IN THE SUPREME COURT OF MISSISSIPPI
NO. 2008-IA-01300-SCT

MARK L. PEARSON — APPELLANT

versus

DAVID NUTT & ASSOCIATES, P.C.;
HAROLD J. BARKLEY, JR. d/b/a HAROLD J. BARKLEY, Jr., Attorney at Law; THE BARKLEY LAW FIRM, PLLC, and
LUNDY & DAVIS, LLP — APPELLEES

INTERLOCUTORY APPEAL FROM THE
CHANCERY COURT OF HINDS COUNTY
(FIRST JUDICIAL DISTRICT), MISSISSIPPI

BRIEF OF APPELLEES

(ORAL ARGUMENT REQUESTED)

Attorneys for Appellees

Edward Blackmon, Jr. (MSB [redacted]
BLACKMON & BLACKMON
907 W. Peace Street
Canton, Mississippi 39046-0105
Tel. (601) 859-1567
Fax. (601) 859-2311

William Liston, III (MSB [redacted]
William H. Liston (MSB [redacted]
LISTON/LANCASTER PLLC
Post Office Box 22983
Jackson, Mississippi 39225
Tel. (601) 944-0820
Fax. (601) 944-0811

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case:

1. David Nutt & Associates, P.C., Appellee.

2. Harold J. Barkley, Jr., Appellee.

3. The Barkley Law Firm, PLLC (and Harold J. Barkley, III), Appellee.

4. Lundy & Davis, LLP, Appellee.

5. Edward Blackmon, Jr., Blackmon & Blackmon, Canton, Mississippi, counsel for Appellees.

6. William Liston, III, Liston/Lancaster PLLC, Jackson, Mississippi, counsel for Appellees.

7. William H. Liston, Liston/Lancaster PLLC, Winona, Mississippi, counsel for Appellees.

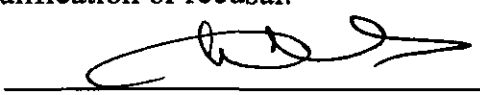
8. Mark L. Pearson, Appellant.

9. Gary D. Thrash and John N. Satcher, II, Singletary & Thrash, PA, Jackson, Mississippi, counsel for Appellant.

10. Richard Freese, Freese & Goss, PLLC, Birmingham, Alabama, counsel for Appellant.

11. Dennis Sweet, Sweet & Associates, Jackson, Mississippi, counsel for Appellant.

So certified on this the 4th day of March, 2009, in order that the Justices of this Court may evaluate possible disqualification or recusal.



WILLIAM LISTON, III, Counsel for Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Constitution and Statutes

STATEMENT OF THE ISSUES

This case presents the following issues, none of which are novel under Mississippi law:

1. Whether the Chancellor erred in her Order and Opinion of July 9, 2008 by examining the allegations of the Complaint, rather than the Counterclaim filed by Appellant, to determine the issue of subject matter jurisdiction?

2. Whether the Appellant is entitled to a jury trial in this action in the chancery court?

3. Whether the nature of the controversy involved in this action, as reflected in the Complaint, is equitable?

4. Whether the claims asserted by the Appellant by way of counterclaim filed in this action are equitable in nature?

5. Whether the claims set forth in the Complaint seek equitable relief?

6. Whether the chancery court may adjudicate all claims asserted in this matter, the equitable claims asserted by Appellees and the legal claims, if any, asserted by Appellant?

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings and Disposition in the Court Below.

This case involves equitable issues and the determination of rights of attorneys attendant to the dissolution of a joint venture involving their representation of clients in environmental litigation. The venture in issue was a single-shot partnership to prosecute claims for personal injuries and property damage occurring in Crystal Springs, Mississippi due to environmental pollution[1] caused by Kuhlman Corporation (hereinafter "Kuhlman") and other defendants. The scope of the legal work, and expense, required to bring the Kuhlman litigation to a successful conclusion was massive – it involved seven (7) separately filed lawsuits and the representation of approximately 1,034 clients having claims against Kuhlman. R11-12/RE 1 (Complaint ¶13 & 17).

Before April 15, 2002 the co-venturers consisted of the Appellant, Mark L. Pearson (hereinafter "Pearson") and the Appellees, David Nutt & Associates, P.C., Harold J. Barkley, Jr., and Harold J. Barkley, III (hereinafter "Nutt group"). On April 15, 2002 the Nutt group transmitted a letter to Pearson which unequivocally terminated his participation in the venture and expelled him therefrom due to his failure to contribute significant effort in the preparation or prosecution of the Kuhlman litigation. R26-27/RE 1. Due to the time, expense and efforts of the Nutt group, the Kuhlman litigation parties

---

[1] The pollutants in issue were polychlorinated biphenols ("PCBs") which Kuhlman utilized in the manufacture of electrical transformers at its Crystal Springs plant. R8.

reached a settlement agreement on or about July 5, 2005. R169-172.

Despite his failure to contribute to this result, Pearson claimed entitlement to a lion's share of the attorney's fees from the Kuhlman litigation and rebuffed the Nutt group's attempt to compensate him in *quantum meruit*. On September 7, 2005, the Nutt group filed its Complaint seeking relief consisting of "injunction, accounting and declaratory judgment" in the Chancery Court of Madison County, Mississippi, the situs of the law firm of David Nutt & Associates, P.C. which possessed all the client files, employment agreements, and papers related to the Kuhlman litigation. R5-42/RE 1 (Complaint).

Pearson filed a number of motions in response to the Complaint, including his Motion of December 15, 2005 to Dismiss or in the Alternative, to Transfer this action to the Chancery or Circuit Court of the First Judicial District of Hinds County, Mississippi or Copiah County, Mississippi. R49-50. Ruling on Pearson's motion was delayed by the recusal of a number of Chancellors[2] to whom the case was assigned. Ultimately, Chancellor Jon Barnwell accepted this Court's appointment as Special Judge (R112) and ruled on Pearson's motion on April 2, 2007. Chancellor Barnwell denied Pearson's motion to dismiss this action but granted his alternative motion by ordering transfer of this action to the Hinds County (First Judicial District) Chancery Court. R203-209.

---

[2] In order, the following Chancellors recused themselves from this action: the Honorable William J. Lutz; the Honorable Janace Harvey-Goree; and the Honorable Marie Wilson. R100-111. Chancellor Denise Owens also recused herself after this action was transferred to the Chancery Court of the First Judicial District of Hinds County. R343.

On June 4, 2007 Pearson filed his Motion to Dismiss, Answer, Defenses, and Counterclaim of Defendant, Mark L. Pearson which demanded a jury trial, or alternatively, moved for transfer of the action to the Circuit Court of Hinds County (First Judicial District). R219-232/RE 2. Pearson's counterclaim, contained within such responsive pleading, injected issues of actual and punitive damages into this matter for the Nutt group's alleged breach of a fiduciary duty owed to Pearson. R230-231/RE 2.

The Nutt group filed on July 2, 2007 the Counter-Defendants' Miss.R.Civ.P. 12(b)(6) Motion to Dismiss Counterclaim as Untimely Filed under Statute of Limitations which asserted that, regardless of whether Pearson's counterclaim is based on contract or tort, it is untimely due to expiration of the three (3) year statute of limitations under *Miss. Code Ann. §15-1-49 (1972).* R233-238. On February 15, 2008 Pearson filed his Response to the motion to dismiss based on the statute of limitations wherein he relied on the law applicable to joint ventures, partnerships and constructive trusts for the position that his counterclaim was not untimely. R349-358/RE 3. To date, there has been no ruling on the Nutt group's motion to dismiss.

Chancellor Patricia D. Wise of the Hinds County Chancery Court held a hearing on Pearson's demand for a jury trial or alternative motion to transfer to circuit court. In denying Pearson's Motion, Chancellor Wise's Order and Opinion entered July 9, 2008 stated, in pertinent part:

> In determining whether this Court has subject matter jurisdiction of this action, this Court must examine the well-pleaded allegations of the complaint filed by Plaintiffs. The Court finds that Plaintiffs' Complaint asserts claims for relief which are equitable in nature. Although Defendant/Counter-Plaintiff Pearson filed a Counterclaim for relief seeking actual and punitive damages, Pearson has not submitted any statutory authority that would warrant a jury rial. The Court is persuaded that a jury trial in this matter is not mandated by statute.
>
> Defendant Pearson's counterclaim may assert some legal claims, however, this Court must look to the allegations plead in the Plaintiffs' Complaint, not the Defendant's Counterclaim in order to determine subject matter jurisdiction. Where a case has at least one issue within the subject matter jurisdiction of the Chancery Court, the court may adjudicate any legal issues as well. (citation omitted). Accordingly, this Court finds it has subject matter jurisdiction over this action, and Defendant/Counter-Plaintiffs' Motion for Jury Trial, or in the Alternative, Transfer to Circuit Court shall be denied.

R439-444/RE 4. From this Order, Pearson filed his Petition for Interlocutory Appeal.

B. Statement of Facts.

Pearson and the Nutt group agree that the legal relationship they formed was a joint venture. R7-6/RE 1 (Complaint ¶5); R222/RE 2 (Answer to Complaint ¶5). The joint venture was created by a November 3, 2000 letter addressed by Harold J. Barkley, III to David Nutt, and executed by the Nutt group and Pearson, which provided:

> It is agreed that myself, Harold J. Barkley, Jr., and Mark Pearson will refer any and all Crystal Springs, Mississippi Kuhlman-Borg Warner cases to you with a sixty/forty (60/40) split of any monies received through judgment or settlement for each of the cases referred. That is your firm receiving sixty percent (60%) of the fees and myself, Harold J. Barkley, Jr. and Mark L. Pearson receiving forty percent (40%) of the fee. Additionally, you will be responsible for all trial preparation expenses, i.e. engineering, hydrology, toxicology, experts, etc. as well as all cost associated with medicals for the clients. Each firm will be responsible for its general expenses including travel, copying expenses, etc.

