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OPINION	:	No. 84-307
	:	
of	:	<u>JUNE 28, 1984</u>
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THE HONORABLE ROBERT C. FRAZEE, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following questions:

1. Under the provisions of California's Uniform Limited Partnership Act, Corporations Code section 15501 *et seq.*, may the signature of a general partner be subscribed by a duly authorized attorney-in-fact on certificates of limited partnership, amendments thereto, and cancellations thereof?

2. Under the provisions of the California Revised Limited Partnership Act, Corporations Code section 15611 *et seq.*, may the signature of a general partner be subscribed by a duly authorized attorney-in-fact on certificates of limited partnership, amendments thereto, and cancellations thereof?

CONCLUSIONS

1. Under the provisions of California's Uniform Limited Partnership Act, Corporations Code section 15501 *et seq.*, the signature of a general partner may be subscribed by a duly authorized attorney-in-fact on certificates of limited partnership, amendments thereto, and cancellations thereof.

2. Under the provisions of the California Revised Limited Partnership Act, Corporations Code section 15611 *et seq.*, as amended by Statutes of 1984, chapter 103, the signature of a general partner may be subscribed by a duly authorized attorney-in-fact on certificates of limited partnership, amendments thereto, and cancellations thereof.

ANALYSIS

In this opinion we analyze provisions of California's original Uniform Limited Partnership Act, first codified in 1929 as section 2477 *et seq.* of the Civil Code (Stats. 1929, ch. 865) and subsequently codified as section 15501 *et seq.* of the Corporations Code (Stats. 1949, ch. 383). We additionally analyze provisions of the California Revised Limited Partnership Act, Corporations Code section 15611 *et seq.* (added Stats. 1983, ch. 1223) which is operative July 1, 1984, and will supersede the former law, except as provided therein. (See Corp. Code, §§ 15710-15714, "Transition Provisions.")¹ In summary, we are asked whether, under both laws, a duly authorized

¹ All section references are to the Corporations Code unless otherwise indicated.

We note that in 1981 the Legislature also enacted the Limited Partnership Act (Stats. 1981, ch. 807), to be operative January 1, 1983. That act was amended extensively in 1982 (Stats. 1982, ch. 997), and its operative date was postponed to January 1, 1984.

Sections 14-16 of the *Statutes of 1983*, chapter 1223 (the California Revised Limited Partnership Act) provide:

"SEC. 14. Section 1 of Chapter 807 of the Statutes of 1981 is repealed.

"SEC. 15. Sections 8 to 13, inclusive, of this act shall become operative on July 1, 1984.

"SEC. 16. The Legislature finds and declares as follows:

"(a) The legislative intent in enacting Chapter 997 of the Statutes of 1982 was that the provisions of the Corporations Code and Government Code adopted by Sections 1 through 43 thereof would substitute for the corresponding provisions of the Corporations Code and Government Code adopted by Chapter 807 of the Statutes of 1981 upon such latter chapter becoming operative and hence, that the provisions adopted by Sections 1 through 43 would not be operative until that operative date.

"(b) The current legislative intent in enacting Sections 8 to 13, inclusive, of this act is to restate the limited partnership law as intended by Chapter 807 of the Statutes of

attorney-in-fact may subscribe a general partner's signature to the certificate of limited partnership, amendments thereto, and the cancellation thereof. Each law will be discussed separately.

1. California's Original Uniform Limited Partnership Act

For our purposes herein we assume that a general partner has executed a power of attorney conferring upon such agent or "attorney-in-fact" the power to sign on his behalf a certificate of limited partnership, amendments thereto, and the cancellation thereof if permitted by law in California. (See generally *Funk v. Roe* (1886) 70 Cal. 296, 306 *et seq.* *re* nature of a power of attorney and the holder thereof being an agent and attorney-in-fact.)

The general provisions concerning the authority of agents are found in sections 2304 *et seq.* of the Civil Code. Of particular significance to our inquiry are sections 2304 and 2305 of that code. Section 2304 thereof provides:

"WHAT AUTHORITY MAY BE CONFERRED. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention."

