The Strong Firm P.C. Attorneys

StrongPoints

Our Home in Hughes Landing: The Dust Is Beginning to Settle

By: Bret Strong

It is hard to believe The Strong Firm will celebrate one year in Hughes Landing this summer. When we arrived to our new offices in August 2014, we did so based on the vision and promise by The Howard Hughes Corporation of a magnificent 66-acre development on the banks of Lake Woodlands. To our – and our clients' – delight, the Hughes Landing development has quickly blossomed into a wonderful reality.

With great fanfare, Whole Foods opened in March at the corner of Lake Woodlands and Lake Front Circle. The market is a wonderful amenity to drop in at breakfast or lunch and pick up prepared food or snag groceries on your way home in the evening. Right around the corner Starbucks has opened a new location and become a great place to meet a client for coffee and an informal chat. Local Pour, a "gastro pub," opened its doors in April and has become a favorite for lunch and after-work drinks. We understand that Escalante's (Fine Tex-Mex and Tequilla), Del Fricso's Grille and California Pizza Kitchen are all set to open in May with Truluck's coming this fall.

Retail businesses are starting to pop up around the 23,000 square feet of retail at the base of One Lake's Edge, an eight-story luxury multifamily development. With One Hughes Landing and Two Hughes Landing occupied and Three Hughes Landing set to open by the end of the year, many excellent companies and neighbors are occupying the beautiful office space around us on Lake Woodlands. This summer's Independence Day celebration will include a large fireworks display put on by The Woodlands Convention & Visitors Bureau with the best view right here in Hughes Landing.

For those of you who have yet to come see us, please drop by anytime or give us a call to meet you for coffee, lunch or drinks at one of the Hughes Landing establishments. We look forward to seeing you in Hughes Landing this summer!

Bret Strong

***Bret Strong** is the founder and Managing Shareholder of The Strong Firm P.C. His areas of practice include oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law in Texas, Colorado and before The United States Supreme Court. Bret is a founding board member of The Woodlands Bar Association, former Chairman of The Woodland Area Chamber of Commerce and currently serves on the Board of Leadership Montgomery County.*

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Beware of Unintended Partnerships: Planning Your Business Relationships

By: Royce Lanning

When two or more people go into business together, the default arrangement is a partnership, whether the individuals intended that or not, and the failure to legally define this relationship can result in litigation asserting a common law partnership was formed. Partnership litigation often catches at least one "partner" completely off guard because it was never intended, envisioned, discussed or understood as a possible result of their combined efforts towards success.

No single factor determines if a partnership was intended between individuals. Rather, Texas courts examine the entire business arrangement to decide whether a partnership exists with particular focus on the following factors:

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Properly Classifying Employees and Independent Contractors

By: Eric R. Thiergood, Sr.

Eric R. Thiergood, Sr.

Is your "independent contractor" actually an employee? While it seems like a relatively simple question, the ramifications are substantial to a business owner. Misclassifying and paying a worker as a 1099 independent contractor when in reality he or she should be treated as a W2 employee can result in a variety of consequences for the employer. Misclassifying a worker often means the employer has also failed to pay the proper amount of employment taxes on that person, improperly shifting the tax burden to the employee.

The reasons employees are misclassified as independent contractors can range from a simple mistake to nefarious financial gain. At times, it is the contractor/ employee who requests or prefers to be paid as a 1099 contractor rather than a W2 employee because his or her paycheck will typically be higher since no taxes are withheld. However, though this will result in a higher pay check initially, in the end the worker will be hit with increased tax liability when they file their annual income taxes and are responsible for paying self-employment taxes. Employers must always remember that regardless of what a worker wants or prefers, it is the employer's responsibility to properly classify the contractor/employee status of its workers.

Some employers prefer to treat and pay all workers as 1099 contractors because they simply find it easier on the HR and administrative side. Other employers have a purely financial motivation for the misclassification as independent contractors are not entitled to overtime pay, unemployment benefits and are not typically covered by worker's compensation insurance. For these reasons, some employers who are willing to push the line of illegal and unethical business practices will intentionally and knowingly misclassify workers as independent contractors rather than employees for financial gain. Regardless of the motivation and intent, the misclassification of a worker will create a number of headaches for employers.

