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BROOK VALLEY LIMITED PARTNERSHIP, A NEBRASKA LIMITED PARTNERSHIP, AND BROOK VALLEY II, LTD, A NEBRASKA LIMITED PARTNERSHIP, APPELLANTS, V. MUTUAL OF OMAHA BANK, FORMERLY KNOWN AS NEBRASKA STATE BANK OF OMAHA, A STATE BANKING INSTITUTION, AND OMAHA FINANCIAL HOLDINGS, INC., A NEBRASKA CORPORATION, SUCCESSOR TO MIDLANDS FINANCIAL SERVICES, INC., A NEBRASKA CORPORATION, APPELLEES.

797 N.W.2d 748

Filed May 6, 2011. No. S-10-043.

1. **Standing: Jurisdiction: Parties.** Standing is a jurisdictional component of a party's case.
2. **Jurisdiction: Judgments: Appeal and Error.** Determination of a jurisdictional issue which does not involve a factual dispute is a matter of law which requires an appellate court to reach its conclusions independent from a trial court.
3. **Contracts: Appeal and Error.** The interpretation of a contract involves a question of law, in connection with which an appellate court has an obligation to reach its conclusions independently of the determinations made by the court below.
4. **Standing.** In order to have standing to invoke a tribunal's jurisdiction, one must have some legal or equitable right, title, or interest in the subject of the controversy.
5. **Parties: Standing.** Either a party or the court can raise a question of standing at any time during the proceeding.

Appeal from the District Court for Sarpy County: DAVID K. ARTERBURN, Judge. Reversed and remanded for further proceedings.

Michael J. Mooney and Francie C. Riedmann, of Gross & Welch, P.C., L.L.O., for appellants.

James B. Cavanagh, of Lieben, Whitted, Houghton, Slowiaczek & Cavanagh, P.C., L.L.O., for appellees.

CONNOLLY, GERRARD, MCCORMACK, and MILLER-LERMAN, JJ., and IRWIN, Judge.

MILLER-LERMAN, J.

NATURE OF THE CASE

Appellants, Brook Valley Limited Partnership (BVLP) and Brook Valley II, LTD (BVII) (collectively the Partnerships), filed suit in 2004 in the district court for Sarpy County against

Mutual of Omaha Bank, formerly known as Nebraska State Bank of Omaha, and Omaha Financial Holdings, Inc., successor to Midlands Financial Services, Inc. (collectively the Banks), for, inter alia, breach of fiduciary duty and conversion. The action stems from loans made by the Banks in July and October 2000 which were secured by partnership property. The real property was ultimately sold to cover payment on the loans.

The case was tried to the court. The agreements establishing the Partnerships (Partnership Agreements) were nearly identical. The district court determined that under the Partnership Agreements, general partners are empowered to authorize lawsuits. The district court concluded that because the general partners who succeeded the original general partner, Prime Realty, Inc., had not been duly elected, they were without power to authorize this lawsuit. The district court concluded that the Partnerships lacked standing and dismissed the case. The Partnerships appeal. We conclude that the issue of the Partnerships' standing was properly before the court and that because the successor general partners were selected pursuant to the Partnership Agreements, the Partnerships had standing. Accordingly, we reverse, and remand for further proceedings.

STATEMENT OF FACTS

BVLP and BVII were created in 1993 and 1997 respectively. The Partnerships were created to develop real estate in Sarpy County, Nebraska. At the time they were created, the general partner for both of the Partnerships was Prime Realty. The president of Prime Realty was James McCart. Pursuant to the Partnership Agreements, as general partner, Prime Realty was responsible for the day-to-day management of the Partnerships and had authority to initiate lawsuits on behalf of the Partnerships.

In July and October 2000, McCart, on behalf of Prime Realty, obtained loans from the Banks. The loans were secured by real property belonging to the Partnerships. A loan officer from the Nebraska State Bank of Omaha testified at trial that at the time the Banks made the loans to McCart, bank representatives were aware that McCart had overdrawn his accounts by

over $2 million as a result of a check-kiting scheme. The loan officer testified that the July and October loans were made in part to assist McCart in covering his overdrafts.

A federal indictment was filed against McCart in the U.S. District Court for the District of Nebraska, based on the check-kiting scheme. Representatives from the Nebraska State Bank of Omaha participated in the prosecution of McCart, and McCart was convicted.

There was testimony at trial that in March 2002, Prime Realty and McCart declared bankruptcy. Ultimately, the Banks sold the real property owned by the Partnerships to mitigate their losses based on McCart's inability to pay back his July and October 2000 loans.

