AN OVERVIEW OF ISSUES AND CASES INVOLVING BREACH OF FIDUCIARY DUTY IN TEXAS BUSINESS LITIGATION

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Publications and Presentations
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I. EXISTENCE OF A FIDUCIARY RELATIONSHIP

Under Texas law, the first step in determining whether a breach of fiduciary duty has occurred is determining whether a fiduciary relationship exists between the parties. A fiduciary relationship exists in some relationships as a matter of law. See, e.g., Archer v. Griffith, 390 S.W.2d 735 (Tex. 1965) (attorney-client); Johnson v. Peckham, 120 S.W.2d 786 (Tex. 1938) (partners); Langford v. Shamburger, 417 S.W.2d 438 (Tex. Civ. App.—Fort Worth 1967, writ ref’d n.r.e.) (trustee-beneficiary); see Tex. Rev. P’ship Act art. 6132b-1.01 et seq.; see also Int’l Bankers Life Ins. Co. v. Holloway, 368 S.W.2d 567 (Tex. 1963) (directors and officers-corporation); Hyde Corp. v. Huffines, 314 S.W.2d 763 (Tex. 1958) (licensee-licensor); Anderson v. Griffith, 501 S.W.2d 695 (Tex. Civ. App.—Fort Worth 1973, writ ref’d n.r.e.) (real estate brokers and agents). When the existence of a fiduciary duty is a matter of law, a juror question wrongfully predicated on an owed fiduciary duty that does not actually exist can be overturned on appeal even if the appellant failed to object to the juror question when it was submitted. National Plan Administrators, Inc. v. National Health Ins. Co., 235 S.W.3d 695, 704 (Tex. 2007).

In other relationships, the plaintiff must prove the fiduciary relationship as a question of fact. See, e.g., Meyer v. Cathey, 167 S.W.3d 327, 331 (Tex. 2005) (no fiduciary duty as a matter of law between parties who were friends and frequent dining partners for four years); Associated Indem. Corp. v. CAT Contracting, Inc., 964 S.W.2d 276 (Tex. 1998) (no fiduciary relationship as a matter of law between surety and principal on construction bond); Ins. Co. of N. Am. v. Morris, 981 S.W.2d 667 (Tex. 1998) (no fiduciary duty on surety-principal on securities investment bonds); Crim Truck & Tractor Co. v. Navistar Int’l Transp. Corp., 823 S.W.2d 591 (Tex. 1992) (no fiduciary duty as a matter of law between franchiser and franchisee—existence of relationship is a fact question). The courts have focused on the entire relationship between the parties, and more specifically, on the defendant’s acts, to determine whether the finding of a fiduciary relationship is warranted. See English v. Fischer, 660 S.W.2d 521 (Tex. 1983). Subjective belief and trust on the part of the plaintiff is not enough. The defendant must, by some undertaking, give the plaintiff a reasonable basis for believing that the defendant would act in the plaintiff’s best interests. Crim Truck, 823 S.W.2d 591. To impose a fiduciary relationship in a simple business transaction, Texas courts typically have required a finding of a fiduciary relationship prior to and apart from the transaction in question. See Meyer, 167 S.W.3d at 331 (“To impose an informal fiduciary duty in a business transaction, the special relationship of trust and confidence must exist prior to, and part from, the agreement made the basis of the suit.”); Morris, 981 S.W.2d 667; Schlumberger Tech. Corp. v. Swanson, 959 S.W.2d 171 (Tex. 1997).

Other general factors that Texas courts have considered in deciding fiduciary relationships have included the following: family ties, Tex. Bank & Trust Co. v. Moore, 595 S.W.2d 502 (Tex. 1980) (aunt-nephew); non-legal professional relationships, Squires v. Christian, 253 S.W.2d 470 (Tex. Civ. App.—Fort Worth 1952, writ ref’d n.r.e.) (accountant); Pace v. McEwen, 574 S.W.2d 792 (Tex. Civ. App.—El Paso 1978 writ ref’d n.r.e.) (stockbroker); and co-tenants, Hamman v. Ritchie, 547 S.W.2d 698 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). In these cases, the relationship alone does not create the fiduciary relationship, but it may be a factor in establishing a factual fiduciary relationship.

