

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

GEORGE D. GEIER and	)	
ROBERTA A. GEIER,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 1328-K
	)	
MICHAEL L. MEADE and	)	
GLORIA MEADE,	)	
	)	
Defendants.	)	

***MEMORANDUM OPINION***

Submitted: November 26, 2003

Decided: January 30, 2004

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Dover, Delaware, *Attorneys for the Plaintiffs*

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PARSONS, Vice Chancellor.

This is an action for an accounting as to a partnership that ceased operations in 1993. Plaintiff, George D. Geier ("Geier"), and defendant, Michael L. Meade ("Meade"), formed the partnership in 1988 to operate certain retail sportswear stores. Based on a Complaint filed April 15, 1996, Geier claims to have paid a number of partnership debts and seeks contribution from Meade for his 50 percent share of those liabilities.<sup>1</sup>

After several postponements at Meade's request, former Vice Chancellor Jacobs began a trial of this action on August 29, 2001.<sup>2</sup> That day, Meade requested a further postponement, arguing that he had just met with his attorney, Cabbage Brown, the day before and needed more time to prepare.<sup>3</sup> Noting the number of previous postponements and the Court's earlier admonition that there would be no further postponements, Vice Chancellor Jacobs denied the request. The Court stated, however, that Meade and his counsel could listen to Geier's case and then try to find a later date to present Meade's side.<sup>4</sup> The Court also encouraged the parties to make a record of which debts were in dispute, and the basis for any such disputes. The Court suggested that could be done on a paper record, and Meade's counsel agreed.<sup>5</sup>

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<sup>1</sup> The Complaint was filed by Geier and his wife and named both Meade and his wife as defendants. By agreement, the parties dismissed both Mrs. Geier and Mrs. Meade from the action. Transcript of trial held on August 29, 2001 ("8/29/01 Tr.") at 68, 72.

<sup>2</sup> Former Vice Chancellor Jacobs later was appointed to the Delaware Supreme Court, and this case was reassigned.

<sup>3</sup> 8/29/01 Tr. at 4-5.

<sup>4</sup> *Id.* at 7-9.

<sup>5</sup> *Id.* at 69.

Thereafter, the parties engaged in additional discovery and, in March 2003, Geier moved for summary judgment. For the reasons stated below, the Court will grant summary judgment in favor of the plaintiff, Geier.

## I. FACTS

In 1979, Geier opened a business in Dover, Delaware known as Athletic Attic.<sup>6</sup> Prior to 1989, Geier was the sole owner of Athletic Attic.<sup>7</sup> On or about August 2, 1988, Geier and Meade entered into a Partnership Agreement to operate a business known as Sports Dynamics, and trading as Sports Fans (the "Partnership").<sup>8</sup> Around the same time, the Partnership opened a Sports Fans store in the Dover Mall.<sup>9</sup> The Partnership later opened another Sports Fans store in Rehoboth Beach, Delaware.<sup>10</sup>

The Partnership Agreement provides in relevant part:

In consideration of the mutual promises, benefits and obligations, Geier and Meade agree as follows:

1. Geier and Meade hereby formally enter into their partnership named above by this Agreement, which sets forth all of the agreements between them. In the event that any agreement existed, or is claimed to have existed, before the execution hereof, such agreement is null, void, unenforceable, and of no effect. This Agreement supercedes, any other

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<sup>6</sup> Trial testimony of George Geier ("8/29/01 Tr. at \_\_\_ (Geier)") at 35.

<sup>7</sup> Affidavit of George D. Geier ("Geier Aff.") ? 2.

<sup>8</sup> DTX 1. Citations in the form "PTX \_\_\_" and "DTX \_\_\_" are to plaintiff's and defendant's exhibits, introduced at the trial on August 29, 2001.

<sup>9</sup> 8/29/01 Tr. at 51 (Geier).

<sup>10</sup> *Id.*

prior agreement; is the entire agreement between them; and may be altered only by a writing signed by both Geier and Meade.