R25/RE 1.

Though the November 3, 2000 agreement (hereinafter "Venture Agreement") did not quantify the percentage of Pearson's individual interest in attorney's fees which might arise from the Kuhlman litigation, it did limit Pearson's interest to some percentage of the fees on only "cases referred" to David Nutt by Pearson, Harold J. Barkley, Jr. and Harold J. Barkley, III. The Nutt group's Complaint in this matter asserts that, pursuant to a separate agreement between Pearson, Barkley Jr., and Barkley III, these attorneys agreed to share fees received under the Venture Agreement in equal thirds. R9/RE 1(Complaint ¶8).

The Nutt group performed substantially all of the work[3] necessary to prosecute and achieve a settlement in the Kuhlman litigation while Pearson did essentially nothing. R14/RE 1 (Complaint ¶21-22). Despite Pearson's representation that he would assist in preparation of all aspects of the case, he did not regularly attend meetings set up for clients and did not contribute to development of the client questionnaire or database. R10/RE 1 (Complaint ¶10-11). On two occasions, at most, Pearson attended client

---

[3] Work done by the Nutt group which resulted in successful resolution of the Kuhlman litigation included, but was not limited to, scheduling and attending numerous client meetings in Crystal Springs; contacting environmental regulatory agencies to investigate a compliance history of Kuhlman; researching the effects of PCB exposure; drafting and submitting employment agreements, medical authorizations and questionnaires to clients; receiving client information and building a database thereof; personally interviewing clients and assisting in the preparation of their paperwork; fielding clients' calls and inquiries as the litigation progressed; identifying and retaining numerous expert consultants and/or witnesses; meeting with experts to learn the science pertinent to hydrogeology, toxicology, environmental contamination, and real estate evaluation; attending an Alabama trial involving similar PCB contamination issues; and drafting complaints, written discovery, motions and briefs. R10-12/RE 1 (Complaint ¶11-15).

meetings in Crystal Springs but arrived late and left early and contributed very little to the purpose of the meetings. R10-11/RE 1 (Complaint ¶12). On one of these occasions, he arrived hours after the client meeting began, and he appeared to be inebriated when he arrived. R10-11/RE 1 (Complaint ¶12).

He did not contribute to the selection of experts, who the Nutt group retained in the fields of hydrogeology, toxicology, and real estate, to educate themselves with regard to the science and damages underlying the Kuhlman litigation, and his attendance at meetings with the experts was sporadic. R11/RE 1 (Complaint ¶14). Again, he arrived late and left early at the expert meetings he did attend, and he while there he appeared to lack interest in the scientific basis of the clients' claims. R11/RE 1 (Complaint ¶14). It was apparent to the Nutt group that he did not understand the scientific issues involved in the case and was making no effort to acclimate himself to the issues. R11/RE 1 (Complaint ¶14). When the Nutt group attended a PCB trial against Monsanto in Alabama to further delve into the science of the case, Pearson opted for a Cancun, Mexico vacation. R12/RE 1 (Complaint ¶15).

The Nutt group, rather than Pearson, drafted and filed all pleadings, discovery, motions and briefs in the Kuhlman litigation. Pearson did not participate in the drafting of a motion to remand filed in response to Kuhlman's removal of the action to federal court nor give any input into the motion after being sent a draft copy for his comment. R26-27/RE 1. He dropped the ball on research he was supposed to do into an indemnity

issue that was crucial to a motion to dismiss in the case. R26-27/RE 1. Indeed, since the November 3, 2000 Venture Agreement, Pearson rarely communicated with the Nutt group and did not assist in the prosecution of the Kuhlman litigation in any meaningful way. R26-27/RE 1.

Consequently, on April 15, 2002 the Nutt group transmitted a letter[4] to Pearson notifying him that "[W]e hereby rescind, revoke and terminate our association agreement with you of November 3, 2000 in connection with" the Kuhlman litigation. R26-27/RE 1. This letter referenced the fact that all attorneys had agreed to substantially contribute a fair share of work to the case and informed Pearson of the Nutt group's position that "[Y]ou have not contributed significant effort in this case". R26-27/RE 1.

The April 15, 2002 letter did not continue Pearson's participation in the joint venture at some lesser fee share; it unequivocally terminated Pearson's interest in the Venture Agreement, and thus, the venture itself. However, the letter did attempt to avoid the very issues which the parties are now facing in this litigation by extending a settlement offer to Pearson, as follows:

> **For the above and foregoing reasons we hereby terminate our association agreement.** However, we do not believe it would be fair for you to receive nothing should this case go to judgment or be settled prior to trial. Therefore, we propose that you receive 2% of the net attorney's fees recovered in

---

[4] In transmitting the letter to Pearson, the Nutt group was acting in conformity with a procedure recognized under Mississippi law for expulsion of a member from a joint venture. See, *McCartney v. McKendrick*, 226 Miss. 562, 85 So.2d 164, 169 (Miss. 1956) [Co-venturers may dissolve a venture and expel a joint venturer therefrom due to his nonperformance if they take active, definite steps to terminate his interest in the venture].

this case. Unless we hear otherwise from you within ten days of the date of this letter, we will presume this to be acceptable.

R26-27/RE 1.

The effect of the April 15, 2002 letter – that it terminated Pearson from the Venture Agreement and the venture – was not lost on Pearson or his counsel. On July 1, 2002, Pearson's counsel wrote counsel for the Nutt group, stating:

> I have received your letter of May 29, 2002 regarding your representation of David Nutt & Associates, P.C. and Mr. Nutt, individually. I have discussed the matters contained in your letter with Mr. Pearson. We are both confused by your assertions in the letter that the Association Agreement is controlling this matter. **As you will recall, in Mr. Nutt's letter to Mr. Pearson dated April 15, 2002, Mr. Nutt clearly terminated and repudiated the terms of that Association Agreement.**[5]

R36-37/RE 1.

Pearson failed to assert his claim by filing suit against the Nutt group, and this issue waned until 2005 when Pearson, through counsel, threatened to take action to prevent the settlement of the Kuhlman litigation. His counsel wrote the Nutt group on May 18, 2005, with copies of the letter to all Kuhlman litigation defense counsel, and demanded that Pearson be included as payee on any settlement checks. R28-29. On July 11, 2005 Pearson's counsel expressed his displeasure with Pearson's exclusion from the

---

[5] Pearson gives the April 15, 2002 letter a different spin in his Brief on Interlocutory Appeal, referring to it merely as a new fee split agreement and claiming that "[U]nder the April 15, 2002 split agreement, Mr. Pearson remained a member of the joint venture and was to receive two percent (2%)". If, as Pearson contends on appeal, the April 15, 2002 letter constituted a new fee split agreement between the parties, rather than an expulsion of Pearson from the joint venture, then that would definitely resolve Pearson's claim for 20% of the attorney's fees.

Kuhlman settlement negotiations and posited that Pearson would file suit to prevent settlement of the Kuhlman litigation without his consent. R30.

On July 22, 2005, the Nutt Group, through counsel and envisioning paying Pearson on a *quantum meruit* basis, requested that Pearson provide an itemization of time and expenses he claims to have contributed to the litigation as well as the identity of any Kuhlman litigation clients who Pearson claims signed attorney fee contracts with him. R31-33/RE 1. Pearson never responded to this request.

His failure to respond and the necessity of bringing these issues to a binding conclusion prompted the Nutt group to file their Complaint for injunction, accounting and declaratory relief on September 7, 2005. The well-pleaded allegations of the Complaint filed by the Nutt group in this matter, upon which the jurisdictional inquiry turns, are further discussed hereinbelow.

SUMMARY OF THE ARGUMENT

The Order and Opinion from which Pearson appeals denied his demand for a jury trial in chancery court, or alternatively, for transfer of this action to circuit court. He is not entitled by statuteto a chancery court jury trial, and Chancellor Patricia D. Wise appropriately exercised her discretion in denying his demand for the same. Chancellor Wise also properly denied Pearson's alternative motion to transfer this action to circuit court.

Even though the verdict of a jury would be purely advisory in chancery court, the

matter was within Chancellor Wise's discretion, and she was not required to empanel a jury unless required to do so by statute. Pearson has cited no statute which commands that he be afforded a jury trial in this matter. Moreover, a jury trial in chancery court is simply not necessary in a case involving a dispute between former joint venturers about attorney's fees. Requests for attorney's fees and awards of the same are matters which Chancellors customarily hear and rule upon in a host of cases which are properly within their jurisdiction, and Chancellor Wise is well-suited to hear these issues and rule thereon without the assistance of a jury.

Pearson's alternative motion for transfer of this action to circuit court is unusual in that he seeks transfer based upon the alleged legal claims in his Counterclaim rather than on claims asserted against him in the Nutt group's Complaint. His basis for transfer, therefore, ignores the established standard for determining subject matter jurisdiction which turns upon the well-pleaded allegations of the complaint which are taken as true. A determination of subject matter jurisdiction also requires reference to the face of the complaint for an examination of both the nature of the controversy and the relief sought therein.

The Nutt group is not aware of any Mississippi decision which authorizes a court, trial or appellate, to base its determination of subject matter jurisdiction on allegations set forth by way of counterclaim. To the contrary, Mississippi case law provides, and *Miss. R. Civ. P. 13* envisions, that legal claim asserted by way of counterclaim, rather than in a

separately filed action, may be tried by the Chancellor along with equity claims set forth in the complaint. When so asserted by counterclaim, transfer of the action to circuit court for a jury trial of legal claims is not warranted. Pearson has cited no authority and offered no valid reason to alter this rule.

