

WHEN FRIENDS BECOME BUSINESS PARTNERS



COUNSEL'S CORNER

Carlo and Denise Bazan went into business with their long time friend, Luis Muoz, by opening a restaurant in Laredo called Vamp Ultra Lounge & Café. Two years later Luis sued Carlos and Denise, claiming they had wrongfully taken money from the café.

The partnership decision was made when Carlo, Denis and Luis were vacationing together in Cancun in 2008. A year later they signed a contract designating Denise as the Manager of their new enterprise. But as a matter of practicality, Denise delegated her management duties to Carlo.

According to the contract, the Bazans owned a 50% interest in the business, and Luis owned the remaining 50%. Initially, Luis contributed \$80,000 to buy an existing nightclub, while Bazans contributed \$15,000 which was used to remodel.

The business opened on October 31, 2009. Carlo collected cover charges at the door and installed cash controls in a point-of-sale system. It seems Luis may not have been consulted and expressed his displeasure about the cover charges, and his unhappiness was likely accelerated when Denise and Carlo started paying themselves a salary without Luis' consent.

Record-keeping was poor or non-existent as cash receipts were counted at Denise's residence. More often they were not counted at all. Distributions were made, also without Luis' consent or participation, to Carlo and Denise.

The business did not make bank deposits for months, and as a consequence, bank accounts were frozen. When questioned, Carlo claimed that vendors, staff and DJs were paid by cash and that explained why receipts were not deposited at the bank.

Finally, Luis asserted a lawsuit against Carlo and Denise. It seemed the business was making \$60,000 to \$70,000 a month, but the bank records only reflected deposits of \$20,000 per month.

A jury found in favor of Luis on his claims for breach of contract, breach of fiduciary duty and fraud. The jury awarded Luis \$120,000 and the trial court converted the jury award into Judgment.

Denise and Carlo appealed.

In a lengthy decision, the Court of Appeals found there was ample evidence of fraud committed by the Bazans' failure to disclose information. Business partners owe fiduciary duties to each other – the same high standard that brokers and agents owe to their principals.

There was a special relationship of trust, confidence and loyalty in the café business. As such, Carlo and Denise had a duty to disclose material information to Luis.

Secretly taking money from the business breaches that duty, and supports the jury's finding of fraud by nondisclosure.

The Appellate Court agreed with the Luis. Luis Muoz won and the Bazans lost. See *Bazan v. Muoz*; No. 04-13-00184-CV; Texas Court of Appeals; 4th District; November 5, 2014.

Lessons learned:

1. It's not newsworthy to state that friends don't always make good business partners. In fact, I see the opposite is also true: sometimes friends make the best business partners. But, be sure that the relationship is properly documented.
2. This appellate decision states something we all know – the highest duties in law are imposed upon those who have a special relationship or duty of trust. Like brokers and agents. Breach of that duty means a lawsuit.
3. Practice Point: All parties in a business venture should have their own separate lawyers. When that is not possible, at least be sure that the Contract has a provision where anyone who needs to exit can do so.

Stuart A. Lautin, Esq.*

* Board Certified, Commercial (1989) and Residential (1988) Real Estate Law,
Texas Board of Legal Specialization

Licensed in the States of Texas and New York

Higier Allen & Lautin, PC
5057 Keller Springs Road, Suite 600
Addison Texas 75001
P: 972.716.1888
E: slautin@higierallen.com
W: www.higierallen.com



HIGIER ALLEN & LAUTIN
ATTORNEYS & COUNSELORS