

STEVEN A. WICKS,
Plaintiff

vs.

STANLEY C. WICKS,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
: NO. 00-00,194
:
: EXCEPTIONS
: TO SPECIAL MASTER'S REPORT

Date: April 30, 2004

OPINION and ORDER

Before the Court for determination are the Exceptions to the Special Master's Report dated October 10, 2003 of Defendant Stanley Wicks (Stanley) filed October 23, 2003. Stanley has listed eleven exceptions. The Court will deny all eleven exceptions.

This case involves the dissolution of a partnership between Stanley and his son, Steven Wicks (Steven) that was entered into in April 1995 for the purpose of operating the restaurant the Uptown Diner. By Court Order dated June 26, 2001, David G. Bohlander was appointed as Master to hold a hearing and make a determination as to the distribution of the partnership assets. The Order also directed Bohlander to submit a master's report with his recommendation to the Court. A hearing was held before Bohlander on June 26, 2001 at which Steven and Stanley presented evidence and testimony. Bohlander then submitted his master's report to the Court.

In the master's report, Bohlander concluded that Stanley's capital account was reduced to \$5,579 and Steven's capital account was increased to \$53,209. This resulted in a difference of \$47,630 in favor of Steven. Bohlander also concluded that Stanley's 50% interest in the partnership was valued at \$12,965. This would be credited to the difference in favor of Steven and leave Stanley with a debt of \$34,666. Bohlander recommended that Stanley's 50%

interest be transferred to Steven and that Stanley pay Steven the \$34,666 in one lump sum, or if this was financially impossible, then in accordance with a structured settlement.

When reviewing exceptions to a master's report, the court's standard of review is limited to a determination of whether there was an abuse of discretion or an error of law. *Moran v. Moran*, 839 A.2d 1091,1095 (Pa. Super. 2003); *Nagle v. Nagle*, 799 A.2d 812, 818 (Pa. Super. 2002). The "fact-finder is entitled to believe all, part, or none of the evidence," and a court will not disturb a fact-finder's credibility determinations. *Fielding v. Fielding*, 685 A.2d 178, 179 (Pa. Super. 1996). The Court will list and address each of Stanley's exceptions

- 1. The Master erred in rendering a decision when he did not have all the information needed and said information is in the sole possession and control of Plaintiff.***

The Court denies this exception. As noted by Bohlander, the financial records of the partnership are abysmal. As established by the testimony at the master's hearing, the financial records and documents of the partnership were not accurately kept and cannot be considered credible evidence. As such, a professionally accurate accounting cannot be based upon them. The Master made a reasonable calculation based on the concrete information he had and his expertise and knowledge in the field. It is doubtful that any additional record in the possession of Steven would be any more accurate than those presented and shed any additional light on the matter.

The exception must also be denied because the exception does not disclose what specific additional information might be needed and the record does not disclose any specifics the Court can relate to this exception. Stanley had the opportunity to obtain discovery and subpoena all information he deemed relevant. As a party to this action, Stanley was required to

furnish credible evidence to the Master to support his claims. The master's report makes it clear that he failed to do so and also strongly suggests that due to Stanley's poor business practices (and those of Steven) such credible evidence does not exist. Stanley cannot be granted relief on this exception because he essentially seeks to reopen the evidentiary record.

Accordingly the exception is denied.

2. *The Master erred in determining that the accumulated assets/liabilities of the partnership are to be split 50/50.*

The Court denies this exception. Steven and Stanley had entered into an oral agreement establishing the partnership whereby both were to share equally in the profits and expenses of the partnership. Testimony to the contrary that Steven and Stanley were anything but equal partners under the partnership was not and has not been introduced. Bohlander did not abuse his discretion when splitting the assets and liabilities of the partnership equally, 50/50.

Accordingly, the exception is denied.

3. *The Master erred in failing to consider or include Mr. Verrastro's Exhibit "D."*

The Court denies the exception. Exhibit "D" was an analysis and determination of the net present value of projected Uptown Diner cash flows and Stanley's share thereof. Bohlander concluded that Exhibit "D" was not a valid means to determine the business value of the Uptown Diner. He made this determination based on his extensive experience in business valuation. Bohlander discounted the exhibit because in his opinion it was "fraught with wrong methodology and improper assumptions." Like any other trier of fact, Bohlander was free to accept or reject any evidence, including expert testimony, presented to him.

Accordingly, the exception is denied.

4. *The Master erred in determining that Defendant purchased equipment for Bojangles, which was credited to Plaintiff at \$2,500.00.*

The Court will deny the exception. Stanley directs the Court to his master's hearing testimony in which he testified that he paid for the Bojangles equipment with money from a Wells Fargo loan. Without any documentary evidence to support this claim, as it does not appear any was provided to Bohlander or this Court, Bohlander was left to judge the veracity of this statement based on Stanley's credibility. It would appear that Bohlander did not find Stanley credible on this issue. It would appear that Bohlander found credible the testimony that Stanley had removed significant amounts of money from the cash box at the Uptown Diner and likely used these funds to purchase the equipment. The Court will not substitute its own credibility determination for that of the Master's.