Businesses are facing increased scrutiny from at least three separate state and federal agencies: the Texas Workforce Commission, the Texas Office of the Comptroller of Public Accounts, and the United States Internal Revenue Service (IRS). Misclassification of workers most often results in the underreporting and underpaying of various state and federal employment and income taxes, which understandably supplies the motivation for these agencies to aggressively investigate and uncover businesses that have misclassify their workers. Failure or refusal by an employer to properly classify its workers can subject it to a number of state and federal civil penalties. Moreover, an employee who has been mischaracterized may be entitled to between two and three years' worth of unpaid overtime once the misclassification is discovered.

***Eric R. Thiergood, Sr.**, Income Shareholder, joined The Strong Firm P.C. in 2005. Eric graduated from South Texas College of Law and is licensed to practice in Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. He lived a large portion of his life in Asturias, Oropesa Del Mar and Madrid, Spain and is fluent in Spanish.*

Extroversion vs. Introversion: Learning How to Adapt to a Client's Personality

By: Kyla Wilder

Kyla Wilder

As a business, The Strong Firm understands the value of knowing and using personality types within the firm to promote synergy amongst the staff in order to meet client objectives and deadlines. Recently, the firm brought in a specialist to administer the Myers-Briggs Type Indicator personality test on all employees. Not only was it interesting to learn the different personality types within the office, it also encouraged each of us to be cognizant of how we can more effectively communicate with clients with different personality types than our own. After a few initial discussions with a client, you should have a good idea whether they are an introvert or extrovert. Here are a few common characteristics associated with each personality type:

Introvert:

- Examiner, keeps to self, quiet, deliberate, internally aware, prefers smaller groups, not socially inclined, enjoys solitude, thinks before speaking
- Well-known introverts: Bill Gates, Mahatma Gandhi, Albert Einstein

Extrovert:

- Assertive, talkative, likes groups, parties, social events, etc., energized by interaction, expressive, volunteers personal information, distractible, has many friends, easy to approach
- Well-known extroverts: Steve Jobs, Winston Churchill, Bill Clinton

Personally, I am a textbook extrovert I think and talk out loud, love socializing one on one or at large events, and generally consider myself an open book. When I work with an introverted client, I am mindful of our personality differences and try to take that into consideration throughout our representation. If you are a fellow extrovert like me, consider taking the following approaches when working with an introvert personality: respect the introvert's reserve and privacy; deal with an introvert one on one rather than in large group settings; and allow an introvert to process information on their own. Do not pressure an introvert to make a quick decision on the spot without allowing time to process. Alternatively, if you are an introvert and find yourself working with an extrovert personality, consider the following approaches to improve communication: allow an extrovert to explore and talk things out; offer an extrovert more than one option to consider; and accept and encourage an extrovert's enthusiasm.

The world would be a boring place if we were all the same, so take this opportunity to understand your personality type and learn how you can be a more effective communicator with your clients going forward.

***Kyla Wilder**, Associate Attorney, joined The Strong Firm in 2013. A Texas native, she spent 8 years of her childhood living in Dubai. In 1999, Kyla's family relocated back to the U.S. in The Woodlands where she attended The John Cooper School. She received her undergraduate degree from Texas A&M University and earned her law degree from South Texas College of Law. During her 2nd summer of law school, she studied abroad at Charles University School of Law in Prague, Czech Republic.*

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It's Not Me, It's You: Business Divorces
in Partnerships, Closely Held Corporations, and Limited Liability Companies

Adam Looney

By: Adam Looney

There are many ways that business partnerships are like a marriage. Both create legally binding obligations on those who enter into them, and just like a marriage, a business partnership requires commitment, trust, and hard work. Each person involved must do their part in order for the venture to succeed.

Despite the colloquialism "it's just business," the shared experience of starting and operating a new business often results in the forging of an almost familial relationship among the members. It is this emotional connection between business partners that creates yet another similarity between a small business and a marriage: divorce.

While the legal term of art varies depending on the type of entity and the specifics of each situation, as a general rule when business partners part ways it gets messy. The fight revolves around whose fault it is that things aren't working out, who invested more in the partnership, and, of course, who gets what. If you have ever been through a divorce, or been close to someone who has, these issues probably sound all too familiar. It is these similarities that have led to the adoption of the term "business divorce" to refer to the process of legal separation between the owners of a partnership or other closely held business entity.

