

JOINT VENTURES—ESSENTIAL ELEMENTS:
THE NORTH DAKOTA SUPREME COURT CREATES A
BROADER DEFINITION OF JOINT VENTURES
Sandvick v. LaCrosse, 2008 ND 77, 747 N.W.2d 519

I. FACTS

In May 1996, Joedy Bragg, Frank Haughton, William LaCrosse, and Monte Sandvick purchased three oil and gas leases in Golden Valley County, North Dakota.¹ The oil and gas leases, known as the Horn Leases, were standard, paid-up leases with terms of five years.² The leases contained no provision for extension or renewal.³ LaCrosse owned Empire Oil Company, which held record title to the leases.⁴ The parties purchased the leases through their credits in the Empire Oil Company JV checking account.⁵

In addition to the Horn Leases, the parties developed relationships with one another through previously owned oil and gas leases.⁶ Bragg and Sandvick alleged that the parties discussed extending the original Horn Leases upon their expiration.⁷ However, Haughton and LaCrosse claimed that such conversations never occurred.⁸ In November 2000, Haughton and LaCrosse purchased three oil and gas leases on the same Golden Valley County property.⁹ These leases were known as the Horn Top Leases and were to be leased at the expiration of the Horn Leases, as they covered the same acreage.¹⁰ Before purchasing the Horn Top Leases, Haughton and LaCrosse twice offered to purchase Bragg and Sandvick's interests in the Horn Leases, but Bragg and Sandvick refused.¹¹

1. *Sandvick v. LaCrosse*, 2008 ND 77, ¶ 2, 747 N.W.2d 519, 520.

2. *Sandvick*, ¶ 2, 747 N.W.2d at 520.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* ¶ 3.

7. Brief for Plaintiffs-Appellants at 8, *Sandvick v. LaCrosse*, 2008 ND 77, 747 N.W.2d 519 (No. 20070146).

8. Brief for Defendants-Appellee at 5, *Sandvick v. LaCrosse*, 2008 ND 77, 747 N.W.2d 519 (No. 20070146).

9. *Sandvick*, ¶ 4, 747 N.W.2d at 520.

10. *Id.* at 521.

11. *Id.*

In 2004, Bragg and Sandvick sued Haughton and LaCrosse under partnership law, claiming that they breached their fiduciary duties by not offering Bragg and Sandvick an opportunity to purchase the Horn Top Leases.¹² While the parties agreed that they shared profits, losses, and expenses, no written document established a partnership or joint venture relationship.¹³ But Bragg and Sandvick claimed that they had orally agreed to form a partnership relationship, and argued that oral agreements, rather than written agreements, are customary in the oil and gas industry.¹⁴ The district court found in favor of Haughton and LaCrosse and held that no partnership or joint venture existed.¹⁵ Bragg and Sandvick appealed the district court's judgment.¹⁶

The North Dakota Supreme Court reversed and remanded the case.¹⁷ The court held that while there was no partnership relationship, a joint venture relationship existed.¹⁸ Additionally, the North Dakota Supreme Court found that Haughton and LaCrosse breached their fiduciary duties.¹⁹ The *Sandvick* court remanded the case to address and determine damages.²⁰

II. LEGAL BACKGROUND

*Sandvick v. LaCrosse*²¹ implicates various areas of law including top leases and the differences between partnership and joint venture relationships.²² First, partnership relationships are examined. Joint venture relationships are then discussed. Next, the fiduciary duties of partnerships and joint ventures are analyzed. Finally, top leases are explained.

A. A BRIEF ANALYSIS OF PARTNERSHIPS

General partnerships, limited partnerships, and limited liability partnerships are three types of partnership relationships.²³ Most partnerships are

12. *Id.* ¶ 5, 747 N.W.2d at 521.

13. *See* Brief for Plaintiffs-Appellants, *supra* note 7, at 9 (explaining that there was no written document).

14. *Id.*

15. *Id.* at 17.

16. *Sandvick*, ¶ 1, 747 N.W.2d at 520.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* ¶ 20, 747 N.W.2d at 524.

21. 2008 ND 77, 747 N.W.2d 519.

22. *See* discussion *infra* Parts II.A-D (analyzing partnerships, joint ventures, fiduciary duties, and top leases).

23. *See* discussion *infra* Parts II.A.1-2 (explaining general partnership law, as well as North Dakota partnership law); *see also* JEROLD A. FRIEDLAND, UNDERSTANDING PARTNERSHIP AND LLC TAXATION 11 (2d ed. 2003) (listing and defining the common types of partnerships). A

general partnerships.²⁴ General partnership law provides common concepts of partnership law that are essential in understanding most partnership relationships.²⁵ Therefore, general partnership relationships are discussed first. General partnerships are then examined in the context of North Dakota law.

1. *Overview of General Partnership Law*

The Uniform Partnership Act (UPA) is the foremost guide for partnership law.²⁶ Today, most practitioners and commentators use a revised version of the UPA.²⁷ The UPA rules focus on the relationships among partners as well as the relationships between partnerships and third parties.²⁸

The original UPA defined a partnership as “an association of two or more persons to carry on as co-owners a business for profit.”²⁹ The revised UPA (RUPA) states that “the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.”³⁰ While no exclusive test is used to determine the existence of a partnership, parties are considered to be partners when they agree, by their acts, conduct, or an agreement, that they intend to carry on as co-owners of a business and share in profits, losses, and expenses.³¹

limited partnership must have two or more parties. *Id.* At least one of the partners involved in the limited partnership must be a general partner and one must be a limited partner. *Id.* In limited partnerships, the general partner has unlimited personal liability, while the limited partner is only liable for the amount he or she invested into the limited partnership. *Id.* A limited liability partnership is a partnership in which the partners are not personally liable for certain partnership debts. *Id.* Liability differs from state to state, but in limited liability partnerships, a partner is usually only personally liable when he or she has acted negligently or committed wrongful conduct. *Id.*

24. FRIEDLAND, *supra* note 23, at 10.

25. *See id.* (discussing general partnership law).

26. DAVID S. KLEINBERGER, AGENCY, PARTNERSHIP, AND LLCs 190 (2d ed. 2002); *see* discussion *infra* Parts II.A.2 (analyzing North Dakota partnership law); UNIFORM PARTNERSHIP ACT Prefatory Note 1, 1 (1997) [hereinafter Prefatory Note]. Developing a uniform law of partnership was first considered in 1902. *Id.* The National Conference of Commissioners on Uniform State Laws originally developed the Uniform Partnership Act (UPA) in 1914. KLEINBERGER, *supra* note 26, at 190. The UPA provided guidelines for general partnerships and limited partnerships. Prefatory Note, *supra* note 26, at 1. The UPA was adopted in all states, with the exception of Louisiana. *Id.*

27. KLEINBERGER, *supra* note 26, at 190; Prefatory Note, *supra* note 26, at 1-2. In 1987, the National Conference of Commissioners on Uniform State Laws (NCCUSL) decided to begin revisions on the UPA. *Id.* at 1. In 1992, the NCCUSL adopted a revised version of the UPA. *Id.* The NCCUSL again revised the UPA and adopted a new version in 1994, 1996, and 1997. KLEINBERGER, *supra* note 26, at 1, 190. While the NCCUSL refers to each version as the UPA, many practitioners refer to the revised act as the Revised Uniform Partnership Act (RUPA). *Id.*

28. KLEINBERGER, *supra* note 26, at 191.

29. UNIFORM PARTNERSHIP ACT § 6(1) (1914); *see* KLEINBERGER, *supra* note 26, at 193.

30. UNIFORM PARTNERSHIP ACT § 202(a) (1997); *see* KLEINBERGER, *supra* note 26, at 193.

31. KLEINBERGER, *supra* note 26, at 193-94.

Partnerships are usually classified into three types: partnerships at will, partnerships for a term, and partnerships for a particular undertaking.³² When parties are involved in a partnership at will, any party is entitled to end the partnership at any time, even without cause.³³ If the parties are involved in a partnership for a term, they are in an agreement to be in the partnership for a specified time.³⁴ Finally, if the parties are involved in a partnership for a particular undertaking, the partnership ends when the specific task or goal is complete.³⁵ The goal or task is usually specified in the partnership agreement.³⁶

In *Estate of Zimmerman*,³⁷ which involved a spouse's property in an augmented estate, the North Dakota Supreme Court held that uniform laws, such as the revised UPA, are used in a uniform manner; this means that courts can and should consult other jurisdictions that have adopted the uniform statutes when interpreting the statute's meaning.³⁸ However, the court also explained that it has the authority to use decisions from other states in order to further interpret the law.³⁹ Therefore, in the following section, North Dakota partnership law is examined, as the North Dakota Supreme Court's interpretation of partnership law is important to understand.⁴⁰

2. *North Dakota Partnership Law*

In 1995, North Dakota adopted the revised UPA.⁴¹ The North Dakota Century Code, using the revised UPA's definition, identified partnership as "an association of two or more persons to carry on as co-owners a business for profit."⁴² Although North Dakota has adopted the revised UPA, the following sections further examine basic partnership concepts in the context of North Dakota law.⁴³ First, the definition of a North Dakota partnership is discussed. The elements of a North Dakota partnership are then explained. Finally, the standard of review for a North Dakota partnership is examined.

32. *Id.* at 198.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. 2001 ND 155, 633 N.W.2d. 594.

38. *Estate of Zimmerman*, ¶ 14, 633 N.W.2d at 599.

39. *Id.*

40. See discussion *infra* Parts II.A.2 (analyzing North Dakota partnership law).

41. *Ziegler v. Dahl*, 2005 ND 10, ¶ 14, 691 N.W.2d 271, 275 (citing *Uniform Partnership Act* § 202, cmt. 1 (1997)).

