

November 7, 2007

Issue No.265

Juan C. Araneda

Jennifer A. Becker

David Borovsky

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Beth A. Trittipio

Karen L. Uno

Kevin Whittaker

Irene K. Yesowitch

PARTNERSHIP LIABILITY

California Law

By Jennifer A. Becker

PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP
(2007) 150 Cal. App. 4th 384

The Second District holds that a firm is liable for the acts of a non-equity partner holding himself out as a member of the partnership, regardless of internal agreements concerning the partner's separate practice.

PCO was in the business providing discounted life insurance benefits to beneficiaries prior to the death of the insured. Although PCO's David W. Laing obtained over 89 million in loans from investors for this purpose, he never purchased any life insurance policies. PCO filed an action through its receiver against Laing's attorney Robert L. Shapiro and his law firm, Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP alleging that Shapiro improperly obtained monies that belonged to the receivership.

PCO alleged that Shapiro directed a group of Laing's associates to retrieve 12 duffel bags each containing \$500,000 in cash from Laing's residence. Some of the money was used to post bail for Laing and to pay Shapiro's fees. PCO alleged that the money belonged to the receivership, and asserted numerous causes of action against Shapiro and his firm, including breach of fiduciary duty.

The court granted Christensen's summary judgment motion holding that

Christensen could not be vicariously liable for Shapiro's conduct because Shapiro acted outside the scope of his authority as a partner.

Shapiro asserted that he represented Laing in his "private" capacity; that his activities on behalf of Laing were part of Shapiro's criminal law practice that was separate from his practice in the Christensen Firm; and that the monies he received were payable to him and deposited in his personal bank accounts.

PCO presented evidence that the Firm, who lists Shapiro as a named partner, promotes Shapiro as the "head of the firm's white-collar criminal defense practice" on its website. The retainer agreement includes rates for an attorney who was "of counsel" to the Christensen Firm. The Christensen Firm billed Laing for over \$23,000 in costs. Shapiro used the Christensen Firm's letterhead corresponding with the Assistant United States Attorney prosecuting Laing. Shapiro identified his affiliation with the Christensen Firm on the record.

The Court of Appeal held that PCO's evidence could lead a reasonable trier of fact to conclude that Shapiro acted in his capacity as a member of the Christensen Firm to protect the funds to pay bail and legal fees.

Similar to an employer-employee context, a law partnership is vicariously liable for the actionable conduct of a partner acting in the ordinary course of business of the partnership or with authority of the partnership. Benefit to the partnership is not required to impose liability. Willful, malicious and even criminal torts may render a partnership liable.

The conduct must be typical of or broadly incidental to the partnership's enterprise and be foreseeable, that is, not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the partnership's business. Whether a partner's actions were within the scope of his authority is ordinarily a question of fact.

The retention of an attorney in a law firm constitutes the retention of the entire firm. The firm assumes the authority and responsibility of representing that client, unless the circumstances indicate otherwise.

There was a question of fact about whether Shapiro's conduct was foreseeable. The fee agreement specified a flat fee of \$250,000 and Shapiro warned Laing that legal fees could run over a million dollars. Shapiro testified that criminal defense attorneys seek assurance of payment in advance. At an initial bail hearing the prosecutor indicated that Laing's bank accounts would be frozen and Laing's only real

property was a condominium worth approximately \$250,000. Shapiro represented to the court that Laing would be able to post cash bail of \$500,000 that afternoon. Shapiro told Laing's associates that Laing wanted them to "secure" property from Laing's residence, including \$1 million in cash before Shapiro had been paid a retainer. A Laing associate testified that the cash was used to collateralize a bail bond and to pay Shapiro. A reasonable jury could conclude that Shapiro wanted to help a firm client post bail and pay legal fees, which are activities "typical of or broadly incidental" to the practice of a white-collar criminal defense lawyer.

Moreover, any separate practice by Shapiro while he also was a partner in the Christensen Firm would not necessarily immunize the Christensen Firm from liability. Only when conduct clearly appears not to serve the partnership can a partner's conduct not be imputed to the partnership.

The trial court properly granted Christensen's motion for summary adjudication on the breach of fiduciary duty claims. Neither Shapiro nor Christensen received money in trust for the benefit of PCO. There was no fiduciary relationship between PCO and Shapiro and his firm. Although PCO was entitled to impose a constructive trust over the money received by Shapiro, this is an equitable remedy and not a substantive claim.

Comment: Attorneys holding themselves out as partners need to understand the obligations that are imposed on the partnership members towards clients. Attorneys should not make decisions to practice law together lightly, or think

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that agreements among partners will prevent the imposition of liability.

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