

Partnership
Fiduciary Duty

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

4/18/96

DDS

Unpublished

On June 20, 1990, Debtor, Pacific Capital Partners ("PCP") and Emilion International, Inc. ("Emilion") signed a letter of understanding which reflected an agreement to form a joint venture "to carry out the Emerald Valley Resort transaction." PCP and Emilion were to loan Debtor \$250,000 to meet an earnest money agreement for Debtor's land sale contract to purchase the Emerald Valley Resort, an \$8 million golf resort in Creswell, Oregon. The agreement in the letter of understanding was formalized in a Partnership Agreement dated July 11, 1990, which was signed by all parties.

The language in the letter of understanding that addressed repayment of the \$250,000 contemplated that if the purchase of the Emerald Valley Resort was not completed, resulting in a forfeiture of the earnest money, the loan would be transferred to the next project to be done by the parties and repaid as a part of the cost of the subsequent project. The Partnership Agreement did not incorporate this language, but the promissory note executed in conjunction with the loan did. The partnership was unsuccessful in purchasing the Emerald Valley Resort, but the partners engaged in no future projects together.

Some time later, PCP and another entity formed a partnership to acquire the Tahkenitch Tree Farm. Debtor brought this adversary proceeding against PCP and related parties, asserting that PCP was obligated to offer the opportunity to participate in the acquisition of Tahkenitch and that the failure to do so was a breach of the letter of understanding, a breach of fiduciary duty under the Partnership Agreement, and an usurpation of a partnership opportunity.

The court held that neither the Partnership Agreement, nor the letter of understanding, created a contractual obligation which required defendants to do future business with Debtor. The Partnership Agreement contained exculpatory language which allowed any partner to participate in any other business venture, regardless of whether that business venture would compete with the business of the partnership, without notice to any other partner and without giving the other partners an opportunity to participate. The court held that this exculpatory language limited PCP's fiduciary duties to the Emerald Valley Resort acquisition such that PCP had no duty to disclose the Tahkenitch opportunity.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 394-36013-dds11
PACIFIC WESTERN DEVELOPMENT)
CORP.,) Adversary Proceeding No.
) 94-3578-dds
Debtor,)
PACIFIC WESTERN DEVELOPMENT) MEMORANDUM GRANTING
CORP.,) SUMMARY JUDGMENT
) TO DEFENDANTS
Plaintiff,)
)
v.)
)
PACIFIC CAPITAL PARTNERS, a)
Hawaiian partnership, PACIFIC)
CAPITAL PARTNERSHIP OF OREGON,)
an Oregon partnership, PACIFIC)
CAPITAL HAWAIIAN PARTNERS OF)
OREGON, INC., an Oregon)
corporation, DICK GRIFFITH as)
a partner in Pacific Capital)
Partners and individually,)
)
Defendants.)

The parties filed cross-motions for summary judgment.
Subsequent to oral argument on the cross-motions, plaintiff
filed its Third Amended Complaint to eliminate certain claims
involving Robert Smith ("Smith"), plaintiff's former employee,

1 with whom there has been a settlement. The amendment does not
2 moot the cross-motions. Defendants are entitled to summary
3 judgment on all counts. My reasons follow.

4 In April 1990 plaintiff, through its President, Kevin
5 Warner, signed a land sale contract to purchase the Emerald
6 Valley Resort, an \$8 million golf resort in Creswell, Oregon,
7 which obligated plaintiff to pay a \$250,000 nonrefundable
8 earnest money by June 20, 1990. Defendant Pacific Capital
9 Partners ("PCP") and an entity known as Emilion International,
10 Inc. ("Emilion") first met with Warner and Smith on June 19,
11 1990 to discuss investing in the Emerald Valley Resort. The
12 following day, PCP and Emilion agreed to loan plaintiff
13 \$250,000 to meet the earnest money deadline, and the parties,
14 PCP, Emilion and plaintiff, signed a letter of understanding.
15 Paragraph 6 of the letter of understanding reflected an
16 agreement to form a joint venture "to carry out the Emerald
17 Valley Resort transaction," which agreement was formalized in
18 the Partnership Agreement dated July 11, 1990, and signed by
19 PCP, Emilion and plaintiff. Paragraph 2 of the Partnership
20 Agreement contains the following exculpatory language with
21 respect to future projects:

22 "Any partner may participate in any way in
23 any other business venture of any type,
24 whether or not such business venture
25 competes with the business of the
26 partnership, and neither the partnership nor
any other partner shall have the right by
virtue of this Agreement to participate in
any way in such other independent venture or
ventures or share in any way in the income,
profits or proceeds thereof. No partner

1 shall be required to give notice to any
2 other partner of any other business venture
3 or offer the opportunity to participate
4 therein even though such opportunity to
5 participate therein even though such
6 opportunity [sic] may come to the attention
7 of or be available to such partner through
8 his participate [sic] in this partnership."

9 Paragraph 3 of the letter of understanding addresses
10 repayment of the \$250,000 loan PCP and Emilion made to
11 plaintiff to fund the earnest money obligation. The language
12 contemplated that if the purchase of the Emerald Valley Resort
13 was not completed, resulting in a forfeiture of the earnest
14 money, the loan would be transferred to the next project to be
15 done by the parties and repaid as a part of the cost of the
16 subsequent project. Although the Partnership Agreement did not
17 incorporate this language, the promissory note, executed on
18 July 10, 1990, did. The partnership was unsuccessful in
19 purchasing the Emerald Valley Resort, and the partners engaged
20 in no future projects together.

21 In early July 1991, PCP learned that the Tahkenitch Tree
22 Farm ("Tahkenitch") was for sale. Smith, while an employee of
23 plaintiff, introduced defendants to Mark McDevitt, who was
24 Smith's friend and who was a personal acquaintance of the
25 seller of Tahkenitch. PCP and an entity known as Yorkshire
26 Partnership, Ltd. formed the Tahkenitch Tree Farm Partnership
which acquired Tahkenitch. Plaintiff contends that defendants
were obligated to offer the opportunity to participate in the
acquisition of Tahkenitch under the letter of understanding or
the Partnership Agreement, and that the exclusion of plaintiff

1 constitutes a breach of the letter of understanding, which
2 plaintiff calls a joint venture agreement, a breach of
3 defendants' fiduciary duty to plaintiff under the Partnership
4 Agreement, and an usurpation of a partnership opportunity.

5 I find that while the parties contemplated engaging in
6 future ventures together, neither the Partnership Agreement nor
7 the letter of understanding created any contractual obligation
8 which required defendants to do future business with plaintiff.
9 I further find that, based upon the purpose of the letter of
10 understanding and the subsequent Partnership Agreement, and
11 because of the exculpatory language contained in paragraph 2 of
12 the partnership agreement, PCP's fiduciary duties as
13 plaintiff's partner were limited to the Emerald Valley Resort
14 acquisition. PCP contractually became a stranger to plaintiff
15 and had no fiduciary duty to disclose to plaintiff either the
16 Tahkenitch opportunity or its business relationship with Smith.

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18 Summary judgment is granted to defendants. A separate
19 judgment of dismissal should be entered.

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22 DONAL D. SULLIVAN
Bankruptcy Judge

23 cc: Sally R. Leisure
24 David W. Axelrod