42. N.D. CENT. CODE § 45-13-01(19) (2007).

43. See discussion *infra* Parts II.A.2.a-c (defining terms, explaining elements, and discussing the standard of review for a North Dakota partnership).

a. Definition of a Partnership

The North Dakota Supreme Court has defined partnership in many cases.⁴⁴ While the court uses the definition provided in the revised UPA, North Dakota case law has further construed the North Dakota Supreme Court's interpretation of the definition.⁴⁵ This section reviews North Dakota cases that provide the North Dakota Supreme Court's analysis of the definition of a partnership.⁴⁶

In *Gangl v. Gangl*,⁴⁷ the parties brought an action involving a family farming relationship.⁴⁸ Anton Gangl, the plaintiff, alleged that the parties had a working arrangement that was equivalent to a partnership, and that the assets of their arrangement should be divided among the parties.⁴⁹ The district court held that no partnership existed because Gangl failed to establish evidence to show that one existed.⁵⁰ The North Dakota Supreme Court affirmed the decision.⁵¹

The *Gangl* court used the North Dakota Century Code definition of partnership and further illustrated how to prove the existence of a partnership.⁵² The *Gangl* court first established that one specific test is not used to determine whether a partnership exists.⁵³ Instead, the determination is based on the facts and circumstances of each case.⁵⁴ However, the *Gangl* court suggested that, with the statutory definition, specific elements are important when determining the existence of a partnership.⁵⁵ The court clarified three essential elements in showing a partnership exists: (1) an association, or an intention to be partners; (2) co-ownership and a community of interest in the business; and (3) a profit motive.⁵⁶ Through *Gangl*, the North Dakota Supreme Court established the groundwork for the definition

44. *See, e.g.*, *Gangl v. Gangl*, 281 N.W.2d 574, 579 (N.D. 1979) (quoting the North Dakota Century Code).

45. *See, e.g.*, *Tarnavsky v. Tarnavsky*, 2003 ND 110, ¶ 7, 666 N.W.2d 444, 446 (discussing North Dakota's interpretation of the definition of partnership).

46. *See* discussion *infra* Parts II.A.2.a (discussing the definition of partnership through North Dakota case law).

47. 281 N.W.2d 574 (N.D. 1979).

48. *Gangl*, 281 N.W.2d. at 576.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 579 (citing N.D. CENT. CODE § 45-05-06(4) (repealed 1995)).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

of a partnership.⁵⁷ The court has further developed the definition of a partnership in later cases.⁵⁸

In *Tarnavsky v. Tarnavsky*,⁵⁹ Edward Tarnavsky, the plaintiff, argued that the lower court erred when it did not find that a partnership or business arrangement existed between he and his brother, Morris Tarnavsky.⁶⁰ Edward and Morris ranched and farmed together under an informal arrangement.⁶¹ Edward sued Morris and claimed that their informal arrangement was a partnership.⁶² Edward sought “dissolution and an accounting of partnership profits and assets.”⁶³ However, Morris denied that their arrangement was a partnership and counterclaimed for payments he claimed he had made on behalf of Edward, in order to satisfy a previous federal court judgment.⁶⁴ The trial court ruled in favor of Morris and held that no partnership existed because Edward was unable to establish co-ownership.⁶⁵ Edward appealed, claiming that the trial court erred when it did not find a partnership.⁶⁶ Additionally, Edward argued that he was entitled to some partnership assets that Morris had prevented him from obtaining.⁶⁷

In its decision, the North Dakota Supreme Court again looked to the North Dakota Century Code to define partnership.⁶⁸ Similarly to *Gangl*, the court held that three essential elements of partnership exist: (1) intent to be partners; (2) co-ownership of the business; and (3) profit motive.⁶⁹ Because Edward was unable to establish co-ownership of any items of property, and because he was unable to show intent to create a partnership, the court held that the evidence did not sufficiently show that a partnership had been established.⁷⁰

Through *Gangl* and *Tarnavsky*, the North Dakota Supreme Court defined partnership by establishing the critical elements needed to prove the

57. *Id.*

58. *See, e.g.*, *Tarnavsky v. Tarnavsky*, 2003 ND 110, ¶ 7, 666 N.W.2d 444, 446 (interpreting the definition of partnership).

59. 2003 ND 110, 666 N.W.2d 444.

60. *Tarnavsky*, ¶ 6, 666 N.W.2d at 446.

61. *Id.* ¶ 4.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* ¶¶ 4, 8.

66. *Id.* ¶ 6.

67. *Id.*

68. *Id.* ¶ 7 (quoting *Gangl v. Gangl*, 281 N.W.2d 574, 579 (N.D. 1979)).

69. *Id.*; *see Gangl*, 281 N.W.2d at 579 (N.D. 1979) (reiterating the partnership elements).

70. *Tarnavsky*, ¶ 8, 666 N.W.2d at 446.

existence of a partnership.⁷¹ Identifying essential elements of a partnership is important, but discovering what the North Dakota Supreme Court has found to be adequate in meeting these elements is critical.⁷² In *Ziegler v. Dahl*,⁷³ the North Dakota Supreme Court further articulated the three elements needed to prove the existence of a partnership.⁷⁴

b. Elements of a Partnership

In *Ziegler*, Michael Ziegler and Jack Kirsch claimed that they were in a partnership relationship with Steve Dahl, David Tronson, and James Legacie.⁷⁵ Dahl, Tronson, and Legacie marketed an ice fishing guide service on Devils Lake in 1997, after the completion of the 1996-1997 ice fishing season.⁷⁶ While the three shared clients and marketing expenses, they agreed to work as independent contractors and to obtain their own licenses and equipment.⁷⁷ Near the end of the 1998-1999 ice fishing season, Dahl asked Ziegler and Kirsch to assist in guiding.⁷⁸ After the completion of the 1999 ice fishing season, the parties orally agreed that each party would receive his payments from different clients.⁷⁹ Additionally, the parties each wrote a check to Dahl for \$813.97.⁸⁰ Ziegler and Kirsch later claimed that the checks were for an initial capital investment, while Dahl claimed they were for future marketing expenses.⁸¹ In 2000, Dahl, Tronson, and Legacie continued to guide under the name Perch Patrol.⁸² However, Dahl, Tronson, and Legacie informed Ziegler and Kirsch that Ziegler and Kirsch could no longer guide with Dahl, Tronson, and Legacie.⁸³ The district court granted a motion for summary judgment dismissing Ziegler and Kirsch's claim that they were in a partnership with Dahl, Tronson, and Legacie.⁸⁴ The North Dakota Supreme Court affirmed, based on the finding that

71. *Id.* ¶ 7; *Gangl*, 281 N.W.2d at 579.

72. *See* *Ziegler v. Dahl*, 2005 ND 10, ¶¶ 13-26, 691 N.W.2d 271, 275-78 (identifying and explaining the elements of a North Dakota partnership).

73. 2005 ND 10, 691 N.W.2d 271.

74. *Ziegler*, ¶¶ 13-26, 691 N.W.2d at 275-78.

75. *Id.* ¶ 1, 691 N.W.2d at 273.

76. *Id.* ¶ 2.

77. *Id.*

78. *Id.* ¶ 3.

79. *Id.* ¶¶ 4-5.

80. *Id.* ¶ 6.

81. *Id.*

82. *Id.* ¶ 7, 691 N.W.2d at 274.

83. *Id.*

84. *Id.* ¶ 8.

Ziegler and Kirsch were unable to show that the first two partnership elements existed in their relationship with the defendants.⁸⁵

Ziegler illustrated that establishing each partnership element is imperative to prove the existence of a partnership.⁸⁶ The following sections explain each of the essential elements in establishing a partnership under North Dakota law. First, the element of intent is explained. Next, co-ownership is discussed. Finally, the profit motive element is examined.

i. Intent by Partners

Ziegler stated that demonstrating intent to form a partnership is one of the most important steps in proving the existence of a partnership.⁸⁷ In 1995, North Dakota adopted the revised UPA's definition, which added the phrase, "whether or not the persons intend to form a partnership," to the existing definition.⁸⁸ This language informs parties that they could become partners by demonstrating intent through their actions alone, even if they explicitly stated that their relationship was not a partnership.⁸⁹

In *Gangl*, the North Dakota Supreme Court stated that the requisite intent is met when the different parties want to work together and be a part of a relationship that includes the other essential elements required of a partnership.⁹⁰ So long as parties aim to work together in a co-ownership relationship with the sharing of profits, the element of intent is met.⁹¹ The court further emphasized that intent is not something that must be stated outright.⁹² Therefore, if intent is shown through the actions of the parties, parties cannot simply state that they are not involved in a partnership, they must show it.⁹³ A partnership can only exist if there is a form of intent among the parties.⁹⁴ However, in order to completely establish the existence of a partnership, the elements of co-ownership and profit motive are required as well.⁹⁵

85. *Id.* ¶ 27, 691 N.W.2d at 278.

86. *See id.* ¶¶ 13-26, 691 N.W.2d at 275-78 (demonstrating how the elements must be met in order to prove a partnership existed).

87. *Ziegler*, ¶ 14, 691 N.W.2d at 275.

88. *Id.*; UNIFORM PARTNERSHIP ACT § 202(a) (1997).

89. *Ziegler*, ¶ 14, 691 N.W.2d at 275.

90. *Gangl v. Gangl*, 281 N.W.2d 574, 580 (N.D. 1979).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Ziegler*, ¶ 14, 691 N.W.2d at 275.

