

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JAMES E. HARTZEL,	:	
Plaintiff	:	
	:	
v.	:	No. 04-00,168
	:	CIVIL ACTION
STACY L. EDKIN,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court for non-jury trial disposition. Trial in this matter was held on June 13, 2006. The Defendant seeks compensation for one-half (1/2) the expenses he claims to have incurred because of the Plaintiff allegedly breaching the partnership agreement between the parties and other enumerated partnership duties. After a review of the evidence presented at the trial, the Court makes the following findings of fact.

Background

The Plaintiff and the Defendant's relationship extends back over five years when the Plaintiff began working for the Defendant while he was still in high school. In February 2001, the parties entered into a partnership agreement whereby the Plaintiff bought into the Defendant's sole proprietorship construction business. The terms of the agreement provided that the parties were to share equally the responsibilities of running the business with the Defendant serving as the managing partner. As managing partner, the agreement directed that the Defendant was to have final say on all management decisions and would determine the parties' weekly draws and other distributions.

Within two years of entering into the partnership agreement, conflicts arose over whether each partner was fulfilling their duties to each other and the partnership. These conflicts came to

a head on October 21, 2003 when the Defendant confronted the Plaintiff over his alleged failure to maintain his half of the partnership work. The details of that confrontation vary depending on the source. Both parties agree that, on October 21, 2003, the Defendant posed an ultimatum to the Plaintiff whereby if the Plaintiff did not show up for work the following day, the Defendant would consider the partnership extinguished, and that the Defendant followed-up this conversation when he hand delivered a letter to the Plaintiff at his home later that same evening. The letter states, *inter alia*, that the Defendant accepts the Plaintiff's desire to end their relationship immediately and that the Defendant would be responsible for fulfilling the remaining obligations of the partnership. Conversely, the Plaintiff claims that when the Defendant delivered the aforementioned letter to him at his home on the evening of October 21, 2003, that the Defendant threatened to take legal action against the Plaintiff if he showed up at work the next day. Despite the discrepancies in the parties' accounts of the October 21, 2003 evening encounter, the Plaintiff terminated his association with the partnership.

After the October 21, 2003 confrontation, the Defendant did fulfill the remainder of the partnership obligations; however, he had to make loans to the partnership from his personal monies, work overtime, and hire subcontractors in order to complete the obligations in a timely manner. These loans, costs of overtime expended and debt to subcontractors is the bulk of the monies the Defendant now seeks. The remainder of the monies the Defendant is seeking is a draw from the partnership account the Plaintiff made in February 2004 and one-half (1/2) of the amount outstanding debts incurred by the partnership.

In February 2004, the Plaintiff filed a complaint seeking an accounting of the transactions of the partnership, a valuation of the partnership assets, and an injunction prohibiting the Defendant from disposing or encumbering the property of the partnership. The parties stipulate

that, in 2005, the Plaintiff's complaint was resolved after an inventory and subsequent auction of partnership assets took place; however the Defendant's October 2004 Counterclaim remains. That Counterclaim seeks reimbursement for the aforementioned funds the Defendant expended after the October 21, 2003 confrontation and any remaining partnership debt.

Discussion

Partners stand in a fiduciary relationship to one another and the partnership, 15 Pa.C.S. § 8334 and *Clement v. Clement*, 436 Pa. 466, 260 A.2d 728 (Pa. 1970) and are jointly liable for the debts and obligations of the partnership . . . , 15 Pa.C.S. § 8327(2). Additionally, "[t]he dissolution of a partnership does not, in and of itself, discharge the existing liability of any partner." 15 Pa.C.S. § 8358(a). Notwithstanding this, in actions by partners against copartners in connections with partnership affairs, "the flexible methods of equity are better adapted to accomplish the proper distribution of the assets of the partnership and to determine the relative rights and obligations of the partners." *Taylor v. Richman*, 395 Pa. 162, 167, 149 A.2d 69, 71 (Pa. 1959), citing *Donatelli v. Carino*, 384 Pa. 582, 122 A.2d 36 (Pa. 1956). In that vein, the Court finds as follows.

