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TN Court of Appeals Considers Business Management Issues

By Stan Soocher

The Tennessee Court of Appeals, at Nashville, reversed and remanded a trial court ruling against Clint Black in the country artist's suit against his former business manager. *Black v. Sussman*, M2010-01810-COA-R3-CV.

This case is notable not only for statute-of-limitations issues, but also involves business-management partnership liability, as well as the line between accounting and business management services.

Defendant Charles Sussman became Black's business manager in 1992. In 2003, Black formed Equity Records, in which Sussman received a 10% interest. But Black ended his business-management relationship with Sussman in May 2007, after discovering that Sussman allegedly failed to tell him that Equity Record's major act Little Big Town hadn't yet signed a recording contract with the label. In November 2008, Black sued Sussman and Gudvi, Sussman & Oppenheim (GSO) in Davidson County Chancery Court. Black alleged, among other things, that Sussman "repeatedly engaged in self-dealing, negligence, and/or gross negligence" and had improperly advised Black regarding investments in Equity Records. The complaint included causes of action for accounting malpractice, breach of contract, breach of fiduciary duty, misrepresentation, and violation of the Tennessee Consumer Protection Act. Sussman counterclaimed for breach of contract, seeking commissions and expenses from Black.

The Chancery Court granted partial summary judgment for Sussman. The chancery judge concluded that the complaint raised accounting malpractice claims that were thus barred by the one-year statute of limitations of Tenn. Code Ann. §28-3-104, which applies to "[a]ctions and suits against attorneys or licensed public accountants or certified public accountants for malpractice, whether the actions are grounded or based in contract or tort." The chancery judge also dismissed Black's partnership-liability claims against GSO.

In its opinion, the court of appeals noted, regarding the claims the trial court identified as for accounting services, "we must respectfully disagree with the court's conclusion about when the statute of limitations begins to run." For example, in finding genuine issues of material fact (for jury consideration), the court of appeals explained: "[As] related to advice on the prospect of forming an independent record label, we disagree with the trial court's conclusion, as a matter of law, that 'Mr. Black knew or should have known shortly after he discharged Mr. Sussman in May of 2007' that he had been injured by the defendants' wrongdoing. The defendants argue that Black was put on notice when he signed the loan guarantees [for Equity Records], beginning in December 2004 or January 2005. The plaintiffs argue that Sussman assured Black that these personal guarantees were a temporary measure to address cash flow problems and that Equity was worth between $25 and $50 million. [But i]t was not until Black retained [subsequent business manager Mike] Vaden and received his report in November 2007, the plaintiffs argue, that Black knew or should have known that he had been injured by the defendants' wrongdoing."

But for claims "involving injuries caused by Sussman's alleged failure to comply with the standard of care applicable to a business manager," the court of appeals wrote, "the three-year statute of limitations for breach of fiduciary duty [under Tenn. Code Ann. §28-3-105(1)] would govern. … [W]e must remand for further proceedings as to those claims not identified by the trial court as involving accounting services."

In his complaint, Black also claimed that GSO was jointly liable with Sussman. The court of appeals agreed with the chancery court on one point: that there had been no actual GSO partnership with Sussman. The court of appeals noted, as Sussman had in his deposition, that "GSO was a limited joint venture arrangement between Sussman and Associates, P.C. and Gudvi Oppenheim Inc. for consolidating payroll and human services, their [website], their letterhead, and their telephones. It is undisputed that Sussman and Associates, P.C. and Gudvi Oppenheim, Inc. kept their clients, their client billing, and their profits separate."

But Tennessee Code Ann. §61-1-308 provides that a party that represents itself as a partner can be subject to partnership liability. Citing this, the court of appeals reinstated Black's claim of a purported partnership. A chancery court jury will consider whether "Black relied upon the representations of partnership."

Samuel D. Lipshie, a partner in Nashville's Bradley Arant Boult Cummings LLP who argued the case on Black's behalf, with firm partner Patricia Moskal also on the appellate brief, says the court of appeals ruling is "the first case other than (arguably) *Malmsteen [v. Berdon LLP*, 477 F.Supp.2d 655 (S.D.N.Y. 2007)] to apply different statutes of limitation (breach of fiduciary duty, rather than accounting malpractice) to an accountant serving an entertainer in a business manager role."

Charles Sussman was represented by partner C. Bennett Harrison Jr. and associate J. Cole Dowsley Jr. of Nashville's Cornelius & Collins LLP. John O. Belcher and Curtis Rodney Harrington II of Nashville's Lassiter & Tidwell, and Nashville lawyer Jordan S. Keller represented Sussman & Associates P.C., GSO Business Management LLC and GSO Accountancy Corp.