Like the dissolution of a marriage, it is almost always more efficient to negotiate an amicable business divorce. Unfortunately, business divorces seem to end up in litigation more often than not. I don't practice family law so I cannot make a direct comparison, but business divorces are some of the most contentious cases I handle. I believe this is because there is always an element of personal betrayal involved. Inevitably one partner feels taken advantage of by those they once trusted. This emotional component has a tendency to amplify many of the negative aspects that are always inherent in litigation – the stress, fatigue, and worry. I often counsel my business divorce clients to try and leave their feelings at the door when evaluating whether or not to file suit.

Sometimes, however, a lawsuit is unavoidable. And in those situations, our goal is always to achieve the best result for our clients while minimizing the interruption to their life and future business.

***Adam Looney**, Associate Attorney, joined The Strong Firm P.C. as in 2012. He graduated Summa Cum Laude from Pepperdine University School of Law in 2009 and was elected into the Order of the Coif. Adam started his career as a Litigation Associate at the law firm of Baker Botts L.L.P.*
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Know Your Role:
Fiduciary Duties of the Corporate Director

Brian Albert

By: Brian Albert

For most legal issues, Texas corporations are governed by the Texas Business Organizations Code. However, one topic that is not expressly addressed is the fiduciary duties of corporate directors. Case law has established the principle that directors owe their corporations three general fiduciary duties: a duty of obedience, a duty of care, and a duty of loyalty. As a corporate director, each of your actions must take into consideration these duties, and failure to do so could result in substantial damage to both the company and yourself.

The duty of obedience prohibits a director from pursuing actions outside of the authorized powers of the corporation. This duty is rarely an area of concern given that most modern corporate laws define corporate powers broadly and permit extensive purpose clauses in the certificate of formation. Therefore, courts rarely impose personal liability on directors for illegal or ultra vires acts of corporate agents unless the directors either participated in the act or had actual knowledge of the act.

The duty of care requires a director to be diligent and prudent in managing the corporation's affairs. The established standard for this duty requires that a director handle their corporate duties with the same care as an ordinarily prudent person would use under similar circumstances. However, compliance with this duty is aided by the principle known as the business judgment rule, which provides that a director who acts in good faith and without corrupt motive will generally not be held liable for judgment mistakes that damage corporate interests. This caveat protects all but obvious fraudulent or illegal conduct. Therefore, directors may, in good faith and with ordinary care, rely on information, opinions, reports, or statements prepared or presented by officers or employees of the corporation, or by legal counsel and others with professional or other expertise without being overly concerned with violating the duty of care.

The final duty, the duty of loyalty, requires honesty, good faith and loyal conduct towards the best interests of the company. While case law does provide examples of certain transactions or conduct that implicate the duty of loyalty, such as self-dealing and usurpation of a corporate opportunity, similar to the duty of care, most corporation laws include stipulations that leave the door open for interested-director transactions so long as there is full disclosure by the interested director and approval by the disinterested directors or the shareholders. Likewise, even without full disclosure, the transaction will oftentimes withstand challenge if it passes scrutiny for "fairness" to the corporation.

While each of these obligations are potentially weakened by the various exceptions and limited applications, it is still critical for directors to understand their role in the corporate structure and to respect the duties placed upon them. A corporation depends on its leaders, and as a director you owe it to your company to fulfill your duties.

***Brian Albert**, Associate Attorney, joined The Strong Firm P.C. in 2012. His areas of practice include oil and gas, commercial real estate, business law and contracts, and trademark law. He received his Juris Doctorate from the University of Houston Law Center and a B.S. in Business Administration with a specialty in Finance from American University in Washington, D.C. He has previously worked for Baker Hughes, Inc.'s and Hewlett-Packard's in-house legal departments.*
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Commercial Tenant Eviction

By: Wendy Lambie

Wendy Lambie

Although a commercial tenant does not have the same statutory protections as residential tenants, there are still specific legal procedures, as outlined in the commercial lease and the Texas Property Code, which are vital to a proper eviction process. Below is a rough outline of some important considerations in a commercial eviction:

Step 1 Commercial lease provisions should be thoroughly reviewed to determine grounds for an eviction. This review should include examining how and when the tenant defaulted, any grace periods or cure options available to the tenant, and remedies available to the landlord. Oftentimes these provisions are different for each type of default within the same lease. The appropriate sections of the Texas Property Code should also be reviewed with regards to any statutory requirements imposed on the landlord.

