

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
Issued Pursuant to Pa.R.A.P. 1925(a)

On April 20, 2011 Michael J. Morrone filed a Notice of Appeal. On April 25, 2011 this Court directed the Appellant to file a “Concise Statement of Matters Complained of on Appeal.” In his “Statement of Issues on Appeal Pursuant to Pa.R.A.P. 1925(b)” Appellant submits eleven issues for review. Appellant primarily submits that this Court erred by applying a statute of limitations period to the action, finding that the action was barred by the equitable doctrines of laches and unclean hands, finding that the partnership agreement was breached, and failing to consider the significance of guaranteed wage payments paid to the Appellee.

A reviewing court may disturb the order of the trial court only where it is established that the court committed an error of law or abused its discretion.

Southard v. Temple University Hosp., 781 A.2d 101 (Pa. 2001). Review in a nonjury case is limited to whether the findings of the trial court are supported by competent evidence and whether the trial court committed an error in the application of the law. Fletcher-Harlee Corp. v. Szymanski, 936 A.2d 87 (Pa.Super. 2007). The test to be applied is not whether the reviewing court would have reached the same decision on the evidence presented, “but rather, after due consideration of the evidence which the trial court found credible, whether the trial court could have reasonably reached its conclusion.” Id. at 333, *quoting* Hollock v. Erie Insurance Exchange, 842 A.2d 409, 414 (Pa.Super. 2004).

This Court relies upon its previous Opinion and Order of February 1, 2011 on all issues raised by Appellant. The main issues raised will be discussed as follows:

Statute of Limitations

The action at issue related to a contract signed by two brothers in 1984 and their respective operation of a jointly owned restaurant and tavern. Michael Morrone’s Complaint at docket No. 09-01081 demanded relief in two (2) counts. Count I sought an accounting for alleged violations of the Partnership Agreement. Count II sought a money judgment for any sums which that accounting might reveal. Essentially, Counts I and II were both for breach of contract of the written Partnership agreement. An Amended Complaint was subsequently filed which incorporated the Counts in the preceding Complaint in Count I, included a Count for Promissory Estoppel as Count II, and included a count entitled “Account Stated” as Count III.

On February 5, 2010, this Court dismissed Count III of Plaintiff's Amended Complaint.¹

Actions for breach of contract in Pennsylvania clearly have a four (4) year statute of limitations period. 42 Pa.C.S.A. § 5525. Equitable claims for accounting carry a six year statute of limitations. See Elias v. Elias, 237 A.2d 215, 217 (Pa. 1968). This Court accordingly entered an Order on February 5, 2010 which granted Frank Morrone's Motion for Partial Summary Judgment limiting claims related to breach of the partnership agreement to four (4) years. This Court's Order provided specifically provided, however, that should the pleadings be amended to include an equitable right to an accounting, the Order would be automatically amended to extend the applicable statute of limitations period to six years as opposed to six. This Court noted that this decision was based, in part, upon consideration of equitable principles, including but not limited to laches and notions of fairness and due diligence. Michael Morrone subsequently amended his complaint in accordance with this Court's Order on January 21, 2011.

As this Court appropriately applied the applicable statutes of limitations to the facts presented, this Court respectfully requests affirmance of its February 1, 2011 Order.

Laches and Unclean Hands

Michael Morrone asserts that this Court erred in finding that the Plaintiff was barred by the doctrine of laches and by its finding that the plaintiff had unclean hands. As set forth in this Court's Opinion and Order of February 1, 2011, the Plaintiff,

¹ Michael Morrone's action at Docket No. 09-01081 was consolidated with the dissolution action filed by Frank Morrone at Docket No. 08-00809 by Order dated April 28, 2009.

Michael Morrone was dissatisfied for many years and for 28 years requested money from the partnership. In May of 1997 Michael Morrone hired an attorney to examine the partnership information. Despite hiring legal counsel due to his concerns, Mr. Morrone did not institute legal action regarding the fairness or accuracy of the partnership profits.

Michael Morrone's testimony on this issue was as follows:

Q: So at least once a year, over a period of 28 years, you asked your brother for money and he said no, is that correct?

A: Correct.

Q: Isn't it true, Mr. Morrone, that at some point after you had been refused, by your testimony, that you hired a lawyer to look into why you weren't getting money out of the Old Corner Hotel partnership; isn't that correct?

A: Correct.

* * * * *

Q: Did any lawyer file any court action on your behalf of any nature to get you any money up to the time that your brother Frank filed actions in 2008 for a dissolution of the partnership?

A: No, there wasn't.