At some point, the limited partners became aware of the July and October 2000 loans, the March 2002 bankruptcy filing, and the legal issues involving McCart and Prime Realty. At meetings conducted on August 21, 2002, the limited partners of BVLP selected Harrison Street Brook Valley Limited Management Company, LLC, as general partner of BVLP and Brook Valley on Giles Road Management Company, LLC, as general partner of BVII. The Banks argued, and the district court found, that the August meetings were for the purpose of removing Prime Realty as general partner and that the removal was not effective due to insufficient notice to Prime Realty.

After the bench trial, the district court filed an opinion and order on December 14, 2009, in which it dismissed the case for lack of standing. The district court determined that Prime Realty had not been properly removed as general partner under the terms of the Partnership Agreements and that because the lawsuit had not been authorized by Prime Realty, the Partnerships lacked standing to bring the lawsuit. The Partnerships appeal.

ASSIGNMENTS OF ERROR

The Partnerships claim, restated and summarized, that (1) because the Banks are not signatories to the Partnership Agreements, they have no basis to complain about purported irregularities under the Partnership Agreements in replacing Prime Realty as general partner and (2) in any event, because

the new general partners were selected in accordance with the Partnership Agreements after Prime Realty's bankruptcy caused it to involuntarily withdraw, the district court erred when it determined that Prime Realty was improperly removed, that the lawsuit was not authorized, and that the Partnerships lacked standing.

STANDARDS OF REVIEW

[1,2] Standing is a jurisdictional component of a party's case. *Countryside Co-op v. Harry A. Koch Co.*, 280 Neb. 795, 790 N.W.2d 873 (2010). Determination of a jurisdictional issue which does not involve a factual dispute is a matter of law which requires an appellate court to reach its conclusions independent from a trial court. *Id.*

[3] The interpretation of a contract involves a question of law, in connection with which an appellate court has an obligation to reach its conclusions independently of the determinations made by the court below. *Albert v. Heritage Admin. Servs.*, 277 Neb. 404, 763 N.W.2d 373 (2009).

ANALYSIS

As an initial matter, the Partnerships assert that because the Banks were not signatories to the Partnership Agreements, they were not in a position to raise the issue of compliance with the Partnership Agreements in connection with the method used to select the new general partners, Harrison Street Brook Valley Limited Management Company, LLC, and Brook Valley on Giles Road Management Company, LLC. The Partnerships therefore claim that the district court erred when it examined the standing of the Partnerships at the Banks' urging. Although, for reasons explained later in this opinion, we disagree with the district court's conclusion that the Partnerships lacked standing, it was not error for the district court to examine the Partnerships' standing as a jurisdictional component of the Partnerships' case.

In support of their argument challenging the district court's consideration of the Partnerships' standing, the Partnerships rely on cases where nonpartners unsuccessfully challenged partnership agreement compliance. For example, in *Baird Ward Printing v. Great Recipes Pub. Assoc.*, 811 F.2d 305 (6th Cir.

1987), the U.S. Court of Appeals for the Sixth Circuit determined that a creditor of a limited partnership did not have standing to challenge the withdrawal and replacement of a general partner. The court stated that the creditor

> was in no position to challenge the internal operation of the limited partnership, either by reliance upon the provisions of the agreement itself or the statute. Only parties privy to the partnership agreement are in a position to bring such a challenge, since the various rights and duties created by the agreement and the statute were intended to inure only to parties to the agreement.

Id. at 309. The court in *Baird Ward Printing* continued that there are "numerous situations where parties do not have standing to claim the benefit of protections designed for others" and that "[t]he formation of the limited partnership . . . was the product of a written agreement creating rights and duties among its signator[ie]s. There is no indication in the partnership agreement of any intent to create rights in favor of third party creditors." *Id.* See, similarly, *Swain v. Wiley College*, 74 S.W.3d 143, 148 (Tex. App. 2002) (stating that it appears "settled . . . that the legality of actions taken at a shareholders' meeting is not open to collateral attack by nonshareholders on any ground of informality or irregularity").

Along with the Partnerships, we agree with the legal propositions in the foregoing opinions, but we do not agree that such authorities control this case. Specifically, we disagree with the Partnerships who claim that such authority supports their position that the district court in this case should not, at the urging of the Banks, have examined the actions of the Partnerships in connection with the selection of the successor general partners, as such selection bore a relation to the standing of the Partnerships to bring this lawsuit.