And section 2305 thereof provides:

"AGENT MAY PERFORM ACTS REQUIRED OF PRINCIPAL BY CODE. Every act which, according to this Code, may be done by or to any person, may be done by or to the agent of such person for that purpose, *unless a contrary intention clearly appears.*" (Emphasis added.)

Nothing in the original Uniform Limited Partnership Act, or any other provision of law of which we are aware, requires that the subject signatures of a general partner must be "give[n] his personal attention." Accordingly, the issue is whether the pertinent provisions of law implicitly so provide, that is, does "a contrary intention [still] clearly appear" which would preclude such signatures being affixed by an attorney-in-fact?

Significantly, one of the few cases which has applied the provisions of sections 2304 and 2305 of the Civil Code involved an attorney-in-fact and a traditional

1981 and Chapter 997 of the Statutes of 1982 and to make certain numbering and other changes thereto."

We do not address herein a reconciliation of the operative dates, as such is not material to our consideration herein.

partnership. In *Goldtree v. Swinford* (1888) 74 Cal. 586 the court held that, by virtue of these provisions, an attorney-in-fact could sign and acknowledge the partnership certificate required by then sections 2466-2468 of the Civil Code.² Therefore, silence in the analogous provisions of the Uniform Limited Partnership Act would indicate a similar holding is justified.

It is to be recalled that the original Uniform Limited Partnership Act was enacted in 1929. As originally enacted, section 2478 provided with respect to the execution of a certificate of limited partnership that:

"(1) Two or more persons desiring to form a limited partnership shall

"(a) Sign and swear to certificates in duplicate, which shall state"

[followed by an enumeration of some 14 provisions and a filing requirement with the appropriate county clerks and recorders.]

The section and the law were completely silent as to whether the signatures of general partners or limited partners could be executed by an attorney-in-fact. This was the state of the law through the section's recodification as section 15502 of the Corporations Code and until the amendment of that section in 1970.

In 1970, (Stats. 1970, chap. 839) section 15502 was amended to read as it presently does. To the requirement that "(1) Two or more persons desiring to form a limited partnership shall (a) Sign and acknowledge a certificate which shall state" all the pertinent information concerning the partnership, and which shall be properly recorded in the appropriate counties, was added the following paragraph:

"The signing of such certificate by a limited partner may be in person or for him by an attorney in fact, who may but need not be a member of the partnership, who shall acknowledge such signature as such attorney in fact. Proof of a personal signature of a limited partner, if not acknowledged, may be made by a subscribing witness as provided by law."³

² We need not concern ourselves with the fact that the Limited Partnership Act is no longer in the Civil Code for purposes of section 2305. When appropriate, all codes blend together and are considered a single code. (*People v. Ashley* (1971) 17 Cal.App.3d 1122, 1126.) Also, the mere recodification of the law into another code would not effectuate a change in the law. (*In re Dapper* (1969) 71 Cal.2d 184, 189.)

³ Section 15502 provides in full:

"(1) Two or more persons desiring to form a limited partnership shall

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- "(a) Sign and acknowledge a certificate, which shall state
- "I. The name of the partnership,
 - "II. The character of the business,
 - "III. The location of the principal place of business,
 - "IV. The name and place of residence of each member; general and limited partners being respectively designated,
 - "V. The term for which the partnership is to exist,
 - "VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,
 - "VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,
 - "VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,
 - "IX. The share of the profits or other compensation by way of income which each limited partner shall receive by reason of his contribution,
 - "X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,
 - "XI. The right, if given, of the partners to admit additional limited partners,
 - "XII. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,
 - "XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner,
 - "XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution, and
 - "XV. The right, if given, of a limited partner to vote upon any of the matters described in subdivision (b) of Section 15507, and the vote required for election or removal of general partners, or to cause other action to be effective as to the limited partnership.
- "The signing of such certificate by a limited partner may be in person or for him by an attorney in fact, who may but need not be a member of the partnership, who shall acknowledge such signature as such attorney in fact. Proof of a personal signature of a limited partner, if not acknowledged, may be made by a subscribing witness as provided by law.
- "(b) Record said certificate in the office of the recorder of the county in which the principal place of business of the partnership is situated.
- "(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph one.