Scrutiny of the Complaint in this matter, and other parts of the record on appeal, reveal that the nature of this controversy is purely equitable. The Complaint involves issues concerning the expulsion of Pearson from the parties' former joint venture and the dissolution of the venture as a result of his expulsion. Joint ventures are scope-limited partnerships to which the law of partnership fully applies. Mississippi common law provides that chancery courts shall have jurisdiction over the dissolution of partnerships, and the Mississippi Uniform Partnership Law of 1977 ("UPA") vests the chancery court with jurisdiction over matters of partnership dissolution. The UPA also provides the law applicable to this case for Pearson's expulsion, dissolution of the venture resulting from expulsion, and valuation of Pearson's interest upon dissolution, all of which issues are raised by the Complaint in this matter.

Even though this Court should not look to Pearson's Counterclaim as a basis for jurisdiction, the claims made by Pearson therein, as well as Pearson's response to a motion filed by the Nutt group to dismiss his counterclaim, are telling. Therein, Pearson clearly admits that equity forms the basis for his claim for a share of the attorney's fees flowing from the Kuhlman litigation. In Pearson's words, the Nutt group was required to

"hold as constructive trustees for Pearson" attorney's fees received from the Kuhlman litigation, and this "gives rise to Pearson's claims for accounting and recovery of the funds" since "[A]n equitable action for an accounting is a proper remedy for a party to a joint venture to recover his share of the profits". Thus, the substance of Pearson's Counterclaim, through styled as a tort, relies upon equitable remedies and any damages he seeks are merely ancillary thereto.

The Complaint filed by the Nutt group in this matter seeks relief consisting of accounting, injunction and declaratory judgment. The Complaint does not contain any claim for legal relief or seek any monetary damages against Pearson, and none of the claims set forth in the Complaint have been resolved. As Pearson concedes, there has been no testimony in this case to date, and no court has ruled upon the merits of the Complaint.

An accounting of and from Pearson, a claim within equity jurisdiction, is absolutely essential in this matter, and it will consist of information that only Pearson can provide. There is a clear need for such discovery; the need arises out of the fiduciary relationship of former joint venturers; and the account(s) in issue are complicated and complex for a number of reasons more fully described herein, including but not limited to the fact that the Kuhlman litigation consisted of 1,034 different client files on which Pearson claims to have performed work and incurred expense. An accounting from Pearson is also pivotal to other claims in the Complaint since, if Pearson cannot provide a

valid or sufficient accounting or if it reveals a *de minimus* contribution to the Kuhlman litigation, it will support the Nutt group's request for declaratory judgment that Pearson was rightfully expelled from the venture due to his lack of significant effort in prosecuting the Kuhlman litigation. An accounting would also reflect the value of Pearson's contributions to the venture, and hence his interest in the venture, at the time of dissolution, another issue upon which the Nutt group seeks declaratory judgment.

The claim for injunctive relief set forth in the Complaint is also squarely within the equity jurisdiction of a chancery court. The Nutt group asserted injunctive relief in the Complaint because of Pearson's threats to interfere with consummation of the Kuhlman litigation settlements, a process which has not concluded. Although he contends that the injunctive claim is moot, this argument is nothing more than a defense on the merits to the injunction claim which should not be taken into account in the determination of subject matter jurisdiction.

Although the claim for declaratory relief in the Complaint is jurisdictionally neutral, it involves issues of a type over which the chancery court has original jurisdiction. Issues raised in the declaratory judgment claim include whether the Nutt group rightfully expelled Pearson from the venture, whether Pearson is only entitled to the value of his interest in the venture as of the date of its dissolution, as a result of his expulsion, or whether Pearson is entitled to the value of his contribution of time and expense to the venture prior to dissolution on a *quantum meruit* basis. Just as the

chancery court has jurisdiction over the dissolution of this joint venture, it also has jurisdiction over claims for attorney's fees based on *quantum meruit* which are equitable in nature.

There is no legal or factual reason in this matter for the Court to depart from the rule of pendent jurisdiction. Pearson's proposed measure of "connected to a contractual relationship", without consideration of the nature of the action and the claims made in the Complaint, is an inappropriate standard for transfer of an action to circuit court. Approval of such a standard would deprive chancery courts of their properly-asserted historical jurisdiction over actions seeking accounting, specific performance, and the dissolution of partnerships/joint ventures, since all of these matters have some connection to a contractual relationship. Further, Pearson's Counterclaim for punitive damages against the Nutt group does not provide a ground for transfer of this action to circuit court since chancery courts have original, and not just pendent, jurisdiction over claims for punitive damages.

The Complaint in this matter raises a controversy and seeks relief which was properly presented to and filed in a chancery court. Pearson's Counterclaim does nothing to dispel such a conclusion and, in fact, substantively seeks equity. This case does not abuse equity jurisdiction, and there is no reason to depart from the rule of pendent jurisdiction so as to transfer this matter to circuit court. The Order and Opinion of Chancellor Patricia D. Wise which denied all relief requested by Pearson should be

affirmed.

ARGUMENT

A. A jury is not necessary or required in this chancery proceeding.

To the extent that Pearson seeks to empanel a jury for trial of this case in the chancery court, he has not provided any case law or statutory authority which entitles him to the same. Though Chancellor Wise certainly has the discretion to empanel a jury in chancery court, she is not required to do so unless dictated by statute, and even then, the verdict of a jury in chancery court is purely advisory. *Tillotson v. Anders,* 551 So.2d 212, 241 (Miss. 1989).

The Nutt group submits that a jury is neither necessary nor warranted to determine the amount of attorney's fees to which Pearson may be entitled, and Chancellor Wise is well-suited to make such a determination without the advice of a jury. Chancellors customarily entertain requests for awards of attorneys fees pertinent to matters which fall within their equity jurisdiction. Most divorce cases involve requests for awards of attorney's fees. Chancellors also frequently determine what amounts of attorney's fees are appropriate under contingency fee agreements in personal injury or death cases involving guardianships and estates. See, *Mississippi Uniform Chancery Court Rule 6.12* Essentially, determining attorney's fees are part of a Chancellor's job description.

B. The standard for determining subject matter jurisdiction.

In the alternative to empaneling a jury in chancery court, Pearson seeks a transfer of this action to circuit court so as to afford him a jury trial. What takes this case out of the norm is that Pearson seeks a jury trial on the claims asserted in his Counterclaim, not the claims made against him in the Complaint. His position in this regard completely ignores the standard for determining subject matter jurisdiction and the pleading which is determinative in that inquiry.

Regardless of whether chancery or circuit court jurisdiction is in issue, the existence of subject matter jurisdiction – the authority to hear a type of case at all – turns on the well-pleaded allegations of the **complaint** which are **taken as true**. *In re Adoption of a Minor Child,* 931 So.2d 566, 572 (Miss. 2006); *Curtis v. Curtis*, 574 So.2d 24, 28 (Miss. 1990); *American Fidelity Fire Insurance Co. v. Athens Stove Works, Inc.,* 481 So.2d 292, 296 (Miss. 1985); and *Luckett v. Mississippi Wood, Inc.*, 481 So.2d 288, 290 (Miss. 1985). Further, defenses on the merits to the claims set forth in a plaintiff's complaint are inconsequential in the context of this jurisdictional analysis. *Luckett*, 481 So.2d at 290; *Wiggins v. Perry*, 989 So.2d 419, 428 (Miss. Ct. App. 2008).

This inquiry is even further refined, however, since the authority of a court to hear a case also depends on the type of case at issue. *Hood v. Mississippi Department of Wildlife Conservation*, 571 So.2d 263, 266 (Miss. 1990). In "typing" the case, this Court looks to the face of the complaint to examine both the nature of the controversy and the

relief sought. *Issaquena Warren Counties Land Co., LLC v. Warren County, Mississippi*, 996 So.2d 747, 749 (Miss. 2008); *Hood*, 571 So.2d at 266. As with many aspects of the law, it is the substance of the claims set forth in the complaint, rather than their form, which determines whether the claims are legal or equitable in nature. *Tillotson v. Anders*, 551 So.2d 212, 214 (Miss. 1989); *Thompson v. First Miss. Nat'l Bank*, 427 So.2d 973, 976 (Miss. 1983).

The Nutt group is not aware of any Mississippi decision which authorizes a court, trial or appellate, to base its determination of subject matter jurisdiction on allegations set forth in a counterclaim. In fact, two prior decisions of this Court may be compared to demonstrate that allegations set forth within a responsive pleading (*i.e.*, counterclaim) are not considered in determining jurisdiction.

Cossitt v. Nationwide Mutual Ins. Co., 551 So.2d 879, 880 (Miss. 1989) involved an automobile accident where Nationwide interpled uninsured motorist ("UM") coverage of $25,000 into chancery court. Cossitt and White, the parties injured in the accident, alleged that the UM coverage should be stacked and filed their counterclaim for $75,000 in the interpleader action. *Id.* The counterclaim also sought punitive damages against Nationwide for its bad faith refusal to pay the stacked benefits. *Id.* After filing their counterclaim in *Cossitt*, the counter-plaintiffs sought to do what Pearson tries here – empanel a jury in chancery court or have the case transferred to circuit court based upon *Miss. Const. Art. 3, §31* which provides that "the right of trial by jury shall remain

inviolate." *Cossitt*, 551 So.2d at 883.

