

Partnership  
Joint Venture  
Fiduciary Duty  
Summary

Judgment

Pacific Western Development Corp. v. Pacific Capital Partners, et al., Adv. No. 94-3578  
In re Pacific Western Development, Case No. 394-36013-dds11

2/16/99

9<sup>th</sup> Cir., reversing Haggerty

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The bankruptcy court granted summary judgment in favor of defendants on Debtor's claims that defendants had usurped a partnership opportunity. The district court reversed, holding that summary judgment was not appropriate where the scope of the partnership was not clear from the evidence. The Ninth Circuit reversed the district court. Oregon law clearly permits a partner to consent to another partner undertaking a business venture which competes with the partnership. The broad exculpatory clause in this case was merely advance disclosure and advance consent that either partner could engage in business without including the other partner.

P99-2(5)

See district court opinion at P97-24(11) and bankruptcy court opinion at P96-28(7).

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

1999 FEB 16 P 12:07

CLEARING HOUSE  
DISTRICT OF OREGON  
PORTLAND, OREGON  
BY [Signature]

314517  
NO. 97-35304  
CT/AG#: CV-96-01283-ALH

PACIFIC WESTERN DEVELOPMENT CORPORATION

Debtor in Possession

Certified to be a true and correct  
copy of original filed in my office  
Dated 3-15-99  
By [Signature] Donald M. Cinnarrondo, Clerk  
Deputy

PACIFIC WESTERN DEVELOPMENT CORPORATION

Plaintiff - Appellee

v.

PACIFIC CAPITAL PARTNERS, a Hawaiian partnership;  
DICK GRIFFITH, individually and as a partner in Pacific  
Capital Partners

Defendants - Appellants

[Signature]

APPEAL FROM the United States District Court for the  
District of Oregon (Portland).

THIS CAUSE came on to be heard on the Transcript of the  
Record from the United States District Court for the  
District of Oregon (Portland) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and  
adjudged by this Court, that the judgment of the said  
District Court in this cause be, and hereby is REVERSED and  
REMANDED.

Filed and entered: December 11, 1998

[Signature]

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NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

DEC 11 1998

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

PACIFIC WESTERN DEVELOPMENT CORPORATION,  
Debtor in Possession.  
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PACIFIC WESTERN DEVELOPMENT CORPORATION,  
Plaintiff-Appellee,  
v.  
PACIFIC CAPITAL PARTNERS,  
a Hawaiian Partnership;  
DICK GRIFFITH, Individually and  
as a Partner in Pacific Capital Partners,  
Defendants-Appellants.

No. 97-35304  
D.C. No. CV-96-01283-ALH  
MEMORANDUM\*

FEB 9 1999  
*Stephanie [Signature]*

Appeal from the United States District Court  
for the District of Oregon  
Ancer L. Haggerty, District Judge, Presiding

Argued and Submitted November 3, 1998  
Portland, Oregon

Before: NOONAN, THOMPSON, and TROTT, Circuit Judges.

Appellant Pacific Capital Partners ("PCP") appeals a decision of the United States District Court for the District of Oregon, which reversed and remanded the bankruptcy court's

\* This disposition is not appropriate for publication and may not be cited to or by the courts in this circuit except as provided by Ninth Circuit Rule 36-3.

summary judgment in favor of PCP. We have jurisdiction under 28 U.S.C. § 158(d) (1994),<sup>1</sup> and we reverse.

Relying on an exculpatory clause which permitted competing against the "partnership," PCP took advantage of a business opportunity without providing Pacific Western Development Corp. ("Debtor") or the partnership a chance to become involved. When Debtor entered chapter 11, it sought to be included in the business opportunity, but the bankruptcy court held that the exculpatory clause permitted PCP to act without including Debtor and granted summary judgment in favor of PCP. The district court reversed, holding that were the relationship a partnership, a clause in the agreement purporting to derogate from the statutory duty of loyalty was invalid, and the factual issue of whether the relationship was a partnership or a joint venture prevented summary judgment.

We hold that such an exculpatory clause is valid under Oregon law, so the issue of whether the relationship was a partnership or a joint venture need not be reached. The Uniform Partnership Act as enacted by the state of Oregon creates a statutory duty of loyalty to the partnership. Or. Rev. Stat. § 68.340 (1997). However, Oregon law clearly permits a partner to consent to the other partner undertaking a business venture

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<sup>1</sup> This court exercises jurisdiction over non-final judgments of a district court under narrow circumstances in the bankruptcy context. Foothill Capital Corp. v. Clare's Food Mkt., 113 F.3d 1091, 1098 (9th Cir. 1997). Because deciding this issue on appeal can "dispose of the case or proceeding and obviate the need for further factfinding," we have jurisdiction under our "flexible finality" rule. Id.

in competition with the partnership. Liggett v. Lester, 390 P.2d 351, 354 (Or. 1964). A broad exculpatory clause like that at issue in this case is merely advance disclosure that either partner may engage in business without including the other partner and advance consent to such conduct.

REVERSED and REMANDED.