II. DUTIES OF A FIDUCIARY

The duties of a fiduciary, once the relationship has been established, can vary depending on the instrument involved, special statutes, and the common law. However, in general, the following duties have been recognized by Texas law:

1) duty of competence, Tex. Prop. Code § 113.056 (trustee); Int’l Bankers Life Ins., 368 S.W.2d 567 (Tex. 1963) (corporate directors); see also Tex. Bus. Corp. Act arts. 2.41(D), 2.42(C); Tex. Rev. P’ship Act arts. 6132b-4.04(c) (“business judgment rule”) (partners); Davis v. Sheerin, 754 S.W.2d 375 (Tex. App.—Houston [1st Dist.] 1988, writ denied) (minority shareholders against majority);

2) duty to exercise reasonable discretion, Corpus Christi Bank & Trust v. Roberts, 597 S.W.2d 752 (Tex. 1980) (trustee exercise of discretion always subject to review); Sassen v. Tanglegrove Townhouse Condominium Ass’n, 877 S.W.2d 489 (Tex. App.—Texarkana 1994, writ denied) (condo association designated as attorney-in-fact);

3) duty of loyalty, Tex. Bank & Trust, 595 S.W.2d 502 (“presumption of unfairness” that arises from any gift or advantage of opportunity); Int’l Bankers Life Ins., 368 S.W.2d 567 (corporate officers took secret commissions on sale of corporate real estate); Slay v. Burnett Trust, 187 S.W.2d 377 (Tex.
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When a fiduciary profits or benefits in any way from a transaction with the beneficiary, a presumption of unfairness arises that shifts the burden of persuasion to the fiduciary to show: (1) that the transaction was made in good faith, (2) that the transaction was fair and equitable to the beneficiary, and (3) that the transaction was made after full and complete disclosure of all material information to the principal. Tex. Bank & Trust, 595 S.W.2d at 509; Stephens County Museum, Inc. v. Swenson, 517 S.W.2d 257 (Tex. 1974). If there is no evidence rebutting the presumption, no breach of fiduciary question is necessary. Tex. Bank & Trust, 595 S.W.2d at 509.

III. DEFINING RELATIONSHIPS AND DUTIES IN PRACTICE

A. Stockbrokers and Financial Advisors

In Edward D. Jones & Co. v. Fletcher, 975 S.W.2d 539 (Tex. 1998), the Texas Supreme Court addressed the question of whether a stockbroker has a legal duty to ascertain the mental competence of the investor prior to assisting in transferring securities. The plaintiff, the independent executrix of an estate, brought suit against Edward Jones & Co. based on the transfer of securities to the nephew of the decedent prior to the decedent’s death. The lawsuit was based on negligence, breach of fiduciary duty, duty of good faith and fair dealing, and negligent misrepresentation, among other causes of action. The jury found in favor of the plaintiff and the court of appeals affirmed. The Texas Supreme Court held that the stockbroker had no duty, fiduciary or otherwise, to determine the competence of the investor, reasoning that the law afforded protection already to incompetents through guardianships and by making their agreements voidable. Edward Jones, 975 S.W.2d at 545.

Courts interpreting Texas law in the past have looked at the scope of the agency and the extent of authority to make trades in determining whether the stockbroker owed a fiduciary duty to the customer. See Miley v. Oppenheimer & Co., 637 F.2d 318 (5th Cir. 1986); Magnum Corp. v. Lehman Bros. Kuhn Loeb, Inc., 794 F.2d 198 (5th Cir. 1986). In general, a non-discretionary account has been viewed as creating a very narrow common law fiduciary duty, imposing only the obligation to not make unauthorized trades. Magnum, 794 F.2d 198. A broker who manages a discretionary account, where he is not limited to the express orders of the client, will be held to a much broader fiduciary duty. Id. The Texas Supreme Court in Edward Jones did not really analyze this case from the standpoint of a fiduciary duty, choosing instead to focus on whether any duty at all was owed to the customer.

The Austin Court of Appeals has followed the Edward Jones case to hold that an investment firm had no fiduciary duty to inform a spouse of a change in beneficiary, even though she was also their client. Anton v. Merrill Lynch, 36 S.W.3d 251 (Tex. App.—Austin 2001, pet. denied).

By way of contrast, in Western Reserve Life Assurance Co. of Ohio, a broker assumed the role to act as a financial advisor to the clients. His relationship with the clients went well beyond mere “mutual benefit.” W. Reserve Life Assurance Co. of Ohio v. Graben, 233 S.W.3d 360 (Tex. App.—Fort Worth 2007, pet. denied). The court held that any arm’s length transaction that may have existed between the parties was elevated into a fiduciary relationship by the very nature of the broker’s actions. Id. at 373-74. The clients brought action against the broker for misrepresentations and breach of fiduciary duty, which caused them losses when the stock market took a downturn. The court of appeals held that (1) the broker had a fiduciary relationship to the clients when he became a financial advisor, (2) the duty went beyond the duty to execute stock trades, and (3) evidence supported the finding of breach by selecting investments in securities, rather than bonds. Id. The court held that there was legally sufficient evidence to support the jury’s finding that a fiduciary duty existed. The court also rejected the argument that the broker did not breach his duty because his only duty was to execute the trade orders that the clients authorized. The court held that the duty the broker owed the clients went well beyond the narrow duty of executing trade orders. Id. at 374.

