

Essay Question No. 2

Answer this question in booklet #2

Lands-R-Us Inc., a publicly owned Texas corporation, owns 120 acres of undeveloped land in Wasilla, Alaska. They are in the business of real estate development, with projects located all over the United States. John Rich is a director of the corporation, and enjoys playing golf in his spare time. While playing golf on a trip to Alaska, John was struck by the beauty of the Wasilla area and decided to pursue an Alaska business venture with Lands-R-Us Inc. He proposed that Lands-R-Us Inc. develop its Alaskan acreage into a world-class golf course. Talks progressed, and ultimately they decided that a limited partnership was the optimal business vehicle for the venture. On January 1, 2001, an Alaska Limited Partnership Agreement was drawn up and signed by the following investors:

Lands-R-Us Inc.: General Partner

John Rich: Limited Partner

Scott Tyler: Limited Partner

Ann Davis: Limited Partner

Through an oversight on the part of Ann Davis, the fully executed certificate of limited partnership was not filed with the Alaska Department of Community and Economic Development until July 1, 2001. Under the partnership agreement, the general partner and all 3 limited partners each agreed to contribute \$350,000 to the partnership. Each partner's contribution was to be made in \$50,000 increments over the next 5 years.

All partners paid their initial \$50,000 without incident. The partnership agreement left all management decisions to the general partner. In accordance with the partnership agreement, on January 15, 2001, Lands-R-Us Inc. conveyed title in the 120 acres to the limited partnership in exchange for a promissory note executed by the general partner on behalf of the limited partnership in the amount of \$400,000, payable \$100,000 annually on July 1 each year without interest until paid. None of the limited partners were required to supply personal guarantees for payment of the promissory note.

Lands-R-Us Inc.'s management knew that to get the golf course project moving, they would need some expert help on the design of the course. They hired John as an employee of the partnership and instructed him to investigate and learn how golf courses had been built in other northern climates.

John completed his job assignment and then advised Lands-R-Us Inc. management about what he had learned. He recommended that the partnership contract with Lyon Forest, a famous golf pro who consults on golf

course developments as a sideline. John had met Lyon in his travels, and had called him a couple times with questions during his research. At the invitation of John, Lyon came to Alaska and John gave him a tour of the Wasilla acreage and explained John's vision for the golf course. In Lyon's presence, John requested a meeting of all partners in a phone call to Lands-R-Us Inc. management. While Lands-R-Us Inc. management preferred to proceed slowly, John insisted that they call a meeting so that the partners could review Lyon's proposals for developing the Wasilla acreage into a golf course and decide whether to enter into a contract with him to formalize the design. Lands-R-Us Inc. management went along with John's directions, and the partnership meeting was arranged.

At the partnership meeting in September 2001, and in Lyon's presence, John advocated strongly for the approval of the contract with Lyon for the design of the course. The partners voted unanimously to approve a contract between the partnership and Lyon. Under the contract, Lyon agreed to provide blueprints and specifications for a golf course to be located on the acreage. Before Lyon left Alaska that evening, the contract with the limited partnership was fully executed.

Lyon performed his research and work over the course of the fall, and in December, Lyon presented the partnership with the promised golf course design work, and an invoice for \$200,000, the agreed price for his services.

In February 2002, a commercial death sentence was imposed on the business venture when the City of Wasilla enacted zoning laws that prohibited any new golf developments. The limited partners ceased making any contributions to the limited partnership, the limited partnership had no money left in the bank, and Lyon Forest's bill remained unpaid. To date, only \$100,000 had been paid under the promissory note for the purchase of the land.

Various lawsuits are filed in Alaska State Court.

QUESTIONS

1. Lands-R-Us Inc. sues the limited partners in Alaska State Court for \$300,000, the remaining debt owed under the promissory note. Lands-R-Us Inc. alleges that this legal result flows from the delay in the filing of the certificate of partnership on July 1, 2001. Explain Lands-R-Us Inc.'s legal theory as to why the limited partners should be liable for the promissory note debt, and discuss whether Lands-R-Us Inc. will succeed.

2. Lyon Forest sues the Limited Partnership, and all general and limited partners in Alaska State Court for \$200,000, the amount owed for his services. As to John Rich, he seeks the full amount of the debt as though John Rich

were in fact a general partner. What legal arguments will Lyon Forest use to try to establish that limited partner John Rich should actually be held liable for the debt as though he were a general partner? Will these arguments be successful? (Do not discuss issues of apparent agency.)

3. Assume for purposes of answering this question only, the following:

- Limited partners Ann and Scott learn that on August 25, 2002, Lands-R-Us Inc. entered into a similar contract with Lyons to design a golf course located in Arizona.
- Lands-R-Us Inc. was able to obtain Lyon's services at half the cost for the Arizona project by agreeing to pay a premium for Lyon's services on the Alaska project.
- Ann and Scott file a lawsuit against Lands-R-Us Inc. to benefit the Limited Partnership.

Describe the lawsuit, whether Ann and Scott are proper parties, and how the monetary recovery, if any, will be distributed.