95. *Id.* ¶¶ 21-26, 691 N.W.2d at 277-78.

ii. Co-Ownership

The second element to prove the existence of a partnership is co-ownership.⁹⁶ With co-ownership, parties must prove that they have mutual control over their business and that they share a community of interest.⁹⁷ If a party is able to establish mutual control and a community of interest, the element of co-ownership is met.⁹⁸

With co-ownership, the parties involved must have control over their business.⁹⁹ Parties are considered co-owners of a business when they share ultimate control of the enterprise and combine this with profit sharing.¹⁰⁰ While control is necessary to show the existence of co-ownership, relinquishing control from the actual parties involved in the co-ownership to associates is acceptable.¹⁰¹

Beyond control, parties must also share a community of interest in the profits and losses of their business.¹⁰² Sharing in the profits of a business is essential in partnerships.¹⁰³ Establishing that the partners share in the losses is equally important.¹⁰⁴ Showing that parties shared in the profits and losses of the business helps establish co-ownership among the parties.¹⁰⁵ Co-ownership is an essential element in determining the existence of a partnership.¹⁰⁶ Along with co-ownership, though, intent and profit motive must also exist.¹⁰⁷

iii. Profit Motive

The third element to prove the existence of a partnership is profit motive.¹⁰⁸ To meet the profit motive requirement, partners must prove that their business is intended to operate for a profit.¹⁰⁹ If the parties are able to establish that their business was functioning in order to make a profit, the element is met.¹¹⁰ Profit motive is an essential element to partnership.¹¹¹

96. *Id.* ¶ 21.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* ¶ 24, 691 N.W.2d at 277-78.

103. *Gangl v. Gangl*, 281 N.W.2d 574, 580 (N.D. 1979).

104. *Id.* at 581.

105. *Id.* at 580.

106. *Ziegler*, ¶ 21, 691 N.W.2d at 277.

107. *Id.* ¶¶ 14-26, 691 N.W.2d at 275-78.

108. *Gangl*, 281 N.W.2d at 581.

109. *Id.*

110. *Id.*; *Ziegler*, ¶ 26, 691 N.W.2d at 278.

111. *Ziegler*, ¶ 26, 691 N.W.2d at 278.

But the other essential elements, intent and co-ownership, must be proven along with a profit motive to establish a partnership.¹¹²

c. Partnership Standard of Review

Additionally, the North Dakota Supreme Court has previously held that determining whether a partnership exists is a mixed question of law and fact.¹¹³ However, the final determination, in whether a partnership exists, is a question of law.¹¹⁴ In *J.P. v. Stark County Social Services Board*,¹¹⁵ which involved Medicaid payments of out-of-state medical care, the North Dakota Supreme Court held that questions of law are fully reviewable, that is, de novo review applies.¹¹⁶ Furthermore, in *Klein v. Larson*,¹¹⁷ where child custody and child support were at issue, the North Dakota Supreme Court held that when there are questions of fact, the clearly erroneous standard of review applies.¹¹⁸

While partnership law and joint venture law are not identical, they share many similarities, likely because at one time they were indistinguishable.¹¹⁹ Partnership law has been very influential in the development of joint venture law.¹²⁰ Although similar, partnerships and joint ventures are distinct entities with varying components.¹²¹

B. A BRIEF ANALYSIS OF JOINT VENTURES

Joint venture relationships are similar to partnerships, but more limited in scope and duration.¹²² Understanding common concepts of general joint venture law, as well as specific interpretations of joint venture law by states, is important in obtaining a grasp of joint venture law.¹²³ The follow-

112. *Id.* ¶¶ 14-24, 691 N.W.2d at 275-78.

113. *Tarnavsky v. Tarnavsky*, 2003 ND 110, ¶ 7, 666 N.W.2d 444, 446. Mixed questions of law and fact involve issues that are neither pure questions of fact nor pure questions of law. BLACK'S LAW DICTIONARY 1024 (8th ed. 2004). Questions of fact do not involve the law on a given point; instead, they are required to be resolved by a jury in a jury trial or judge in a bench trial. *Id.* at 1281. Questions of law concern the application or interpretation of the law and are answered by the judge. *Id.*

114. *Tarnavsky*, ¶ 7, 666 N.W.2d at 446.

115. 2007 ND 140, 737 N.W.2d 627.

116. *J.P.*, ¶ 9, 737 N.W.2d at 631.

117. 2006 ND 236, 724 N.W.2d 565.

118. *Klein*, ¶ 35, 724 N.W.2d at 575.

119. Henry W. Nichols, *Joint Ventures*, 36 VA. L. REV. 425, 428 (1950).

120. *See* *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 8, 718 N.W.2d 580, 582 (stating that partnership law principles apply to joint ventures).

121. Nichols, *supra* note 119, at 444.

122. *SPW Assocs., LLP*, ¶ 8, 718 N.W.2d at 582.

123. *See* Nichols, *supra* note 119, at 432-33 (describing the common characteristics of joint venture relationships).

ing sections explain both the general concepts of joint venture law and the North Dakota Supreme Court's interpretation of joint venture law. First, joint venture relationships are broadly discussed. Next, joint venture relationships are discussed in the context of North Dakota law.

1. *Overview of Joint Venture Law*

At common law, joint ventures, a creation of the American court system, were not recognized as an individual entity.¹²⁴ Instead, they were identified as informal partnerships.¹²⁵ While no identified reason of why or how joint ventures developed, American courts began to recognize joint ventures and distinguish them from partnerships as early as 1890.¹²⁶ It was then that courts began to gradually acknowledge that parties could combine their property and services without forming an actual partnership.¹²⁷

Joint venture relationships are typically described as similar to partnerships, without the longevity of a partnership: “[t]he joint venture, also known as joint adventure, joint enterprise, joint undertaking, joint speculation and syndicate, has been defined as a special combination of two or more persons who, in some specific venture, seek a profit jointly without any actual partnership or corporate designation.”¹²⁸ Courts have generally stated that joint venture relationships are established when parties undertake a specific business project with a profit motive.¹²⁹ Additionally, the parties involved must have an equal voice regarding the control and management of the venture.¹³⁰

No exclusive test is used to establish a joint venture.¹³¹ Whether a joint venture exists depends upon the facts and circumstances of each case, as no rule can be applied to every case.¹³² In joint venture relationships, a single factor is not determinative.¹³³ Instead, the facts of each case are examined as a whole.¹³⁴ However, courts have determined a number of elements that generally establish a joint venture: (1) two or more parties must establish a specific agreement to carry on a venture; (2) parties must show through the agreement an intention to be joint venturers; (3) parties must each

124. Nichols, *supra* note 119, at 428.

125. *See id.* (explaining the history of joint venture entities).

126. *Id.*

127. *Id.*

128. *Id.* at 430.

129. *Id.* at 431.

130. *Id.*

131. *Id.* at 432.

132. *Id.* at 433.

133. *Id.*

134. *Id.*

contribute property, finances, skill, knowledge, or effort to the joint venture; (4) parties must each have some control over the enterprise; and (5) parties must share in both the profits and the losses of the enterprise.¹³⁵

2. *North Dakota Joint Venture Law*

The North Dakota Supreme Court more clearly defines the nature of joint ventures in North Dakota.¹³⁶ The court's interpretation of joint venture law will be developed throughout the following sections. First, the definition of a joint venture is discussed. Then the elements of a joint venture are analyzed. Finally, the standard of review for joint ventures is examined.

a. Definition of a Joint Venture

Historically, North Dakota has recognized joint venture relationships.¹³⁷ In *SPW Associates, LLP v. Anderson*,¹³⁸ the North Dakota Supreme Court stated that joint ventures are very similar to partnerships, but more limited in scope and duration.¹³⁹ Additionally, the North Dakota Supreme Court has stated there is no definite way to determine the existence of a joint venture.¹⁴⁰ While each case depends on its respective facts, the North Dakota Supreme Court has indicated that particular elements are very influential when establishing a joint venture.¹⁴¹ Consequently, understanding the factors relied upon by the North Dakota Supreme Court provides crucial insights into the determination of a joint venture relationship.¹⁴²

b. Elements of a Joint Venture

In *Voltz v. Dudgeon*,¹⁴³ James Dudgeon appealed from a judgment for Jeffrey Voltz.¹⁴⁴ In 1978, Voltz, a farmer, purchased a truck through his business, Voltz Trucking, in order to haul grain.¹⁴⁵ Voltz hired Dudgeon to

135. *Id.*

136. See *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 8, 718 N.W.2d 580, 582 (explaining the North Dakota Supreme Court's interpretation of joint ventures).

137. See, e.g., *SPW Assocs., LLP*, ¶ 8, 718 N.W.2d at 582 (“North Dakota has historically recognized the joint venture relationship.”).

138. 2006 ND 159, 718 N.W.2d 580.

139. *SPW Assocs., LLP*, ¶ 8, 718 N.W.2d at 582.

140. *Id.* ¶ 10, 718 N.W.2d at 583; *Voltz v. Dudgeon*, 334 N.W.2d 204, 206 (N.D. 1983).

141. *SPW Assocs., LLP*, ¶ 10, 718 N.W.2d at 583; *Voltz*, 334 N.W.2d at 206.

142. See *Voltz*, 334 N.W.2d at 206 (defining the elements of a joint venture).

143. 334 N.W.2d 204 (N.D. 1983).

144. *Voltz*, 334 N.W.2d at 205.

