

of the caverns did not have standing to challenge the tax assessments until 1995, when the Tax Code was amended to allow lessees contractually liable for taxes to contest them.²

On this main issue, to which the parties, the lower courts, and numerous amici have addressed almost all of their arguments, the Court says nothing, instead holding merely that Coastal lacked capacity to prosecute its suit because it did not prove that it was properly registered as a Delaware limited partnership doing business in Texas. Section 9.07(a) of the Texas Revised Limited Partnership Act prohibits a foreign limited partnership doing business in Texas from maintaining a lawsuit in the state until it has registered and paid the appropriate fees.³ Coastal registered on June 27, 1995, but the Court concludes that Coastal did business in Texas from 1993 on and did not prove that it had paid the fees and penalties for prior years as required by section 9.07(d). The problem with this conclusion, besides the fact that it sidesteps the principal dispute in the case and adds essentially nothing to the State's jurisprudence, is that whether Coastal paid all the registration fees due was never raised in the trial court. If it had been, Coastal could have either proved that all fees due had been paid or else paid what was due and continued with the suit, as section 9.07 would allow.

The District argued in the trial court that section 9.07 precluded Coastal from challenging taxes assessed before it registered in June 1995. The 1994 and 1995 taxes in dispute were due as of the first day of each year, respectively. The District also argued that Coastal was bound by its statement in the registration application that it would begin doing business in Texas on July 1, 1995, and therefore could not

² 7 S.W.3d 183 (Tex. App.—Houston [1st Dist.] 1999).

³ TEX. REV. CIV. STAT. ANN. art. 6132a-1, § 9.07(a) (Vernon Supp. 2001).

have been a taxpayer with standing to challenge the assessments before that date. The District did not assert that Coastal had failed to pay all the fees due for registration. The District's pleadings on the subject consumed these two sentences:

Plaintiff Coastal Liquids Transportation, L.P., a Delaware limited partnership, was not registered or authorized to do business in Texas as a foreign limited partnership until June 27, 1995, and the first date business would be transacted in Texas was July 1, 1995, as shown in records filed with the Secretary of State. . . . Therefore, this Plaintiff cannot maintain this action for tax years 1994 and 1995.

In all of the hundreds of pages of motions and briefs filed in the trial court, the sum total of the District's argument on the registration issue is found in two more sentences in its amended motion for summary judgment:

Plaintiff Coastal Liquids Transportation, L.P., a Delaware limited partnership, was not registered in Texas as a foreign limited partnership during 1994, and was not registered in Texas until June 27, 1995, and it cannot maintain this action for tax year 1994 (January 1, 1994) or tax year 1995 (January 1, 1995). Tex. Rev. Civ. Stat. Ann. art. 6132 a-1, § 9.07(a) (Vernon Supp. 1997).

Coastal Liquids Transportation, L.P., was not licensed or authorized to do business in Texas as a foreign limited partnership until June 27, 1995, and its application filed with the Secretary of State of Texas states that the first date business will be transacted in Texas is “July 1, 1995”.

The District went on to argue, as I have said, that Coastal could not challenge taxes assessed before it registered. Coastal responded — correctly, as the Court indicates — that once it registered, it was free to litigate pre-registration issues.⁴ The matter of fees due was never pleaded, argued, or even mentioned.

⁴ *Ante* at ___; *see* TEX. REV. CIV. STAT. ANN. art. 6132a-1, § 9.07 source and comment — bar committee (“By implication, strengthened by Section 9.07(b), once a partnership registers, it can maintain suit, even on a claim arising while it was improperly unregistered.”).

Nor was the matter raised in the briefing in the court of appeals. As in the trial court, the District chose to argue not that Coastal had underpaid the registration fees due, but that registration did not allow Coastal to litigate prior claims.

That choice may have been strategic. The District could have argued instead that Coastal had been doing business in Texas since 1993 and had not paid the required fees, but then all Coastal would have had to do to avoid the argument was pay the few hundred dollars in unpaid fees. The District may have considered that the argument it chose — that Coastal was *not* doing business before July 1, 1995, and therefore was not a taxpayer — was the better course. In any event, the issue of fees was not raised in the trial court, or even in the court of appeals until Coastal's motion for rehearing.

Coastal made two arguments in that motion that the Court refuses to consider because they were not asserted in the trial court. One, with which the court of appeals agreed,⁵ was that although Coastal sued the District, it was not really “maintaining” suit within the meaning of section 9.07(a) but was defending against what it considered to be excessive appraisals. The other argument Coastal made was that for section 9.07 to be construed to deprive it of the right to challenge the tax assessments would violate state and federal constitutional due process guaranties. To refuse to consider Coastal's arguments because they were not made in the trial court, and yet to rule against Coastal on an argument the District did not make in the trial court, is inexplicably unfair.

⁵ 7 S.W.3d at 187.

I would address the only section 9.07 argument the District made and hold that Coastal's statement in its registration application that it was not doing business in Texas until July 1, 1995, did not estop it from contending that it was a taxpayer with standing to challenge the tax assessments on the storage caverns in 1994 and 1995. I would then decide the issue we took this case to decide: whether those assessments were proper.

Nathan L. Hecht
Justice

Opinion delivered: May 10, 2001