Step 2 The landlord should properly notify the tenant of the claimed default(s). Proper notice is a mandatory prerequisite for filing an eviction action. Texas Property Code Section 24.005 establishes a three-day written notice requirement to vacate prior to filing suit unless the lease states a different time period. There are certain instances in which the statutes may require more, less, or additional notices and procedures. For example, if the tenant is a holdover past the term of the lease, if the tenant is a tenant at will or by sufferance, or if the occupant gained possession of the property by forcible entry.

Step 3 The landlord files a proper forcible detainer action in the appropriate court. Most eviction proceedings in Harris and Montgomery counties will be assigned to a Justice of the Peace Court associated with the address of the leased property. Once the complaint is filed, the court will immediately issue a citation commanding the tenant to appear between six to 10 days from when the citation was served. The defendant can respond in writing or by appearing on the court date. At the trial, the judge will hear all evidence and render a judgment. If the defendant fails to appear, the allegations in the complaint will likely be deemed admitted and a default judgment entered in favor of the landlord.

Step 4 Request a writ of possession from the court, which will entitle the landlord to take possession of the property by evicting the tenant. Present the writ to the county sheriff and ask them to remove the tenant.

The landlord-tenant relationship is a complex and statutorily regulated relationship. Before commencing the eviction process, landlords and tenants should consult an attorney to confirm they have taken the appropriate measures and given the required notices to insure a smooth eviction process. Real estate attorneys who represent landlords or tenants are able to diligently review and follow the proper procedures applicable to the situation.

***Wendy Lambie**, Associate Attorney, joined The Strong Firm, P.C. in 2013. Wendy received her Juris Doctorate from South Texas College of Law and is licensed to practice law in the State of Texas and in the United States Federal District Court for the Southern District of Texas. During her career, she has gained valuable experience with Houston area firms, focusing her practice on estate planning and probate. In addition, she has in-depth experience in oil and gas matters, with special emphasis on title issues.*

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Beware of Unintended Partnerships

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Royce Lanning

(1) Receipt or right to receive a share of profits of the business;
(2) expression of an intent to be partners in the business;
(3) participation or right to participate in control of the business;
(4) agreement to share or sharing:
  (a) business losses; or
  (b) liability for claims by third parties against the business;
(5) agreement to contribute or contributing money or property to the business.

Although not determinative, courts have historically placed a special emphasis on the first factor, however, we can easily identify business relationships that involve shared profits not intended to result in joint ownership of the business, such as sales commissions and performance-based compensation for managers/general managers/consultants, etc. When we properly structure and document those arrangements there is little opportunity to argue that the parties intended to enter into a partnership.

By contrast, litigation is a frequent result of parties proceeding with a verbal understanding and a handshake because somewhere along the way the actual owner unwittingly ran afoul of one (or more) of the other factors without any intention of sharing ownership of the business. For instance, a general manager is expected to make business decisions regarding the operations of a store or restaurant. Likewise, an equity owner that hires a key manager to operate a business that the owner lacks knowledge to operate may refer to that key manager as a “partner” or sign – or allow the manager to sign – forms that refer to that manager as an “owner” or “partner” as a practicality toward everyday operations.

A person with a plausible claim may bring suit to assert the existence of a partnership when relations turn bad. If a partnership exists, then all of the rights and duties of a partnership are owed regardless of whether they are 50/50 or 90/10 partners. In a partnership, either individual acting alone has the authority to bind the partnership, each partner is 100 percent liable for actions or debts of the partnership, and partners owe each other fiduciary duties. It is essential that parties in a business arrangement properly document their relationship. Not only will a written agreement help to identify misunderstandings between the parties, it will control any later claim that one party was intended to have an ownership interest in the business and its assets.