In Lee v. Hasson, 286 S.W.3d 1 (Tex. App.—Houston [14th Dist.] Jan. 30, 2007, pet. denied), the Fourteenth Court of Appeals held that the evidence was sufficient to establish that Hasson, an insurance broker/financial advisor, owed Lee, his wealthy friend and client, an informal fiduciary duty. Lee retained Hasson’s services as an advisor regarding the division of property incident to her divorce. Hasson contended that under their oral agreement he would receive ten percent of the amount of the marital estate that Lee received in her divorce settlement. The trial court entered judgment for Hasson and Lee appealed. The court of appeals found that the oral agreement

1945) (fiduciary cannot gain any benefit for himself at expense of his beneficiary); and

4) duty of full disclosure, Willis v. Maverick, 760 S.W.2d 642 (Tex. 1988) (breach of duty of disclosure is same as fraudulent concealment); Montgomery v. Kennedy, 669 S.W.2d 309 (Tex. 1984) (affirmative duty to make a full and accurate confession of transactions, profits, and mistakes); Archer, 390 S.W.2d 735 (beneficiary not required to prove elements of fraud); Johnson, 120 S.W.2d 786 (beneficiary not required to prove he relied on fiduciary to disclose).
regarding Hasson’s compensation under which he would have been paid between $4.7 and $15.4 million in the first year was not fair to Lee. Id. at 22. Additionally, the court held that Hasson did not make reasonable use of the confidences that Lee placed in him, he failed to exercise the utmost good faith and scrupulous honesty, and he did not fully and fairly disclose the necessary information; thus, he breached the duty he owed to Lee. Id. at 27.

B. Attorneys

The Texas Supreme Court in 2002 held that an associate owes a fiduciary duty to his law firm not to refer a matter to another law firm or lawyer, absent the employer’s permission. See Johnson v. Brewer & Pritchard, P.C., 73 S.W.3d 193 (Tex. 2002).

In Manon v. Solis, 142 S.W.3d 380 (Tex. App.—Houston 2004 [14th Dist.] pet. denied), the court reviewed the evidence of a casual friendship in law school, social contact, and separate career paths after law school to reach the conclusion that no fiduciary relationship was present pre-employment.

In Aiken v. Hancock, 115 S.W.3d 26 (Tex. App.—San Antonio 2003, pet. denied), a client sued his attorney for misrepresenting that the attorney was ready for trial and that the retained expert was adequately prepared. The court of appeals rejected the breach of fiduciary duty claim because there was no indication that the attorney obtained an improper benefit. The court distinguished breach of fiduciary duty from ordinary negligence case. For a similar perspective, see Gonzales v. Am. Title Co. of Houston, 104 S.W.3d 588 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). The court held that the title company may have acted unprofessionally but that is not the same as a breach of fiduciary duty. Id.; see also Archer v. Med. Protective Co. of Fort Wayne, Ind., 197 S.W.3d 422, 427-28 (Tex. App.—Amarillo July 13, 2006, no pet. h.) (plaintiff cannot fracture a legal malpractice claim into various causes of action such as breach of fiduciary duty; but claims arising out of allegations of conflicts of interest, self-dealing, or misusing confidential information, state separate breach of fiduciary duty claims that are different from legal malpractice claims).

In Burrow v. Arce, 997 S.W.2d 229 (Tex. 1999), the Texas Supreme Court held that a client need not prove actual damages to obtain forfeiture of an attorney’s fee once a breach of fiduciary duty by the attorney is established. Once the jury finds that an attorney has breached his fiduciary duty to the client, the trial court determines the amount of any fee forfeiture, since it is an equitable remedy. Burrow, 997 S.W.2d at 234. It is within the discretion of the trial court to determine whether the attorney receives full compensation or whether compensation will be reduced or denied. Id. In Jackson Law Office, P.C. v. Chappell, 37 S.W.3d 15 (Tex. App.—Tyler 2000, pet. denied), the Tyler Court of Appeals followed Arce in determining that a trial court had exercised its discretion in reducing a fee by $5000.