The Chancellor in *Cossitt* denied the motion to empanel a jury or transfer the action to circuit court, and the Supreme Court of Mississippi affirmed. *Id.* at 887. This Court recognized that Nationwide's interpleader action was a type of case commonly tried in chancery court and that the chancery court could adjudicate all disputed issues in the case, both legal and equitable, where it properly took jurisdiction on any one ground of equity. *Id.* at 883.

When this Court decided *United States Fidelity & Guaranty Company v. Estate of Francis*, 825 So.2d 38 (Miss. 2002) over a decade later, it distinguished *Cossitt*, and in so doing struck a distinction important to the case sub judice. The *Estate of Francis* case arose when USF&G filed its interpleader and deposited UM benefits into the registry of the chancery court. *Estate of Francis*, 825 So.2d at 43. Francis and Draper, the parties interested in the interpled fund, did not file a counterclaim in the interpleader action but filed a separate action in the same chancery court alleging that USF&G was negligent in various ways for not providing sufficient UM coverage to their decedent. *Id.* USF&G alleged that the chancery court lacked subject matter jurisdiction over the separate action and moved to transfer it to circuit court to obtain a jury trial on the legal claims made therein. *Id.* at 43-44.

When the decedent's heirs relied on the *Cossitt* decision, the Supreme Court focused on the distinction:

> Francis/Draper incorrectly rely on *Cossitt v. Nationwide Mut. Ins. Co.* in their argument that USF&G chose the forum in which to proceed by filing their interpleader action in the Simpson County Chancery Court. The facts in *Cossitt* are clearly distinguishable from the fact in the case sub judice. In *Cossitt*, Nationwide interpled uninsured motorist coverage of $25,000 into the Hinds County Chancery Court. **Cossitt then counterclaimed for $75,000 and for punitive damages. Thus, equity issues and issues of law were all contained within a single action before the chancellor. This is not so in the case sub judice.** USF&G, like Nationwide, interpled $25,000 into the Simpson County Chancery Court. **But Francis/Draper did not answer with a counterclaim. Francis/Draper filed a separate action in the Simpson County Chancery Court against USF&G and the Estate of Lewis Henry Johnson. The Francis/Draper complaint did not contain any equity issues.** The complaint alleged a negligent motor vehicle accident, sought damages for personal injury and wrongful death, sought benefits from the insurance policy and alleged negligence on the part of the insurance company's agent. Although there was an interpleader action before the chancery court, that alone does not establish subject matter jurisdiction of the separate tort action. *Cossitt* is distinguishable and thus not applicable to the case at bar.

Estate of Francis, 825 So.2d at 46 (citations omitted, emphasis added).

Cossitt and *Estate of Francis* collectively teach that (1) legal claims set forth by way of counterclaim are not jurisdictionally determinative and do not authorize transfer of an action to circuit court, and (2) legal claims may be adjudicated by the chancery court when asserted by way of counterclaim in response to an action based in equity. This assessment is in full accord with *Miss.R.Civ.P. 13* which envisions that counterclaims seeking legal relief may be filed in chancery court. "Rule 13(a), however, makes it immaterial whether the counter-claim is legal or equitable ..." *Miss. R. Civ. P. 13, official comment.*

Pearson did not file a separate action setting forth legal claims against the Nutt

group. He filed a counterclaim which injected his legal claims, if any, into the equity-based action filed by the Nutt group in chancery court. Therefore, Pearson's assertion of a right to a jury trial on his counterclaim is constrained within the rubric set by the *Cossitt* and *Estate of Francis* decisions. His claimed right to a jury trial is not absolute and subject to the authority of Chancellor Wise to adjudicate the legal along with the equitable. See, *Re/Max Real Estate Partners, Inc. v. Lindsley*, 840 So.2d 709, 713 (Miss. 2003).

Given the standard applied in jurisdictional analysis, Pearson's criticism of Chancellor Wise is both unwarranted and nonsensical. According to Pearson, "the Honorable Patricia Wise in her Order made findings of fact without any basis in proof. As of yet there has been no testimony under oath or affidavits in this case, and yet the factual history presented by the Court suggests that there is no question of the facts as they have been presented". Appellant's Brief p. 7. Pearson's motion was not one for summary judgment, and Chancellor Wise was not required to hold an evidentiary hearing. The nature of this controversy and claims made in the Complaint were relevant to her decision, and as the standard commands, she was required to and did accept the well-pleaded allegations of the Complaint as true.

Pearson also submits that the Court would be justified in looking solely to his Counterclaim for jurisdictional purposes because of "blatant forum shopping" which subjects him to "an unfair and unbalanced administration of justice" in the Hinds County

Chancery Court. This proposition, for which he cites no legal authority, may be summarily rejected. *Grey v. Grey*, 638 So.2d 488, 491 (Miss. 1994). Moreover, its just wrong. Pearson unduly delayed pursuing any rights he claimed to have against the Nutt group and rejected an overture to compensate him in *quantum meruit*. Pearson's demands to be compensated on par with those whose toil and expense produced fruit in the Kuhlman litigation were wholly unreasonable, and the Nutt group owed Pearson no obligation to telegraph its intention to file suit or to engage in the same dilatory conduct as he in seeking a judicial resolution of this matter.

The state of jurisdictional law by which jurisdiction turns on the nature of the controversy and the claims in the Complaint is as it should be. Otherwise, Pearson and any other party defending a properly-filed equity action could usurp the chancery court's jurisdiction merely by filing a counterclaim which asserts alleged legal relief.

C. This controversy is equitable in nature.

Looking solely to the allegations in the Nutt group's Complaint, it is apparent that this controversy is equitable in nature. However, if the Court chooses to consider the allegations of Pearson's Counterclaim as well as another filing by Pearson in this matter, it is apparent that the substance of Pearson's claims are founded on equity as well.

This analysis begins with the law of joint venture and partnerships. All parties admit that the November 3, 2000 Venture Agreement created a joint venture between them. R7-6/RE 1 (Complaint ¶5); R222 (Answer to Complaint ¶5). There is no

difference between a partnership and joint venture except that the latter has limited and circumscribed boundaries. *Hults v. Tillman*, 480 So.2d 1134, 1141 (Miss. 1985). A joint venture is, in fact, a single-shot partnership, and the legal principles for determining the existence of both relationships are identical. *Id.* at 1141, 1143. Joint ventures, like partnerships, give rise to a fiduciary relationship between their members. *Wilkins v. Bancroft*, 248 Miss. 622, 160 So.2d 93, 96 (1964). For all practical purposes in application of the law to this case, the instant parties' joint venture and a partnership were one in the same.[6]

These two legal relationships are so synonymous that this Court has not hesitated to apply the law of partnerships, both statutory and common, to joint ventures. The rights and duties between partners and joint venturers, as between themselves, are practically the same. *Sample v. Romine*, 193 Miss. 706, 8 So.2d 257, 261(1942). In *Hults v. Tillman*, 480 So.2d 1134 (Miss. 1985) the Court applied Mississippi's statutory Uniform Partnership Act to joint ventures, reasoning:

> In 1976 this state adopted the Uniform Partnership Act, Miss. Code Ann. §79-12-1, et seq., the primary purpose of which was to codify the common law into one uniform act on partnerships. The Act makes no effort to distinguish or eliminate joint ventures from its provisions. In other states courts have held the UPA applicable to cases involving joint ventures. *Id.* at 1144.

---

[6] Pearson does not quibble with this conclusion given the July 27, 2005 letter from his counsel to the Nutt group that "I do not believe Mr. Nutt and the Barkleys have the authority to unilaterally terminate the association agreement, which basically constitutes a partnership." R34-35.

> Because for all practical purposes a joint venture is a miniature partnership, or a partnership limited in scope, it would be a trying proposition not to apply the same legal principles to them both. Putting the matter differently, if the UPA applies to all partnerships, it manifestly applies to joint ventures, except for possible exceptions in some very special cases. *Id.* at 1145 (citation omitted).

The Mississippi Uniform Partnership Law ("UPA")[7], sections 79-12-1, et seq., effective April 1, 1977, also applies to the joint venture in this case from which Pearson was expelled by the Nutt group and which then, upon his ouster, dissolved. The sections[8] of the UPA pertinent to the issues in this case of expulsion, dissolution and method for evaluating Pearson's interest in the venture are:

Miss. Code Ann. §79-12-41 (1976) - Partner accountable as a fiduciary.

> Requiring partners to account for benefits and hold as trustee any profits derived from the partnership without the consent of the other partners.

Miss. Code Ann. §79-12-57 (1976) - "Dissolution" defined.

> Providing that dissolution of a partnership is a change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of the business.

---

[7] The Uniform Partnership Law of 1997, sections 79-13-101, et seq., effective from and after January 1, 2005, does not apply to the instant controversy. This Act governs only those partnerships formed before January 1, 2005 which elect to be governed by its provisions. *Miss. Code Ann. §79-13-1205 (a)(2) (2004).* The joint venture in the case sub judice was formed before January 1, 2005, and there is no evidence that it elected to be governed by the Uniform Partnership Law of 1997.

[8] All statutory enactments of the UPA cited herein are reproduced and attached as an addendum to the instant Brief of Appellees.

Miss. Code Ann. §79-12-59 (1976) - Partnership not terminated by dissolution.

> Declaring that a partnership does not terminate on dissolution but continues until the winding up of partnership affairs.

Miss. Code Ann. §79-12-61 (1976) - Causes of dissolution.

> Providing that dissolution is caused under various circumstances, including the "expulsion" of a partner from the "business bona fide" without violation of the partnership agreement; by the express will of any partner in contravention of the partnership agreement; or by a "decree" of court under section 79-12-63.