Q: So you would agree with me, sir, that from 1981 until 2008 you kept right on believing that somehow your brother Frank was cheating you and you never filed any action or any claim of any nature whatsoever about it; isn't that true, sir?

A: Yes.

(N.T. 1/21/10, p. 40 - 42).

In 1998 the parties both received a letter from their joint accountant, George Rizzo, outlining certain accounting exceptions and adjustments. Mr. Rizzo's testimony on this was as follows:

Q: I'd like to know, Mr. Rizzo, why you wrote the letter marked exhibit 3 dated October 22nd, 1998, to Frank and Mike?

A: Well, it was becoming increasingly problematic with the way things were operating, the confusion and the problems. I just felt that they should try to –especially with the getting inquiries from the other attorneys – try to do something to make everything amenable to everybody.

Q: Did you at the second page of that letter make reference to the fact that Mike's capital account was negative?

A: Yes.

* * * * *

Q: And those returns would have included a K-1 for the Old Corner Hotel partnership, would they have not?

A: Yes.

Q: And those K-1's would account for both income and capital account transactions, would they not?

A: It would be a summary of that, yes.

Q: Have you ever had a conversation with Michael Morrone with regard to the financial impact to his tax return from that K-1?

A: Yes.

Q: One conversation or more than one?

A: Several.

Q: Do you think you had a conversation with Michael Morrone about his taxes during tax time?

A: Yes.

Q: Every year during tax time?

A: I would say so, every year.

Q: Did he have any concerns about the Old Corner Hotel partnership K-1 in the annual course of your annual conversations about his K-1?

A: Yes.

Q: What were his concerns expressed to you on an annual basis about his K-1?

A: He would be concerned with income that would be apportioned at times for income that he wasn't, per se, getting remuneration of or payments from.

(N.T. 1/21/10, p. 139-141).

Deposition testimony revealed that Michael Morrone could have sought an accounting of the Old Corner Hotel Partnership several decades earlier. Mr. Morrone testified that all financial information was provided to the parties joint accountant, and that Mr. Rizzo never refused to provide Michael Morrone with copies of any financial documents requested. (Id. at 42 - 47).

In Elias v. Elias, 237 A.2d 215 (Pa. 1968) a younger brother brought an action in equity against members of a family partnership to recover his alleged share in the partnership. In denying recovery, the Pennsylvania Supreme Court held:

If the contract in fact did not wholly kill the plaintiff's right to an accounting, laches did indeed deliver the mortal blow. Lacking fraud or concealment the general rule is that laches follows the Statute of Limitations. We said in First National Bank of Pittston v. Lytle Coal Co., 332 Pa. 394, 3 A.2d 350:

Equity will not lend its aid to one who has slept upon his rights until the original transaction is obscured by lapse of years and death of parties...and where a party having the right to set aside a transaction stands by and sees another dealing with the property in a manner inconsistent with his alleged claim and makes no objection, a delay of six years will bar a suit in equity.'

Id. at. 217.

As Michael Morrone was aware of potential issues regarding the partnership as early as 1997, and did nothing until 2009, after litigation arose between the parties

on other issues, this Court held that an equitable accounting would be inequitable and this Court respectfully requests affirmance of its February 1, 2011 Order.

Breach of Partnership Agreement

As set forth above, the Plaintiff's Complaint included claims for breach of contract based upon an alleged breach of a partnership agreement signed in 1984.

The partnership agreement, marked as Exhibit "D-1" at the trial of this matter provided:

"Each partner shall devote his full time and attention to the partnership business."

Mr. Morrone's testimony regarding work performed in accordance with that agreement was as follows:

Q: And you and your brother made an agreement to the effect that you would co-own the real estate which was the business premises of the Pub, you would co-own the real estate which was the business premises of the Old Corner, and you would co-own the real estate which was the business premises of the Lounge, is that not correct?

A: Correct.

Q: And all of those were gifts from your uncle, is that not correct?

A: Correct

Q: You also made an agreement with your brother Frank that he would keep 100 percent of the proceeds of the business known as the Pub, that is the business money, and you would keep 100 percent of the proceeds of the business known as the Lounge; isn't that correct, sir?

A: Right.

Q: And neither one of you charged rent to the partnership, that is the real estate partnership, you just kind of offset the rents for the Pub and the Lounge; isn't that correct, sir?

A: Right.

Q: And, in fact, you and you alone ran the Lounge from 1981 until 2008, is that not correct, sir?

A: Correct.

Q: And you were working very, very, very long hours at the Lounge, weren't you, Mr. Morrone?

A: Yes.