The Plaintiff is liable for one-half (½) of all the debts incurred and currently outstanding by the partnership. The partnership debts include the loans made to the partnership by the Defendant (Defendant's Counterclaim Count I); the cost of materials the Defendant provided to the partnership for outstanding jobs (Defendant's Counterclaim Count II); and any remaining partnership debt (Defendant's Counterclaim Count VI).

The partnership debts do not include the Defendant's instant claims for overtime pay (Defendant's Counterclaim Count IV); pay for labor he provided to complete outstanding jobs (Defendant's Counterclaim Count II); or reimbursement for "payment" of the partnership debt to

R&C Drywall Finishers (Defendant's Counterclaim Count III). First, the Defendant's October 21, 2003 letter to the Plaintiff clearly states that he "will complete the work contracted by the partnership by himself (and employees) . . . and pay himself an appropriate hourly wage." During trial, both parties testified that it was not customary for the partners to be paid overtime; furthermore, the Defendant testified that he was seeking overtime because he was essentially doing the work of both partners. The Court does not consider time-and-half overtime pay an "appropriate hourly wage," nor does the Court believe that the Defendant is entitled to extra compensation for work he decided to take the burden of finishing without the assistance of his partner. At trial, the Defendant offered testimony that the R&C Drywall Finishers' bill was satisfied when he did work in consideration of payment on said bill. There was never any evidence that it was customary for the partnership to satisfy debts in this manner and the Court will not hold the Plaintiff accountable for the Defendant's unilateral and non-customary decision to satisfy a partnership debt in this way. Although the Court will not permit the Defendant to include the costs of his labor in the partnership debts, the Court will permit him to offset his one-half (1/2) share of the partnership liabilities with the amount of labor he provided, at a regular hourly wage, after October 21, 2003.

The partnership debts also do not include the Defendant's instant claim for the Plaintiff's \$824.99 withdrawal from the partnership checking account (Defendant's Counterclaim Count V). During trial, both parties testified that the Plaintiff worked for the partnership through October 21, 2003 but did not receive any paycheck for that period; therefore, the Court, although not endorsing the Plaintiff's methods, will treat the Plaintiff's withdrawal as payment he was due for the work he did during October 2003.

During the trial, it was revealed that Defense counsel was holding, in escrow, five thousand dollars (\$5,000.00) in proceeds from the auction of partnership assets. This money should be applied to any remaining partnership debts; if there is any monies remaining after satisfying any remaining partnership debts, the parties are entitled to share this money equally, or, in the case of the Plaintiff, use his share of said remaining monies to offset the monies he owes the Defendant.

ORDER

AND NOW, this _____ day of June 2006, after a non-jury trial in this matter, the Court finds (1) by virtue of stipulation of the parties, in favor of the Defendant and against the Plaintiff on all Counts contained in the Plaintiff's February 2004 Complaint and (2) in favor of the Defendant and against the Plaintiff regarding the Defendant's Counterclaim in the amount of two thousand one hundred nineteen dollars and thirty one cents (\$2,192.31) plus one half (1/2) of all outstanding partnership debt that remain after the five thousand dollars (\$5,000.00), held in escrow by Defense counsel, is applied to said debts. The Court's award consists of the following amounts:

1. one thousand six hundred sixty nine dollars and thirty-two cents (\$1,669.32) in outstanding loans the Defendant made to the partnership (one-half of \$4,200 made on March 9, 2004 plus \$138.63 made on March 22, 2004 less \$1,000 payback on March 11, 2004); plus
2. five hundred twenty-two dollars and ninety-nine cents (\$522.99) (one-half of one thousand forty-five dollars and ninety-nine cents (\$1,045.99)) for materials the Defendant provided to complete outstanding partnership duties.

Additionally, the Defendant is entitled to offset his one-half (1/2) share of the outstanding partnership debt with the labor he provided, after October 21, 2003, to complete the outstanding obligations of the partnership, at an hourly wage consistent with previous draws made to the partners during its existence. Lastly, in the event that there is monies remaining after the five thousand dollars (\$5,000.00), held in escrow by Defense counsel, is applied to any outstanding partnership debt, the Plaintiff may use his one-half (1/2) share of that money to off-set the monies he owes the Defendant.

By the Court,

Nancy L. Butts, Judge

xc: Leory H. Keiler, Esq.
Kristine L. Waltz, Esq.
Judges
Nancy L. Butts, Judge
Laura R. Burd, Law Clerk