

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID G. BYKER,

Plaintiff-Appellee,

v

THOMAS J. MANNES,

Defendant-Appellant.

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UNPUBLISHED  
February 25, 2003

No. 205266  
Kent Circuit Court  
LC No. 96-000256-CB

ON REMAND

Before: Gage, P.J., and White and Markey, JJ.

PER CURIAM.

In a previous opinion, we vacated the judgment against defendant and held that the trial court erred in its determinations that a super partnership existed between the parties and that there was a monetary partnership obligation owing from defendant to plaintiff. *Byker v Mannes*, unpublished per curiam opinion of the Court of Appeals, issued February 1, 2000 (Docket No. 205266), slip op p 1. Thereafter, the Supreme Court reversed and remanded this case to us for further proceedings in conformity with its opinion. *Byker v Mannes*, 465 Mich 637; 641 NW2d 210 (2002). As our Supreme Court has instructed, we have again reviewed this case to ensure our compliance with the Court's opinion. After carefully reading the Supreme Court's opinion and our original opinion, we reaffirm our original decision.

In its opinion, the Supreme Court defined how one should determine the existence of a partnership under Michigan partnership law, MCL 449.6(1). The Supreme Court clarified that "[i]n determining whether a partnership exists, the focus is not on whether individuals subjectively intended to form a partnership, that is, it is unimportant whether the parties would have labeled themselves 'partners.'" 465 Mich 638-639. Instead, the Court clarified that "the focus is on whether individuals intended to jointly carry on a business for profit within the meaning of the Michigan Uniform Partnership Act, MCL 449.1 *et seq.*, regardless of whether they subjectively intended to form a partnership." 465 Mich 639. With that specific explanation in mind, we have carefully reviewed the facts of this case and our original analysis.

In our original opinion, we stated:

We agree that, in the absence of an express agreement, the court appropriately looked to the acts and conduct of the parties in relation to the businesses in ascertaining the existence or nonexistence of a partnership, *Van Stee v Ransford*, 346 Mich 116, 133; 77 NW2d 346 (1956); *Moore v [DuBard]*, 318 Mich 578, 595;

29 NW2d 94 (1947)]; *Miller [v City Bank & Trust Co*, 82 Mich App 120, 124-126; 266 NW2d 687 (1978).] [*Byker, supra* slip op pp 2-3.]

In our original opinion, we further stated that “[o]bjective indicia of a super partnership are absent in this case.” *Byker, supra* slip op p 3. We then carefully identified each specific, objective fact that led to this conclusion. *Id.*

The only portion of our original opinion that discusses the intent of the parties is as follows:

The absence of intent to form a partnership contradicts the established law in this state that the *mutual* intent of the parties is of *prime* importance in ascertaining whether a partnership exists. . . . As noted by the trial court, plaintiff conceded that he did not realize that his relationship with defendant was a general or super partnership until nine years after the parties entered into their informal business relationship – specifically, when the Pier 1000 corporation collapsed and plaintiff’s attorney determined that plaintiff and defendant had formed a super partnership whether or not it was their intent to do so. [*Id.* at 2 (citations omitted; emphasis in original)].

In our original opinion, however, we went further and specifically examined the “acts and conduct of the parties” and all of the other *objective* evidence to ascertain the existence of a “super partnership.” *Id.* at 2-3. Upon this second review, we did not anywhere in our opinion, nor do we now, base our analysis or decision on the parties’ subjective intent. Again, when discussing the parties’ intentions as to creating a partnership, we concluded that “[o]bjective indicia of a super partnership are absent in this case.” *Id.* at 3.

In conclusion, we have followed the Supreme Court’s directive that “to the extent the Court of Appeals regarded the absence of subjective intent to create a partnership as dispositive regarding whether the parties carried on as co-owners a business for profit, it incorrectly interpreted the statutory (and the common) law of partnership in Michigan.” 465 Mich 653. Nonetheless, we did not regard the absence of a subjective intent to create a partnership as dispositive in our original opinion, nor do we now. Instead, we thoroughly analyzed the parties’ actions, conduct, and all of the other objective data available to us in ascertaining that no super partnership existed. We therefore reaffirm our original opinion.

/s/ Hilda R. Gage

/s/ Jane E. Markey