



**NUMBER 13-15-00452-CV**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**SANDEEP PATEL,**

**Appellant,**

**v.**

**HARBOR HOSPICE OF BEAUMONT, LP,  
HARBOR HOSPICE MANAGERS, LLC,  
ARFEEN PROPERTIES, LLP, AND  
QAMAR ARFEEN,**

**Appellees.**

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**On appeal from the 172nd District Court  
of Jefferson County, Texas.**

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**MEMORANDUM OPINION<sup>1</sup>**

**Before Chief Justice Valdez and Justices Contreras and Hinojosa  
Memorandum Opinion by Chief Justice Valdez**

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<sup>1</sup> This case is before the Court on transfer from the Ninth Court of Appeals in Beaumont, Texas pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2017 R.S.).

Appellant Sandeep Patel appeals a summary judgment dismissing his claims against appellees Harbor Hospice of Beaumont, LP, Harbor Hospice Managers, LLC, Arfeen Properties, LLP, and Qamar Arfeen (collectively, Harbor Hospice) for breach of fiduciary duty, breach of contract, conversion, theft, and fraud. We reverse and remand.

## I. BACKGROUND

The summary judgment evidence showed the following. In 2005, Harbor Hospice, a limited partnership, was created to build and operate a hospice in Beaumont, Texas. Patel was one of Harbor Hospice's limited partners; so was Arfeen. At all times relevant to this case, Patel owned a 6% limited partnership interest. Patel also served as a guarantor on a construction loan to build Harbor Hospice.

In 2008, the bank that made the construction loan requested updated financial information from Patel, and some evidence suggests that Patel did not respond to the bank's request. Thereafter, general counsel for Harbor Hospice sent Patel a letter—hereinafter, the Parker Letter—to ensure that Patel responded to the bank. The Parker Letter advised Patel that if he did not provide updated financial information to the bank by March 10, 2008, he would be in material breach of his obligations under the partnership agreement. Quoting from section 10.2 of Harbor Hospice's partnership agreement, the Parker Letter stated:

[a]ll of the general partners may unanimously terminate the interest of a limited partner and expel him . . . for failing to meet any commitment to the partnership or manager in accordance with any written undertaking signed by such limited partner . . . [The] expulsion and termination may, in the sole discretion of the general partners in order to compensate for any damages caused to the partnership, result in a forfeiture to the partnership of all or a portion of the value of the partnership interest of the expelled partner at the time of such expulsion or termination.

The Parker Letter further stated that:

Please allow this letter to serve as notice that unless you remedy this breach and provide updated financials to the bank on or before March 10, 2008, the general partner shall terminate your interest in Harbor Hospice of Beaumont, L.P. and expel you for your continued breach of this written obligation. Please further note that if the general partner is forced to take action pursuant to [s]ection 10.2 of the partnership agreement, you will forfeit to the partnership the entire value of your partnership interest upon your termination and expulsion.

According to Afreen, Patel did not update his financial information with the bank by March 10, 2008. Although the Parker Letter contemplated expulsion and forfeiture of Patel's interest to the partnership in such a circumstance, some summary judgment evidence suggests it did not happen that way. Specifically, Harbor Hospice's general ledger indicates that Patel's interest was transferred directly to Afreen sometime in 2009 rather than forfeited to the partnership in March 2008. That Patel's interest was transferred directly to Afreen is also supported by an email from Harbor Hospice's accountant and by Harbor Hospice's tax filing with the Internal Revenue Service (IRS). There is no evidence indicating whether Patel was ever notified that his partnership interest had been transferred to Afreen or what amount Afreen paid Patel for it.

Still, other summary judgment evidence suggests that Patel's interest was neither forfeited to Harbor Hospice in March 2008 nor transferred to Afreen in 2009, but instead "redeemed" by Harbor Hospice in 2011 pursuant to section 8.5 of the partnership agreement. Section 8.5 provides that:

- (a) The partnership interests of all limited partners are subject to redemption by the partnership at the election of the general partners. In the event the general partners make such an election, the general partners shall provide the limited partner whose partnership interest is to be redeemed (the "Redeemed Partner") with at least sixty (60) days' prior written notice of the redemption.