145. *Id.*

transport the grain and the two later decided that they could make more money with an additional truck.¹⁴⁶ Voltz Trucking purchased another truck, and both Voltz and Dudgeon signed the purchase agreement.¹⁴⁷ Dudgeon maintained the second truck and oversaw the bills for the truck maintenance.¹⁴⁸ Dudgeon was also authorized to write checks and even withdraw his compensation from the account.¹⁴⁹ After Voltz Trucking purchased the second truck, the first truck was in an accident and was not operable, which left Voltz Trucking with only one truck.¹⁵⁰ But after a discrepancy regarding the serial numbers of the second truck, the truck had to be returned to the seller, leaving Voltz Trucking with no trucks.¹⁵¹ Voltz brought an action against Dudgeon.¹⁵² He claimed that because of the partnership between the two men, Dudgeon was responsible for half of the trucking business expenses.¹⁵³ The district court found that a joint venture, not a partnership, existed between the parties.¹⁵⁴ The North Dakota Supreme Court affirmed the decision.¹⁵⁵

The *Voltz* court elaborated on the elements of the long-recognized joint venture relationship.¹⁵⁶ Because the court had never specifically defined the elements needed to show a joint venture relationship, it summarized elements that the Minnesota Supreme Court used in what was considered a generally accepted rule.¹⁵⁷ The court provided four elements that it found necessary to establish a joint venture relationship: (1) contribution; (2) joint proprietorship and control; (3) sharing of profits, but not necessarily losses; and (4) a contract.¹⁵⁸ The court also held that a business enterprise must be limited in scope and duration in order to be considered a joint venture.¹⁵⁹

In *SPW Associates, LLP v. Anderson*, Murdo Cameron appealed from a district court judgment that determined SPW Associates had lawfully possessed an airplane.¹⁶⁰ Cameron, a commercial pilot, was interested in a

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.* at 206.

157. *Id.* (citing *Rehnberg v. Minnesota Homes*, 52 N.W.2d 454, 457 (Minn. 1952)).

158. *Id.*

159. *Id.*

160. *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 1, 718 N.W.2d 580, 581.

vintage airplane.¹⁶¹ After Cameron placed advertisements in aviation magazines, Douglas Anderson responded.¹⁶² The two men entered into a written agreement to build two airplanes.¹⁶³ Cameron was responsible for providing an engine for the first airplane and parts for both airplanes, while Anderson was in charge of designing and manufacturing different parts for the airplanes.¹⁶⁴ Cameron and Anderson agreed that they would each keep one of the completed airplanes.¹⁶⁵

Anderson later entered into a loan agreement with SPW Associates through his company, Exclusive Aviation, in order to finance the airplanes.¹⁶⁶ Anderson defaulted on the loan and signed an agreement granting possession of the first airplane to SPW Associates.¹⁶⁷ Cameron filed a lien multiple times, and eventually the lien was recorded.¹⁶⁸ SPW Associates then sought a declaratory judgment stating that it was entitled to possession of the airplane.¹⁶⁹ Cameron argued that his interest in the airplane, not the security interest of SPW Associates, was superior.¹⁷⁰ The district court found that Anderson and Cameron formed a joint venture relationship.¹⁷¹ Due to this relationship, the district court granted SPW Associates the security interest in the airplane.¹⁷² The North Dakota Supreme Court affirmed.¹⁷³

The North Dakota Supreme Court reiterated the elements necessary to establish a joint venture relationship.¹⁷⁴ The court held that four elements were necessary to show a joint venture relationship.¹⁷⁵ The North Dakota Supreme Court, however, also clarified that no definite formula exists for identifying a joint venture relationship and the facts of each case control the decision.¹⁷⁶

161. *Id.* ¶ 2.

162. *Id.* ¶¶ 2-3.

163. *Id.* ¶ 3, 718 N.W.2d at 581.

164. *Id.* at 581-82.

165. *Id.* at 582.

166. *Id.* ¶ 4.

167. *Id.* ¶ 5.

168. *Id.*

169. *Id.* ¶ 6.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* ¶ 14, 718 N.W.2d at 584.

174. *Id.* ¶ 10, 718 N.W.2d at 583. The court laid out four elements: (1) contribution by the parties; (2) proprietary interest and right of mutual control; (3) an express or implied agreement for the sharing of profits, but not necessarily losses; and (4) an express or implied contract showing the formation of a joint venture. *Id.*

175. *Id.*

176. *Id.*

While the court established that the facts of each particular case are important, the court also established that certain elements need to be present for a joint venture relationship to exist.¹⁷⁷ The following sections explain each of the elements essential to establish a joint venture in North Dakota. First, contribution is analyzed. Next, the requirement of a proprietary interest and mutual control are discussed. Then, the express or implied agreement for the sharing of profits is examined. Finally, the express or implied contract is explored.

i. Contribution

When establishing that a joint venture relationship existed, parties must prove contribution among the members of the venture.¹⁷⁸ Contribution shows that the parties involved in the joint venture relationship combined their money, property, time, or skill.¹⁷⁹ In *Voltz v. Dudgeon*, both parties contributed, but in different ways.¹⁸⁰ While Voltz contributed money to the venture, Dudgeon contributed his time, skill, knowledge, driving expertise, and business maintenance.¹⁸¹ Therefore, while parties involved in a joint venture relationship must show that they each contributed in some way, the contribution that each party supplied does not necessarily need to be of equal type or value, as long as all of the parties have contributed.¹⁸² Like the element of contribution, establishing a proprietary interest and mutual control, an agreement for shared profits, and a contract showing the agreement are also essential elements.¹⁸³

ii. Proprietary Interest and Mutual Control

To establish that a joint venture relationship exists, parties must also show that a proprietary interest and right of mutual control existed over the joint venture property.¹⁸⁴ A proprietary interest is defined as “the interest held by a property owner together with all appurtenant rights, such as a

177. See generally *id.* (listing the elements after stating “the following four elements must be present”); *Voltz v. Dudgeon*, 334 N.W.2d 204, 206 (N.D. 1983) (defining the elements necessary to prove a joint venture relationship).

178. See *Voltz v. Dudgeon* 334 N.W.2d 204, 206 (N.D. 1983) (defining the meaning of contribution, with regard to North Dakota joint venture law).

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. See *id.* (listing and defining elements necessary to display a North Dakota joint venture); see also *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 10, 718 N.W.2d 580, 583 (listing the elements necessary to display a North Dakota joint venture).

stockholder's right to vote the shares."¹⁸⁵ Sharing an economic interest is an important part in proving a joint venture; however, an economic interest alone is not sufficient to prove a joint venture.¹⁸⁶ Parties must also demonstrate joint control over the venture.¹⁸⁷ Once a party has demonstrated that they had some control in the enterprise, the element of proprietary interest and mutual control is met.¹⁸⁸ Beyond the other required elements, an agreement for shared profits must also be shown to form a joint venture.¹⁸⁹

iii. Agreement for Shared Profits

Parties must prove an express or implied agreement, showing that they intended to share in the profits of the venture.¹⁹⁰ The agreement, however, does not necessarily need to show that the parties intended to share in the losses of the venture.¹⁹¹ In *Voltz v. Dudgeon*, no express agreement demonstrated that the parties intended to share in the profits of the trucking business.¹⁹² Dudgeon, however, testified that he expected to share in the profits.¹⁹³ Therefore, the court found that although no express agreement existed, an implied agreement to share in the profits of the business was present.¹⁹⁴ Similarly, in *SPW Associates, LLP*, the parties did not have an express agreement to share in the profits of making airplanes.¹⁹⁵ However, because the parties had an agreement to build airplanes and sell them to third parties, the court found that the parties implied, through their actions and other agreements, to share in the profits of the venture.¹⁹⁶ An agreement to share in profits is essential in establishing a joint venture.¹⁹⁷ The existence of a contract that can show the formation of a joint venture is also a critical element in the formation of a joint venture.¹⁹⁸

185. BLACK'S LAW DICTIONARY 829 (8th ed. 2004).

186. See Nichols, *supra* note 119, at 439 (stating that the joint venturers typically need to have an equal voice and level of control); see also 46 AM. JUR. 2D *Joint Ventures* § 13 (2006) (stating that merely sharing an economic interest is not sufficient to form a joint venture).

187. 46 AM. JUR. 2D *Joint Ventures* § 13 (2006).

188. *Id.*

189. *Id.*

190. *Id.*

191. See *id.* (explaining an agreement for shared profits); see *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 10, 718 N.W.2d 580, 583.

192. *Voltz*, 334 N.W.2d at 205.

193. *Id.* at 207.

194. *Id.*

195. *SPW Assocs., LLP*, ¶ 11, 718 N.W.2d at 583.

196. *Id.* ¶ 12, 718 N.W.2d at 584.

197. *Voltz*, 334 N.W.2d at 206.

198. *Id.*

iv. Contract Showing Joint Venture

To establish a joint venture relationship, parties must show an express or implied contract to form a joint venture relationship.¹⁹⁹ Similar to the agreement to share profits, the contract that shows that the parties entered into a joint venture can be either express or implied.²⁰⁰ In *Voltz*, Dudgeon argued that there was no contract between the parties even though he had co-signed a retail installment contract.²⁰¹ The court, however, held that the circumstances of the events “indicate[d] a sufficient objective manifestation of consent” which, in turn, satisfied the implied contract element.²⁰² When a contract showing the formation of a joint venture is present, along with evidence of contribution, proprietary interest and mutual control, and an agreement to share in profits, all of the elements of a joint venture are met.²⁰³

c. Joint Venture Standard of Review

Determining the existence of a joint venture is a question of fact.²⁰⁴ The North Dakota Rules of Civil Procedure state, “[f]indings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”²⁰⁵ The North Dakota Supreme Court determined that a finding of fact is clearly erroneous if: (1) induced by an erroneous view of the law; (2) no evidence supports the finding; or (3) the reviewing court is left with a definite and firm conviction that a mistake has been made.²⁰⁶

While differences exist between partnerships and joint ventures, such as their respective standards of review, they also share many similar qualities.²⁰⁷ For instance, the fiduciary duties that partners and joint venturers owe to one another are identical.²⁰⁸ Throughout the next section, these fiduciary duties owed in partnerships and joint ventures are analyzed.

