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PARTNERSHIP

Milton M. Harrison*

Louisiana jurisprudence has repeatedly adhered to the concept that a partnership is a legal entity separate and distinct from the partners.¹ In two recent cases, the courts again recognized the concept. In *Davis v. Pioneer Bank & Trust Co.*,² it was shown that the defendant bank disbursed funds from a partnership account upon the instructions or signature of only one partner, whereas the deposit contract provided that the signatures of two partners were required. The court held properly that the partnership and not any partner was the depositor; the breach of the deposit contracts by the bank was a breach of contract with the partnership; thus only the partnership, and not any one nor all of the partners individually, would be proper parties to assert a claim for the breach.

In *Bradley v. Lemoine*,³ the court affirmed the dismissal by the trial court of a suit by an individual attorney to recover his fee. The plaintiff was a partner in a law partnership and the court relied on the entity theory and article 688 of the Code of Civil Procedure in holding that "a suit seeking recovery of an indebtedness due the partnership must be brought in the name of the partnership . . ."⁴

In view of the long and consistent adherence to the separate entity doctrine, it is difficult to understand why the Courts of Appeal for the Second,⁵ Third⁶ and Fourth⁷ Circuits would ignore the doctrine and fail to treat the partnership and the partners as separate entities, holding that the partner is not a "third party" under section 1101 of the workmen's compensation statute.⁸ These cases are being analyzed in depth in a student note to be published subsequently, and are, therefore, not being discussed here.

In 1957, the Louisiana supreme court held erroneously in *State v. Peterson*⁹ that a partner who embezzled funds of his partnership

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1. See *Trappey v. Lumbermen's Mut. Cas. Co.*, 229 La. 632, 86 So. 2d 515 (1956) (and cases cited therein).

2. 272 So. 2d 430 (La. App. 2d Cir. 1973).

3. 278 So. 2d 148 (La. App. 1st Cir. 1973).

4. *Id.* at 148.

5. *Cockerham v. Consolidated Under.*, 262 So. 2d 119 (La. App. 2d Cir.), *writ refused*, 262 La. 315, 263 So. 2d 49 (1972).

6. *Leger v. Townsend*, 257 So. 2d 761 (La. App. 3d Cir.), *writ refused*, 261 La. 464, 259 So. 2d 914 (1972).

7. *Bersuder v. New Orleans Pub. Serv., Inc.*, 273 So. 2d 46 (La. App. 4th Cir. 1973). See also *Dupuy v. Parish Cont., Inc.*, 275 So. 2d 872 (La. App. 4th Cir. 1973).

8. LA. R.S. 23:1101 (1950).

9. 232 La. 931, 95 So. 2d 608 (1957).

was not guilty of theft under the statute¹⁰ defining the crime as the "taking of anything of value which belongs to another" on the theory that partners have ultimate liability for debts of the partnership. The court overruled *Peterson* in 1970 in *State v. Morales*¹¹ and stated that the partnership, being a legal entity, is "another" under the statute.¹² It is to be hoped that the supreme court will likewise correct the erroneous recent cases of the courts of appeal with reference to the liability of a partner to partnership employees for injuries caused by his fault.

10. LA. R.S. 14:67 (1950), as amended by La. Acts 1968, No. 647 § 1; 1970, No. 458 § 1; 1972, No. 653 § 1.

11. 256 La. 940, 240 So. 2d 714 (1970).

12. LA. R.S. 14:67 (1950), as amended by La. Acts 1968, No. 647 § 1; 1970, No. 458 § 1; 1972, No. 653 § 1.