The Houston Court of Appeals followed Burrow in deciding that a trial court had improperly directed a verdict for the defendant attorneys regarding claims for fee forfeiture based on the law firm’s alleged breaches of fiduciary duty. Deutsch v. Hoover, Bax & Slovacek, L.L.P., 97 S.W.3d 179 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

Subsequent appellate courts have made it clear that the forfeiture of attorney fees for the breach of fiduciary duty is reserved for “clear and serious” violations of duty. See, e.g., Malone v. Watkins, Nichols & Friend, No. 01-99-01192-CV, 2004 WL 1120005 (Tex. App.—Houston [1st Dist.] May 20, 2004, no pet.) (holding that attorney’s breach of fiduciary duty in allegedly disseminating confidential information was inadvertent, did not cause significant injury to the client, and therefore did not warrant forfeiture of attorney fees). Relevant factors include (1) the gravity and timing of the violation, (2) its willfulness, (3) its effect on the lawyer’s work for the client, (4) any other threatened or actual harm to the client, (5) the adequacy of other remedies, and, to be given great weight, and (6) the public interest in maintaining the integrity of attorney-client relationships. Goffney v. O’Quinn, No. 01-02-00192-CV, 2004 WL 2415067, at *7 (Tex. App.—Houston [1st Dist.] Oct. 28, 2004, no pet.).

C. Insurance Duties

In Wayne Duddlesten v. Highland Insurance Co., 110 S.W.3d 85 (Tex. App.—Houston [1st Dist.] 2003, pet. denied), an employer sued its worker’s compensation carrier, claiming that it had breached its fiduciary duty by inappropriately settling and paying claims. The First Court of Appeals held that there is no general fiduciary duty between an insurer and its insured. Citing its prior ruling in R.R. Street & Co. v. Pilgrim Enterprises, Inc., the court held that to impose an informal fiduciary relationship in a business transaction, the requisite special relationship of trust and confidence must exist prior to, and apart from, the agreement made the basis of the suit. Duddlesten, 110 S.W.3d at 96 (citing R.R. Street & Co. v. Pilgrim Enters., Inc., 81 S.W.3d 276, 305 (Tex. App.—Houston [1st Dist.] 2001, rev’d on other grounds, 166 S.W.3d 232 (Tex. 2005)). Because the appellant produced no evidence of such a relationship, the court upheld the summary judgment on the breach of fiduciary duty claim. See E.R. DuPuis Concrete Co. v. Penn Mut. Life Ins. Co., 137 S.W.3d 311, 318 (Tex. App.—Beaumont 2004, no pet.) (“[T]here is no general fiduciary duty between an insurer and its

Furthermore, the Supreme Court found that the Texas Insurance Code imposes no general fiduciary duty on third-party insurance administrators. National Plan Administrators, Inc. v. National Health Ins. Co., 235 S.W.3d 695, 701 (Tex. 2007). In National Plan, a health insurance underwriter asserted that its third-party administrator breached its fiduciary duties when the administrator marketed cancer insurance policies to another insurance company without first notifying the original insurer. Id. at 698. The original underwriter complained that in soliciting the other insurer, the third-party administrator wrongfully disclosed confidential information regarding the underwriter’s policyholders and premiums. Id. The Supreme Court rejected the argument that the Texas Insurance Code created a general fiduciary duty to third-party administrators, instead holding that the statutory requirement that third-party administrators have a written contract with the party they serve as administrator subsumes any general duties in favor of the specific duties, obligations and expectations created by the written agreement. Id. at 701.

D. Aiding and Abetting a Breach of Fiduciary Duty/Contribution

In Hendricks v. Thornton, 973 S.W.2d 348 (Tex. App.—Beaumont 1998, pet denied), the Beaumont Court of Appeals wrote on several issues in a fraud and breach of fiduciary duty case arising out of a failed government securities trading program. In regard to the aiding and abetting claim, the defendant claimed that since the trial court had ruled that the fiduciary duty claim was disposed of on limitation grounds, the aiding and abetting claim was gone as well, since it was just a “tag-along” claim. Hendricks, 973 S.W.2d 348. The court of appeals disagreed, stating that the claims were “distinct” and that “[i]t is settled as the law of this State that where a third party knowingly participates in the breach of duty of a fiduciary, such third party becomes a joint tortfeasor with the fiduciary and is liable as such.” Id. at 372.

The third party liability rule set out by the court of appeals has been used both offensively and defensively in the past in Texas to either reach an additional defendant or to preclude a third party from enforcing a contract right against the principal if the right was obtained as the result of a breach of fiduciary duty. See City of Fort Worth v. Pippen, 439 S.W.2d 660 (Tex. 1969); Remenchik v. Whittington, 757 S.W.2d 836 (Tex. App.—Houston [14th Dist.] 1988, no writ). The third party can also be held liable for accepting benefits from the transaction knowing the benefits were the result of a breach of fiduciary duty. Cf. Stephens County Museum, 517 S.W.2d 257.