***Royce Lanning**, Associate Attorney, joined The Strong Firm, P.C. in 2013. He received his Juris Doctorate from the University of Hawaii, William S. Richardson School of Law and obtained immediate trial experience as a Deputy Prosecuting Attorney with the Department of the Prosecuting Attorney, Maui. He is licensed to practice law in the State of Texas, the State of Hawaii and all Federal District Courts in Texas.*

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The Strong Attorneys in Action

April, 2015

The Strong Firm provided legal assistance to out of state buyer in reviewing, negotiating and drafting amendments to the contract in furtherance of purchasing multi-million dollar residential real estate property in Montgomery County.

The Strong Firm negotiated purchase and sale agreement for minority owners of $26 million shopping center.

The Strong Firm represented landlord in County Court in Montgomery County on an appeal filed by tenant and obtained a favorable judgment awarding client's possession of their property, unpaid rent, late fees, and attorney's fees.

The Strong Firm represented client in negotiating a settlement and successfully obtaining a release from a creditor on an improper lien filed on client's homestead property.

March, 2015

The Strong Firm's defense of independent oil & gas company's field operations resulted in an affirmative award granting the Firm's client attorney's fees and costs in excess of $250,000.

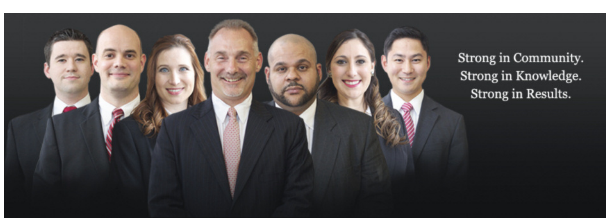
February, 2015

The Strong Firm represented landlord in negotiations of a commercial lease to a medical specialty tenant.

The Strong Firm represented borrower in the refinancing of $3.2 million commercial real estate loan.

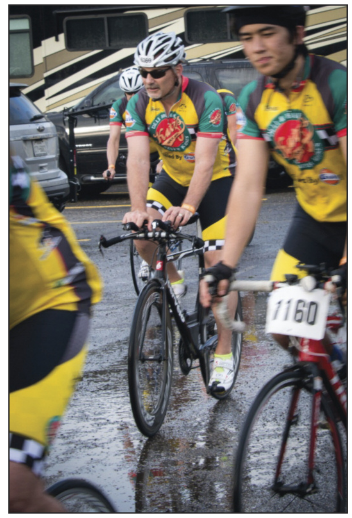
We provide legal services in all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Commercial Litigation
- Wills, Probate, Trusts, and Estates
- Mergers, Sales, and Acquisitions of Businesses
- Oil, Gas, and Energy
- International Business Investment



From left: **Adam Looney**, Associate Attorney; **Royce Lanning**, Associate Attorney; **Wendy Lambie**, Associate Attorney; **Bret L. Strong**, Attorney, Founder, and Managing Shareholder; **Eric R. Thiergood, Sr.**, Income Shareholder; **Kyla Wilder**, Associate Attorney; **Brian Albert**, Associate Attorney.

The Strong Attorneys in the Community



Actively Supporting and Enjoying Spring Events

Left. The Strong Firm sponsored and participated in the **BP MS 150** race from La Grange to Austin on April 18-19. Pictured participating is Bret Strong, The Strong Firm's Managing Shareholder.

The Strong Firm participated in **The Chamber's Annual Golf Classic** held March 30 at The Woodlands Country Club Palmer Course.

Left. The Strong Firm was a sponsor of the 8th annual **Muddy Trails Bash** on April 4. Shown are members of the firm along with their families.

Right. Kyla Wilder (2nd left) of The Strong Firm is shown at the **Giving Goes Glam** event partnered by Interfaith of The Woodlands and Junior League of The Woodlands on March 27. Over 700 guests gathered at The Woodlands Waterway Marriott Hotel & Convention Center for a New York style fashion show presented by Saks Fifth Avenue.

Left. The Strong Firm attended the 4th annual **Future of The Woodlands & Springwoods Village Luncheon** held April 1. Pictured are Eric Thiergood (left) and Wendy Lambie (right) of The Strong Firm, with Tom Pisula of Pisula Development Company (center).