199. *See id.* (defining the elements needed to show a joint venture relationship in North Dakota); *SPW Assocs., LLP*, ¶ 10, 718 N.W.2d at 583 (listing the elements needed to show a joint venture relationship in North Dakota).

200. *Voltz*, 334 N.W.2d at 206; *SPW Assocs., LLP*, ¶ 10, 718 N.W.2d at 583.

201. *Voltz*, 334 N.W.2d at 207.

202. *Id.*

203. *Id.* at 206.

204. *Id.*

205. N.D. R. Civ. P. 52(a).

206. *Klein v. Larson*, 2006 ND 236, ¶ 6, 724 N.W.2d 565, 567.

207. *See, e.g., Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928) (explaining that partners and joint venturers owe one another the same fiduciary duties).

208. *Id.*

C. FIDUCIARY DUTIES IN PARTNERSHIPS AND JOINT VENTURES

A fiduciary relationship exists when a person is expected to act for the benefit of another person, in the scope of their relationship.²⁰⁹ Section one will discuss a background of case law regarding partnership and joint venture fiduciary duties. Section two will then examine the general concepts of the fiduciary duties for partnerships and joint ventures.

1. *Case Law Regarding Fiduciary Duties*

Partners are bound to strict fiduciary duties regarding loyalty and care.²¹⁰ Partnership law applies to joint venture relationships.²¹¹ Therefore, joint venture relationships are bound by the same strict fiduciary duties regarding loyalty and care as partnerships.²¹² The following sections illustrate the great responsibility courts have placed on parties with regard to fiduciary duties.

a. General Fiduciary Duty Case Law

In the seminal fiduciary duty case, *Meinhard v. Salmon*,²¹³ Walter Salmon leased the Hotel Bristol for twenty years from Louisa Gerry.²¹⁴ Salmon intended to renovate the building and develop shops and offices at a cost of \$200,000.²¹⁵ Salmon worked with Morton Meinhard, who provided funding for the renovations.²¹⁶ The Court of Appeals of New York considered the relationship between Salmon and Meinhard to be a joint venture.²¹⁷

Near the end of the twenty-year lease, Elbridge Gerry became the new owner of the premises.²¹⁸ In addition to Hotel Bristol, Gerry owned a number of buildings in the same area.²¹⁹ Gerry intended to lease the area long-term to someone who would destroy and replace the buildings.²²⁰ Eventually, Gerry leased the area to Midpoint Realty Company, a company

209. BLACK'S LAW DICTIONARY 1315 (8th ed. 2004).

210. See UNIFORM PARTNERSHIP ACT § 404 (1997) (discussing the fiduciary duties owed in partnership relationships); N.D. CENT. CODE § 45-16-04 (2007) (describing the fiduciary duties owed in partnership relationships).

211. *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928).

212. *Id.*

213. 164 N.E. 545 (N.Y. 1928).

214. *Meinhard*, 164 N.E. at 545.

215. *Id.* at 546.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

controlled by Salmon.²²¹ Salmon did not inform Meinhard of the lease until it was finalized, which was approximately one month after the signing and delivery of the lease.²²² Meinhard then demanded that the lease be included in the joint venture's assets, which would oblige Salmon to share in the interest of the lease.²²³ Salmon refused, and a referee then found in favor of Meinhard, but limited Meinhard's interest in the lease to twenty-five percent.²²⁴ In a cross-appeal at the appellate division, the court increased Meinhard's interest to fifty percent.²²⁵ Salmon appealed.²²⁶

The New York Court of Appeals held that joint venturers are subject to the same strict fiduciary duties as partners:

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.²²⁷

The court found that Salmon excluded Meinhard from the chance to compete when he chose to keep the new lease a secret.²²⁸ While the New York Court of Appeals held that Salmon was not guilty of a conscious purpose to defraud, the New York Court of Appeals found that Salmon was in a position to gain the new lease because of the success of his joint venture with Meinhard.²²⁹ Consequently, the New York Court of Appeals affirmed the lower court's decision, but modified the judgment, in order to

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* at 547.

229. *Id.* at 548.

designate certain proceeds that Salmon gained from entering the lease to go to Meinhard.²³⁰

Meinard has had a large impact on fiduciary duties owed in both partnership and joint venture relationships.²³¹ Not only did the case demonstrate that a great expectation for loyalty and care exists in joint venture relationships, but it also heightened the level of loyalty and care due in partnership relationships.²³² The court's words describing the strictness of fiduciary duties have been quoted both in cases involving partnerships and joint ventures.²³³ Many courts, including the North Dakota Supreme Court, use *Meinhard* to fully explain the high standard set, in regard to fiduciary duties.²³⁴

b. North Dakota Fiduciary Duty Case Law

In *Svihl v. Gress*,²³⁵ Albert Svihl alleged that he and George Gress entered into a partnership relationship in order to transport livestock.²³⁶ Svihl claimed that Gress disposed of assets and demanded an accounting for all of the money and property received by the partnership.²³⁷ The district court held that a partnership existed between Svihl and Gress, and that Svihl was not entitled to a share of the rental profits for a cattle trailer, which Svihl asserted belonged to the partnership.²³⁸ Svihl appealed and claimed that the district court erred when it held that Svihl was not entitled to a share of the rent on a partnership-owned cattle trailer.²³⁹ Svihl and Gress previously agreed that no business profits would be disbursed until the partnership paid off its debts.²⁴⁰ The partnership owed money for the machinery used to operate the business, and it also owed Gress for the money he advanced in order to operate the business.²⁴¹ The North Dakota Supreme Court held that

230. *Id.* at 549.

231. See KLEINBERGER, *supra* note 26, at 259 (stating that the decision is applicable to both partnerships and joint ventures).

232. See *id.* (explaining the importance of the decision in *Meinhard*).

233. See generally Svihl v. Gress, 216 N.W.2d 110, 115 (N.D. 1974) (quoting Judge Cardozo's words regarding fiduciary duties in *Meinhard*).

234. See, e.g., Svihl, 216 N.W.2d at 115 (using Judge Cardozo's *Meinhard* decision to illustrate the fiduciary duties owed to partners and joint venturers).

235. 216 N.W.2d 110 (N.D. 1974).

236. Svihl, 216 N.W.2d at 111.

237. *Id.*

238. *Id.* at 112.

239. *Id.*

240. *Id.*

241. *Id.*

Svihl was entitled to rental profits from the cattle trailer, but only after Gress had been fully compensated for his advance to the business.²⁴²

The North Dakota Supreme Court used *Meinhard* to demonstrate the importance of fiduciary duties in a partnership relationship.²⁴³ The court held that the fiduciary duties, with regard to partnership assets, were significant, because those who choose to enter into a fiduciary relationship must be held to a higher standard in regard to their partnership relationships.²⁴⁴ The court also held that partners owe one another the duties of good faith and integrity in their partnership dealings.²⁴⁵

2. General Concepts of Fiduciary Duties

Partners owe the partnership and their partners the fiduciary duties of loyalty and care.²⁴⁶ The duties cannot be removed through a partnership agreement.²⁴⁷ However, the partnership agreement may determine how the partnership plans to measure the performance of the duties, so long as the determination is not unreasonable.²⁴⁸

In *Grynberg v. Dome Petroleum Corp.*,²⁴⁹ a case that involved a farmout agreement and fiduciary duties, the North Dakota Supreme Court stated “[t]he existence and scope of a fiduciary duty depends upon the language of the parties’ agreement.”²⁵⁰ The UPA states fiduciary duties that are relevant in partnership relationships.²⁵¹ The North Dakota Century Code uses the same language in identifying the fiduciary duties of a partnership.²⁵² While these laws are discussed in the context of partnership relationships, remembering that the principles of partnership laws apply to joint venture relationships is important.²⁵³ In the following section, the duty of loyalty owed in a partnership relationship is discussed. Finally, the duty of care owed in a partnership relationship is examined.

242. *Id.* at 120.

243. *Id.* at 115 (citing *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928)).

244. *Id.*

245. *Id.* (citing *Engstrom v. Larson*, 55 N.W.2d 579, 587 (N.D. 1952)).

246. UNIFORM PARTNERSHIP ACT § 404(a) (1997); N.D. CENT. CODE § 45-16-04(1) (2007).

247. UNIFORM PARTNERSHIP ACT § 103(b)(3), (4) (1997); N.D. CENT. CODE § 45-13-03(2)(c-d) (2007); UNIFORM PARTNERSHIP ACT § 404, cmt. 1 (1997).

248. UNIFORM PARTNERSHIP ACT § 103(b)(3)(i)-(ii) (1997); N.D. CENT. CODE § 45-13-03(2)(c) (2007); UNIFORM PARTNERSHIP ACT § 404, cmt. 1 (1997).

249. 1999 ND 167, 599 N.W.2d 261.

250. *Grynberg*, ¶ 21, 599 N.W.2d at 267.

251. UNIFORM PARTNERSHIP ACT § 404 (1997); *see also* § 45-16-04 (showing North Dakota’s language in regard to fiduciary duties).

252. *See* § 45-16-04 (displaying identical language regarding partnerships).