- (b) The purchase price of the Redeemed Partner's [limited partnership interest] shall equal the balance of the Redeemed Partner's capital account . . . determined as of the end of the calendar month immediately preceding the month in which the closing of the redemption transaction takes place.

That Harbor Hospice redeemed Patel's interest in 2011 is supported by an amendment to the partnership agreement dated November 10, 2011. Although the amendment was executed in 2011, it provides that Patel's interest was retroactively redeemed by Harbor Hospice "as of" January 1, 2008—some three months before Patel's interest was allegedly forfeited to Harbor Hospice in March 2008. There is no evidence that Patel was provided sixty days' prior written notice of the purported redemption, as required by section 8.5(a).

In June 2012, Patel filed suit against Harbor Hospice relating to the manner in which Harbor Hospice dealt with his limited partnership interest. Specifically, Patel alleged breach of fiduciary duty, breach of contract, fraud,<sup>2</sup> conversion, and theft. Patel also sought the following declarations under the Declaratory Judgment Act:

1. [He] is the rightful owner of a limited partnership interest in [Harbor Hospice];
2. [He] is the rightful owner of at least a 6% limited partnership interest in [Harbor Hospice];
3. [He] is the rightful owner of a limited partnership interest in [Harbor Hospice] in an amount to be determined by the jury or [the trial court];
4. [His] limited partnership interest in [Harbor Hospice] was not properly terminated;
5. [His] limited partnership interest in [Harbor Hospice] was not properly redeemed;
6. [His] limited partnership interest in [Harbor Hospice] was not properly transferred to [Arfeen];

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<sup>2</sup> Patel's fraud claim was subsequently added to the lawsuit.

7. [He] did not receive consideration from [Arfeen] in exchange for his limited partnership interest in [Harbor Hospice];
8. Insufficient documentation exists to support an alleged transfer from [him] to [Arfeen] of [his] limited partnership interest in Harbor Hospice;
9. The alleged transfer from [him] to [Arfeen] of [his] limited partnership interest in [Harbor Hospice] is void because it violates the terms of the [Harbor Hospice] Partnership Agreement.

Thereafter, Harbor Hospice filed a motion for summary judgment seeking dismissal of Patel's claims. The trial court granted Harbor Hospice's motion. This appeal followed.

## **II. STANDARD OF REVIEW**

We review summary judgments de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). The party moving for summary judgment bears the burden to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). Summary judgment for a defendant is proper only if the defendant negates at least one element of each of the plaintiff's claims or conclusively establishes an affirmative defense. *See Sci. Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997).

When reviewing a summary judgment, "we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor." *See Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003) (citing *Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002)).

## **III. DISCUSSION**

Harbor Hospice moved for summary judgment on the following grounds: (1) all of Patel's claims were barred by the statute of limitations; (2) Harbor Hospice negated at least one element of Patel's claims for breach of breach of fiduciary duty, breach of

contract, conversion, and theft;<sup>3</sup> and (3) Patel did not sustain any damages. Patel challenges each summary judgment ground on appeal, and we discuss each separately below.

#### **1. Ground One: Statute of Limitations Bars Claims**

Harbor Hospice's summary judgment motion argued that Patel's claims were barred by the applicable statute of limitations, which is an affirmative defense. See *Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 846 (Tex. 2005). A claim accrues and limitations begins to run on the date facts exist that would authorize a claimant to seek judicial relief. See *ExxonMobil Corp. v. Lazy R Ranch, LP*, 511 S.W.3d 538, 542 (Tex. 2017). A defendant moving for summary judgment on limitations has the burden to conclusively establish the date on which the claim accrued. See *Rubio*, 185 S.W.3d at 846.