[4] The propositions on which the Partnerships rely arose in cases in which the challenge to partnership agreement compliance was made by nonpartners suing as plaintiffs. In order to have standing to invoke a tribunal's jurisdiction, one must have some legal or equitable right, title, or interest in the subject of the controversy. *Spring Valley IV Joint Venture v. Nebraska State Bank*, 269 Neb. 82, 690 N.W.2d

778 (2005). Generally, apart from some obvious prejudice or enforceable right to engage in the general partner selection process, collateral attacks on the operations of the partnership by nonpartners suing as plaintiffs are not allowed. There is nothing in the record which demonstrates partnership rights in favor of the Banks or a satisfactory assumption of partnership rights by the Banks which would give the Banks authority to claim the benefits of the Partnership Agreements. The Banks are not signatories of the Partnership Agreements. The Banks' commercial relationship to the Partnerships derives not from participation in the Partnerships but from the secured loans made in July and October 2000. In any event, the Banks did not initiate this lawsuit or raise the Partnerships' standing issue as plaintiffs.

In contrast to the procedural posture of the authorities on which the Partnerships rely, the standing issue was raised in the Banks' answers as a defense in an action brought by the Partnerships serving as plaintiffs. In their answers, the Banks disputed the Partnerships' entitlement to invoke the jurisdiction of the court to bring their conversion and other claims.

[5] Standing is a jurisdictional component of a party's case, because only a party who has standing may invoke the jurisdiction of a court; determination of a jurisdictional issue which does not involve a factual dispute is a matter of law which requires an appellate court to reach its conclusions independent from a trial court. See *Countryside Co-op v. Harry A. Koch Co.*, 280 Neb. 795, 790 N.W.2d 873 (2010). The facts essential to resolution of the standing issue are not in dispute. Because standing is an aspect of jurisdiction and the challenge to the Partnerships' standing had been raised in the Banks' answers, the issue of standing of the Partnerships' suing as plaintiffs was necessarily before the district court for resolution as an initial matter at the trial. Either a party or the court can raise a question of standing at any time during the proceeding. See *Central Neb. Pub. Power Dist. v. North Platte NRD*, 280 Neb. 533, 788 N.W.2d 252 (2010). We therefore reject the Partnerships' assignment of error in which it claimed that the district court erred when, at the urging of the Banks, it considered the standing of the Partnerships to invoke

the jurisdiction of the court to pursue their conversion and other claims.

Upon consideration of the substance of the standing issue, the district court focused on article XII of the Partnership Agreements, "Removal of General Partner," and concluded that under section 12.1, the limited partners failed to give the general partner the notice required to effectuate its removal. The district court determined that the limited partners failed to comply with the Partnership Agreements with respect to the removal and replacement of Prime Realty as the general partner; the successor general partners were not properly "elected"; and because the lawsuit was not authorized by a proper general partner, the Partnerships lacked standing. As asserted by the Banks, and as implicitly found by the district court, "Prime Realty clearly remained as general partner of each partnership after the lawsuit . . . ." Brief for appellees at 38.

In contrast to the position of the Banks and the findings of the district court, the Partnerships claim, relying on various sections of the Partnership Agreements, that the general partner was not removed under section 12.1 but, instead, because of its bankruptcy, the general partner, Prime Realty, involuntarily withdrew under section 9.2(b) and the Partnerships continued to operate after the successor general partners were properly selected under section 8.3(b). The Partnerships assert that the new general partners were authorized to initiate the lawsuit filed by the Partnerships and that the Partnerships had standing to invoke the jurisdiction of the court. We agree with the Partnerships' interpretation of the Partnership Agreements. We thus conclude that the district court's interpretation was incorrect as a matter of law and that it erred when it concluded that the Partnerships lacked standing.

Our analysis of the standing issue is made by reliance on the Partnership Agreements and undisputed facts. The interpretation of a contract involves a question of law, in connection with which an appellate court has an obligation to reach its conclusions independently of the determinations made by the court below. *Albert v. Heritage Admin. Servs.*, 277 Neb. 404, 763 N.W.2d 373 (2009). The sections of the Partnership Agreements that are relevant to our analysis are quoted below.

Section 2.6 defines an "'Event of Bankruptcy,'" and Prime Realty's bankruptcy was encompassed in the definition of an "'Event of Bankruptcy.'" Section 2.7 defines an "'Event of Dissolution'" as including "the dissolution and liquidation, Event of Bankruptcy, or removal of a General Partner or any successor."