Miss. Code Ann. §79-12-75 (1976) - Rights of partners to application of partnership property upon dissolution.

> Providing remedies for expelled partner, including that expelled partner receive his interest in partnership evaluated at the time of dissolution.

What court, circuit or chancery, is vested with jurisdiction over issues of expulsion and dissolution? The UPA provides, in pertinent part:

Miss. Code Ann. §79-12-63 (1976) - Dissolution by decree of court.

> (1) On application by or for a partner **the chancery court shall decree a dissolution** whenever:
>
> . . . .
>
> (b) A partner becomes in any other way incapable of performing his part of the partnership contract,
>
> (c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,
>
> (d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,
>
> . . . .
>
> (f) Other circumstances render a dissolution equitable.

The facts and relief sought by the Nutt group in their Complaint in this matter clearly invoke the above statutes and possibly other sections of the UPA pertinent to the rights of Pearson, if any, upon his expulsion from the venture. The Complaint addresses the "NATURE OF CASE" and asserts "[T]his case involves a determination of the rights of attorneys at law who entered into a Joint Venture . . . and the subsequent **expulsion** of a member of the Venture based upon the failure of one member of the Venture Agreement to perform duties he agreed to undertake in the furtherance of the objectives of the enterprise . . . This suit is brought by the remaining four members of the Venture . . . for a declaration of the rights of the parties herein under the Venture Agreement **and the law**." R7-6/RE 1 (Complaint ¶5).

Among the issues on which the Nutt group seeks a declaration of rights in the Complaint are "whether the Nutt group **had the right under law to expel** Pearson from the Joint Venture" (R16-17/RE 1, ¶28); whether "Pearson's interest in the Venture was **dissolved** and terminated for cause on April 15, 2002" (R16-17/RE 1, ¶28); and whether "Pearson is only entitled to the value of his interest in cases referred to the Venture as of the date of **dissolution** of his interest". R16-17/RE 1 (Complaint ¶28).

Thus, concerning issues pertinent to expulsion and a resulting dissolution of partnerships and the rights of partners in connection therewith, the legislature has vested subject matter jurisdiction of such controversies squarely within the equity jurisdiction of our chancery courts. *Miss. Code Ann. §79-12-63 (1976).* Just as the UPA was intended

to codify the common law, this conclusion also comports with the common law. A chancery court sitting in equity has original jurisdiction over the settlement or dissolution of a partnership estate and an accounting between the partners. *Crowe v. Smith*, 603 So.2d 301, 307-308 (Miss. 1992), citing *Barry v. Mattocks*, 156 Miss. 424, 125 So. 554, 556 (1930). There is no reason why the same law, statutory and common, and the remedies it provides should not be applied to adjust the rights of joint venturers upon expulsion and dissolution.

A close examination of Pearson's Counterclaim, and another filing by Pearson which discloses the true nature of his counterclaim, reveals that he knows his claims sound in equity. While Pearson's Counterclaim alleges a tort – breach of fiduciary duty – that duty arises out of the trust/fiduciary duties owed by joint venturers to one another.[9] Referencing the allegations of his Counterclaim:

> This settlement was undertaken without the advice or consent of Pearson. The Counter-Defendants have received settlement proceeds, including attorney's fees, and distributed same without the advice or consultation of Pearson. R230/RE 2 (Counterclaim ¶VIII).
>
> Joint Venturers stand in a fiduciary relation to each other and each has the duty to act for the benefit of the other as to matters within the scope of the relation .... A fiduciary relationship does not necessarily terminate upon the withdrawal of a party from the joint venture. It continues until the rights of the members have been adjusted. R230/RE 2 (Counterclaim ¶IX).

---

[9] Pearson's Brief on Interlocutory Appeal also references his desire to submit the "fraudulent actions" of the Nutt group to a jury, yet his Counterclaim contains no allegations of any fraud or misrepresentation. R219-232/RE 2. As he has not pled it, it is not a claim in issue on this appeal.

> Counter-Defendants owed a fiduciary duty to Pearson in connection with any settlements as a result of the Kuhlman Litigation. Counter-Defendants breached their fiduciary duty to Pearson by conducting settlements without the advice or consent of Pearson. As the proximate result of their breach, Pearson was damaged and is entitled to twenty percent (20%) of the recovered attorney's fees. R231/RE 2 (Counterclaim ¶X).

When responding to the Nutt group's Motion to Dismiss Pearson's Counterclaim as Untimely Filed under the Statute of Limitations[10], Pearson filed a Response thereto which further clarifies that what he really seeks in this matter is equity. Arguing that his Counterclaim was not subject to the three year statute of limitations because his cause of action did not accrue until the Kuhlman litigation was settled, Pearson's Response to the Nutt group's statute of limitations motion asserted:

> Even when a joint venture is terminated from the standpoint of further prosecution of the venture, it remains in existence nevertheless for the purposes of **accounting and settlement**. R351/RE 3.
>
> Upon **dissolution** of a joint venture, a winding up of affairs is required. An **accounting** may be compelling [sic] by an appropriate action. **An equitable action for an accounting is a proper remedy for a party to a joint venture to recover his share of the profits**. R352-353/RE 3.
>
> On the other hand, there are earlier Mississippi cases holding that the ten year statute of limitations in Miss. Code §15-1-39 applies when the claim is one for an **accounting** of funds which should be regarded as being held in **trust** by one former partner/joint venturer which rightfully belong to another former partner/joint venturer. R354-355/RE 3.

---

[10] The Nutt group moved for dismissal of Pearson's Counterclaim as untimely filed under the general three year statute of limitations (*Miss. Code Ann. §15-1-49*), arguing that such limitations period applied thereto regardless of whether his cause of action was based upon tort or contract. R233-238.

> When [Barkleys and Nutt] settled the cases without notifying Pearson and first received attorneys fees, a part of which rightfully belonged to Pearson, the law imposed a **constructive trust** on them which carried with it more fiduciary duties . . . . It is the breach of the winding up fiduciary duties upon receipt of the fees in 2005 which gives rise to **Pearson's claims for accounting and recovery of the funds wrongfully withheld by the Barkleys and Nutt, which they now hold as constructive trustees for Pearson. In such circumstances, the court has the authority to provide relief in the form of an accounting, the imposition of a constructive trust over the fees due to Pearson**, and if it finds the circumstances egregious enough, to award punitive damages. The ten year statute of limitations applies to these claims. R356-357/RE 3.

Pearson's response to the statute of limitations motion by the Nutt group in this case is marked by concepts such as "dissolution", "constructive trust"[11], and his right to an "accounting". Is this his position *du jour* in response to a dispositive motion, or are these the real remedies afforded by equity to a joint venturer who has been expelled from a venture causing its dissolution? The Nutt group submits it's the latter. Certainly, the remedies Pearson espouses to save himself from the statute of limitations are eerily similar to those referenced in the UPA, if not one in the same, and remedies such as accounting and imposition of a constructive trust fall squarely within the jurisdiction of a chancery court.

Though Pearson may allege a tort in his Counterclaim against the Nutt group, it is in actuality a claim which arises from equity-based duties he believes to be owed by the Nutt group arising from the obligation of joint venturers to hold profits in trust for one

---

[11] A constructive trust is a fiction of equity, a formula through which the conscience of equity finds expression, and over which a chancery court sitting in equity should retain jurisdiction. *Re/Max Real Estate Partners, Inc. v. Lindsley*, 840 So.2d 709, 714 (Miss. 2003); *Russell v. Douglas*, 243 Miss. 497, 138 So.2d 730, 734 (1962).

another. In that sense his claim is identical to that of the plaintiffs in *Trustmark National Bank v. Johnson*, 865 So.2d 1148, 1149 (Miss. 2004) who sued Trustmark in circuit court for its alleged negligence in the administration of a trust. The Supreme Court held that the action should be transferred to chancery court because the claims for negligence against Trustmark in its capacity as trustee all arose from its administration of a trust which was within the jurisdiction of the Warren County Chancery Court. *Id.* at 1151. In so holding, the Supreme Court examined the "fundamental substance" of the plaintiff's claim, regardless of the language of negligence and legal remedy that it employed. *Id.* See also, *Issaquena*, 996 So.2d at 750-51 (Transfer to chancery court proper despite the fact that complaint sought "damages", where the substance of the claim sought an equitable remedy and damages sought were ancillary to the equitable remedy).

Similarly, Pearson's Counterclaim seeks "damages" in the form of a share of attorney's fees which he submits are to be held in trust for him by the Nutt group, the amount of which fees will presumably be determined at some date by way of an accounting after resolution of the instant jurisdictional issue. Despite the style of his claim as one for "breach of fiduciary duty", he has no claim unless the Nutt group had some duty in a joint venture capacity to preserve some share of the fees for Pearson.[12]

---

[12] Of course, this begs questions which go to the merits of whether Pearson's expulsion from the venture constituted a dissolution and whether Pearson's interest in the venture is to be evaluated as of the date of dissolution. In order to exclude a delinquent venturer from further participation and profits in the venture, co-venturers must take clear and decisive action to terminate his interest in the venture. See, *McCartney v. McKendrick*, 226 Miss. 562, 85 So.2d 164 (Miss. 1956). The Nutt group believes it took the requisite action with its April 15, 2002

The substance of his claim, though styled as a tort, seeks an equitable remedy and any damages he seeks are ancillary thereto.

