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RECENT DEVELOPMENT

CLANCY V. KING: A FIDUCIARY, DESPITE ADVERSE REPERCUSSIONS TO THE PARTNERSHIP'S INTERESTS, MAY IN GOOD FAITH ENFORCE A VALIDLY OBTAINED LEGAL RIGHT AGAINST HIS OR HER PARTNERSHIP.

By: Joseph Maher

The Court of Appeals of Maryland held that there is no breach of fiduciary duty when a validly obtained legal right is enforced by a partner against his or her partnership despite adverse repercussions to the partnership, provided the partner acts in good faith. *Clancy v. King*, 405 Md. 541, 954 A.2d 1092 (2008). In so holding, the court explained that contracted rights established within the four corners of partnership agreements may preempt statutory and common law fiduciary duties. *Clancy*, 405 Md. at 541, 954 A.2d at 1092.

In 1992, Thomas L. Clancy, Jr. ("Clancy") created the Jack Ryan Limited Partnership ("JRLP") with Wanda King ("King"), his then wife. The provisions of the agreement allowed each partner to engage in activities that were in competition with JRLP. Additionally, the agreement required neither partner to disclose his or her interest in such activities.

The following year, JRLP contracted with S&R Literary, Inc. ("S&R") to form Tom Clancy's Op-Center ("Op-Center"). This joint venture agreement was signed by Clancy, individually and as a partner of JRLP. Additionally, it specifically provided Clancy the prevailing power with respect to the venture's development in the event of a stalemate.

A subsequent development from the Op-Center agreement was a successful paperback book series. Clancy's chief contribution to this endeavor was the association of his name and reputation. In the midst of the book series, Clancy and King divorced, but they retained their respective ownership interests in JRLP. In 2001, S&R and Clancy, individually and as a partner of JRLP, agreed by letter that JRLP could withdraw permission to use Clancy's name in conjunction with the series after publication of the fourteenth book. Clancy withdrew such permission in 2004.

King, requesting injunctive relief, filed a complaint against Clancy for breach of his fiduciary duty to her and JRLP in the Circuit Court

for Calvert County. The circuit court found that Clancy breached his fiduciary duty to JRLP, Op-Center, and King. Upon Clancy's appeal, this ruling was affirmed by the Court of Special Appeals of Maryland. Clancy then petitioned for a writ of certiorari, which the Court of Appeals of Maryland granted.

The court addressed the primary question of whether the lower courts erroneously failed to recognize that contract principles override fiduciary duties where the contract and intentions of the parties are clear and unambiguous. *Clancy*, 405 Md. at 553, 954 A.2d at 1099. The court did not dwell upon the fiduciary duties provided under the common law or Maryland statutes because it is well-established in Maryland that contract law is fully applicable over partnership agreements. *Id.* at 554-56, 954 A.2d at 1100. Thus, the court analyzed King's claim by applying the governing law to effectuate the contents within the four corners of the JRLP and Op-Center agreements. *Id.* at 556, 954 A.2d at 1101.

First, the court deduced that a fiduciary may enforce validly obtained legal rights against other parties to the fiduciary relationship. *Id.* at 563, 954 A.2d at 1105. In making such a conclusion, the court initially looked to Maryland case law, which provided minority shareholders of a corporation the right to protect their personal investment of property against the corporation. *Id.* at 562-63, 954 A.2d at 1104-05 (citing *Waterfall Farm Sys., Inc. v. Craig*, 914 F. Supp. 1213, 1215, 1228 (D. Md. 1995)). Additionally, the court relied upon its prior ruling that prevented a corporation from filing a claim for breach of fiduciary duty against a director because the director enforced his own valid rights against the company. *Clancy*, 405 Md. at 563, 954 A.2d at 1105 (citing *Storetrax.com, Inc. v. Gurland*, 397 Md. 37, 67, 915 A.2d 991, 1009 (2007)).

The court explained that in order to enforce validly obtained legal rights, an individual or firm does not need to show personal financial loss. *Clancy*, 405 Md. at 564, 954 A.2d at 1005. The court's reasoning was based on precedent set by the United States Supreme Court which stated that directors who purchased notes from third parties at a discount were allowed to continue receiving payments on those fairly purchased notes, despite the fact that the profit was obtained at the company's expense. *Id.* at 563-64, 954 A.2d at 1005 (citing *Mfrs. Trust Co. v. Becker*, 338 U.S. 304, 305-06, 314-15 (1949)). Therefore, the Court of Appeals of Maryland concluded that no breach of fiduciary duty occurs when a fiduciary enforces his or her valid rights even if the fiduciary profits at the principal's expense. *Clancy*, 405 Md. at 565, 954 A.2d at 1106.

However, the court limited a fiduciary's ability to profit at the principal's expense to a good faith standard, regardless of whether

such a standard is included in the partnership agreement. *Id.* at 565-66, 954 A.2d at 1106 (citing MD. CODE ANN., CORPS. & ASS'NS § 9A-103(b)(5) (West 2007)). In setting this limitation, the court defined bad faith as conduct motivated to injure the firm, venture, or business partner. *Clancy*, 405 Md. at 568, 954 A.2d at 1108. The court illustrated bad faith by referring to another Maryland case in which a general partner acted to outmaneuver other partners hoping to block the exercise of their statutory rights. *Id.* at 567, 954 A.2d at 1107 (citing *Della Ratta v. Larking*, 382 Md. 553, 557, 856 A.2d 643, 657 (2004)). The court also pointed to a case from the Supreme Court of Delaware, where a general partner's abuse of discretion in retaliation against limited partners was deemed to constitute bad faith. *Clancy*, 405 Md. at 568, 954 A.2d at 1108 (citing *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund, II, L.P.*, 624 A.2d 1199, 1206 (Del. 1993)).

Applying the foregoing principles, the Court of Appeals of Maryland concluded that Clancy contracted with both JRLP and Op-Center to maintain control over the use of his name. *Clancy*, 405 Md. at 565, 954 A.2d at 1106. The provisions of the contracts trumped the usual duty of non-competition or theft of partnership opportunities. *Id.* at 558, 954 A.2d at 1102. Clancy enforced his validly obtained legal right, as the court deemed it reasonable and rational for an artist to retain creative control over a project which bears his name, despite his actual amount of contribution. *Id.* at 565, 954 A.2d at 1106. The court noted that, upon remand, bad faith could be found if Clancy acted to impair the Op-Center franchise out of personal ill feelings toward his ex-wife and partner, King. *Id.* at 571, 954 A.2d at 1109.

Conversely, the dissent emphasized the significance of a fiduciary relationship. *Id.* at 584, 954 A.2d at 1117 (Battaglia, J., dissenting). The dissent argued that in this situation, one must show an adverse effect on his or her personal finances. *Id.* Only upon such a showing would one be acting within their fiduciary obligation. *Id.* Agreeing with the lower courts, the dissent would have held that Clancy did not prove an adverse effect upon which to justify his actions. *Id.*

The court's opinion elucidates the rules and application of contract law within the state of Maryland with regard to the fiduciary duties of partners. The court's holding protects the legally obtained rights of individuals at the time of contracting. This ruling also emphasizes the high regard that written agreements have under the law and the controlling power of the relationships created by these agreements. Practitioners must pay meticulous attention to the contractual language of partnership agreements to ensure protection from undue harm that may result in another fiduciary's exercise of contracted rights.