Harbor Hospice argues that, on March 10, 2008, facts came into existence that authorized Patel to sue, and therefore, all of his claims accrued by that date.<sup>4</sup> Specifically, Harbor Hospice asserts that Patel knew he had been expelled from the partnership as of March 10, 2008 when he allegedly failed to provide financial information to the bank by that date. Harbor Hospice points to the Parker Letter as evidence that Patel knew that the consequence for failing to communicate with the bank was automatic expulsion from the partnership. However, the summary judgment evidence does not conclusively

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<sup>3</sup> Harbor Hospice's summary judgment motion did not attempt to negate an element of Patel's fraud claim. However, the motion did seek dismissal of Patel's fraud claim under the statute of limitations.

<sup>4</sup> The parties agree that Patel's lawsuit would be barred by limitations if Patel's claims accrued on March 10, 2008. Breach of fiduciary duty, breach of contract, and fraud have a four-year statute of limitations period. TEX. CIV. PRAC. & REM. CODE ANN. § 16.004 (West, Westlaw through 2017 R.S.). Conversion and theft have a two-year limitations period. TEX. CIV. PRAC. & REM. CODE ANN. §§ 16.003, 134.001 (West, Westlaw through 2017 R.S.). Patel filed suit on June 15, 2012.

establish that Patel failed to communicate with the bank by March 10, 2008. And even if it were true that Patel failed to communicate with the bank, the Parker Letter merely contemplated expulsion upon further action being taken by the general partners under section 10.2 of the partnership agreement. Specifically, the Parker Letter states that Patel would be in material breach of the partnership agreement if he failed to provide financial information to the bank and that he could be expelled under section 10.2 *if* the general partners unanimously decided to expel him. There is no evidence that the general partners took any additional action, as contemplated by the Parker Letter, to expel Patel. Instead, some summary judgment evidence tends to indicate that Harbor Hospice recognized Patel as a limited partner all the way up until November 2011 when the partnership agreement was amended to reflect that Patel's interest had been redeemed "as of" January 1, 2008. There is also conflicting evidence indicating that Patel's interest was transferred directly to Afreen in 2009.

Given the factual dispute concerning whether, how, and when Harbor Hospice disposed of Patel's interest, we cannot say that Harbor Hospice conclusively established that Patel's claims accrued on March 10, 2008. We therefore conclude that the fact issue concerning the disposition of Patel's partnership interest precludes summary judgment on limitations grounds because the record fails to conclusively establish when Patel's claims accrued. *See Martinez*, 941 S.W.2d at 911.

## **2. Ground Two: Negated At Least One Element of Each of Patel's Claims**

### **a. Breach of Fiduciary Duty**

Patel sued Harbor Hospice for breach of fiduciary duty. Partners owe a duty of loyalty to the joint concern of the partnership. *See Bohatch v. Butler & Binion*, 977 S.W.2d

543, 545 (Tex. 1998). Partners also owe a duty of “the utmost good faith, fairness, and honesty in their dealings with each other with respect to matters pertaining to the enterprise.” *Id.* To prevail on this claim, Patel must prove: (1) a fiduciary relationship existed between him and Harbor Hospice; (2) Harbor Hospice breached a fiduciary duty; and (3) Harbor Hospice benefitted from the breach or harmed Patel. *See Graham Mortg. Corp. v. Hall*, 307 S.W.3d 472, 479 (Tex. App.—Dallas 2010, no pet.).

Harbor Hospice’s summary judgment motion argued that it negated the second element listed above—i.e., that Harbor Hospice breached a fiduciary duty owed to Patel. Specifically, Harbor Hospice argued that no breach of fiduciary duty occurred because Patel was properly expelled under section 10.5 of the partnership agreement for failing to communicate with the bank. Harbor Hospice quotes case law stating that “the fiduciary duty that partners owe one another does not encompass a duty to remain partners or else answer in tort damages.” *Bohatch*, 977 S.W.2d at 545 (holding that action taken to expel a partner was not a breach of any fiduciary duty that the partnership owed to the expelled partner).

