

## Business Divorce: Court Affirms Jury Finding That A Manager Did Not Breach Her Fiduciary Duties

Article By:

David Fowler Johnson

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In *Trinh v. Cent. River Healthcare Group*, a brother sued his sister over the management of a PLLC. No. 03-19-00393-CV, 2021 Tex. App. LEXIS 4542 (Tex. App.—Austin June 9, 2021, no pet. history). The brother claimed that the sister promised to pay him a salary, and she did not. The court of appeals affirmed the jury's finding that there was no such promise based on the sister's testimony that she did not remember making such a proposal, and even so: "evidence of a proposal does not prove an agreement." *Id.*

The brother also challenged the jury's finding that the sister complied with her duty by disputing that "the transactions in question were fair and equitable to Khiem . . . and 4. Loann [] placed the interests of Khiem [] before her own and did not use the advantage of her position to gain any benefit for herself at the expense of Khiem." The brother argued that he contributed more than a half million dollars to the business when the sister claimed to own 100% of it and that the sister required the brother to pay federal income tax on 5% of the company's profits most years, and on 50% of the profits one year while the brother received nothing in return.

The jury heard testimony from the sister that Khiem may have forfeited whatever interest he had in CRHG. In October 2011, he emailed Loann: "I don't want to run the clinics. I am saving it before they collapse. Those are your clinics. I built them in the beginning for you. . . . I want you to take over without any headache. . . . Every investment in there is yours." Loann testified to the point of Khiem's email: "So basically he's willing to forfeit everything so that way I can come back and run and resuscitate the clinic. That to me means that everything is under my management, my care[]. The whole business is legally under my direction[]." She also testified that she understood this email to mean "that he's relinquished all his positions whether management, ownership, all investment. So it says every investment is yours."

*Id.* Further, regarding the taxes, the court noted:

[T]he evidence does not support Khiem's assertion that Loann "required" Khiem to pay those amounts of federal income tax. Khiem testified that he and Loann were equally responsible for the preparation of the tax return, that he sent the tax documents to the tax advisor and relied on him to prepare the filings, that he signed the tax filings that indicated the profit attribution of 95% for Loann and 5% for Khiem for the relevant tax years (2005-2012)

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except the 2007 tax filing indicated a 50% split, and that he “wasn’t interest[ed] in the profit [during] that period of time because there’s no profit.”

*Id.* The court affirmed the trial court’s judgment and the jury’s verdict for the sister.

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