Issue

Under the Partnership Act 1891 (Qld) and the common law

1. Is there a partnership among Luke, Chris and Liam?
2. Did Chris have authority? What type of authority does Chris have?

3. Who is liable for Loki’s Logistics? Will TT or Chris be liable?

4. Did Chris breach his duty?

5. What remedies are available to “TT” and Chris?

Law

Legislation: Partnership Act 1891 (Qld)

s5 : partnership

s8 : authority

s12, s17: liability of partners

s27, s31, s32, s33: breach of contract

s28, s35, s38:PA enforcement and remedies

Common law:

Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd [1974]

Keith Spicer Ltd v Mansell [1970] - No partnership, as not “in common”​

Minter v Minter [2000] – partnership despite initial losses

Molinas v Smith [1932] – binding on partners ​

Goldberg v Jenkins (1889) –  Firm not liable in contractKendall v Hamilton (1879) – only one action available

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Kilpatrick v Mackay (1878) – profits from sale of hotel shared equally​

Law v Law [1905] – failure to disclose all partnership assets​

Birtchnell v Equity Trustees (1929) – liable to account for profits made using a partnership business connection​

Application:

Definition of partnership

Section 5 PA:“The relationship which subsists between persons carrying on a business in common with a view of profit.”(slide 36). There are four elements of section 5, if there are more than 2 people corporate together, each party’s behaviour needs to be repeated to a certain extent, and there are generally no isolated transactions (Canny Gabriel Castle Jackson Advertising), the partnership must be operated by or on behalf of all partners, each party will share its rights and obligations equally, each party will benefit from the partnership and be responsible for it (Keith Spicer), partnership do not actually need to be profitable, but they do need to be profitable at the beginning (Minter).

In this case, in June 2017, Luke, Chris and Liam decided to open a restaurant and this is more than 2 persons, they carry on the business together, they need to manage the restaurant at the same time and share the profits equally in common and they started this restaurant for the purpose of making money. So there is a partnership among Luke, Chris and Liam.

Authority

Section 8 PA : it is the law about actual authority ( about written and oral), if the partner has actual rights and it is bound by the actions of other partners, implied authority (about implied ability), unless otherwise stated in the partnership agreement, partners usually have rights in exceptional circumstances (Molinas) and apparent authority, whether the transaction is going to take place in the usual way is doubtful to the third party(Goldberg).

In this case, they had verbally assigned each person’s responsibilities, so Chris has actual authority clearly for nearly 2 years. However, Chris could not sign a contract which is over $5,000 secretly, he does not have the right to go above this amount. There is a purchasing specified limit for all the partners, so Chris did not have implied authority. And there is no evidence that TT informed Loki’s Logistics of its restrictions on Chris’s rights, therefore, from the perspective of Loki’s Logistics, Chris just signed the contract within his own duty, so TT needs to bear all $40,000 bill.

The liability of each party

Section 12 PA: If the partners have authority, and each partner shares all the obligations and responsibilities, the every partner has only one right of action and is best sued in the name of the firm (Kendall). Section 17 PA: If the partners themselves breach the agreement, the other partners in the firm can sue the offending partner in person, but the firm and the partners remain liable.

In this case, there is a relationship among Luke, Chris and Liam, so each person has the shared power and responsibility to manage TT, so they need to shoulder all the debts and obligations together. Under the common law Kendall V Hamolton (1897), due to the relationship of partnership, Luke, Chris and Liam have to pay $40,000 to Loki’s Logistics. And Chris breached the partnership agreement, so TT can sue Chris personally.

Breach of contract

Section 27 PA: all partners need to split all profits and losses equally (Kilpatrick). Section 31 PA: the partner shall provide all true accounts and complete information affecting the partnership to any partner or its legal representative (Law). Section 32 PA: the partner must pay the company any benefits that it receives without the consent of the other partners (Birtchnell). Section 33 PA: if, without the consent of the other partners, the partners engages in any business which is of the same nature and in competition with the business of the company, the partner must pay to the firm all profits made by the partner (Birtchnell).

In this case, TT’s losses need them to take, Chris managed his own restaurant “marvel’s Mexican” secretly, and this is also a restaurant, there is a competitive relation between TT and Chris’s restaurant. Under the common law Kilpatrick v Mackay (1878), Law v Law [1905] and Birtchnell v Equity Trustees (1929), TT needs to bear $40,000 that is only Chris made, Chris can not secretly opened a restaurant and it was the same attribute as TT. Moreover, Chris can not receive private profits because he breached his duty.

Conclusion

On the balance of probabilities, it is likely that the Queensland Magistrates Court would find there is a partnership among Luke, Chris and Liam, and they have authority to manage TT, so Luke, Chris, Liam and TT are liable for the negative consequences--$40,000 contract, although Chris used over his actual authority to sign the contract over $5,000, he acted with apparent authority. And Chris also breached his duty that he owned a personal restaurant which is a competitor to TT and he did not share the profits and signed the contract with LL in the name of TT and exceeded his management scope by $5,000.

Chris’s remedies

Chris is entitled to his own remuneration, if there is a clear or implied statement in the contract, but it is very likely that he was rejected because he breached his duties.

TT’s remedies

Applying s28 PA, a majority of the partners can not expel a partner unless a power to do so has been conferred by express agreement between the partners. TT should expel Chris, and TT can refuse to pay Chris the commission and sue Chris to compensate for the cost and pay the profits he made.

Question 1:

A) Section 49 PA

1. A limited partnership is a partnership, other than an incorporated limited partnership- that exists between 2 or more persons of whom 1 or more is or are a general partners and 1 or more is or are a limited partner or limited partners and a corporate person may be a general partner or a limited partner in a limited partnership.

Question 2:

1. The chief executive
2. Section 51 PA

Question 3:

1. Section 53 PA

B) Not to exceed the amount shown in relation.

Question 4:

1. No, he or she is not.
2. No, it can not.

Question 5:

1. Application for registration of limited partnership
2. $150.90