We agree that Patel could not legally stake a claim for breach of fiduciary duty by alleging merely that he should not have been expelled pursuant to the partnership agreement. *See id.* However, Patel never premised his claim on the fact of expulsion, nor does the summary judgment evidence conclusively establish that Patel was expelled.<sup>5</sup> Instead, the summary judgment record contains conflicting accounts of what happened to Patel and his interest:

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<sup>5</sup> Harbor Hospice points to the Parker Letter itself as evidence that Patel was expelled, but the Parker Letter merely conditioned expulsion on future action being taken by the general partners. There is no evidence that the general partners took any action to expel Patel for allegedly failing to meet a financial commitment as contemplated in the Parker Letter.



- The first account is the one that Harbor Hospice advanced to support summary judgment—i.e., that Patel was expelled and that his interest was forfeited to the partnership under section 10.5. Evidentiary support for this account comes from the Parker Letter.
- The second account is the one that Patel advanced in an attempt to defeat summary judgment—i.e., that Patel’s interest was improperly transferred directly to Afreen without his knowledge or consent and without any payment. Evidentiary support for this account comes from Harbor Hospice’s general ledger, an email from its accountant, and its tax filings.
- The final account is that Harbor Hospice redeemed Patel’s interest without providing sixty days’ advance notice to Patel, as required by section 8.5(a) of the partnership agreement. The amendment to the partnership agreement supports this account of what might have happened.

Whether Patel’s claim for breach of fiduciary duty succeeds depends on which account the fact finder believes. For example, if Patel was properly expelled under section 10.5, his claim would lack merit because partners do not owe a fiduciary duty to refrain from expelling a partner. See *id.* On the other hand, if Harbor Hospice clandestinely transferred Patel’s interest to Afreen or retroactively redeemed it under section 8.5, then the fact that such action was allegedly taken without notice or payment to Patel implicated fiduciary duties owed to Patel, including “the obligation of loyalty to the joint concern and of the utmost good faith, fairness, and honesty in their dealings with each other with respect to matters pertaining to the enterprise.” *Id.*

We conclude that a fact issue concerning the disposition of Patel’s interest precludes summary judgment as to his claim for breach of fiduciary duty. See *id.*

**b. Breach of Contract—The Partnership Agreement**

Patel sued Harbor Hospice for breach of the partnership agreement. To prevail on his breach-of-contract claim, Patel must prove: (1) the partnership agreement was valid;

(2) he performed or tendered performance as required by the agreement; (3) Harbor Hospice breached the agreement; and (4) he sustained damages as a result of Harbor Hospice's breach. See *B & W Supply, Inc. v. Beckman*, 305 S.W.3d 10, 16 (Tex. App.—Houston [1st Dist.] 2009, pet. denied).

Harbor Hospice's summary judgment motion argued that it negated the third element—i.e., that Harbor Hospice breached the partnership agreement. Specifically, Harbor Hospice asserted that no breach occurred because Patel was justifiably expelled under section 10.5 of the partnership agreement, and therefore, his interest was forfeited to the partnership in compliance with the agreement. However, as noted, the summary judgment evidence did not conclusively establish that Patel was expelled under section 10.5. Instead, there is some evidence that Harbor Hospice transferred or redeemed Patel's interest without notifying him about it or paying him for it. If that is what happened, Harbor Hospice potentially stands in breach of the partnership agreement.

Therefore, we conclude that a material fact issue concerning the disposition of Patel's interest precludes summary judgment as to his claim for breach of contract.

### **c. Conversion and Theft**

Patel sued Harbor Hospice for conversion and theft. To prevail on these claims, Patel will have to prove, among other things, that Harbor Hospice unlawfully appropriated, or wrongfully exercised dominion and control, over his partnership interest without his consent. See TEX. CIV. PRAC. & REM. CODE ANN. § 134.002(2) (West, Westlaw through 2017 R.S.); TEX. PENAL CODE ANN. § 31.03(b)(1) (West, Westlaw through 2017 R.S.); *Stroud Prod., L.L.C. v. Hosford*, 405 S.W.3d 794, 811 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). Harbor Hospice's summary judgment motion argued that forfeiture of

Patel's interest was authorized under section 10.5. Again, however, the summary judgment evidence did not conclusively establish that Patel's partnership interest was properly forfeited under section 10.5. Instead, there is some evidence indicating that Patel's partnership interest was transferred or redeemed without notifying him about it or paying him for it. If that is what happened, then Harbor Hospice may have appropriated, or wrongfully exercised dominion and control, over Patel's partnership interest without his consent. We therefore conclude that the fact issue concerning the disposition of Patel's interest precludes summary judgment as to his claims for conversion and theft.