253. *See* *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 8, 718 N.W.2d 580, 582 (explaining how the principles of partnership law apply to joint ventures).

a. Duty of Loyalty

The duty of loyalty is essential in a partnership relationship.²⁵⁴ The purpose of the duty of loyalty is to prevent individual partners from profiting at the expense of the partnership.²⁵⁵ UPA section 404(b) outlines the areas of partnerships where a duty of loyalty is owed:

A partner's duty of loyalty to the partnership and the other partners is limited to the following:

1. to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner or partnership property, including the appropriation of a partnership opportunity;
2. to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
3. to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.²⁵⁶

These three areas encompass the entire duty of loyalty that is owed in a partnership relationship.²⁵⁷

UPA section 404(b)(1) discusses the duty of loyalty in the context of business opportunities.²⁵⁸ The provision limits the duty of loyalty in two ways.²⁵⁹ First, the section requires that the partners involved in a partnership avoid any opportunities, without consent from the other partners, which would allow them to use the partnership property for their own personal gain.²⁶⁰ Second, the provision requires individual partners to avoid taking business opportunities from which the partnership may benefit.²⁶¹ But the second section of the provision may be eliminated if all of the partners agree.²⁶² Additionally, if an opportunity arises and the partnership

254. UNIFORM PARTNERSHIP ACT § 404, cmt. 1.

255. KLEINBERGER, *supra* note 26, at 261.

256. UNIFORM PARTNERSHIP ACT § 404(b); *see also* § 45-16-04(2) (noting the identical language present in the UPA).

257. UNIFORM PARTNERSHIP ACT § 404, cmt. 2.

258. *Id.* § 404(b)(1) (1997); *see also* § 45-16-04(2)(a) (showing the corresponding section of North Dakota partnership law).

259. *Id.* § 404(b)(1) (1997); *see also* § 45-16-04(2)(a).

260. KLEINBERGER, *supra* note 26, at 263.

261. *Id.* at 262.

262. *Id.* at 263.

wholly decides to pass, the individual partners may then take the opportunities for themselves.²⁶³

UPA section 404(b)(2) prevents partners from operating as, or on behalf of, a party that has an adverse interest to the partnership.²⁶⁴ A conflict of interest exists when a partner has agreed to allow the partnership to participate in business with a partner, a partner's family member, an organization in which the partner has financial interest, or any person whose interests are adverse to the partnership.²⁶⁵ These relationships lead to a conflict of interest, which is considered a breach of the duty of loyalty.²⁶⁶

UPA section 404(b)(3) requires partners to avoid competing with the partnership before the dissolution of the partnership.²⁶⁷ As soon as the partnership dissolution occurs, the individual partners may again compete.²⁶⁸ However, the partners are not able to use confidential information gained from the partnership after the dissolution.²⁶⁹

To remedy violations of UPA section 404(b), the partners who breached the provision are required to reimburse the partnership.²⁷⁰ If a partner violates UPA section 404(b), he or she is required to give any profits gained through his or her violation to the partnership.²⁷¹ While a partnership is not required to prove damages in these cases, if the partnership can, it may then bring an additional suit to compensate those damages.²⁷² This duty of loyalty, as well as a duty of care, is owed to partners in partner relationships.²⁷³

b. Duty of Care

The duty of care among partners is limited to "refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."²⁷⁴ In explaining the duty of care, comment three to UPA section 404 states, "[t]he standard of care imposed by RUPA is that of gross negligence."²⁷⁵ While partners have a duty to avoid gross

263. *Id.*

264. UNIFORM PARTNERSHIP ACT § 404, cmt. 2 (1997).

265. KLEINBERGER, *supra* note 26, at 263.

266. *Id.* at 264.

267. UNIFORM PARTNERSHIP ACT § 404(b)(3); *see also* N.D. CENT. CODE § 45-16-04(2)(c) (2007) (articulating North Dakota's fiduciary requirement of partners).

268. UNIFORM PARTNERSHIP ACT § 404, cmt. 2.

269. *Id.*

270. KLEINBERGER, *supra* note 26, at 264.

271. *Id.* at 261.

272. *Id.* at 264.

273. UNIFORM PARTNERSHIP ACT § 404, cmt. 3.

274. N.D. CENT. CODE § 45-16-04(3) (2007).

275. UNIFORM PARTNERSHIP ACT § 404, cmt. 3.

negligence, partners are not liable to the partnership for common mistakes.²⁷⁶ Under the revised UPA, the duty of care cannot be eliminated from a partnership.²⁷⁷ While the standard of care can be limited, the standard cannot be “unreasonably reduce[d].”²⁷⁸

Fiduciary duties play a large role in both partnership and joint venture relationships.²⁷⁹ As partnership law applies to joint ventures, joint venturers are bound to the same stringent fiduciary duties as partners.²⁸⁰ Therefore, partners and joint venturers should be aware of the possible liabilities they will face if fiduciary duties are breached.²⁸¹

D. TOP LEASES

A top lease is an oil and gas lease.²⁸² In *Reynolds-Rexwinkle Oil, Inc. v. Petex, Inc.*,²⁸³ which involved oil and gas lease extensions, the Kansas Supreme Court cited Williams and Meyers, *Manual of Oil and Gas Terms*, to define “top lease” as “an oil and gas lease granted by a landowner during the existence of a recorded mineral lease which is to become effective if and when the existing lease expires or is terminated.”²⁸⁴ The North Dakota Supreme Court has also applied this definition when explaining top leases.²⁸⁵

In *Nantt v. Puckett Energy Co.*,²⁸⁶ the North Dakota Supreme Court discussed top leasing.²⁸⁷ The court stated that while top leasing was once discouraged and considered to be similar to claim jumping, it is now considered useful.²⁸⁸ Top leasing is now seen as functional because a top lease increases drilling and competitiveness among oil lessees.²⁸⁹ If a current lease, also known as a bottom lease, is topped, the owner of the bottom lease will likely drill on the land in order to prevent losing the

276. KLEINBERGER, *supra* note 26, at 258.

277. UNIFORM PARTNERSHIP ACT § 103(b)(4); § 404, cmt. 3.

278. UNIFORM PARTNERSHIP ACT § 103(b)(4).

279. *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928).

280. *Id.*

281. *See id.* (discussing the importance of fiduciary duties in both partnerships and joint ventures).

282. *Reynolds-Rexwinkle Oil, Inc. v. Petex, Inc.*, 1 P.3d 909, 914 (Kan. 2000).

283. 1 P.3d 909 (Kan. 2000).

284. *Reynolds-Rexwinkle Oil, Inc.*, 1 P.3d at 914.

285. *Nantt v. Puckett Energy Co.*, 382 N.W.2d 655, 657 n.1 (N.D. 1986).

286. 382 N.W.2d 655 (N.D. 1986).

287. *Nantt*, 382 N.W.2d at 659.

288. *Id.*

289. Nelson Roach, *The Rule Against Perpetuities: The Validity of Oil and Gas Top Leases and Top Deeds in Texas After Peveto v. Starkey*, 35 BAYLOR L. REV. 399, 409 (1983).

lease.²⁹⁰ Additionally, top leasing allows smaller oil companies to compete with larger oil companies in heavily leased areas.²⁹¹ Therefore, top leasing plays a large role in the development of areas with an abundance of oil.²⁹²

The North Dakota Supreme Court, along with many other courts, has examined top leases, as well as partnership and joint venture relationships.²⁹³ With partnership and joint venture relationships, the court has established specific elements that are essential in showing the formation of each entity.²⁹⁴ Additionally, courts have determined the fiduciary duties for both of these relationships and discussed the heightened responsibility of loyalty and care that partners and joint venturers owe to one another.²⁹⁵ The North Dakota Supreme Court used its past decisions regarding partnerships, joint ventures, fiduciary duties, and top leases to decide *Sandvick v. Lacrosse* in 2008.²⁹⁶

III. ANALYSIS

In *Sandvick v. LaCrosse*, Justice Sandstrom wrote the majority opinion, joined by Chief Justice VandeWalle and Justice Maring.²⁹⁷ The Honorable Bruce E. Bohlman, who sat in place of Justice Kapsner, also joined the majority.²⁹⁸ Justice Crothers concurred in part and dissented in part.²⁹⁹ In reversing the district court's decision, the majority found that a joint venture relationship existed between the parties, but that a partnership relationship did not.³⁰⁰ Additionally, the majority held that Haughton and LaCrosse owed Bragg and Sandvick damages because Haughton and LaCrosse breached their fiduciary duty of loyalty.³⁰¹ The dissent agreed with the majority that a partnership did not exist, but dissented as to the majority's joint venture determination and fiduciary duty findings.³⁰²

290. *Id.*

291. *Id.*

292. *See id.* (discussing top leasing).

293. *See* Gangl v. Gangl, 281 N.W.2d 574, 579 (N.D. 1979) (defining partnership under the North Dakota Century Code); *see also* SPW Assocs., LLP v. Anderson, 2006 ND 159, ¶ 8, 718 N.W.2d 580, 582 (defining joint venture).

294. *See, e.g.,* Ziegler v. Dahl, 2005 ND 10, ¶¶ 13-26, 691 N.W.2d 271, 275-78 (identifying and explaining the elements of a North Dakota partnership); Voltz v. Dudgeon, 334 N.W.2d 204, 206 (N.D. 1983) (defining the elements of a joint venture).

295. *E.g.,* Meinhard v. Salmon, 164 N.E. 545, 546 (N.Y. 1928).

296. *See* discussion *infra* Part III (analyzing *Sandvick*).

297. *Sandvick v. LaCrosse*, 2008 ND 77, ¶¶ 1, 22, 747N.W.2d 519, 520, 524.

298. *Id.* ¶ 23, 747 N.W.2d at 524.

299. *Id.* (Crothers, J., concurring in part and dissenting in part).

300. *Id.* ¶¶ 10, 13, 747 N.W.2d at 522, 523.

301. *Id.* ¶¶ 19, 20, 747 N.W.2d at 524.

