

IN THE SUPREME COURT OF TEXAS

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No. 09-0396
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REID ROAD MUNICIPAL UTILITY DISTRICT NO. 2, PETITIONER,

v.

SPEEDY STOP FOOD STORES, LTD., RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS
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Argued October 12, 2010

JUSTICE WILLETT, joined by JUSTICE LEHRMANN, concurring.

The Court addresses application of Texas Rule of Evidence 701 and the Property Owner Rule when a business organization owns the property condemned by the government. It holds that when a business entity owns the property, a natural person can testify as to its value under the Property Owner Rule if the person is “an officer in a management position with duties that at least in some part relate to the property at issue, or an employee of the entity in a substantially equivalent position.”¹ The Court concludes that the Property Owner Rule does not apply because LaBeff was not an officer or employee of the limited partnership that owned the property; rather, he was an officer of the corporation serving as the general partner of the limited partnership.

¹ ___ S.W.3d at ___.

The Court further holds that one key to whether LaBeff’s affidavit was admissible under Rule 701 was “his personal familiarity with both the property and its value.”² The Court notes the lack of proof in this regard. The opinion, as I read it, leaves open the question whether LaBeff’s affidavit would have been admissible under Rule 701 (but not the Property Owner Rule) if he had such personal knowledge, even though he was not an officer of the limited partnership that owned the property.

Limited partnerships, including real-estate limited partnerships, are popular investment vehicles.³ They commonly consist of passive limited partners⁴ and a general partner that is a corporation.⁵ Since limited partnerships are managed by the general partner or partners,⁶ there is no particular reason for a limited partnership to have any managerial employees—or indeed any employees at all. Therefore, the Court’s treatment of the Property Owner Rule means that many, if

² *Id.* at ____.

³ *See* 19 ROBERT W. HAMILTON ET AL., BUSINESS ORGANIZATIONS § 13.2 (Tex. Practice 2004) (“The limited partnership offers certain advantages that may make it an attractive choice of business entity. . . . [P]artnership tax treatment for federal income tax purposes may provide significant tax savings when compared with the tax treatment of either a C corporation or an S corporation.”).

⁴ *Id.* § 13.1 (“Limited partners are, at least in the statutory default mode, passive investors whose liability is limited to their capital contributions.”).

⁵ *Id.* §§ 1.8 (“In practice today, most limited partnerships have only a single general partner and that partner is usually a nominally capitalized limited liability entity such as a corporation or limited liability company.”); 13.2 (“The principal disadvantage of the limited partnership form as compared with a corporation or a limited liability company relates to the liability of the owners. The general partners of a limited partnership are personally liable for partnership obligations. To minimize this disadvantage, limited partnerships are often formed with a corporate or limited liability company general partner”); 14.7 (“Corporate or limited liability (“LLC”) general partners are frequently used to avoid exposing individuals or other entities to liability as general partners [of a limited partnership].”).

⁶ *Id.* § 13.1 (“General partners of a limited partnership, like partners of a general partnership, have managerial rights”); TEX. BUS. ORG. CODE §§ 153.102, .152.

not most, limited partnerships could never proffer a witness on the value of their real estate holdings under the Property Owner Rule.

Yet the Court does contemplate application of the Property Owner Rule to a managing officer of the entity owning the property or an employee of the entity in a “substantially equivalent” position. In the case of a limited partnership, I would hold that a managing officer of the corporate general partner with duties relating to the property may testify as to the value of partnership property without being qualified as a expert witness, provided the officer is familiar with the specific property in issue and its value. Such a rule would provide some parity of treatment of limited partnerships and corporations in condemnation proceedings. I do not think it matters whether this rule is seen as an application of the Property Owner Rule or Rule 701 or both. Regardless, in this case LaBeff did not meet the personal knowledge requirement and his affidavit was properly excluded, as the Court holds.

Don R. Willett
Justice

OPINION DELIVERED: March 11, 2011