### **3. Ground Three: Patel Suffered No Damages**

Harbor Hospice's summary judgment motion argued that Patel suffered no damage as a result of any actionable behavior on their part.

Initially, Harbor Hospice argued that Patel forfeited the entirety of his 6% interest to the partnership after being expelled pursuant to section 10.2, and therefore, Harbor Hospice owed him nothing as per the partnership agreement.<sup>6</sup> However, a fact issue exists regarding whether Harbor Hospice could justify not paying Patel the value of his partnership interest under section 10.2's forfeiture provision. As previously noted, there is no evidence that the general partners took any additional action to expel Patel, as would be required in order to forfeit his interest under section 10.2. The Parker Letter only threatened expulsion, and it is not clear whether Harbor Hospice followed through on its threat. Instead, there is some evidence that Patel's interest was transferred directly to

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<sup>6</sup> Section 10.2 states that an expelled partner could forfeit "all or a portion of the value of [his] partnership interest . . . at the time of such expulsion [.]"

Afreen without consideration. Section 10.2's forfeiture provision would not apply if Afreen acquired Patel's interest.

Alternatively, Harbor Hospice asserted that it redeemed Patel's interest pursuant to section 8.5, and therefore, Patel was owed only the balance in his capital account, which was always zero.<sup>7</sup> Patel countered that the balance remaining in his capital account is \$28,575, at the very least. To support this assertion, Patel alleged that his 2008 K-1 erroneously stated that he received a distribution from Harbor Hospice in the amount of \$28,575. Patel testified that he never received any money from Harbor Hospice and that Harbor Hospice's general ledger for 2008 does not reflect any distributions made to him. Consequently, a fact issue would exist regarding the value of Patel's capital account even if it could be said that Harbor Hospice redeemed Patel's interest pursuant to section 8.5.<sup>8</sup>

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<sup>7</sup> Under section 8.5 of the partnership agreement, the amount of the redeemed partner's capital account is determined "as of the end of the calendar month immediately preceding the month in which the closing of the redemption transaction [took] place." The summary judgment record shows that Harbor Hospice amended the partnership agreement in November 2011, which had the purported effect of redeeming Patel's partnership interest "as of" January 2008. Harbor Hospice did not attempt to explain whether the "redemption transaction [took] place" in January 2008 or in November 2011 for purposes of determining the balance of Patel's capital account. Instead, Harbor Hospice appeared to argue that the balance would have been zero on the month preceding either of those two months for purposes of determining the amount of his capital account.

<sup>8</sup> Moreover, by his suit, Patel sought a declaration that any purported transfer to Afreen is void under the partnership agreement, and therefore, he is entitled to reinstatement of his 6% limited partnership interest in Harbor Hospice. We express no opinion regarding the merit of such claim. However, Harbor Hospice's motion for summary judgment failed to address why Patel would not be entitled to reinstatement of his interest under that theory even if his capital account was zero at all relevant times. Instead, Harbor Hospice focused on negating a finding of damages under the partnership agreement's forfeiture and redemption provisions.

We conclude that Harbor Hospice did not sustain its summary judgment burden to conclusively establish that Patel suffered no damage as a result of any actionable behavior on their part. We therefore sustain Patel's first, second, and third issues.<sup>9</sup>

#### IV. CONCLUSION

We reverse the trial court's judgment and remand for further proceedings.

**/s/ Rogelio Valdez**  
ROGELIO VALDEZ  
Chief Justice

Delivered and filed the  
28th day of September, 2017.

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<sup>9</sup> Patel's fourth issue complains that summary judgment was improper because "[Harbor Hospice] failed to authenticate any of [its] summary judgment evidence." We need not address this issue because we have already concluded that material fact issues preclude summary judgment after considering the summary judgment evidence. See TEX. R. APP. P. 47.1.