302. *Id.* ¶ 24 (Crothers, J., concurring in part and dissenting in part).

A. MAJORITY OPINION

The majority first discussed how to establish a partnership, and then determined that one did not exist between Bragg, Haughton, LaCrosse, and Sandvick.³⁰³ The majority then analyzed joint venture relationships and held that one did exist between the parties.³⁰⁴ Finally, the majority discussed the fiduciary duties of joint venturers and found that Haughton and LaCrosse breached their duties of loyalty and care.³⁰⁵ With regard to the breach of fiduciary duties, the North Dakota Supreme Court held that Haughton and LaCrosse owed damages to Bragg and Sandvick.³⁰⁶

1. *Determination of Partnership*

First, the North Dakota Supreme Court analyzed what constituted a partnership under North Dakota law.³⁰⁷ The court referenced *Tarnavsky* and held that the elements of a partnership are: (1) the intention to be partners; (2) co-ownership of the business; and (3) a profit motive.³⁰⁸ The court then discussed the standard of review that should be used to determine the existence of partnerships.³⁰⁹ The court quoted *Tarnavsky* and stated that the existence of a partnership is a mixed question of law and fact.³¹⁰ Ultimately, the court stated that existence of a partnership is a question of law, and that questions of law are fully reviewable on appeal.³¹¹

The court then discussed the district court's decision.³¹² The district court held that the parties did not co-own a business.³¹³ Also, the district court determined that the business the parties were involved in was limited because their relationship was confined to their involvement in the Horn Leases.³¹⁴ Furthermore, the district court found that the Horn Leases were only for a set period of time, and therefore were limited to that specific time period.³¹⁵

303. *Id.* ¶¶ 7-10, 747 N.W.2d at 521-22.

304. *Id.* ¶¶ 11-13, 747 N.W.2d at 522-23.

305. *Id.* ¶¶ 14-19, 747 N.W.2d at 523-24.

306. *Id.* ¶ 20, 747 N.W.2d at 524.

307. *Id.* ¶¶ 7-10, 747 N.W.2d at 521-22.

308. *Id.* ¶ 7, 747 N.W.2d at 521 (citing *Tarnavsky v. Tarnavsky*, 2003 ND 110, ¶ 7, 666 N.W.2d 444, 446).

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.* ¶ 8.

313. *Id.*

314. *Id.*

315. *Id.*

Next, the *Sandvick* court discussed the revised UPA and its history in North Dakota.³¹⁶ The court stated that it has the option to examine comments of the revised UPA, which North Dakota adopted in 1995, in order to interpret the intent of the drafters.³¹⁷ Therefore, when a conflict or misinterpretation occurs, the court has the ability to review the comments and understand the intent of the statutory language.³¹⁸

Finally, the court analyzed the facts of the case in order to determine if a partnership existed.³¹⁹ The court discussed that the parties entered the leases for a specific amount of time, that they intended to sell the leases, and that the parties were involved in numerous similar enterprises with different parties.³²⁰ These factors proved influential and displayed that they did not intend to be involved with one another by means of a partnership.³²¹ The *Sandvick* court concluded that the district court did not err, and that no partnership existed between the parties, because the Horn Leases constituted one act, not a series of acts.³²²

2. *Determination of Joint Venture*

The North Dakota Supreme Court then analyzed what constituted a joint venture in North Dakota.³²³ The court stated that joint venture relationships are similar to partnerships, but are more limited in scope and duration.³²⁴ The court also acknowledged that the laws of partnerships apply to joint ventures.³²⁵ The court laid out the four elements needed to show that a joint venture exists: (1) contribution; (2) proprietary interest and the right of mutual control; (3) an express or implied agreement for sharing of profits, but not necessarily losses; and (4) an express or implied contract showing the formation of a joint venture.³²⁶ However, the court also stated that there is not a set method to determine the existence of a joint venture, as each case is dependent on the facts.³²⁷

316. *Id.* ¶ 9 (citing *Ziegler v. Dahl*, 2005 ND 10, ¶ 14, 691 N.W.2d 271, 275).

317. *Id.*

318. *Id.*

319. *Id.* ¶ 10, 747 N.W.2d at 521-22.

320. *Id.*

321. *Id.* at 522.

322. *Id.*

323. *Id.* ¶¶ 11-13, 747 N.W.2d at 522-23 (citing *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 8, 718 N.W.2d 580, 582).

324. *Id.* ¶ 11, 747 N.W.2d at 522 (citing *SPW Assocs., LLP*, ¶ 8, 718 N.W.2d at 582).

325. *Id.*

326. *Id.*

327. *Id.*

After the court discussed the background of joint ventures in North Dakota, it reviewed the district court findings regarding the existence of a joint venture.³²⁸ The district court held that a joint venture did not exist.³²⁹ The district court also found that an agreement between Bragg and Haughton or LaCrosse about the purchase of future leases did not exist.³³⁰ Additionally, no written or oral agreement was found between Sandvick and Haughton or LaCrosse concerning a new lease.³³¹ Furthermore, when the Horn Leases were purchased, no agreement between Bragg and Haughton or LaCrosse about the lease development existed.³³² In fact, no agreement was shown that made Bragg or Sandvick a part of any future leases.³³³ No agreement was established between the parties that limited them in any way, with regard to other similar projects.³³⁴ Beyond that, none of the parties involved in the Horn Leases intended to work exclusively with one another, a fact well-known among those involved.³³⁵ Finally, none of the individuals involved expected that the others would include them in their other business projects.³³⁶

The *Sandvick* court also discussed some of the other findings made by the district court.³³⁷ The district court found that the parties had a checking account entitled “Empire Oil JV Account,” that the leases were purchased from their equal contributions, that the leases’ title was held under the Empire Oil Company’s name, and that the parties intended to sell the leases.³³⁸ These findings, along with the testimony of Bragg, Haughton, and LaCrosse that stated the parties intended to share in the profits, persuaded the North Dakota Supreme Court to determine that a joint venture existed between the parties.³³⁹

328. *Id.* ¶ 12, 747 N.W.2d at 522-23.

329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.* ¶ 13, 747 N.W.2d at 523.

338. *Id.*

339. *Id.*

3. *Determination of Fiduciary Duties*

Finally, the North Dakota Supreme Court analyzed the fiduciary duties required in joint venture relationships in North Dakota.³⁴⁰ The court stated that fiduciary duties can be owed in different ways, depending on the agreement between the parties.³⁴¹ The court also held that partnership law is applicable to joint ventures.³⁴²

The North Dakota Supreme Court looked to the North Dakota Century Code, which states that partners owe one another the duty of loyalty and care.³⁴³ The court described the duty of loyalty by using the North Dakota Century Code and previous court decisions, such as *Meinhard* and *Svihl*.³⁴⁴ The *Sandvick* court then discussed the purchase of the original Horn Leases in comparison to the purchase of the Horn Top Leases.³⁴⁵ The court determined that an important difference between the two purchases was the fact that Bragg and Sandvick were unaware of Haughton and LaCrosse's attainment of the Horn Top Leases.³⁴⁶ The court found that Haughton and LaCrosse created a conflict of interest when they purchased the Horn Top Leases without informing Bragg and Sandvick of the purchase.³⁴⁷

Therefore, the North Dakota Supreme Court found that purchasing the Horn Top Leases was not in the best interest of the joint venture because of the underlying joint venture in the original Horn Leases.³⁴⁸ The court reasoned that because Bragg and Sandvick were deliberately left out of the attainment of the Horn Top Leases, Haughton and LaCrosse breached their fiduciary duties of loyalty.³⁴⁹ The *Sandvick* court remanded the case in order to determine the amount of damages that Bragg and Sandvick should receive.³⁵⁰ The court further instructed the district court to limit damages to the revenue generated from oil production on the land where the Horn leases existed.³⁵¹ While the court found that a joint venture existed between

340. *Id.* ¶¶ 14-19, 747 N.W.2d at 523-24.

341. *Id.* ¶ 14, 747 N.W.2d at 523 (citing *Grynberg v. Dome Petroleum Corp.*, 1999 ND 167, ¶ 21, 599 N.W.2d 261, 267).

342. *Id.* (citing *SPW Assocs., LLP v. Anderson*, 2006 ND 159, ¶ 8, 718 N.W.2d 580, 582).

343. *Id.* ¶ 15 (citing N.D. CENT. CODE § 45-16-04(1) (2007)).

344. *Id.* ¶ 16 (citing *Svihl v. Gress*, 216 N.W.2d 110, 115 (N.D. 1974); *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928)).

345. *Id.* ¶ 17, 747 N.W.2d at 523-24.

346. *Id.* at 524.

347. *Id.* ¶ 19.

348. *Id.*

349. *Id.* (citing *Meinhard v. Salmon*, 164 N.E. 545, 548 (N.Y. 1928)).

350. *Id.* ¶ 20.

