

Sale of partnership property allowed despite lack of authorization and disclosure

Litigation | Litigation & Dispute Resolution | Partnership

7 July 2022

Ioannidis v. Ioannidis, 2022 ONSC 3942 (CanLII), is a cautionary tale of siblings who owned an investment property without a written partnership or trust agreement. The dispute involved an income property in Kitchener, Ontario, which was registered in the name of one brother (Steve), who held the property in trust for himself, his brother (Peter), and their sister-in-law (Maria). The family had owned the property for years. In 2013, an opinion of market value determined that the property was worth \$1.2 to \$1.4 million.

In 2014, the family had meetings to discuss the future of the property and whether to sell it on the open market or have one of the brothers buy out the others' interests. Peter gave Steve and Maria an ultimatum to either buy him out or he would buy them out based on a price of \$1.3 million. No agreement was finalized.

Steve was authorized by Peter to lease the empty retail space in the property but not to list the property for sale.

Steve nevertheless retained a real estate agent to look for potential buyers. In March 2014, Steve received an offer to purchase the property for \$1.725 million which he accepted. Steve later claimed that he had a telephone conversation with Peter to discuss the potential offer, which Peter denied.

Peter then sued Steve, Maria, Maria's son Nick, and the real estate agent who acted on the sale, alleging breaches of fiduciary duties. The trial took place in 2021, almost seven years after the sale had been completed.

The court began by assessing the nature of the relationship between the property owners and concluded that Peter had effectively dissolved the partnership through his verbal buy out demand. Under section 32 of the Ontario *Partnerships Act*, subject to any agreement between the partners, a partnership that is entered into for an indefinite time is dissolved by a partner giving notice to the others of their intention to dissolve the partnership.

In the court's view, Peter's utterance of the buy out demand terminated the partnership and left the partnership affairs to be wound up. After this point, there was no suggestion that the partnership could have continued.

The next issue was whether Steve had breached any duties to Peter by unilaterally completing the sale. The trial judge noted that partners owe each other duties of loyalty, utmost good faith, disclosure, and avoidance of conflict and self-interest: *Rochweg v. Truster*, 2002 CanLII 41715 (ON CA), paras. 22 & 36. Partners also owe a duty to account in equity and pursuant to section 29(1) of the *Partnerships Act*.

In the circumstances, the court reasoned that the fiduciary duties owed by the partners continued until the business was wound up and the property was sold since only Steve was on title and Peter was therefore vulnerable to his dealings with the property.

Section 28 of the *Partnerships Act* provides that partners are bound to render true accounts and full information of all things affecting the partnership to any partner or the partner's legal representatives. Since the arrangements regarding the sale of the Property constituted matters "affecting" the Partnership, Steve was obliged to disclose full information to Peter concerning its sale. The court found that by failing to do so, Steve breached his duty of full disclosure owed to Peter.

This did not mean, however, that Steve was liable for selling the property. In that regard, the court noted that the partnership's "business" was the leasing of the residential and commercial units in the property. Since Peter had dissolved the partnership before the sale of the property, the court concluded that the sale was

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for the purpose of winding up the firm's business as a result of that dissolution. In those circumstances, Peter's consent was not required for the sale since it was not a change in the nature of the partnership business.

Rather, after dissolution, section 38 of the *Partnerships Act* provides that partners are able to continue to bind each other as necessary to wind up the affairs of the partnership. By virtue of this section, Steve had the requisite authority to sell the property in order to wind down the affairs of the Partnership, without the need to obtain the unanimous consent of all of the partners: *Zeron v. Zoller*, 2003 CanLII 64237 (ON SC), aff'd 2004 CanLII 39932 (ON CA).

Based on the sale price achieved, the sale was not improvident and there was no evidence that the sale was conducted negligently or for personal gain or benefit by the defendants. There was no evidence of fraudulent conduct. The evidence is that the defendant partners were always intending to share with Peter his full 1/3 share of the net proceeds.

As for the claim against the real estate agent, the court found that he was entitled to rely on Steve's instructions to sell the property. There was nothing in the evidence that would have warned the agent that he needed to make enquiries to determine if Steve truly had sufficient authority to sell the property. Title to the property was in Steve's name and it is well-settled law that the registered owner can deal with the property regardless of it being held in trust.

Given the court's conclusion that the sale of the property was not improvident and that a fair market price was obtained, there were not any damages caused by a breach of any duty of care owed by the real estate agent in relation to the sale.

In the result, aside from requiring the partners to account to Peter for his share of the proceeds, Peter's action was dismissed against the defendants. However, the damage to family relations caused by seven years of litigation may well be irreparable. A PDF version is available to download [here](#).

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