

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

FRANK MORRONE, II	:	
Plaintiff	:	NO: 08-00809
	:	
vs.	:	
	:	
MICHAEL J. MORRONE	:	CIVIL ACTION
Defendant	:	

MICHAEL J. MORRONE	:	
Plaintiff	:	
	:	
vs.	:	NO: 09-01081
	:	
FRANK MORRONE, II	:	
Defendant	:	

OPINION

By Deed dated May 18, 1977, Frank Morrone, the uncle of the parties, transferred to Frank Morrone, II and Michael J. Morrone real estate situate in the Fourth Ward of the City of Williamsport which currently bears the street address of 328 Court Street, Williamsport, Pennsylvania, 17701. From that time until approximately 1980, Frank Morrone II and Michael J. Morrone participated jointly in the operation of a tavern and restaurant at 328 Court Street known as the Old Corner Hotel.

In approximately 1980, Micheel Morrone undertook to operate another tavern and restaurant at other real property owned jointly by Frank Morrone II and Michael Morrone known as Morrone's Lounge. From approximately 1980 through March 2008 Michael Morrone spent substantially all of his time in the operation of

Morrone's Lounge and kept all profits and paid all expenses related to the operation of Morrone's Lounge.

During that same time period, Frank Morrone II also operated another restaurant and tavern through a corporation owned by him named "Pub It Always, Inc." at another parcel of real property jointly owned by the parties. Frank Morrone, II kept all profits and paid all expenses related to this operation, known as the "Pub."

From approximately 1980 through March 2008, the jointly owned restaurant and tavern known as the Old Corner Hotel was operated by Frank Morrone II.

On April 23, 1984, Michael J. Morrone and Frank Morrone, II entered into a written Partnership Agreement. The written Agreement provided that the partners have "an equal voice in the management and conduct of the partnership business" and that "each partner shall devote his full time and attention to the partnership business." The agreement further provided that each partner "draw a sum as salary as shall from time to time be agreed upon."

On May 4, 2009, Plaintiff Michael Morrone filed a Complaint asking for an equitable accounting and an award of approximately \$40,000.00 against his brother and former business partner, Defendant Frank Morrone, alleging unequal distribution from the partnership. While there is an inference and innuendo that Frank Morrone somehow paid himself extra out of the partnership and unfairly treated Michael Morrone, there is no evidence to support those assertions.

Plaintiff has made an issue regarding wages allegedly paid to Frank Morrone who denied specifically taking wages. The testimony of partnership accountant George Rizzo makes it clear that what is referred to in the record of the business as

“guaranteed wages” are actually accounting adjustments having to do with certain obligations paid by the parties from the partnership which included health insurance premiums for Plaintiff and his family, health insurance premiums for Defendant and his family, and health insurance premiums paid for both Plaintiff and Defendant’s father. In addition, the partnership paid taxes and expenses on other jointly owned real estate having nothing to do whatsoever with the partnership and in recent years paid assisted living expenses for the parties’ father. Adjustments were therefore made by the accountant to reflect these payments. The Court finds specifically that Frank Morrone was not paid any extra wages out of the business. As noted above, Michael Morrone received substantial benefits from the partnership.

The Partnership agreement required the parties to provide their full time and attention to this business. Plaintiff Michael Morrone totally and completely breached any obligation to this partnership and did not provide any meaningful work for the partnership for at least 25 years until March 2008 when his business Morrone’s Lounge was sold. During that long stretch of time, from approximately 1984 to 2008, the Plaintiff Michael Morrone had full access to the partnership records, accounts and accounting. The partnership used the same accountant, George Rizzo, for many years and Mr. Rizzo prepared individual tax returns for the Plaintiff, for the Defendant, for the Old Corner Partnership and for the other businesses operated by the brothers and their families. He continued to do so even despite this litigation and earlier litigation on other partnership businesses. Michael Morrone regularly consulted Mr. Rizzo and the Court believes that this long term relationship entitles Mr. Rizzo to greater weight as to any of the accounting issues. It must be remembered that for many years from

the 1980's to the present Plaintiff Michael Morrone used the form K-1 from the partnership tax return to file his own taxes. That form in and of itself made clear the value of the capital account of each partner and what distributions occurred, if any.

Plaintiff Michael Morrone was dissatisfied for many years and for 28 years requested more money from the partnership albeit without providing any partnership work. In May of 1997 having been frustrated with the situation he hired Attorney Marc Drier who examined the partnership information. No legal action was taken regarding unfairness, inaccuracy, or any other complaint regarding the partnership. In 1998, Plaintiff and Defendant received a letter from their accountant, George Rizzo, outlining certain accounting exceptions and adjustments and clearly stating what the current partner situation was and the negative nature of Plaintiff Michael Morrone's capital account. Despite these two red flags or recognition of potential issues in the partnership, Plaintiff Michael Morrone did nothing and sat on his rights until 2009 after litigation arose between the partners on other issues.

The Court believes that equity cannot help Plaintiff Michael Morrone with this background in mind. In fact, the court believes that an equitable accounting would be inequitable on its face for the following reasons:

1. Plaintiff totally breached all of his obligations to the partnership.
2. Plaintiff had been aware of the accounting issues for years before a litigation contest broke out between the parties.
3. Plaintiff has unclean hands.
4. Plaintiff has sat on his rights and his claims are therefore barred by the equitable doctrine of laches. Elias v. Elias, 237 A.2d 215 (Pa. 1968).

5. Plaintiff signed and filed his tax returns each year, which included a K-1 statement outlining his share of income and expenses from the Old Corner Hotel Partnership thereby representing the accuracy of those statements.

Finally, Plaintiff provided expert testimony from Thomas Keller, CPA to support his claim for a return of \$80,138.70 to the partnership. Mr. Keller is a fine accountant and his numbers do not substantially vary from Mr. Rizzo's, however they are totally based on an artificial assumption that both parties capital accounts were zero as of the beginning of the period in question. The Court, by allowing a six year statute of limitations had no intent whatsoever to require a zero balance, certainly when such balance would make no sense from an equity point of view. While this Court appreciates concessions made by Mr. Carlucci on this accounting issue, this Court believes it would be inequitable to allow the Plaintiff to take advantage of a statute of limitations decision to create a better accounting picture for himself.

The Court finds credible the testimony of George Rizzo to the effect that nothing is needed to be paid between the parties. In fact, the figures provided by Mr. Rizzo which the Court accepts are remarkably even and any adjustments that should be or could be made are *de minimus*.

ORDER

AND NOW, this 1st day of February, 2011, verdict is entered for Frank Morrone, II. Michael Morrone's claims for equitable accounting are DISMISSED. All other related claims and counterclaims are also dismissed to the extent not previously covered in earlier orders of court.

BY THE COURT,

Richard A. Gray, J.

cc: William P. Carlucci, Esquire
J. David Smith, Esquire
Gary Weber, Esquire