

Business Law: Partnerships

Case 8:
Makeup
Madness!

Holmes v. Lerner

A Case in Partnership Formation

OBJECTIVE

To understand the basic formation of a partnership between two individuals.

TOPICS COVERED

- Business Organizations
- Partnerships
- Verbal Contracts

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Holmes v. Lerner

A Case in Partnership Formation

BACKGROUND

- Two friends, Patricia Holmes, a horse trainer, and Sandra Kruger Lerner, a multi-millionaire businesswoman, agreed to form a business organization to start a cosmetics company known as "Urban Decay."
- After returning from a trip to England to purchase horses, the two friends began experimenting with different colors for nail polish. This experiment blossomed into selecting names for the colors, securing funding for market research and product development, and naming their company "Urban Decay."
- Holmes claimed that the two friends formed a partnership, and as the business began to succeed, Lerner pushed her out of this business.
- Lerner claimed that there was no partnership, and although Holmes helped with the original idea, it was Lerner's business experience and financial connections that made the business successful.

BEFORE YOU BEGIN

What is a business organization?

A business organization is an entity formed to make a profit. The entity may be in the form of a sole proprietorship, a partnership, a limited liability company, or a corporation.

What is a partnership?

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. The partners must "intend" to form a partnership. This requires the court to look at the "terms" of their agreement, their conduct, the sharing of profits, and any other surrounding circumstances that are relevant to the case.

Can a contract be verbal?

A contract can be verbal or in writing. Some contracts are required to be in writing; for example, contracts for the sale of goods over \$500, contracts for the sale of real estate, contracts that require over a year to complete, contracts in contemplation of marriage, and contracts where one person guarantees to pay for the debt of another.

ISSUE BEFORE THE COURT

Whether there are sufficient facts to prove that a partnership existed between two individuals.

THE FACTS

Sandra Kruger Lerner was a successful entrepreneur and an experienced businesswoman. She and her husband, Len Bosack, were the original founders of Cisco Systems, a very successful computer company. When she sold her interest in that company, she received a substantial amount of money, and her net worth was in excess of \$47 million at the time of the trial.

Patricia Holmes was a horse trainer when she met Lerner in late 1993. Lerner visited Holmes' horse training facility to arrange for the training and boarding of two horses she imported from England. Holmes and Lerner became friends, and after an initial six-month training contract expired, Holmes continued to train Lerner's horses without a contract and without cost.

In 1995, Lerner asked Holmes to travel to England with her to attend a horse show and to buy horses with her. While in England, Lerner decided that she wanted to celebrate her 40th birthday by going out to pubs in Dublin, Ireland.

As the two got dressed in Lerner's mansion outside of London, Lerner gave Holmes a manicuring kit, telling her to find a color Holmes could wear. Lerner wore what Holmes termed "alternative clothes" with black nail polish and encouraged Holmes to do the same. Holmes, however, did not like black nail polish and was unable to find a suitable color in the English stores. Holmes looked through the kit, tried different colors, and eventually developed her own color by layering a raspberry color over black nail polish. This produced a purple color that Holmes liked. Holmes showed the new color to Lerner, who also liked it.

On July 31, 1995, the two friends returned from England. While sitting at the kitchen table in Lerner's posh West Hollywood condominium, they discussed nail polish and colors. Lerner's husband was in and out of the room during the conversation.

For almost two hours, Lerner and Holmes worked to try to recre-

Dysfunctional partnerships are a major source of business failure.

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ate the purple color Holmes had made in England. Lerner made a different shade of purple, and Holmes commented that it looked just like a bruise and called it “Plague.” Holmes had been reading about 16th century England and how people with the plague developed purple sores. She thought the color looked like the plague sores.

Lerner and Holmes decided to create names with an urban theme, such as “bruise,” “plague,” “mildew,” “smog,” “uzi,” and “oil slick.” Len Bosack heard the conversation about the urban theme and suggested “decay.” The two women liked the idea and decided that Urban Decay was a good name for their concept. Lerner stated, “This seems like a good thing; it’s something that we both like and it isn’t out there. Do you think we should start a company?” Holmes responded, “Yes, I think it’s a great idea.”

Lerner’s housekeeper testified that she heard Lerner tell Holmes, “It’s going to be our baby, and we’re going to work on it together. It was all Pat’s idea over in England, but I’ve got the money to make it work.” Lerner also told her housekeeper that she hoped to sell Urban Decay to Estee Lauder for \$50 million.

Neither woman had experience in cosmetics, but they began to work on their idea immediately. Holmes and Lerner did market research by going to stores, talking with people about nail polish, checking what nail polishes were available, and buying samples to bring back to discuss with each other. Using Lerner’s home as a laboratory, they experimented with nail colors, taking pictures of various color mixing sessions. They met with a graphic artist to create a logo, and secured a trademark for Urban Decay. Lerner and Holmes discussed visiting chemical companies and hiring people to handle the daily operations of the company.

Eventually, Lerner stopped including Holmes in meetings and business decisions of the company. Feeling edged out of the business, Holmes confronted Lerner. Lerner claimed she was just being nice to Holmes by including her in the Urban Decay business and denied Holmes had any role in creating the colors, names, or concepts for Urban Decay. Furious, Holmes sued for breach of a partnership contract.

At trial, Lerner maintained that because the two women did not discuss sharing profits and losses of the business during their earliest conversations about the business, there can be no partnership.

Urban Decay's colors were inspired by the unique hues of America's modern edgy urban scene.

Sources

The case briefing above contains excerpts and direct extractions from the sources noted below that have been combined with the author’s own expert legal input. The case has been condensed and formatted from its original content for purposes of this workbook.

Holmes v. Lerner, 74 Cal. App. 4th 442, 88 Cal. Rptr.2d. 130 (1999). California Court of Appeals, First District, Division One September 7, 1999. Opinion written by the Honorable Justice James J. Marchiano.

NAME

DATE

Review the Case

After reading Holmes v. Lerner, answer the following:

1. Identify the Plaintiff(s) in the case.

2. Identify one of the Defendants in the case.

3. How did the parties meet?

4. What was Patricia Holmes' profession prior to Urban Decay?

5. What business did Sandra Kruger Lerner own prior to Urban Decay? Was it financially successful?

6. List specific facts that will help the jury understand Lerner's wealth.

7. What prior experience did the parties have in nail polish?

8. Who came up with the name "Urban Decay"?

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Review the Case (continued)

9. Who came up with the idea of an "urban" theme for nail polish?

10. Who created the original "purple" color in England, and what was it called? What information helped to name the "purple" color?

11. What did the housekeeper overhear during the conversation in the kitchen between Lerner and Holmes?

12. BONUS: What could the parties have done to avoid this lawsuit?

Make the Argument

In order for the judge or jury to render a decision, the following are some of the questions that must be considered:

1. Did Sandra Kruger Lerner and Patricia Holmes intend to carry on as co-owners of a business for profit? To make this determination as to intent, the court must consider the following:

- a. What were the terms of their agreement?

- b. What was the conduct of the parties? For example, did the parties act like they were in business together?

- c. What were the surrounding circumstances of the agreement?

2. Was the agreement between Lerner and Holmes sufficiently "definite"? In other words, did the parties agree "upon the same thing, in the same sense"? Explain.

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You Be the Judge

Having reviewed the case and considered the questions involved, decide the case for either the **Plaintiff** or the **Defendant**:

Decision for the Plaintiff



Decision for the Defendant

Patricia Holmes

Sandra Kruger Lerner

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