Accordingly, the exception is denied.

5. *The Master erred in determining personal expenses paid by the partnership for Defendant and giving Plaintiff a credit of \$4,450.00.*

The Court will deny the exception. Again this boils down to a credibility determination. Stanley contended that he made the payments on the insurance for 1172 West Fourth Street, the garbage dumpster, and real estate taxes. Steven Wicks testified that he made the payments. Bohlander credited Steven's testimony on this issue. The Court will not conduct a *de novo* credibility determination.

Accordingly, the exception is denied.

6. ***The Master erred in awarding Plaintiff a credit of \$30,500.00 for rent.***

The Court will deny the exception. By an Opinion and Order dated October 20, 2000, it was determined that the real estate located at 1172 West Fourth Street, the building Bojangles occupies, was a partnership asset. As such, the partnership was entitled to be paid for rental of its property. The values assigned to the apartment (\$300) and the Bojangles space (\$700) were based on what Steven would have charged for rental of the property. Bohlander assigned the value the partnership would have charged for rent.

Accordingly, the exception is denied.

7. ***The Master erred in failing to award Defendant any credit for perquisites paid on behalf of Plaintiff and Caroline Wicks from the Partnership.***

The Court will deny the exception. Bohlander determined that Steven and Caroline Wicks, his mother, received perquisites while running the Uptown Diner – eating at the diner, automobile expenses, taking nominal amounts of money, and payment of Steven’s child support. Bohlander assigned no credit to Stanley for these perquisites. Bohlander concluded that the value of these perquisites were less than the market-rate wage equivalent for both Steven and Caroline. This would negate the value of the perquisites and might even result in a debt owed to Steven and Caroline for their work. Therefore, it was reasonable to assign no value to the perquisites.

Accordingly, the exception will be denied.

8. ***The Master erred in his conclusions regarding credit card debt and the credit given to Plaintiff.***

The Court will deny the exception. Bohlander determined that there was an old credit card debt in the amount of \$24,718 in Steven's name. Bohlander found that the credit cards were taken out in Steven's name and used for the business. Bohlander concluded that Stanley strong-armed Steven into doing this. Bohlander gave Steven a \$12,359 credit and Stanley a \$12,359 deduction.

The assignment of credit and deduction on the credit card debt issue was a credibility determination. Bohlander accepted Steven's testimony that Stanley forced him to get the cards in his name and that Stanley would use the cards for cash advances. The Court will not substitute its own credibility determination for Bohlander's.

Accordingly, the exception is denied.

9. ***The Master erred in his conclusions regarding outstanding liabilities and debts of the business.***

The Court will deny the exception. Bohlander received and reviewed the evidence and testimony presented by Steven and Stanley. He was aware of their conduct toward the partnership and that they shared equally in the profits and debts of the partnership. Therefore, the Court cannot say that Bohlander's conclusions as to liabilities and debts of the partnership were in error.

Accordingly, the exception is denied.

10. ***The Master erred in making damage calculations in the distribution.***

The Court will deny the exception. Bohlander determined that Stanley owed the partnership \$8,000 for hijacking the Uptown Diner's phone number for use in Bojangles

restaurant. Bohlander gave Steven a \$4,000 credit and Stanley a \$4,000 deduction. Bohlander also assigned a \$5,000 penalty to Stanley for the dog bite incident involving his dog, which caused the cancellation of Uptown's insurance policy. A credit of \$2,500 was given to Steven and a deduction of \$2,500 to Stanley.

Bohlander determined that Stanley had taken actions detrimental to the partnership. The formula used by Bohlander to obtain the \$8,000 debt concerning the use of Uptown's phone number used a twenty-percent profit margin. It was not pulled out of thin air. Bohlander relied on his expertise and experience in valuation of businesses to arrive at this number. Bohlander heard testimony that the cancellation of the insurance was the result of Stanley's actions. It was Stanley who tied the dog out back and it was that dog which bit the child. The Court cannot conclude that Bohlander's determination as to Stanley's conduct and the monetary consequences Bohlander assigned to those actions are not supported by the record.

Accordingly, the exception is denied.

11. The Master erred in his methodology.

The Court will deny the exception. Bohlander has relied on his experience and expertise in the valuation of businesses to make a reasonable and equitable determination of the partnership's assets and liabilities based on the evidence and testimony before him. There is no indication that Bohlander was unqualified to make such a determination. There is also no testimony or evidence that would show that Bohlander used an unaccepted method or procedure for the accounting and valuation.

Accordingly, the exception is denied.

For the foregoing reasons stated in this Opinion, the Exceptions are denied.

ORDER

It is hereby ORDERED that the Exceptions to the Special Master's Report Dated October 10, 2003 of Defendant Stanley Wicks filed October 23, 2003 are DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Milton Savage, Jr., Esquire
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