Another fact which demonstrates that Pearson's Counterclaim really proceeds in equity are the damages which he submits proximately flow from the tort he alleges. According to his Counterclaim, the Nutt group did not breach a fiduciary duty to Pearson by expelling him from the venture on April 15, 2002; the Nutt group breached their fiduciary duty to Pearson by conducting Kuhlman litigation settlements "without his advice or consent". R231/RE 2 (Counterclaim ¶X). The damages which Pearson alleges "as the proximate result" of this alleged breach are not that the settlement amounts would have been greater with his input into the process but that he is merely "entitled to twenty percent (20%) of the recovered attorney's fees". R231/RE 2 (Counterclaim ¶X). Thus, there is no proximate cause or nexus between the breach of duty Pearson alleges and the damages he claims to have sustained – he just wants a 20% share of the fees from the settlement his former co-venturers negotiated. Obviously then, his claim for a share of the proceeds of the venture rests on the equitable principle of constructive trust rather than any true tort claim.

Whether this matter is within the subject matter jurisdiction of a chancery court should be determined on the Complaint of the Nutt Group, not Pearson's Counterclaim.

---

letter to Pearson. This interlocutory appeal does not turn on such issues, but clearly, they are all issues which are within the jurisdiction of a chancery court under the UPA and Mississippi common law.

The nature of this controversy as reflected by the facts pled and issues raised in the Complaint is clearly within the equity jurisdiction of a chancery court. But, as demonstrated above, even if this Court goes a step farther and scrutinizes Pearson's Counterclaim, it will find that Pearson also bases his claim for damages in this matter on equitable grounds. His claim to right of trial by jury on claims set forth in his counter-pleading is, in and of itself, not well-founded.

D. The claims set forth in the Complaint request only equitable relief and seek no legal relief from Pearson.

Perusal of the Nutt group's Complaint demonstrates that it seeks no monetary damages of any type or other legal relief from Pearson. The Complaint seeks only relief consisting of "injunction, accounting and declaratory judgment". R5-42/RE 1. Pearson admits as much on this appeal by his statement that "[T]he case at issue involves matters of equity . . . . ". Appellant's Brief p. 7.

Pearson erroneously asserts that the claims set forth in the Complaint have now been resolved. Appellant's Brief p. 8. It would be quite interesting how this occurred since, as Pearson also asserts in criticizing Chancellor Wise, there has been no testimony under oath or affidavits submitted in this case to date. Appellant's Brief p. 7. As this Court can clearly see from the record in this matter, no finder of fact or law has reached the merits of this case, and there has been no disposition of the claims in the Complaint.

(1) The claim for accounting from Pearson.

Claims for accounting are clearly within the equity jurisdiction of a chancery court. *Crowe v. Smith,* 603 So.2d 301, 307-308 (Miss. 1992). "Cases involving an accounting should be heard in chancery court rather than circuit court." *Re/Max Real Estate Partners, Inc. v. Lindsley,* 840 So.2d 709, 713 (Miss. 2003).

The claim for an accounting is set forth in paragraphs 36 through 39 of the Complaint. Prior to filing suit, Pearson rebuffed the Nutt group's attempt to obtain an accounting from him to establish his contributions to the venture prior to expulsion. R31-33. Consequently, the Complaint included pleas for "an accounting of Pearson's interest in the enterprise at the time he was ousted from the enterprise" (R7-6/RE 1, ¶5), and "an accounting from Pearson of the value of the time and expenses contributed by him to the Venture before his expulsion in order to determine the amount, if any, due Pearson for his contribution to the accomplishment of the goals of the Venture." R20/RE 1 (Complaint ¶39). These accountings are sought from Pearson to establish (1) an itemization of the amounts he claims he may be entitled to if his interest in the venture is evaluated at the time of his expulsion and its dissolution, and (2) the amount to which Pearson may be entitled from the venture if his claim is evaluated on the basis of his *quantum meruit* contribution to the venture.

Because the venture in issue was one between attorneys who obligated themselves to invest their time, skill and money into the prosecution of certain litigation, the Nutt

group believes that the time which Pearson may have contributed to the venture is an essential component of arriving at some valuation of any contribution he made to the venture, regardless of the point in time at which it is evaluated. After all, "a lawyer's time and advice are his stock and trade".[13] This information sought by this accounting is not within the possession of the Nutt group. Any time Pearson spent on any aspect of the venture, and any funds he expended to further the venture, is information that only he can provide.

The three factors typically considered to determine whether a court of equity has jurisdiction over matters of account are (1) the need of discovery, (2) the complicated character of the accounts, and (3) the existence of a fiduciary or trust relation. *Re/Max*, 840 So.2d at 712. All three aspects are satisfied in the case sub judice. The first and third aspects are obvious – there is a clear need for discovery as to the value of any contributions by Pearson to the venture and even Pearson contends that the Nutt group were his fiduciaries obligated to hold for him any profits from the venture by way of constructive trust. R231/RE 2; R356-357/RE 3.

The accounting required of Pearson will also be very complex and complicated. What the Nutt group seeks is not merely an estimate of the total number of hours that Pearson claims he spent working on anything related to the Kuhlman litigation. For the accounting to be meaningful, Pearson should have to account with particularity. Any

---

[13] This statement is widely attributed to Abraham Lincoln, 16th President of the United States.

accounting by Pearson should clearly and specifically describe his activities in the Kuhlman litigation and the amount of time which he claims to have spent on each activity. Did he do any research or draft any documents which benefitted the litigation, or did he simply receive and file research or documents authored by the Nutt group? The former activity would further the objectives of the litigation while the latter activity does not. In other words, the Nutt group submits that Pearson should not be handsomely compensated for merely receiving the work product of others.

Pearson should also be required to specify whether any time he claims to have spent on the litigation was done on a client-specific matter or whether it was work on the overall litigation which would have provided all clients with a common benefit by progressing the litigation. The value added to the case by assisting a single Kuhlman litigation client, while important, may differ from the value added by responding to a dispositive motion which had the potential of ending the case for all clients. The nature of the different contributions made by various members of the venture could be of significant importance to a Chancellor who is charged with quantifying the value of any one member's contributions to the venture.

Finally, the complexity of an accounting in this matter is apparent when one considers that the Kuhlman litigation involved approximately 1,034 clients and that Pearson's interest in the Venture was tied to "cases referred" to David Nutt & Associates, P.C. pursuant to the November 3, 2000 Venture Agreement. If the

Chancellor chooses to consider client cases which Pearson claims to have referred to the venture in addition to any contributions of time and expense by Pearson to the venture, then the accounting may well have multiple facets.

An accounting by Pearson would also be relevant on another issue – the basis for his expulsion from the venture on April 15, 2002. If Pearson cannot provide a valid or sufficient accounting as requested by the Nutt group, or if his contribution to the venture as shown by an accounting appears to be *de minimus*, then such evidence would support the Nutt group's contention on April 15, 2002 that Pearson had not contributed significant effort in prosecution of the Kuhlman litigation. Indeed, the Complaint requests a declaratory judgment to such effect. R16-17/RE 1 (Complaint ¶28).

In that light, the accounting requested by the Nutt group is a pivotal claim by which other claims may be measured. In recognizing the need for an accounting in the *Re/Max* case, this Court took into account that the accounting sought by the plaintiff was a pivotal claim and that it may be dispositive of other issues in the case. *Re/Max*, 840 So.2d at 714. The same circumstance exists here since an accounting by Pearson reflecting what, if anything, he did to help achieve the Kuhlman litigation settlement may be dispositive of other issues in this case.

As demonstrated by the above, there is a *bona fide* need of an accounting of and from Pearson in this matter. The instant facts do not give rise to situations like those addressed by this Court in *Tillotson v. Anders*, 551 So.2d 212, 214 (Miss. 1989) and

Briggs & Stratton Corporation v. Smith, 854 So.2d 1045, 1048 (Miss. 2003) where the plaintiffs attempted to initiate an accounting against themselves and merely pled it as a mask for asserting chancery court jurisdiction.

(2) The claim for injunctive relief against Pearson.

The Nutt group's Complaint also seeks relief in the way of an injunction against Pearson. R18-19/RE 1 (Complaint ¶33). A claim for injunctive relief is also clearly within the equity jurisdiction of a Chancery Court. *Lee v. Coahoma Opportunities, Inc.*, 485 So.2d 293, 294 (Miss. 1986). At the time of filing of the Complaint, the claim for injunctive relief was necessary due to the threats transmitted by Pearson, contained within his counsel's letters of May 18, 2005 and July 11, 2005, to interfere with the consummation of the Kuhlman litigation client settlements. R28-30.

Pearson seems to contend in his Brief of Appellant that the claims for injunctive relief are now moot. Any finding that such claim is moot must necessarily be made on the merits of the claim by the Chancellor as fact-finder. Pearson's defense to this claim does not alter the established rule that subject matter jurisdiction does not depend on any defenses going to the merits of a claim but must be determined by reference to the well-pleaded allegations of the complaint which are taken as true. *Luckett*, 481 So.2d at 290; *Wiggins*, 989 So.2d at 428.

(3) The claim for declaratory judgment.

