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CO-OWNERSHIP OR JOINT VENTURE IN HORSES?

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As the international performance horse industry grows by leaps and bounds so do the costs of training and competing horses. Many times, an owner believes that he or she has a talented prospect but does not have the funds necessary for professional training, competition fees, and promotion. Trainers, on the other hand, possess the expertise to bring along a young horse but often cannot afford to purchase outright a horse of their own. Thus, it has become increasingly common for owners and trainers to "partner" on horses in order to develop them for eventual sale or, in the case of stallions, potential breeding profits. These arrangements can give rise to complicated legal questions, especially when the relationship between owner and trainer sours. In a recent case in Virginia, an FEI dressage trainer and rider, Sally Smith, with FEI experience was approached by a client, Ronda Rogers, who owned a young stallion that Ms. Rogers believed had significant potential as a high-level dressage horse. The stallion, Lothario, was a 5-year old Warmblood that Ms. Rogers had bred and raised on her rural farm. Lothario had been started under saddle but was very green. Ms. Rogers approached Ms. Smith with a proposal that they co-own Lothario so that he could get the training and show experience that Ms. Rogers could not afford. Ms. Smith evaluated Lothario and agreed that he had the ability to become a quality dressage horse. Ms. Smith was looking to replace her aging Grand Prix horse and thought that Lothario might eventually become that replacement.

THE DISPUTE

Ms. Smith took possession of Lothario, and after six months passed, she acquired a 50% ownership interest in the horse as set forth in the contract. Lothario was valued and insured for $25,000.00 at the outset of the agreement. Throughout the next eight months, Ms. Smith received very little communication from Ms. Rogers. Lothario continued to progress in his training and Ms. Smith began the process of obtaining his lifetime breeding license from ISR-Oldenburg NA. Ms. Rogers then began to inquire about breeding promotion for Lothario and began to press for Lothario to get tested for his license. Ms. Smith was concerned that pushing Lothario for his test would undermine his training and soundness, particularly since there had been no interest from breeders to breed to Lothario at that time. As tensions mounted between the two women, Ms. Smith's husband offered to buy out Ms. Rogers' interest. Ms. Smith emailed Ms. Rogers and stated that she had a client who was interested in buying the horse for $20,000.00. Ms. Rogers interpreted the email to mean that the total purchase price was $20,000.00. When Ms. Smith clarified that the client was Ms. Smith's husband and that the $20,000.00 offer was for Ms. Rogers' half-interest, Ms. Rogers accused Ms. Smith of underhanded dealing and cut off all communications.

THE LITIGATION

Shortly after the emails, Ms. Rogers filed suit against Ms. Smith on the grounds that Ms. Smith had abused and neglected the horse. Ms. Smith filed for an emergency hearing. After Ms. Smith retained counsel, the allegations of abuse and the request for an emergency hearing were withdrawn. Ms. Rogers then filed an Amended Complaint asserting that the co-ownership agreement created a joint venture between the parties. Ms. Rogers sought dissolution of the joint venture on the grounds that Ms. Smith had violated her fiduciary obligations that arose from the existence of the joint venture. Ms. Rogers alleged that Ms. Smith's first email conveying the offer to purchase was "underhanded" and not fully forthcoming and, thus, was a violation of the fiduciary duty of utmost loyalty and honesty. Ms. Rogers sought sole ownership of Lothario with no compensation due to Ms. Smith for her time and money expended on Lothario. Ms. Smith denied the allegations and refused to dissolve the purported joint venture.
During the course of the litigation, Ms. Smith continued to fulfill all of her obligations under the contract including obtaining ISR-Oldenburg NA stallion approval at a cost to Ms. Smith of $10,000.00. Ms. Smith continued to pay all of Lothario's expenses totaling $60,000.00. On the other hand, Ms. Rogers failed to fulfill her contractual obligation of paying for half of the insurance premium. During a two-day bench trial, the judge heard evidence and was asked to determine if Ms. Smith and Ms. Rogers had engaged in a joint venture involving Lothario. Ms. Rogers asserted that a joint venture existed; Ms. Smith argued that the written contract was a straightforward co-ownership agreement and that the parties were governed by the four corners of that agreement.

In Virginia, a joint venture exists where two parties combine in a joint business enterprise for their mutual benefit, with an express or implied understanding or agreement that they are to share in the profits or losses of the enterprise, and that each party is to have a voice in the control or management of the joint venture. Ms. Rogers argued at trial that the agreement was a joint venture

THE AGREEMENT

The two women agreed to a written "Training and Co-Ownership Contract." The essential terms of the contract were as follows:

1. Lothario was to remain in Ms Smith's care for a six-month trial period.
2. At the end of the trial period, Ms. Smith would acquire a fifty percent (50%) ownership in Lothario.
3. Ms. Smith was entitled to possession of Lothario for his lifetime.
4. Ms. Rogers could only recover possession and full ownership of Lothario upon a finding of abuse or neglect as determined by a veterinarian.
5. Ms. Smith was responsible for all training, showing, veterinary and care decisions regarding Lothario.
6. Ms. Smith was responsible for obtaining a lifetime breeding license for Lothario.
7. Ms. Smith was responsible for costs of caring for Lothario for his lifetime.
8. Ms. Rogers was responsible for payment of half of the annual insurance premium for Lothario's mortality and major medical insurance.
9. Only Ms. Smith could initiate the sale of Lothario, but if she wanted to sell the horse, Ms. Rogers had to agree to the sale. If Lothario was sold, each party was to receive fifty percent (50%) of the sale proceeds; however, neither party's expenses were to be deducted from the sale proceeds.
10. If Lothario was bred, Ms. Rogers was entitled to fifty percent (50%) of the profits from stallion fees, if there were any profits. Ms. Rogers was not responsible for any of the expenses in making the semen available for sale. Ms. Rogers was also not required to share in the losses if the stallion fees did not exceed the expenses.
11. If Lothario was bred, his breeding activity was to conform to the showing and training schedule set forth by Ms. Smith
12. Ms. Smith was not permitted to geld Lothario without prior permission from Ms. Rogers

because both parties owned Lothario and under the contract, each would share in the sale proceeds and breeding profits. Ms. Smith argued at trial that there was not a joint venture because: 1) there was no joint business enterprise for mutual benefit; 2) there was no sharing of profits and losses; and 3) there was no joint voice or control over management or each other.

JOINT BUSINESS ENTERPRISE

Ms. Smith argued that under the plain language of the agreement there was no business enterprise because there was no requirement to breed Lothario, and no requirement to sell Lothario. Unlike an agreement where an owner and trainer enter into an arrangement with the ultimate goal of selling a horse, or standing a stallion at stud, the written contract in this case specifically stated that "if" Lothario was bred, the parties would share in breeding profits. The contract also stated that "if" Lothario was sold, the parties would split the proceeds of the sale. The contract also granted possession of Lothario to Ms. Smith for the horse's lifetime, and gave Ms. Smith the sole power to initiate a sale. Ms. Smith also argued that there was no mutual benefit, also referred to as a "community of interest," because Ms. Smith's goal was to train Lothario to be a Grand Prix horse for her own use and benefit. Ms. Rogers, on the other hand, testified that her expectation was that the horse would receive accolades from being shown by Ms. Smith and Ms. Rogers' personal breeding business would thereby receive recognition. Thus, Ms. Smith argued that there was no community of interest because each party had different goals and expectations in entering into the contract.

SHARING IN PROFITS AND LOSSES

Ms. Rogers argued that the second element necessary to create a joint venture existed because the contract obligated the parties to share breeding profits and share in the sale proceeds. Ms. Smith contended that there were two financial components to the contract. The first was that the two women would split the sale proceeds if Lothario was sold. There was no deduction for expenses from the sale proceeds. With regard to that component, Ms. Smith argued that there was no sharing in profits and losses because the contract called only for the proceeds to be shared. The second financial piece of the contract was a requirement that breeding profits be split. Ms. Smith argued that because the contract required her to pay for all of the expenses necessary to make Lothario available for breeding, and because there was no revenue from breeding fees, there was actually an operating loss. The contract did not require Ms. Rogers to share in that loss. In order for the Court to find that were was a joint venture, the parties would have been required to share in the profits and losses, not just the profits.

JOINT VOICE OR CONTROL

At trial, Ms. Smith argued that the written agreement specifically and clearly gave her total control and authority over the daily care, training, showing, veterinary care, and breeding of Lothario. The contract also gave her the discretion to breed the horse or not breed the horse, to sell the horse or not sell the horse. The contract imposed only two restrictions on Ms. Smith's authority: that Ms. Rogers must agree to the sale of Lothario and that Ms. Rogers must give permission for Lothario to be gelded. Ms. Smith argued that these contractual restrictions did not rise to the level of joint voice and control over the venture alleged by Ms. Rogers. Ms. Rogers contended that the contractual restrictions gave her control over Lothario and Ms. Smith.

THE VERDICT

The Judge issued a written opinion following the trial. He found in favor of Ms. Smith and determined that there was not a joint venture between the parties for the reasons articulated by Ms. Smith. The Judge also found that the Training and Co-Ownership Agreement was an enforceable contract that governed the conduct of the parties as it pertained to Lothario. He refused to dissolve the alleged joint venture, and Ms. Smith and Ms. Rogers were contractually bound to continue forward under the plain terms of their written agreement.

THE TAKEAWAY

Most of the time when equine lawyers share a case like this the "moral of the story" is to get it in writing. In this case, the parties did put their agreement in writing. However, they did not understand the legal consequences, or potential legal consequences, of their arrangement. Underlying this litigation was really a struggle for possession of the horse; however, it was very possible that neither party would have ended up with the horse. Had Ms. Rogers prevailed, the Court could have ordered a dissolution and sale of the horse, and an accounting and distribution of the proceeds. The very purpose of the entire arrangement would have been defeated. On the flip side, because Ms. Smith prevailed, both women were obligated to continue in a contract with each other after extensive litigation. Therefore, the takeway is to reduce your agreement to writing but understand the full legal consequences of the written agreement and the arrangement it memorializes. ■

1. The names of the parties and the horse have been changed for purposes of this article.
2. During discovery, an email written by Ms. Rogers' attorney came to light. In that email, counsel for Ms. Rogers stated that the initial Complaint alleging abuse and neglect was designed to be a "show of force" in order to "obtain a better bargaining position."

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If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us by e-mail via info@europeanequinelawyers.com or telephone on +31-(0)135114420.

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