

## Illinois Business Divorce Report

Information on the dissolution of Illinois corporations, LLCs and partnerships

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### Can the Bankruptcy of One Partner Force the Dissolution of A Partnership?

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A recent decision under Illinois law addresses the issue of whether one partner's bankruptcy can force the dissolution of an Illinois partnership. Like so many other things under the law, the answer is: It depends.

In [Sullivan v. Mathew, 2015 WL 1509794 \(N.D. Ill. 3/30/15\)](#), a bankruptcy trustee sought judicial dissolution of a real estate partnership of which the debtor owned 25%. The applicable partnership agreement expressly provided that the bankruptcy of a partner would not require dissolution. If the partners elected to purchase the interest of the insolvent partner at fair market value, the partnership could continue. However, if the other partners did not elect to purchase the interest, dissolution of the partnership was required.



In [Sullivan](#), the court ruled that the partners did not timely elect to purchase the insolvent partner's interest at fair market value. Therefore, one would think that the court would allow the trustee's claim to dissolve the partnership. However, surprisingly, the court dismissed the trustee's claim under a nuance of bankruptcy law. In particular, the partners who opposed dissolution argued that the trustee "rejected" the partnership agreement and therefore could not invoke its dissolution provision.

The argument is based on the premise that a partnership is an "executory contract," which means that it is not yet fully performed. Under [Section 365 of the Bankruptcy Code](#), a trustee must assume or reject all of the debtor's executory contracts and, if the trustee does not timely assume one, it is rejected and the trustee cannot enforce it.

In [Sullivan](#), the court ruled that: (a) the partnership agreement was an "executory contract," meaning that it required mutual continuing obligations from the partners; and (b) the trustee failed to timely assume the contract. Therefore, the court concluded, the trustee rejected it.

Having rejected it, the court ruled that the trustee could not enforce the partnership agreement to require the dissolution. Had the trustee timely assumed the partnership agreement, he would have been able to pursue the judicial dissolution.

*(This is for informational purposes and is not legal advice.)*