Mississippi Rule of Civil Procedure 57, which authorizes the entry of declaratory

judgments, has been held to be jurisdictionally neutral. *Issaquena*, 996 So.2d at 750. In other words, declaratory relief is properly had in any court found to have otherwise competent jurisdiction. *Id.*

Among other things, the *Ad Damnum* clause of the Complaint seeks judicial declarations that:

- A joint venture was created between the Nutt group and Pearson in the November 3, 2000 Venture Agreement;
- Pearson breached his duties and responsibilities under the Venture Agreement;
- The Nutt group had the right under the law to expel Pearson from the joint venture based upon his abandonment of the enterprise and the right to exclude Pearson from further activities and operations by them in the furtherance of the objectives of the venture and were factually and legally justified;
- The April 15, 2002 letter to Pearson was factually and legally sufficient to terminate Pearson's involvement in the venture and exclude him from further participation, including a denial of his right to share in the profits of the venture;
- Pearson's rights to share in the attorneys' fees earned and to be earned, as set forth in the agreement of November 3, 2000, was legally cancelled by the Nutt group by the letter of April 15, 2002;
- Pearson's interest in the venture was dissolved and terminated for cause on April 15, 2002; and
- All claims by Pearson against the Nutt group, including but not limited to, his claims for the value of his interest in the venture are barred by the applicable statute of limitations or, alternatively, Pearson is only entitled to the value of his interest in cases referred to the venture as of the date of the dissolution of his interest or to the value of his contribution of time and finances to the venture prior to dissolution on a *quantum meruit* basis; and

R5-42/RE 1.

The issues on which judgment is requested are not only crucial to the Nutt group in determining what, if any, proceeds of the venture are owed to Pearson, but they are also issues which Pearson must face in connection with his Counterclaim. That is, Pearson is not entitled to any proceeds from the venture if his expulsion from the venture constituted a dissolution and his interest is to be evaluated as of the date of dissolution. Pearson is also not entitled to any proceeds from the venture if the applicable statute of limitations expired before he filed his Counterclaim.

To the extent the Chancellor finds that *quantum meruit* is the appropriate method of compensating Pearson, claims for attorney's fees based on *quantum meruit* are equitable in nature and should also be brought in chancery court. *Poole v. Gwin, Lewis & Punches, LLP,* 792 So.2d 987, 990 (Miss. 2001). Certainly, a complete and detailed accounting by Pearson would be required in order for him to be compensated in *quantum meruit* in this matter.

E. Pearson's claims, if legal, are within the chancery court's pendent jurisdiction.

Pearson argues that recent decisions of this Court have departed from the age old and trusted law giving the chancery court authority to adjudicate legal claims where they are pendent to equity claims over which it has subject matter jurisdiction. See, *McDonald's Corporation v. Robinson Industries, Inc.*, 592 So.2d 927, 934 (Miss. 1991).

His position is that an action should be transferred to circuit court so long as it is "connected to a contractual relationship".

In response, the Nutt group submits that jurisdiction must be decided on the particular facts of each case and that a blind standard of connection to a contractual relationship is too loose a measure upon which to make jurisdictional determinations. Every joint venture and partnership will have some contract, express or implied, at the heart of their formation, but there is no question that chancery courts have jurisdiction over their dissolution. Relief sought in the form of an accounting, clearly within equity jurisdiction, by definition may arise out of a contractual relationship. See, *Briggs & Stratton Corporation,* 854 So.2d at 1049 ("An accounting is by definition a detailed statement of the debits and credits between parties arising out of a contract or a fiduciary relation."). The equitable remedy of specific performance, by necessity, has some connection to a contract. Connection to a contract without consideration of the nature of the controversy and the relief sought is not enough. Such a standard would clearly preclude chancery courts of adjudicating matters over which they have historically and properly asserted jurisdiction.

There are three cogent reasons why the rule of pendent jurisdiction controls this case. First, the nature of the controversy raised within the Complaint, as well as the claims asserted therein, clearly fall within the equity jurisdiction of a chancery court. Second, even Pearson contends that his rights *vis a vis* the Nutt group rest upon equitable

principles such as accounting and constructive trust. R349-358/RE 3. Third, Pearson's alleged legal claims are asserted by way of a counterclaim he filed in chancery court rather than an original pleading in a separate action. It is axiomatic that a chancery court can hear and determine all counterclaims which arise out of the same transaction or occurrence as the subject matter of the original action. *Robertson v. La Linda, Inc.*, 548 So.2d 1308, 1311 (Miss. 1989).

Pearson also submits that his claim for punitive damages justifies transfer of this action to circuit court. Jurisdiction over claims for punitive damages, however, is not exclusive to circuit court. This Court has held that chancery courts have actual, not just pendent, subject matter jurisdiction over claims for punitive damages. *Leaf River Forest Products, Inc. v. Deakle*, 661 So.2d 188, 193 (Miss. 1995); *Tideway Oil Programs, Inc. v. Serio*, 431 So.2d 454, 464 (Miss. 1983). Thus, Pearson's claims for actual damages are founded on equity and the chancery court has original jurisdiction over his punitive claim. He has pled no counterclaim which is outside the chancery court's original jurisdiction.

Pearson's reliance upon the unpublished Order of the Honorable Edward C. Prisock in *Langston v. Patt*[14] does not alter this analysis. As reflected in the Order, Judge Prisock correctly looked to the allegations of the plaintiffs' complaint in that case to determine the chancery court's jurisdiction. Appellant's RE 12. What he found in the

[14] Cause No. G2007-1474 in the Hinds County (First Judicial District) Chancery Court.

complaint, however, was vastly different from the Nutt group's Complaint which seeks no legal relief whatsoever. The complaint in *Langston v. Patt* set forth claims for breach of contract, breach of fiduciary duty, wrongful usurpation of corporate opportunity, and tortious interference with business and contractual , all of which Judge Prisock found to be legal claims. Appellant's RE 12.

In the end, the Complaint in this matter alleges a controversy and seeks relief which was properly presented to a chancery court. Pearson's Counterclaim does nothing to dispel such conclusion and, in fact, substantively seeks equity. This case constitutes no abuse of the chancery court's equity jurisdiction and provides no basis to depart from the rule of pendent jurisdiction.

CONCLUSION

For the foregoing reasons, the Nutt group, Appellees herein, respectfully submit that this Court should affirm the July 9, 2008 Order and Opinion of the Honorable Patricia D. Wise of the Chancery Court of the First Judicial District of Hinds County, Mississippi, which denied all relief sought by the Appellant, Mark L. Pearson, in his demand for jury trial, or in the alternative, to transfer this action to the Circuit Court of Hinds County (First Judicial District), Mississippi.

Respectfully submitted this the 4th day of March, 2009.

WILLIAM LISTON III (MB [redacted]
LISTON/LANCASTER PLLC
304 North Congress Street
Post Office Box 22985
Jackson, MS 39205
Tel. (601) 944-0820
wlist3@aol.com

ATTORNEY FOR APPELLEES

Of Counsel:

Edward Blackmon, Jr. (MSB [redacted]
BLACKMON & BLACKMON
907 W. Peace Street
Canton, Mississippi 39046-0105
Tel. (601) 859-1567
Fax. (601) 859-2311

William H. Liston (MSB [redacted]
LISTON/LANCASTER PLLC
Post Office Box 22983
Jackson, Mississippi 39225
Tel. (601) 944-0820
Fax. (601) 944-0811

CERTIFICATE OF SERVICE

I, the undersigned counsel and attorney of record for the Appellees herein, hereby certify that I have this day mailed, *via* United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellees unto:

Honorable Patricia D. Wise, Chancellor
P. O. Box 686
Jackson, MS 39205-0686

Gary D. Thrash, Esquire
SINGLETARY & THRASH, PA
P. O. Box 587
Jackson, MS 39205-0587

Richard Freese, Esquire
FREESE & GOSS, PLLC
2031 2nd Avenue North
Birmingham, AL 35203

Dennis Sweet, Esquire
SWEET & ASSOCIATES
158 East Pascagoula Street
Jackson, MS 39201

Edward Blackmon, Jr., Esquire
BLACKMON & BLACKMON
907 W. Peace Street
Canton, MS 39046-0105

William H. Liston, Esquire
LISTON/LANCASTER PLLC
P. O. Box 645
Winona, MS 38967

This the 4th day of March, 2009.

William Liston, III

Addendum of Statutes referenced in Brief of Appellees

§ 79-12-39. Duty of partners to render information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

SOURCES: Laws, 1976, ch. 407, § 20, eff from and after April 1, 1977.

RESEARCH REFERENCES

ALR. Right of partners to assert personal privilege against self-incrimination with respect to production of partnership books or records. 17 A.L.R.4th 1039.

Am Jur. 59A Am. Jur. 2d, Partnership §§ 409, 410, 425.

§ 79-12-41. Partner accountable as a fiduciary.

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation or the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

SOURCES: Laws, 1976, ch. 407, § 21, eff from and after April 1, 1977.

RESEARCH REFERENCES

ALR. Duty of former partner, acquiring property occupied by partnership business, to renew lease. 4 A.L.R.2d 102.

Construction, application, and effect of Uniform Partnership Act § 25(2)(b), relating to nonassignability of partner's right in specific partnership property. 39 A.L.R.2d 1365.

Meaning and coverage of "book value" in partnership agreement in determining value of partner's interest. 47 A.L.R.2d 1425.

Relative rights of surviving partner and estate of deceased partner in proceeds of life insurance acquired pursuant to partnership agreement. 83 A.L.R.2d 1347.

Insurance on life of partner as partnership asset. 56 A.L.R.3d 892.

Embezzlement, larceny, false pretenses, or allied criminal fraud by a partner. 82 A.L.R.3d 822.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner. 4 A.L.R.4th 1122.

Right of partners to assert personal privilege against self-incrimination with respect to production of partnership books or records. 17 A.L.R.4th 1039.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership. 37 A.L.R.4th 494.

Am Jur. 59A Am. Jur. 2d, Partnership §§ 420 et seq.

CJS. 68 C.J.S., Partnership §§ 98 et seq.

§ 79-12-43. Partner's right to an account.

Any partner shall have the right to a formal account as to partnership affairs:

§ 79-12-57. "Dissolution" defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

SOURCES: Laws, 1976, ch. 407, § 29, eff from and after April 1, 1977.

