Two Partners, Three Lawyers, What Would King Solomon Do?

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Jarvis Properties is a limited partnership with two general partners. As fate would have it, the two general partners are brothers and each brother holds a 50% interest in the partnership. When one brother, James, sued for partition, the other brother, Todd, hired two lawyers - one to represent himself and one to represent the partnership. The partnership's lawyer filed a demurrer and James moved to disqualify the partnership's lawyer. Todd also demurred. The trial court granted the motion to disqualify, dismissed the partnership's demurrer, and overruled Todd's demurrer.

In the ensuing appeal, the Court of Appeal considered a number of issues, including James' standing to move to disqualify. Jarvis v. Jarvis, Cal. Ct. Appeal Case No. H044930 (Mar. 19, 2019). The Court held that James did have standing. As to the merits, the Court of Appeal explained that this was not a case involving conflict of interest because the partnership's lawyer had only one client - the partnership. Nonetheless, the Court of Appeal held that in the "unique circumstances of this case" the trial court had not abused its discretion in granting the motion to disqualify.

How then is the partnership's interests to be protected in the litigation? The Court of Appeal did not prescribe a specific answer but instead provided the following general guidance:

"Since this is an equitable action for partition, and given the court’s inherent power to 'control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it' (Code Civ. Proc., § 128, subd. (a)(5)), we leave it to the trial court to fashion the appropriate remedy. The trial court may decide that the brothers can adequately articulate the issues presented in this partition action and that the Partnership therefore does not require separate counsel. However, the court may wish to explore options for resolving deadlock at the entity level and consider the appointment of a receiver, neutral counsel, or other neutral to protect the interests of the partners and the Partnership. Again, that is for the trial court to decide in the exercise of its inherent and equitable powers."

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