A third party will not be held liable for knowingly participating in a breach of fiduciary duty when the third party is doing that which the third party has a legal right to do. See Baty v. ProTech Ins. Agency, Inc., 63 S.W.3d 841, 863 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

In regard to contribution, the court of appeals listed the various contribution schemes available in Texas and reached the conclusion that the case fell within section 32.001 of the Texas Civil Practice & Remedies Code, the original contribution scheme. The court was aided by the fact that the case had been filed before the effective date of the comparative responsibility statute, chapter 33 of the Civil Practice & Remedies Code. However, the court noted that chapter 33 would not apply in any event because the comparative negligence statute applies only to cases in which negligence is the only theory involved. Hendricks, 973 S.W.2d at 373. Since chapter 32 only comes into play when a payment is made or a judgment rendered, the court of appeals found that the trial court was premature in granting summary judgment on this issue. Id. at 374.

E. Business Relationships

Both the First and Fourteenth Courts of Appeal wrote on the creation of a fiduciary duty in, respectively, R.R. Street & Co. v. Pilgrim Enterprises, Inc., 81 S.W.3d 276 (Tex. App. – Houston [1st Dist.] 2001, rev’d on other grounds), and Swinehart v. Stubbsman, McRae, Sealy, Laughlin & Browder, Inc., 48 S.W.3d 865 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). In Swinehart, a geologist brought a legal malpractice action against his former attorneys, claiming that the firm had not properly represented him in connection with a lawsuit against an oil company that had gone into bankruptcy. Swinehart, 48 S.W.3d 865. One of the issues involved in the appeal was whether the oil company had owed a fiduciary duty to the plaintiff geologist. The Fourteenth Court of Appeals considered two possible grounds for the imposition of the fiduciary duty: (1) the geologist had a joint venture with the oil company, which would give rise to a fiduciary relationship as a matter of law; and (2) an informal confidential relationship arose that created a question of fact. In holding that there was no duty created as a matter of law on the first ground, the court pointed to testimony that indicated that the parties had not agreed to share losses in their business arrangement. In regard to the second ground, the court reviewed the testimony and record to find that a prior confidential relationship (before the dispute in question) had not existed, nor did the record indicate anything other than an arm’s length relationship, except for the plaintiff’s testimony that he had
subjectively trusted the oil company. The court found that subjective trust by one party to the agreement did not give rise to enough of a relationship to justify the imposition of a fiduciary duty.

In R.R. Street, the First Court of Appeals reviewed a case in which the owner of a dry cleaning plant (Pilgrim) brought both statutory and common law claims against the supplier of dry cleaning products, seeking to recover environmental cleanup costs and other damages. R.R. St., 81 S.W.3d 276. The case was tried to a jury and the trial court directed a verdict against the plaintiff on the breach of fiduciary claims. On appeal, the First Court of Appeals reviewed the facts on the record that the plaintiff claimed created a special relationship.

In affirming the trial court, the court of appeals focused on the fact that no evidence was offered of a special relationship of trust and confidence apart from the business relationship made the basis of the lawsuit. Additionally, neither party was in a dependent position, since each was an accomplished businessman who knew how to deal with environmental issues.

In Pabich v. Kellar, 71 S.W.3d 500 (Tex. App.—Fort Worth 2002, pet. denied), a former employee and minority shareholder in a video reconditioning business sued the majority shareholder for breach of fiduciary duty, fraud, and tortious interference. The trial court held that, as a matter of law, a fiduciary duty existed between the shareholders. On appeal, the Fort Worth Court of Appeals held that the trial court committed error by assuming the existence of a fiduciary duty instead of submitting it to the jury, stating that “[a] co-shareholder in a closely held corporation does not as a matter of law owe a fiduciary duty to his co-shareholder.” Pabich, 71 S.W.3d at 504. The fact that the two parties worked together in several business ventures and at one time were close friends did not establish a fiduciary duty as a matter of law.

The Pabich case must be distinguished from the older case of Davis v. Sheerin, 754 S.W.2d 375 (Tex. App.—Houston [1st Dist.] 1988, writ denied), which holds that minority shareholders are owed a fiduciary duty by the majority shareholder in close corporations. The Davis case has never been overruled and is cited by commentators as still being good law. See Douglas Moll, Majority Rule Isn’t What It Used To Be: Shareholder Oppression in Texas Close Corporations, 63 Tex. B.J. 434 (2000); Douglas K. Moll, Shareholder Oppression in Close Corporations: The Unanswered Question of Perspective, 53 Vand. L. Rev. 749 (2000).

