclusion.³⁵

The Partners also contend that this collection suit imposes a type of automatic liability and infringes their due process rights.³⁶ The Court states that their liability is not automatic.³⁷ A suit such as this one is required in order to establish their liability.³⁸ The Partners have the opportunity to contest their liability, as they would if they had been sued under the underlying cause of action.³⁹ Furthermore, the Partners were on notice of potential liability when they chose to conduct business as a partnership.⁴⁰

From a policy standpoint, the holding of this case avoids the injustice of a partner fully shielding himself from liability for the partnership’s actions.⁴¹ Someone choosing to do business with a partnership knows that the partnership assets are not the sole form of relief available if the partnership fails to perform their obligations.⁴² On the same note, those who choose the partnership as their form of business entity are aware that their personal assets may be sought after for the partnership’s failure to perform their obligations.⁴³ The court again fully rejects the Partners’ arguments and holds that American Star’s suit is not barred by the limitations period, reversing the court of appeals.⁴⁴

³¹ *Id.* at 431.

³² *Id.* at 433.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Am. Star Energy*, 457 S.W.3d at 434.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 435.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*