Thus, at least until 1970, *a period of some 40 years*, it would appear that under the authority of sections 2304 and 2305 of the Civil Code and *Goldtree v. Swinford*, *supra*, 74 Cal. 586, the signature of a general partner could have been subscribed by an attorney-in-fact. Did the 1970 amendment change this rule?

At first blush one might conclude that the maxim *expresso unius est exclusio alterius* (the expression of certain things excludes other things not expressed) would require the construction that *after* 1970 *general* partners were prohibited from availing themselves of an attorney-in-fact to subscribe to the certificate of limited partnership by reason of not being expressly included within the provisions of the section as amended. However, we do not believe this rule of construction should be applied. We reach this conclusion through alternate routes.

a. Route One: Application of the Civil Code and Case Law.

It is to be recalled that under the provisions of section 2305 of the Civil Code, an act may be done by an agent "unless a contrary intention *clearly* applies." We do not believe that the addition of the language of the 1970 amendment set forth in the text above with respect to attorneys-in-fact of limited partners demonstrates a *clear* intention to exclude general partners from availing themselves of such attorneys-in-fact. The amended language deals not only with signatures by an attorney-in-fact, but also deals with (1) the authority of a general partner to act as such on behalf of limited partners and (2) the authority of a limited partner to subscribe to the certificate in lieu of acknowledgement if signed personally. Thus, there were several interrelated purposes for the amendment. Hence it cannot be said that the *clear* purpose of the amendment was to specify which partners could utilize an attorney-in-fact in subscribing the original certificate.

"(3) If the partnership has places of business situated in, or holds title to real property in, different counties, it shall cause either such recorded certificate, or a copy of such recorded certificate, certified by the recorder in whose office it is recorded, to be recorded in the office of the recorder of each such different county.

"(4) Recording of the certificate in accordance with (1)(b) above or recording of the recorded certificate or a copy thereof in accordance with (3) above, provided the recorded certificate or a recorded copy thereof appears valid on its face, shall create, in favor of bona fide purchasers or encumbrances for value, a conclusive presumption that such limited partnership was validly formed and in addition shall create the same conclusive presumptions as provided in Section 15010.5 of this code; any other person claiming to be a partner who has been omitted from any such certificate shall have the right to record a corrective statement as provided in said Section 15010.5."

Accordingly, since no change in the law was effected on that point, *Goldtree v. Swinford*, *supra*, 74 Cal. 586, still constituted authority for the proposition that *general* partners could utilize attorneys-in-fact.

b. Route Two: Legislative History Added.

The foregoing conclusion as to certificates of limited partnership may be confirmed through an analysis of the legislative history of the act. This history requires a consideration of additional sections, that is, sections 15525 and 15525.5 which deal with amendments to and cancellation of certificates, and also provides the answer with respect to them.

Section 15525 of that act sets forth the general requirements for amending and cancelling a certificate of limited partnership. It requires that both the writing to amend a certificate and to cancel a certificate "shall be signed by all members." With respect to both amendments and cancellations it contains *the same language* as is contained in the 1970 amendment to section 15502, the certificate section, regarding an attorney-in-fact signing for a limited partner. The section, like section 15502, is silent as to whether a general partner may avail himself of an attorney-in-fact for such purposes.⁴ The language with respect to an attorney-in-fact was added *in 1976* (Stats. 1976, ch. 424.)

⁴ Section 15525 provides in full:

"(1) The writing to amend a certificate shall

"(a) Conform to the requirements of paragraph (a) of subdivision (1) of Section 15502 as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

"(b) Be signed and acknowledged by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner. *The signing of such writing by a limited partner may be in person or for him by an attorney in fact, who may but need not be a member of the partnership, who shall acknowledge such signature as such attorney in fact.*

"(2) The writing to cancel a certificate shall be signed by all members. *The signing of such writing by a limited partner may be in person or for him by an attorney in fact, who may but need not be a member of the partnership, who shall acknowledge such signature as such attorney in fact.*

"(3) A person desiring the cancellation or amendment of a certificate, if any person designated in subdivisions (1) and (2) as a person who must execute the writing refuses to do so, may petition the superior court in the county where the principal place of the partnership is situated to direct a cancellation or amendment thereof.