In Willis v. Donnelly, 118 S.W.3d 10 (Tex. App.—Houston [14th Dist.] 2003), aff’d in part and rev’d in part, 199 S.W.3d 262 (Tex. 2006), the court cited Pabich for the proposition that the existence of a fiduciary duty between co-shareholders in a closely held corporation depends on the circumstances. The court focused on the defendant’s oppressive conduct and dominating control of the business. The court cited several facts that showed the defendant used his control to seek personal advantage. Based on these facts, the trial court instructed the jury that the defendant owed a fiduciary duty. On appeal, the defendant argued that it was error to instruct the jury on the fiduciary duty. The Fourteenth Court of Appeals agreed that the existence of the duty was a fact question, but ruled that the defendant waived the error by not objecting to the charge prior to submission to the jury. Thus, the holding in Pabich remains the standard, leaving Willis as distinguishable on procedural grounds.

The existence of a fiduciary relationship between majority and minority shareholders in a closely held corporation remains unsettled. In Allen v. Devon Energy Holdings, LLC, --- S.W.3d ----, 2011 WL 3208234 (Tex. App.—Houston [1st Dist.] 2011, no pet. hist.) the First Court of Appeals reiterated the general rule that “[a] formal fiduciary relationship is not created automatically between co-shareholders simply because the plaintiff is a minority shareholder in a closely held corporation.” Id. at *25. The Court noted that while the Texas Supreme Court has not addressed a breach of fiduciary duty claim by a minority shareholder against a majority shareholder in such a situation, several jurisdictions throughout the country have held that such a duty exists. Id. at n.21. These courts justify the existence of such a duty by treating closely held corporations similar to partnerships rather than larger corporations. Id.

The First Court of Appeals declined to extend a formal fiduciary duty to shareholders of closely-held corporations, but nevertheless held that it could be possible to prove an informal fiduciary duty between such shareholders. Id. at *25. Citing Willis, the First Court of Appeals explained that an informal fiduciary duty might be created “in certain circumstances in which a majority shareholder in a closely held corporation dominates control over the business.” Id. Because such an imbalance of power is commonplace in closely-held corporations, it appears that breach fiduciary duty can be a useful weapon in a minority shareholder’s arsenal.

The Amarillo Court of Appeals went a little further than Pabich in Robbins v. Payne, 55 S.W.3d 740 (Tex. App.—Amarillo 2001, pet. denied), in holding that two founders of an Internet business did not have a fiduciary duty toward each other, when the relationship was not longstanding and did not go “beyond that ordinarily existing between parties to a contract of this type.” Robbins, 55 S.W.3d at 749. The Amarillo Court of Appeals also held that it did not create a fact issue for one of the parties to “admit” owing a fiduciary duty since from a “legal standpoint” the party stated that he did not understand the term and only knew what it meant “to him.” Id.
Compare the Robbins case with Carr v. Weiss, 984 S.W.2d 753 (Tex. App.—Amarillo 1999, pet. denied). In Carr, the Amarillo Court of Appeals reviewed the evidence on the existence of a fiduciary duty in a case where the plaintiff sued based on an oral contract to jointly acquire an apartment complex with the defendant. After the complex was purchased, the defendant purchaser denied the agreement and the plaintiff brought suit based on breach of fiduciary duty, fraud, negligent misrepresentation, and breach of oral contract. After reviewing the personal relationship between the parties, the court of appeals held that the evidence was sufficient to present a jury question on the existence of a fiduciary duty. The evidence reviewed by the court included the social history of the parties, the business relationship, and representations made by both parties during the time period in question. Carr, 984 S.W.2d at 766. The court stated that “the relationship between the parties, their activities, and their objectives was more than a mere personal relationship but was, rather, of a confidential nature.” Id. at 765.

In E.R. Dupuis Concrete Co., 137 S.W.3d 311, a concrete company brought suit against a life insurance company and its agents for the purchase of a variable life insurance policy on the life of its president. The concrete company alleged that a fiduciary duty existed between the company and the agents because the agents gave an “estate planning kit” and prayed together at the local church. The court held that this did not raise a fact issue because there was no indication from this evidence that there was a pre-existing relationship involving a high degree of trust and confidence over a long period of time.