Q: In many cases in excess of 12 hours a day; isn't that correct, sir?

A: Yes.

Q: And you agree with me, Mr. Morrone, that during those years, your brother ran the Old Corner Hotel at 328 Court Street, isn't that correct?

A: Correct.

(Id. at p. 36-37).

When testifying regarding benefits received from the Old Corner's operation,

Michael Morrone testified:

Q: My question is, from 1981 until 2008, a business that you had absolutely nothing to do with operating paid all your family's health insurance; isn't that correct?

A: Correct.

(Id. at 69).

Based upon the fact that Michael Morrone did not participate in the operation of the Old Corner, as required by the agreement which was allegedly breached by Frank Morrone, this Court held that Michael Morrone breached his own obligations under the partnership agreement and cited this breach as another reason it would be inequitable to require an equitable accounting under the circumstances. As the

Court's findings on this issue were supported by competent trial testimony, this Court respectfully requests affirmance of its February 1, 2011 Order.

Failure to Consider Guaranteed Wage Payments

The final issue to be addressed is Mr. Morrone's assertion that guaranteed wage payments were not considered in its Opinion and Order of February 1, 1011.

Michael Morrone's trial testimony with regard to guaranteed wage payments was follows:

Q: So let's go over some of this. For a period of, I'm going to call it, 28 years, the Old Corner Hotel partnership has paid all your health insurance and, in fact, your families' health insurance and your brother's health insurance and your father's health insurance and your father's nursing home care and the real estate taxes on 328 Court Street, that is the Old Corner Hotel partnership building, and all of the real estate taxes at the farm; isn't that correct, sir?

A: Correct.

Q: Of those sorts of expenses, how many of them did you pay out of the proceeds of your business which was Morrone's Lounge?

A: The only thing I paid for the farm was the electrical and my remodeling, I worked there. I remodeled the place.

Q: Which place?

A: The farm.²

Q: So you did some work at the farm and you paid for the work you did at the farm and you paid the electric bill?

A: Yes.

Q: But as to all the other expenses we've mentioned they all came out of the proceeds of the hotel partnership?

A: Correct.

Q: And did you know that the Old Corner Hotel partnership had to account for all of that money?

² The farm was a rural retreat owned jointly by the parties.

A: yes.

Q: Do you know how your accountant George Rizzo accounted for all of that money?

A: He said he split it.

Q: He split the tax effect of those expenditures, is that correct?

A: Right.

Q: Do you think any of that money might be regarded as a guaranteed wage or distribution of profit by the partnership? Any idea?

A: I don't.

Q: Do you have –

A: No.

Q: Do you have any idea what effect that might have on your capital account?

A: No.

(Id. at 71-73).

George Rizzo's explanation of the term "guaranteed wage" in the context of this action was as follows:

Q: After that conversation, did you begin tracking benefits to these two gentlemen either in terms of their capital account or guaranteed wage?

A: The results of –well, in our analysis each year we would accumulate what payments were made from the account – from the records of the Old Corner for things like their father's insurances or personal expenses for the farm, health insurance benefits, anything connected that would be remotely personal in nature. And, so that was part of the analysis of what went in and what came out of their capital accounts.

Q: With regard to the taxes on the farm, with the Old Corner Hotel partnership paying the taxes on the farm, would that effect the capital account for Mike and Frank?

A: Yes.

Q: How about the health insurance, would that effect the capital account?

A: Yes.

Q: How about Elmcroft, their father's nursing care, would that effect the capital account?

A: Yes.

Q: Would all of these expenditures by the partnership on behalf of Frank and Mike have an effect on their K-1 or would some of these things have no effect on their K-1?

A: The K-1 has both distributions that would be taken out during the year and also shows the allocation of profits for the year. It also shows what was allocated as what we call guaranteed wages for the year. So all of those things would be on the K-1.

Q: With regard to the allocation of profits after guaranteed wages, how were you allocating in the profits between Mike and Frank?

A: 50/50.

(N.T. 1/21/10, p. 146-147).

This Court's Opinion and Order of February 1, 2011 provides:

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 specifically finds that Frank Morrone was not paid any extra wages out of the business. As noted above, Michael Morrone received substantial benefits from the partnership.

(Order, Feb. 1, 2011, p. 2-3).

Clearly, the Court considered the issue in light of Michael Morrone's own admissions and the credible testimony of the parties' accountant.

As this Court carefully considered the issues presented and based its findings upon competent evidence presented at trial, this Court respectfully requests affirmance of its February 1, 2011 Order.

BY THE COURT,

Richard A. Gray, J.

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