351. *Id.*

Bragg, Haughton, LaCrosse, and Sandvick and that Haughton and LaCrosse breached the fiduciary duties that they owed to Bragg and Sandvick, Justice Crothers dissented in regard to these specific holdings.³⁵²

B. JUSTICE CROTHERS'S CONCURRING AND DISSENTING OPINION

Justice Crothers concurred in part and dissented in part from the majority opinion.³⁵³ Justice Crothers' concurred with the majority's holding that a partnership did not exist in this case.³⁵⁴ Justice Crothers's dissent discussed the process of finding a joint venture and argued that the district court's decision should have been affirmed.³⁵⁵ Justice Crothers claimed that the majority disregarded the clearly erroneous standard of review and instead took over the district court's fact-finding role when it chose to set aside the district court's findings.³⁵⁶ Justice Crothers argued that the majority overlooked the district court's findings of fact and instead concluded that a joint venture existed based on facts that the majority found more persuasive.³⁵⁷ Justice Crothers recognized that there was no written contract between the parties, that the scope of the enterprise was unclear, and that the district court made many findings that demonstrated the improbability of a joint venture relationship.³⁵⁸

Additionally, Justice Crothers stated that even if the facts that the majority determined persuasive did constitute a joint venture, the majority erred by presuming that the parties did not limit their duty of loyalty, so long as the limitation is not unreasonable.³⁵⁹ Justice Crothers stated that in North Dakota, partners, and therefore joint venturers, are allowed to limit their duty of loyalty.³⁶⁰ Further, Justice Crothers argued that North Dakota does allow for the limitation of the duty of loyalty.³⁶¹ With that, Justice Crothers stated that when the majority assumed that the full amount of loyalty existed, it failed to determine whether a loyalty limitation occurred among the parties.³⁶²

352. *Id.* ¶ 24 (Crothers, J., concurring in part and dissenting in part).

353. *Id.* ¶ 23.

354. *Id.* ¶ 24.

355. *Id.*

356. *Id.* ¶ 26, 747 N.W.2d at 525 (citing *Klein v. Larson*, 2006 ND 236, ¶ 35, 724 N.W.2d 565, 575 (Crothers, J., concurring in part and dissenting in part)).

357. *Id.* ¶¶ 24, 26, 747 N.W.2d at 524-25.

358. *Id.* ¶ 28, 747 N.W.2d at 525.

359. *Id.* ¶ 27 (citing N.D. CENT. CODE § 45-13-03(2) (2007)).

360. *Id.* (citing N.D. CENT. CODE § 45-13-03(2) (2007)).

361. *Id.* ¶ 27.

362. *Id.*

Justice Crothers concluded that the standard of review necessary for finding joint venture relationships required the court to allow the district court to be the fact-finder.³⁶³ Additionally, Justice Crothers argued that when determining the fiduciary duties, the majority failed to discuss whether the duty of loyalty could have been limited by the parties.³⁶⁴ While Justice Crothers concurred with the majority's determination that a partnership did not exist, Justice Crothers dissented from the majority's holding that found a joint venture existed and fiduciary duties were breached.³⁶⁵

IV. IMPACT

In *Sandvick v. LaCrosse*, the North Dakota Supreme Court broadened the definition of a joint venture.³⁶⁶ In its decision, the North Dakota Supreme Court held that a joint venture existed, even when all of the elements of a joint venture were not shown.³⁶⁷ The *Sandvick* holding will likely affect those parties who do not intend to enter into joint venture relationships and the courts that determine whether joint venture relationships exist.³⁶⁸

Currently, North Dakota oil and gas projects are booming.³⁶⁹ A significant amount of oil has is being developed in western North Dakota.³⁷⁰ With that, many agreements are being made and many business ventures are developing.³⁷¹ *Sandvick* will likely impact these agreements, because of the North Dakota Supreme Court's broad definition of a joint venture.³⁷² Parties are strictly obligated to one another in these types of relationships, because the principles of partnership law, including fiduciary duties, do apply to joint venturers.³⁷³ As a result of the court's broadening of the definition of a joint venture, more parties will likely be involved in

363. *Id.* ¶ 28, 747 N.W.2d at 526.

364. *Id.* ¶ 27, 747 N.W.2d at 525.

365. *Id.* ¶¶ 13, 28, 747 N.W.2d at 523, 525.

366. *See id.* ¶ 13, 747 N.W.2d at 523.

367. *Id.*

368. *See id.*

369. Dale Wetzel, *Soaring Oil Production to get Another Boost*, GRAND FORKS HERALD, Nov. 9, 2009, at A1.

370. *Id.* The Bakken oil formation covers parts of North Dakota, Montana, and southeastern Saskatchewan. *Id.* There is an estimated 271-503 billion barrels of oil located in this formation. *Id.*

371. *Id.*

372. *See Sandvick*, ¶¶ 11-13, 747 N.W.2d at 522-23 (discussing the process by which the North Dakota Supreme Court determined that a joint venture existed).

373. *See Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928) (articulating the strict fiduciary duties that are owed in partnerships and joint ventures).

these types of relationships and, consequently, more people will owe these stringent fiduciary duties.³⁷⁴ Amidst the development of oil and gas projects, *Sandvick* should, and most likely will, impact the way people conduct business in North Dakota.³⁷⁵

Although entering into partnerships and joint ventures without knowledge has been possible for parties in the past, the North Dakota Supreme Court made it much easier for parties to establish the formation of a joint venture by concluding that a joint venture existed without finding an agreement or contract.³⁷⁶ Those who desire to purchase an oil lease without the desire to commit themselves to a business entity, must be especially careful when forming relationships to lease land and mineral interests.³⁷⁷ To avoid unknowingly entering into joint venture relationships, parties need to do more than state that they are not involved in a joint venture relationship.³⁷⁸ While voicing that a joint venture does not exist may be indicative of non-formation, a mere statement, that is, magic words, will not be sufficient to determine the existence of a joint venture.³⁷⁹ The court will look to the actions of the parties, not simply the words exchanged.³⁸⁰ Therefore, to avoid the possibility of unknowingly forming a joint venture relationship, those who do not want to be a part of a joint venture must be careful not to allow any indication that could be interpreted as an affiliation with another person or group.³⁸¹

Furthermore, North Dakota district courts are now obligated to follow the North Dakota Supreme Court's holding, and joint venture relationships

374. See *Sandvick*, ¶¶ 11-19, 747 N.W.2d at 522-24 (noting that broadening the scope of joint venture relationships increases the likelihood of more joint ventures).

375. See *id.*, ¶¶ 11-13, 747 N.W.2d at 522-23 (discussing the process by which the North Dakota Supreme Court determined that a joint venture existed); Jerome R. Corsi, *Billions of Gallons of Oil in North Dakota, Montana Geological Survey Calls Fine Largest Reserves Outside Alaska*, WORLDNETDAILY, Apr. 13, 2008, available at <http://www.worldnetdaily.com/index.php?fa=PAGE.view&pageId=61488> (last visited July 15, 2009) (discussing the Bakken Formation and its potential impact on North Dakota).

376. See *Sandvick*, ¶ 13, 747 N.W.2d at 523 (noting that the absence of an agreement or contract will not preclude the recognition of a joint venture relationship).

377. See *id.* (displaying that a joint venture can exist even when elements essential to a joint venture are not met).

378. See Nichols, *supra* note 119, at 435 (explaining that joint venture relationships can be formed without a written agreement, so long as some type of intent can be inferred).

379. See *id.* at 434 (displaying that the court will look to both the words and the actions of the parties when determining intent).

380. See *id.* (establishing that a court will not only look to the words exchanged, but also the actions of the parties).

381. See *id.* at 434-35 (discussing what the court will look to when determining whether intent to form a joint venture exists).

will likely be found to exist in more circumstances.³⁸² By looking at these relationships in such a broad way, the *Sandvick* court seemed to blur the line between where a joint venture relationship existed and where it did not.³⁸³ The vagueness surrounding the North Dakota Supreme Court's determination of a joint venture relationship will likely result in increased litigation, because more relationships will fit under this broad joint venture definition.³⁸⁴

Sandvick will affect many people in North Dakota.³⁸⁵ In broadening the definition of a joint venture, the North Dakota Supreme Court determined that joint venture relationships may be more easily established.³⁸⁶ *Sandvick* should impact the way people conduct business in North Dakota, especially with the increasing possibility of numerous parties entering into arrangements in the development of the oil and gas industry.³⁸⁷

V. CONCLUSION

In *Sandvick*, the North Dakota Supreme Court held that a partnership relationship was not present between the parties, but that a joint venture relationship existed.³⁸⁸ The North Dakota Supreme Court mentioned the district court's findings with regard to *Sandvick*, but determined different facts were more significant.³⁸⁹ Additionally, the North Dakota Supreme Court defined the elements necessary to establish a joint venture.³⁹⁰ However, when certain elements were not met and the North Dakota Supreme Court still found that a joint venture was established, the North Dakota Supreme Court blurred the lines between the existence and non-existence of a joint

382. See BLACK'S LAW DICTIONARY 1215 (8th ed. 2004). Binding precedent is defined as "[a] precedent that a court must follow. For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction." *Id.*

383. See *Sandvick*, ¶ 13, 747 N.W.2d at 523 (holding that a joint venture existed when all of the elements were not met).

384. See *id.* (holding that a joint venture existed when all of the elements were not met).

385. See *Sandvick*, ¶ 13, 747 N.W.2d at 523 (holding that a joint venture did not exist and thus illustrating that the court has developed a more broad definition of joint venture which will likely affect more North Dakotans).

386. See *id.* ¶¶ 11-13, 747 N.W.2d at 522-23 (discussing the process in which the North Dakota Supreme Court determined that a joint venture existed).

387. *Id.*; see Corsi *supra* note 375 (articulating on the vast amount of oil found in North Dakota).

388. *Sandvick*, ¶ 1, 747 N.W.2d at 520.

389. See *id.* ¶¶ 12-13, 747 N.W.2d at 522-23.

390. *Id.* ¶ 11, 747 N.W.2d at 522.

venture.³⁹¹ This decision will likely influence future determinations of joint venture relationships, as well as future business transactions regarding oil and gas leases in North Dakota.³⁹²

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391. *See id.* ¶¶ 11-13, 747 N.W.2d at 522-23 (holding that a joint venture existed).

392. *See* discussion *supra* Part IV (discussing the impact that *Sandvick* could have on North Dakota).

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