RESEARCH REFERENCES

ALR. Venue of action for partnership dissolution, settlement, or accounting. 33 A.L.R.2d 914.

Am Jur. 59A Am. Jur. 2d, Partnership §§ 808 et seq.

19 Am. Jur. Pl & Pr Forms (Rev), Partnership, Forms 111 et seq.

24 Am. Jur. Proof of Facts 2d 455, Misconduct Warranting Dissolution of Partnership.

CJS. 68 C.J.S., Partnership §§ 302 et seq.

§ 79-12-59. Partnership not terminated by dissolution.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

SOURCES: Laws, 1976, ch. 407, § 30, eff from and after April 1, 1977.

JUDICIAL DECISIONS

1. In general.

Even though partnership is dissolved on account of bankruptcy of one partner, partnership is not terminated but continues until partnership affairs have been wound up, particularly where partnership has outstanding indebtedness which forms basis of law suit against partnership. Smith & Hitt Constr. Co. v. Fowler, 466 So. 2d 896 (Miss. 1985).

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 886 et seq.

CJS. 68 C.J.S., Partnership §§ 318 et seq.

§ 79-12-61. Causes of dissolution.

Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner unless the agreement provides otherwise;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 79-12-63.

SOURCES: Laws, 1976, ch. 407, § 31, eff from and after April 1, 1977.

JUDICIAL DECISIONS

1. In general.
2. Effect of partner's bankruptcy.

1. In general.

In an action involving the ownership and use, as a joint venture of three business corporations, of a sewage disposal system, since the association in the case in question was not a business for profit, it was not a partnership, and therefore, partnership statutes, in particularly § 79-12-61, relating to bankruptcy as a cause of dissolution, did not necessarily apply to joint ventures. Keppner v. Gulf Shores, Inc., 462 So. 2d 719 (Miss. 1985).

2. Effect of partner's bankruptcy.

Even though partnership is dissolved on account of bankruptcy of one partner, partnership is not terminated but continues until partnership affairs have been wound up, particularly where partnership has outstanding indebtedness which forms basis of law suit against partnership. Smith & Hitt Constr. Co. v. Fowler, 466 So. 2d 896 (Miss. 1985).

RESEARCH REFERENCES

ALR. Appointment of receiver in proceedings arising out of dissolution of partnership or joint adventure, otherwise than by death of partner or at instance of creditor. 23 A.L.R.2d 583.

Venue of action for partnership dissolution, settlement, or accounting. 33 A.L.R.2d 914.

Sale or transfer of interest by partner as dissolving partnership. 75 A.L.R.2d 1036.

Am Jur. 59A Am. Jur. 2d, Partnership §§ 812 et seq.

14 Am. Jur. Legal Forms 2d, Partnership §§ 194:741 et seq.

19 Am. Jur. Pl & Pr Forms (Rev), Partnership, Forms 131 et seq., 301 et seq., 321 et seq.

24 Am. Jur. Proof of Facts 2d 455, Misconduct Warranting Dissolution of Partnership.

CJS. 68 C.J.S., Partnership §§ 302 et seq.

Law Reviews. 1985 Mississippi Supreme Court Review — Contracts and Commercial Law. 55 Miss. L. J. 775, December, 1985.

§ 79-12-63. Dissolution by decree of court.

(1) On application by or for a partner the chancery court shall decree a dissolution whenever:

(a) A partner has been declared mentally incompetent in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under Sections 79-12-53 and 79-12-55:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

SOURCES: Laws, 1976, ch. 407, § 32, eff from and after April 1, 1977.

JUDICIAL DECISIONS

1. In general.

While partnership assets may be tangible property, the partnership interest being litigated upon dissolution of the partnership constitutes intangible personal property and, therefore, an action to dissolve a partnership is an action over personal property; thus, a chancery court may properly hear a case for the dissolution and accounting of a partnership. Crowe v. Smith, 603 So. 2d 301 (Miss. 1992).

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 906 et seq.
19 Am. Jur. Pl & Pr Forms (Rev), Partnership, Forms 301 et seq., 321 et seq.

CJS. 68 C.J.S., Partnership §§ 318 et seq.

§ 79-12-73. Right to wind up.

Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

SOURCES: Laws, 1976, ch. 407, § 37, eff from and after April 1, 1977.

JUDICIAL DECISIONS

1. In general.

Even though partnership is dissolved on account of bankruptcy of one partner, partnership is not terminated but continues until partnership affairs have been wound up, particularly where partnership has outstanding indebtedness which forms basis of law suit against partnership. Smith & Hitt Constr. Co. v. Fowler, 466 So. 2d 896 (Miss. 1985).

Any of partners of partnership dissolved due to bankruptcy of one partner and against which suit has been filed on partnership note will be permitted to file petition to wind up affairs of partnership in Chancery Court; if none of partners file petition, then Chancery Court will proceed to hear suit on note against defendants named in complaint, and equities may be adjusted; if petition to wind up affairs of partnership is filed, partners and accommodation parties on note should be named as parties in proceedings so that each party may file necessary pleadings and suit on note should be consolidated with petition to wind up affairs of partnership. Smith & Hitt Constr. Co. v. Fowler, 466 So. 2d 896 (Miss. 1985).

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 1100 et seq., 1180 et seq.
14 Am. Jur. Legal Forms 2d, Partnership §§ 194:781 et seq.

CJS. 68 C.J.S., Partnership §§ 265 et seq., 318 et seq.

§ 79-12-75. Rights of partners to application of partnership property upon dissolution.

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under Section

79-12-71(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have,

(i) All the rights specified in subsection (1) of this section and

(ii) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2)(a)(ii) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(i) If the business is not continued under the provisions of paragraph (2)(b) of this section, all the rights of a partner under subsection (1), subject to clause (2)(a)(ii), of this section;

(ii) If the business is continued under paragraph (2)(b) of this section the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be indemnified against all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered.

SOURCES: Laws, 1976, ch. 407, § 38, eff from and after April 1, 1977.

JUDICIAL DECISIONS

1.-10. [Reserved for future use.]
11. Under former law.

1.-10. [Reserved for future use.]

11. Under former law.

A partner who, upon the winding up of the partnership, failed to assert that his copartner was improperly credited with a managerial fee, may not assert a claim for the amount against the estate of such copartner. Kline v. Pearl, 236 Miss. 66, 109 So. 2d 556 (1959).

Surviving partner as administrator of partnership estate properly allowed credit for money paid out of his individual funds for partnership debt. Byrd v. King, 120 Miss. 435, 82 So. 312 (1919).

Surviving partner not entitled to compensation for administering partnership estate unless authorized by statute, partnership agreement or some other valid understanding. Byrd v. King, 120 Miss. 435, 82 So. 312 (1919).

Executor taking possession of partnership assets and refusing to deliver possession to surviving partner on order of the court is liable for interest and dividend on money and stock withheld. Rose v. Jones, 118 Miss. 494, 78 So. 771 (1918).

§ 79-13-1201. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SOURCES: Laws, 2004, ch. 458, § 1201, eff from and after Jan. 1, 2005.

§ 79-13-1202. Short title.

This chapter may be cited as the Uniform Partnership Act (1997).

SOURCES: Laws, 2004, ch. 458, § 1202, eff from and after Jan. 1, 2005.

§ 79-13-1203. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 2004, ch. 458, § 1203, eff from and after Jan. 1, 2005.

§ 79-13-1204. Reserved.

Reserved.

SOURCES: Laws, 2004, ch. 458, § 1204, eff from and after Jan. 1, 2005.

§ 79-13-1205. Applicability.

(a) Before January 1, 2007, this chapter governs only a partnership formed:

(1) After January 1, 2005, except a partnership that is continuing the business of a dissolved partnership under the Mississippi Uniform Partnership Law in effect on December 31, 2004; and

(2) Before January 1, 2005, that elects, as provided by subsection (c), to be governed by this chapter.

(b) On and after January 1, 2007, this chapter governs all partnerships.

(c) Before January 1, 2007, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one (1) year before the partnership's election to be

governed by this chapter only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

SOURCES: Laws, 2004, ch. 458, § 1205, eff from and after Jan. 1, 2005.

§ 79-13-1206. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.

SOURCES: Laws, 2004, ch. 458, § 1208, eff from and after Jan. 1, 2005.

CHAPTER 14

Mississippi Limited Partnership Act

ARTICLE 5.

FINANCE.

§ 79-14-502. Liability for contributions.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 79-29-502(1) and Miss. Code Ann. § 79-14-502(a) are similar and both statutes deal with the statute of frauds. However, that was not the issue on appeal, where a minority member never promised to contribute to the limited liability company (LLC) in writing or otherwise; the subject of the dispute, a capital call, was not an obligation but a choice, and the minority member's financial interest was properly reduced as a result of the other members' capital contributions in a valid call for the raising of additional equity. KBL Props., LLC v. Bellin, 900 So. 2d 1160 (Miss. 2005).

CHAPTER 17

Agricultural Associations; Conversion to Corporate Form

SEC.
79-17-13. How associations may be formed.

§ 79-17-13. How associations may be formed.

Three (3) or more producers of agricultural products in the State of Mississippi who may desire that they, their associates, and successors shall come under this chapter and enjoy its benefits may enter into articles of association and incorporation, which shall set forth the name of the organization, the period of its existence (which shall be for not more than ninety-nine (99) years), its domicile, and that it is to be organized and operated under this chapter. Such articles shall be in duplicate and signed and acknowledged by all those named therein and filed with the Secretary of State of Mississippi. Upon the receipt of Twenty-five Dollars ($25.00) as a recording fee, the Secretary of