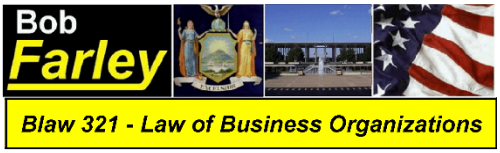

Case Brief – Congel v. Malfitano, NYS Court of Appeals 2018 NY Slip Op 02119

March 27, 2018

Facts:

In 1985, the Defendant, along with seven others, formed a general partnership to own, operate, and manage the Poughkeepsie Galleria shopping mall. Moselle Associates was the majority owner, holding approximately 56% of the Partnership. The Defendant began with a 2.25% ownership interest, which increased to 3.08%

The partners memorialized their Partnership in a written agreement, which provided that the Partnership "shall continue until it is terminated as hereinafter provided." The Agreement also specified that the Partnership would dissolve upon "[t]he election by the Partners to dissolve the Partnership" or "[t]he happening of any event which makes it unlawful for the business of the Partnership to be carried on or for the Partners to carry on in Partnership." The Agreement further provided that "[a]ll decisions to be made by the Partners shall be made by the casting of votes at a meeting of such Partners" and that "[t]he affirmative vote of no less than fifty-one percent" of the partners "shall be required to approve any matter presented for decision."

By the mid-2000s, the Defendant became troubled by the conduct of the Partnership's Executive Committee (the "Plaintiffs"). According to his complaint, the Defendant voiced his concerns, but they went unheard.

Ultimately, on November 24, 2006, the Defendant sent his partners a letter announcing his intent to dissolve the Partnership due to a "fundamental breakdown in the relationship between and among us as partners," citing Section 62(1)(b) of the New York Partnership Law ("NYPL"). Section 62(1)(b) provides that a partner may unilaterally dissolve a partnership, without violating the partnership agreement, if the agreement does not state a "definite term or particular undertaking." In response, the remaining partners maintained that the Defendant had wrongfully dissolved the Partnership, and they continued operating the Partnership under the same name pursuant to NYPL § 69(2)(b).

Procedural History:

In 2007, the Plaintiffs filed a breach of contract action against the Defendant on behalf of the Partnership, seeking a declaration that the Defendant had wrongfully dissolved the Partnership. Plaintiffs claimed that the Defendant had done so in "order to force the partnership 'to buy out . . . his interest at a steep premium.'" Defendant asserted that the Partnership was at-will because the Agreement did not have a "definite term" or "particular undertaking" as required by NYPL § 62(1)(b). Defendant interposed a counterclaim seeking to recover the value of his Partnership interest under NYPL § 69(2)(c)(II). Defendant also cross-moved to dismiss the complaint for failure to state a cause of action.

Discussion

On appeal to the Court of Appeals, the Court held that a partnership is: "a voluntary, contractual association in which persons carry on a business for profit as co-owners." According to the Court, the NYPL "creates default provisions that fill gaps in partnership agreements, but where the agreement clearly states the means by which a partnership will dissolve, or other aspects of partnership dissolution, it is the agreement that governs the change in relations between partners. . . ."

The Court addressed whether the Defendant's unilateral dissolution action violated the Agreement or the NYPL § 69. If not, the remaining issues would be moot.

The Court agreed with the courts below, ruling that the Defendant's unilateral dissolution of the Partnership violated the Agreement but held that those courts erred in applying NYPL § 62(1)(b). The Court proceeded to summarize the provisions of NYPL § 62(1)(b), explaining that a partnership is at-will and can be dissolved at any time by one or more of the partners if the partnership lacks a definite termination date or a particular objective to achieve. On the other hand, when a partnership agreement contains a termination date, definite objective, or method of dissolution, the partnership is not at-will and a partner cannot unilaterally dissolve the partnership. Moreover, a partner that wrongfully dissolves the partnership can be held liable to the other partners for a breach of the partnership agreement.

The Court ruled that the Agreement was clear and contemplated a dissolution of the Partnership in only two instances: (1) upon "[t]he election by the Partners to dissolve the Partnership"; (2) upon "[t]he happening of any event which makes it unlawful for the business of the Partnership to be carried on or for the Partners to carry it on in Partnership." The Court concluded that the Partnership could not be deemed to be at-will. Further, given that the Agreement was clear regarding dissolution, NYPL § 62(1)(b) did not apply. The Court reasoned that the parties had contracted out of Section 62 of the NYPL by providing for their own method of dissolution.

As a result, the Defendant's unilateral action to dissolve the Partnership breached the Partnership Agreement.

Conclusion

This case confirms that parties forming a general partnership are free to chart their own course and contract out of provisions of the NYPL.

When a partnership is silent regarding an area of the NYPL, however, courts will apply the relevant NYPL provision to that agreement.

Of note, the Court of Appeals concluded that a minority discount was appropriate in valuing a dissenting partner's partnership interest in these circumstances. Drafters of partnership agreements ought to keep these issues in mind in choosing options for a partnership.

Also of note, is the Court's reaffirmation of the American Rule regarding cost-shifting.

This ruling reduces some of the negotiating leverage on the part of the partnership when a minority partner seeks to dissolve a partnership.

Again, this is an issue that can be addressed in drafting a partnership agreement.