

Case brief:
zuckerman vs
antenucci essay



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Partnership liability tort can take place when a partner or all partners acting on partnership business causes injury to a third person. Cause of this tort could be a negligent act, a breach of trust, breach of fiduciary duty, defamation, fraud, or another intentional tort (Cheeseman, 2010, p. 538). Under the Uniform Partnership Act, partners are jointly and severally liable for torts and breaches of trust (UPA, 2010). This is true even if the co-partner(s) did not participate in the act.

The joint and severally liable tort permits a third party to sue one or more of the partners separately; however, monetary damages can be collected only against the partners who are sued.

Facts of the Case

Medical doctors, Jose Pena and Joseph Antenucci were partners in a medical practice. Elaine Zuckerman was a patient of both Dr. Pena and Dr. Antenucci during her pregnancy. When her son Daniel Zuckerman was born, she discovered there were severe physical problems. Zuckerman, as Daniel's mother and guardian, brought a medical malpractice suit against both of the doctors.

In trial court, the jury found that Dr. Pena was guilty of medical malpractice but that Dr. Antenucci was not. A judgment against Dr. Pena was entered but not against Dr. Antenucci, in the form of \$4 million. The plaintiffs appealed for judgment against both defendants.

Plaintiff's Position

Mrs. Elaine Zuckerman claimed both doctors were liable for her son's condition. She believed both doctors were liable concerning their general partnership and the simple fact that they both gave her treatment during her pregnancy.

Defendants Position

Drs. Antenucci and Pena refuted the charges. Review of the Supreme Court's Decision Upon review of the case, the Supreme Court determined that both partners were jointly and severally liable for the judgment. The decision of the trial court was reversed and judgment was entered for both Dr. Antenucci and Dr. Pena. The Supreme Court stated " a partnership is liable for the tortious act of a partner, and a partner is jointly and severally liable for tortious acts chargeable to the partnership.

Additionally, when a tort is committed by the partnership, the wrong is imputable to all of the partners jointly and severally, and an action may be brought against all or any of them in their individual capacities or against the partnership as an entity (Cheeseman, 2010, p. 538). In this case, the jury of trial court found that Dr. Antenucci was not guilty of malpractice in his treatment of the patient; it was because of his partnership that he too was included in the judgment.

Analysis

In a partnership, communication, and honesty are essential. They rely on other persons to make morally sound and ethical decisions. In this case, both doctors are jointly and severally liable because they both entered a

partnership and both treated Mrs. Zuckerman. A simple review of each other's work would have led to Dr. Antenucci revealing that the patient was not being treated properly. Partners are ultimately responsible to each other, what they do and how they do it leads back to how the company or business is perceived.

After reviewing the case, I thought of ways that I as an executive or a perspective partner could prevent these occurrences from happening at my place of business or future business opportunities. My first thought was to ensure that my partnership agreement terms identified the duties in which a partner is responsible for and the ramifications that will occur if not adhered. The responsibilities include duty of loyalty, duty of care, duty to inform, and duty of obedience. According to Cheeseman, duty of loyalty is defined " as a duty that a partner was not to act adversely to the interests of the partnership' (2010, p. 536).

This duty is imposed by law and cannot be waived; therefore, all partners must adhere to it or be subject to a lawsuit by the other partner(s). When developing a terms of agreement, if this duty has been breached then the partnership can and will be subject to termination. The duty of care asserts that the obligation partners owe is to use the same level of care and skill that a reasonable person in the same position would use in the same circumstances. A breach of the duty of care is negligence (Cheeseman, 2010, p. 37).

In my opinion, a breach of duty of care would in due course hurt the partnership and may lead to a termination of the partnership agreement.

Duty to inform is characterized as “ a duty a partner owes to inform his or her co-partners of all information he or she possesses that is relevant to the affairs of the partnership” (Cheeseman, 2010, p. 537). Personally, a failure to disclose information that is critical to a company’s interest will be classified as a breach of partnership and will call for a termination of partnership.

Based on the duties stated above the duty of obedience is the catch all clause concerning a partnership, it requires partners to adhere to the provisions of the partnership agreement and the decisions of the partnership (Cheeseman, 2010, p. 537). If a partner should breach any part of the agreement or decisions made during the partnership, they would be liable to the partnership for any damages caused by the breach and will be a cause for a termination of their partnership.