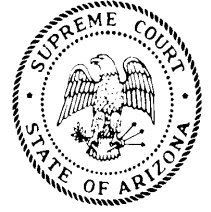




**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**In re: Sky Harbor Hotel Properties, LLC:  
Sky Harbor Properties LLC v. Patel Properties, LLC**  
Adversary No. 2:18-ap-00126-PS  
U.S. Bankruptcy Court for the District of Arizona  
(Order Certifying Question)

**PARTIES:**

*Debtor/Plaintiff:* Sky Harbor Hotel Properties, LLC

*Defendant:* Patel Properties LLC

**FACTS:**

Sky Harbor Hotel Properties, LLC (“**SHHP**”) is an Arizona Limited Liability Company (“**LLC**”) that was formed with two 50% members, also LLCs. SHHP owned a parcel of real property with \$1.5 million value on its bankruptcy schedules and no secured debt (“**Property**”). The Property was acquired to be used in conjunction with the development and operation of a hotel. SHHP’s members are SKK LLC (“**SKK**”), owned by S. Kuber (“**Kuber**”), and Patel Properties LLC (“**PP**”) owned by D. and A. Patel (“**Patel**”). (For simplicity, Kuber’s actions were taken on behalf of SKK, and Patels’ were on behalf of PP).

The Operating Agreement provided that PP was the managing member who was solely authorized to act on behalf of SHHP. SKK, through Kuber, filed a voluntary Chapter 11 bankruptcy, although PP challenged SKK’s authority to file the bankruptcy proceeding. The Bankruptcy Court determined SKK was the managing member because both Kuber and Patel had signed documents indicating that SKK was authorized to act on SHHP’s behalf. As a result, SKK was able to pursue bankruptcy relief and propose a plan. The Bankruptcy Court approved SKK’s plan of liquidation, which provided that the reorganized SHHP would sell the Property and retain the Debtor’s claims and causes of action to pay creditors’ claims. SHHP sued PP, asserting a breach of fiduciary duty claim and requesting equitable relief in the form of forfeiting or subordinating PP’s interest in the reorganized debtor company to SKK’s interest. As relevant here, PP argued that it owed no fiduciary duties to the Debtor under the Arizona Limited Liability Act.

Judge Paul Sala of the U.S. Bankruptcy Court for the District of Arizona entered an Order Certifying a Question to the Supreme Court of Arizona.

**CERTIFIED QUESTIONS:**

1. Whether a manager of an Arizona Limited Liability Company owes common law fiduciary duties to the company?
2. Whether a member of an Arizona Limited Liability Company owes common law

fiduciary duties to the company?

**DEFINITIONS:**

**Fiduciary Duty:** A fiduciary duty is a duty one party has to another party, sometimes arising out of an agreement or under a statute. Generally, corporate officers owe fiduciary duties to a corporation and business partners owe each other a fiduciary duty.

**Forfeiting:** An interest is forfeited if a person loses it as a penalty for wrongdoing.

**Subordinating:** An interest is subordinated if it is determined to be lower in importance than another interest.

**Arizona Limited Liability Act:** Arizona Revised Statutes (A.R.S.) §§ 29-601 to 29-858.

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*