By way of contrast, in Flanary v. Mills, 150 S.W.3d 785 (Tex. App.—Austin 2004, no pet.), a plaintiff shareholder in a home building corporation sued another shareholder, claiming a fiduciary duty existed. Plaintiff was defendant’s nephew and the evidence was that he was “more like a big brother than an uncle.” Flanary, 150 S.W.3d at 794. They worked together in several businesses prior to the home building business and the nephew relied on his uncle to handle the finances and profitability of the business. Under these circumstances, the judgment in favor of the plaintiff was affirmed as sufficient evidence of the fiduciary relationship.

F. Partnerships

In Welder v. Green, 985 S.W.2d 170 (Tex. App.—Corpus Christi 1998, pet. denied), the Corpus Christi Court of Appeals stated that a partner owes a “strict duty” of good faith and candor, and that there is a “general prohibition” against the fiduciary using the relationship to benefit his personal interest, except with full disclosure to the principal. Welder, 985 S.W.2d at 175.

The court’s language tracks the language of cases prior to 1994, when the Texas Revised Partnership Act was passed. Prior to 1994, the law in Texas was clear that each partner owed a fiduciary duty to each of the other partners and this relationship was characterized as “highly” fiduciary in nature. See Johnson, 120 S.W.2d 786. The adoption of the Texas Revised Partnership Act was intended to bring partnership law in line with modern business practices, including a rejection of the traditional “fiduciary” label, but cases still carry over the stricter language. See, e.g., Brosseau v. Ranzau, 81 S.W.3d 381, 395 (Tex. App.—Beaumont 2002, pet. denied) (partners owe one another a fiduciary duty, included in which is a strict duty of good faith, while a managing partner owes his partners the highest fiduciary duty recognized in law).

In Harris v. Archer, 134 S.W.3d 411 (Tex. App.—Amarillo 2004, pet. filed), the Amarillo Court of Appeals followed the presumption that partners still owe a traditional fiduciary duty to each other in a case that involved the sale and transfer of partnership interests. In Harris, one partner bought out two others on a building, then sold the building for a profit. Harris, 134 S.W.3d 411. The Amarillo Court of Appeals, without discussing the Partnership Act, stated that as long as the partnership existed, the remaining partner had a duty to disclose material negotiations on the building that were ongoing prior to terminating the partnership as a part of his fiduciary duty. Id.

While partners have a significant fiduciary relationship with each other, the Texas Supreme Court has held that there is no such duty to remain partners. Bohatch v. Butler & Binion, 977 S.W.2d 543, 546 (Tex. 1998). Reasoning that “[a] partnership exists solely because the partners choose to place personal confidence and trust in one another,” the Supreme Court held that there is not even a limited duty to retain a whistleblower partner. Id. The importance of trust amongst partners evidently overshadows public policy in protecting whistleblowers.

Under Texas law, there is no formal fiduciary relationship between a lessee and a royalty owner. HECl Exploration Co. v. Neel, 982 S.W.2d 881, 888 (Tex. 1998). Furthermore, the duty to develop a mineral lease arises from the implied covenant doctrine of contract law, not from a fiduciary duty arising out of agency law. In re Bass, 113 S.W.3d 735, 743 (Tex. 2003).

G. Limited Partnerships

In Noell v. Crow-Billingsley Air Park Ltd. Partnership, 233 S.W.3d 408 (Tex. App.—Dallas 2007, pet. denied), the Dallas Court of Appeals held that appellant Noell failed to show that appellee, Crow-Billingsley Air Park Limited Partnership and its general partner, owed him a fiduciary duty as a limited partner. Noell brought suit asserting that the trial court
erred in granting summary judgment because Crow-Billingsley Air Park Limited Partnership and its general partner breached their fiduciary duties to him. 

Noell, 233 S.W.3d at 412. Noell asserted that a formal fiduciary relationship existed between him and the partnership because he was a limited partner. Noell cited no authority showing that a limited partnership, itself, was the fiduciary of a limited partner; as a result, the court held that no fiduciary duty existed between the parties. 

I. Statute of Limitations

In re Estate of Fawcett, 55 S.W.3d 214 (Tex. App. —Eastland 2001, pet. denied), stated that both fraudulent concealment and “inherently undiscoverable” injuries have been referred to as discovery rule cases. The court of appeals reasoned that injuries occurring in a fiduciary relationship would seem to be in the first type of case (fraudulent concealment), but have instead been categorized as “inherently undiscoverable.” In re Estate of Fawcett, 55 S.W.3d 214. The court pointed out that the result is the same: the issue is when the plaintiff knew or should have known, with the exercise of reasonable diligence, of the injury. In this case, the court of appeals ruled that the trial court erred in granting the summary judgment. See also Yazdchi v. Wash. Mut., No. 14-04-00639-CV, 2005 WL 2276886, at *3 (Tex. App.—Houston [14th Dist.] Sept. 20, 2005, no pet.) (“Their breach of fiduciary duty claim accrued when the Yazdchis knew, or should have known with the exercise of reasonable diligence, that the Bank paid the checks.”).