Section 15525.5 is a special provision, first enacted *in 1967*. (Stats. 1967, ch. 896.) It permits one general partner to execute amendments to a certificate on behalf of all partners, except where general and limited partners are added or substituted. That general partner must also sign the amendment of the certificate. In essence, section 15525.5 permits a limited partnership to provide in its certificate a short-cut method for the usual and more tedious subscription requirements found in section 15525. It presently provides:

"Notwithstanding the provisions of paragraph (b) of subdivision (1) of Section 15525, if the partnership certificate permits, the writing to amend the certificate may be signed, *personally or by attorney in fact*, by a general partner and by the member to be substituted or added in the case of an amendment substituting a limited partner or adding a limited or general partner and shall be signed, *personally or by attorney in fact*, also by the assigning limited partner when a limited partner is to be substituted, and if the amendment reflects the retirement, death or insanity of a general partner, and the business is continued under Section 15520, the amendment may be signed by any general partner, *personally or by attorney in fact*. (Emphasis added.)

"(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county recorder of the county in which the original certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

"(5) A certificate is amended or canceled when there is recorded in the office referred to in paragraph (b) of subdivision (1) of Section 15502:

"(a) A writing in accordance with the provisions of subdivision (1) or (2), or

"(b) A certified copy of the order of court in accordance with the provisions of subdivision (4). Provided, however, that such amendment or cancellation shall be void as against a purchaser or encumbrances in good faith and for value of real property in a 'different county' referred to in subdivision (3) of Section 15502, whose conveyance is duly recorded before such recorded writing, or a copy thereof certified by the recorder in whose office it is recorded, or a certified copy of such court order, has been recorded in the office of the recorder in such different county.

"(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this act except as to a purchaser or encumbrancer in good faith and for value under the circumstances set forth in the proviso to subdivision (5)." (Emphasis added.)

The words "personally or by attorney in fact" were added *in 1972* by Statutes of 1972, chapter 63.⁵ Section 2 of that chapter stated:

"The amendment of Section 15525.5 of the Corporations Code made by the 1972 Session of the Legislature does not constitute a change in, but is declaratory of, existing law."

Thus, summarizing the foregoing, it is seen from the history of sections 15525 and 15525.5:

1. That in 1967 section 15525.5 was enacted to permit a single general partner to, in most cases, sign amendments to certificates on behalf of all partners, both general and limited, and, like section 15525, was silent with respect to the use of attorneys-in-fact;

2. That in 1972 section 15525.5 was amended to specify that all signatures required by that section could be subscribed either personally or by an attorney-in-fact, *and that such was merely declaratory of existing law*; and

3. That in 1976 the language with respect to the use of attorneys-in-fact by limited partners similar to that contained in section 15502 (added in 1970) was added to section 15525, thus conforming that law and the law as to subscribing amendments to and cancellations of certificates.

To this scenario we apply several rules of construction. "[S]tatutes must be harmonized internally to the extent possible." (*Grogan-Beall v. Ferdinand Roten Galleries, Inc.* (1982) 133 Cal.App.3d 969, 979.) Additionally, "[i]t is well settled that a word or phrase should be given the same scope or meaning when it appears in separate parts of a statute." (*People v. Mirmirani* (1981) 30 Cal.3d 375, 382, fn. 6.) Accordingly, from the statutory history, it can be concluded, and we so conclude, that not only with respect to section 15525.5 (until 1972), but also with respect to section 15502 (at least until 1970) and section 15525 (at least until 1976) the requisite signatures of *both* general partners and limited partners could be subscribed, in the present words of section 15525.5, "personally or by attorney in fact." This is so because (at least until the specified dates) if a specific declaration as to the use of attorneys-in-fact was not required in section 15525.5,

⁵ Section 15525.5 was also amended in 1970 by Statutes of 1970, chapter 839, the chapter which added the language to section 15502 with respect to attorneys-in-fact. This amendment to section 15525.5 deleted the words "and the partnership has 25 or more limited partners immediately prior to the event requiring amendment of the certificate under this chapter" after the words "certificate permits."

it logically follows that it was not required in sections 15502 and 15525 either. This being so, we then can again apply the rule of section 2305 of the Civil Code to section 15502 *after* the 1970 amendment thereto, that is, that such amendments did not evidence the *clear*, contrary intention to change that rule and exclude general partners from using attorneys-in-fact. This same reasoning would apply to section 15525 after the 1976 amendments thereto.