Section 9.2(b) covers the "Involuntary Withdrawal or Assignment by a General Partner" and states in part:

> In the event of any other occurrence described as an Event of Dissolution applying to a General Partner, and the Partnership being continued in accordance with Section 8.3, the representative of the former General Partner shall continue to hold its or his interest in the Partnership, but forthwith shall cease to have any other rights or power as a General Partner.

Section 8.2 covers the "Termination of the Partnership" and states:

> The Partnership shall be terminated upon the happening of any of the following events, whichever shall first occur:
>
> (a) An event of dissolution with respect to any General Partner, unless upon the occurrence of any such event of dissolution the Partnership is continued in accordance with the provisions of Section 8.3 of this Agreement[.]

Section 8.3 covers "Continuation of Partnership Upon Certain Events," and section 8.3(b) states:

> Upon the occurrence of any event or events provided in Section 8.2(a) of this Agreement with respect to a sole General Partner, the Limited Partners shall have the right to continue the business of the Partnership in accordance with the terms of this Agreement and the Uniform Limited Partnership Act for the State of Nebraska upon the selection by such Limited Partners, within ninety [90] days of such occurrence, of a new General Partner and upon such new General Partner executing this Agreement and the certificate amendment and agreeing to be bound by all of the terms and provisions hereof; provided, however, that counsel to the Partnership determines that such continuation would not result in the Partnership being classified

> for federal income tax purposes as an association taxable as a corporation and not as a partnership.

Reading the foregoing provisions of the Partnership Agreements together, it is clear that Prime Realty was not removed—much less improperly removed—as urged by the Banks and found by the district court. Instead, Prime Realty involuntarily withdrew as general partner due to its bankruptcy, and, pursuant to the Partnership Agreements, the successor general partners were selected. The record shows that Prime Realty was involved in a bankruptcy in March 2002, and such action was an "'Event of Bankruptcy'" as defined in section 2.6. An "'Event of Bankruptcy'" is included in the definition of an "'Event of Dissolution'" found in section 2.7. Once the general partner was involved in the bankruptcy, rather than dissolution or termination of the partnership, under section 8.3(b), the limited partners had the right to continue the business of the Partnerships upon the selection of a new general partner within 90 days. If this process is undertaken, then pursuant to section 9.2(b), the general partner is deemed to have involuntarily withdrawn and the general partner "shall cease to have any other rights or power as a General Partner."

Thus, in this case, after the general partner, Prime Realty, became involved in bankruptcy proceedings and involuntarily withdrew as general partner, the limited partners continued the Partnerships by selecting, not removing and electing, new general partners, and the process of replacing the general partner was completed pursuant to the Partnership Agreements. The new general partners had the authority to authorize the bringing of the instant lawsuit.

We note that Prime Realty's bankruptcy occurred in March 2002 and that the meeting resulting in the selection of new general partners was conducted in August. This meeting was not conducted within the 90 days specified in section 8.3(b) of the Partnership Agreements. The Banks were not prejudiced by this delay, and they are not in a position as nonshareholders to assert a collateral attack or assert procedural defects. See *Swain v. Wiley College*, 74 S.W.3d 143 (Tex. App. 2002). Similarly, the Banks are not in a position to object to a failure of timely adherence to the Partnership Agreements' requirements. See

Genet Co. v. Annheuser-Busch, Inc., 498 So. 2d. 683 (Fla. App. 1986). Under the facts of this case, we determine that exceeding the 90-day selection provision was a de minimis technical breach about which no limited partner in this case has objected and did not defeat the selection of the new general partners. See *Odmark v. Mesa Ltd. Partnership*, No. 94-10784, 1995 WL 413035 (N.D. Tex. June 19, 1995) (unpublished disposition listed in table of "Decisions Without Published Opinions" at 59 F.3d 1241 (5th Cir. 1995)). The district court's determination that the general partner was improperly removed was error, and its decision that the Partnerships lacked standing based thereon was further error and must be reversed.

CONCLUSION

The district court properly considered the standing of the Partnerships to bring this lawsuit. The district court erred when it determined that the general partner, Prime Realty, was not properly removed and that the successor general partners could not authorize the lawsuit and thus the Partnerships lacked standing. Instead, we conclude that the limited partners effectively complied with the Partnership Agreements in selecting the new general partners after the previous general partner, Prime Realty, involuntarily withdrew due to its bankruptcy. The district court erred when it concluded that the Partnerships lacked standing and dismissed the lawsuit. Accordingly, we reverse the order of dismissal and remand the cause to the district court for a decision on the merits.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

HEAVICAN, C.J., and WRIGHT and STEPHAN, JJ., not participating.