H. Employer/Employee

A key employee of a trucking company started a competing trucking company. Before leaving his job, he incorporated the new company, bought insurance, obtained hauling permits and talked with drivers about leaving the old company to join his new company. The trucking company sued the key employee for breach of fiduciary duty. Abetter Trucking Co. v. Arizpe, 113 S.W.3d 503 (Tex. App.—Houston [1st Dist.] 2003, no pet.). In an opinion that appears contradictory, the First Court of Appeals acknowledged that an agent has a fiduciary duty not to compete with the principal and that an employee has a duty to deal openly with an employer and to fully disclose information affecting the company’s business. Arizpe, 113 S.W.3d at 510. After citing this established law, the court then concluded “there is nothing legally wrong in engaging in such competition or in preparing to compete before the employment terminates.” Id. The court was influenced by the fact that the employee was an at-will employee, not subject to a non-compete clause.

More recently, in Daniel v. Falcon Interest Realty Corp., 190 S.W.3d 177 (Tex. App.—Houston [1st Dist.] 2005, no pet.), Falcon hired Guy Daniel to serve as project manager and on-site superintendent of a construction project. Part of Daniel’s job included soliciting bids. Unknown to Falcon, Bell hired B&L, a subcontractor run by his wife’s parents. Moreover, Daniel and his wife personally received approximately $200,000 from B&L for Falcon-related operations. The court held that Daniel breached his fiduciary duties of loyalty, fair dealing, and full disclosure to Falcon. Daniel, 190 S.W.3d at 185-86. “Regardless of whether Falcon was satisfied with the quality of B&L’s work, information that Guy would be required to disclose to Falcon would necessarily include that he and his wife were heavily involved in the creation and operation of B&L, including the preparation of bids and proposals for work to be performed on the project, and, more significantly, that he and his wife were reaping a substantial profit from such work.” Id. at 186.

J. Corporate Directors and Mergers

Corporate directors owe a fiduciary duty to act in the best interests of the corporation’s shareholders. This fiduciary duty, however, is owed directly to the corporation, not to the individual shareholders. Hoggett v. Brown, 971 S.W.2d 472, 488 (Tex.App. – Houston [14th Dist.] 1997, writ denied). A shareholder, or a group of shareholders, may still bring a derivative lawsuit on behalf of the corporation to seek redress in the event that a director breaches his duty to the corporation.

Corporate law tends to insulate the good faith decisions of disinterested corporate directors from judicial second-guessing. The business-judgment rule embodies such a policy, and has been extended to shareholders’ challenges to mergers. LC Capital Master Fund, Ltd. v. James, 990 A.2d 435, 451-52 (Del. Ch. 2010) (because so many corporations are incorporated in Delaware, Delaware law tends to provide the most instructive body of law).

The business judgment rule shields director decisions from judicial scrutiny as long the decisions were the product of a rational process and the directors availed themselves all material and reasonably available information. Gearhardt Indus., Inc. v. Smith Intern., Inc., 741 F.2d 707, 741 (5th Cir. 1984).

Once the sale, or merger, of a corporation becomes inevitable, the duty of the board of directors changes from the preservation of the corporate entity to a duty to maximize the company’s value at a sale for the stockholder’s benefits. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986). The business judgment rule extends to the Revlon rule as well. Lyondell Chemical Co. v. Ryan, 970 A.2d 235, 242-43 (Del. Super. 2009) (“No court can tell directors exactly how to accomplish [the Revlon] goal, because they will be facing a unique
combination of circumstances, many of which will be outside their control). See also Barkan v. Amested Industries, Inc., 567 A.2d 1279, 1286 (Del. 1989) (“there is no single blueprint that a board must follow to fulfill its duties.”).

Courts have highlighted both the positive and negative aspects of various boards’ conduct under Revlon. See, e.g., Barkan, 567 A.2d at 1287 (Directors need not conduct a market check if they have reliable basis for belief that price offered is best possible); Paramount Communications, Inc. v. QCV Network, Inc., 637 A.2d 34, 49 (Del. 1994) (No-shop provision impermissibly interfered with directors’ ability to negotiate with another known bidder); In re Netsmart Technologies, Inc. Shareholders Litig., 924 A.2d 171, 199 (Del. Ch. 2007) (Plaintiff likely to succeed on claim based on board’s failure to consider strategic buyers).