These conclusions are also virtually compelled from a comparison of sections 15525 and 15525.5, the amendment and cancellation sections. Contrary conclusions would mean that a single general partner could, through an attorney-in-fact, subscribe to amendments of a certificate on behalf of an *unlimited* number of partners, both general and limited, whereas a single general partner could not, through an attorney-in-fact, subscribe to an amendment *solely on his own behalf*. Such a construction would run counter to the normal rule of construction that "[i]t is presumed that the Legislature did not intend to act inconsistently on the same subject" and that statutes should be construed "consistent with common sense and reasonableness." (*Jacobs v. State Bd. of Optometry* (1978) 81 Cal.App.3d 1022, 1031.)

Accordingly, we conclude that a duly authorized attorney-in-fact may subscribe the requisite signature of a general partner on the certificate of limited partnership provided for in section 15502 of the original Uniform Limited Partnership Act, and may do so with respect to amendments thereto and the cancellation thereof as provided for in section 15525.

2. The Revised Limited Partnership Act

We now examine the Revised Limited Partnership Act on the same questions, that is, whether a general partner's requisite signature on a certificate of limited partnership, amendments thereto, or cancellations thereof may be subscribed by an attorney-in-fact.

Section 15621 sets forth the requirements as to the execution, acknowledgment and filing of the limited partnership certificates, and the contents thereof. Section 15622 provides for amendments thereto and section 15623 provides for the cancellation thereof.⁶ There is no need to set forth these sections in full, since a separate section in the new act provides for the manner in which certificates are to be executed, and provides the answer to our question. Such section is section 15624,⁷ which, as enacted in 1983, stated:

⁶ Parallel provisions in the 1981/1982 legislation are sections 15521 and 15523 respectively.

⁷ Section 15524 is the parallel provision in the 1981/1982 legislation.

"(a) Each certificate required by this article to be filed in the office of the Secretary of State shall be executed in the following manner:

"(1) A certificate referred to in Section 15621 shall be executed by all general partners, unless filed by a limited partner pursuant to Section 15633.

"(2) A certificate of amendment shall be executed by all general partners (or a lesser number provided in the certificate of limited partnership) and by each general partner designated in the certificate as a new partner, unless filed by a limited partner pursuant to Section 15625.

"(3) A certificate of dissolution shall be executed by all general partners (or a lesser number provided in the certificate of limited partnership) unless filed by a limited partner pursuant to paragraph (1) of subdivision (a) of Section 15623.

"(4) A certificate of cancellation of certificate of limited partnership shall be executed by all general partners (or a lesser number provided in the certificate of limited partnership) unless filed by a limited partner pursuant to paragraph (1) of subdivision (b) of Section 15623.

"(5) A certificate filed by a limited partner pursuant to Section 15633 or a certificate of amendment filed by a limited partner pursuant to Section 15625 or a certificate of dissolution filed by a limited partner pursuant to paragraph (1) of subdivision (a) of Section 15623 or a certificate of cancellation of certificate of limited partnership filed by a limited partner pursuant to paragraph (1) of subdivision (b) of Section 15623 shall be signed by the limited partner.

"(b) Any person may execute a certificate referred to in Section 15621 or any certificate of amendment thereto by an attorney-in-fact."

Thus, subdivision (b) at least facially appears to have excluded certificates of cancellation from its scope. Subdivision (b), however, was amended in 1984 by urgency measure, to be operative July 1, 1984, to clarify this point. It now reads:

"(b) Any person may execute *any* certificate referred to in this section by an attorney-in-fact." (Stats. 1984, ch. 103, emphasis added.)

Accordingly, a duly authorized attorney-in-fact may subscribe to the original certificate of limited partnership, amendments thereto, and the cancellation thereof on behalf of a general partner under the new law. *****