\* \* \* \*

3. The proceeds of the aforesaid contemplated business shall be used first to maintain a fiscally current position by timely payments of all invoices, pay-rolls, debts, loans, taxes, professional fees, purchases and other normal business obligations.

4. After providing for such normal business obligation, Geier and Meade shall divide the ("net-net") proceeds equally between them. Such divisions shall be made as frequently as the parties mutually agree, but not less than once in every calendar year.<sup>11</sup>

Frank Cranston, a certified public accountant, served as Geier's accountant from the mid-1980's until the present, and provided accounting services for Athletic Attic during that period.<sup>12</sup> Cranston explained that after Meade and Geier started their partnership in 1988, "Mr. Meade bought half of Mr. Geier's sole business [*i.e.*, the Athletic Attic] out April 1st of 1989, and the two merged their separate halves into the [Partnership]...."<sup>13</sup> To help determine the value of the Athletic Attic business Meade was buying into, Cranston prepared a document entitled, "ATHLETIC ATTIC VALUE OF BUSINESS, December 31, 1988."<sup>14</sup> That document indicates that Athletic Attic had assets, including inventory, of \$282,566, accounts payable of \$73,551 and a note of \$38,748, for a net value of \$170,267. The document further states that the "Net Value of

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<sup>11</sup> DTX 1.

<sup>12</sup> 8/29/01 Tr. at 11 (Cranston).

<sup>13</sup> *Id.* at 11-12.

<sup>14</sup> PTX 1.

1/2 Interest" is \$85,134. Meade reviewed this information with his accountant, and in early 1989, Meade paid Geier \$80,000 for a 50% interest in the Athletic Attic business.<sup>15</sup> Thereafter, the Partnership operated the Athletic Attic store.<sup>16</sup>

Initially, the businesses prospered. Compared to 1988, the sales for 1989 and 1990 nearly doubled.<sup>17</sup> In 1991, however, the Partnership began to experience losses and they continued in 1992 and 1993.<sup>18</sup>

By the end of 1993, the Partnership's stores had ceased operations. The Rehoboth Beach store and most of the inventory was sold in early 1992, with the buyer assuming the lease. Of the \$25,000 purchase price, \$20,000 was paid to trade creditors and \$5,000 was taken by Meade as a "draw."<sup>19</sup>

The Partnership equipment and inventory were consolidated in the Dover Sports Fans store. Geier and Meade then entered into an agreement with Messrs. Pickering and Henry to sell the Partnership equipment, inventory and accounts receivable.<sup>20</sup> Pickering and Henry also assumed responsibility for the remainder of the lease for the Dover stores.

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<sup>15</sup> Geier Aff. ? 3.

<sup>16</sup> 8/29/01 Tr. at 51-52 (Geier).

<sup>17</sup> Geier Aff. ?? 4, 5.

<sup>18</sup> *Id.* ? 6(d)-(f).

<sup>19</sup> Supplemental Affidavit of George D. Geier ("Supp. Geier Aff.") ? 3.

<sup>20</sup> 8/29/01 Tr. at 46-47 (Geier).

Geier and Meade acknowledged continuing responsibility for outstanding liabilities and indemnified the buyers for all accounts payable.<sup>21</sup>

After the Sports Fans and Athletic Attic businesses ceased operations, creditors sued Geier, Meade and their wives on debts and liabilities incurred in connection with the operation of those businesses.<sup>22</sup> As a result, certain judgments were entered against Geier and ultimately collected from him. Geier presented essentially uncontroverted evidence that he made payments to the following trade creditors of the Partnership as indicated: (1) Champion -- \$35,839.53; (2) Ed's West, Inc. -- \$900; (3) Asahi, Inc. -- \$4,757.83; (4) Nike, Inc. -- \$27,000.02; and (5) Diadora America, Inc. -- \$5,198.35.<sup>23</sup>

The Partnership income tax returns for 1989, 1990 and 1991, listed Geier and Meade as 50 percent owners each for profit sharing, loss sharing and ownership of capital purposes.<sup>24</sup> In December 1993, Geier began making periodic payments from his personal checking account to satisfy amounts claimed by the Internal Revenue Service for withholding taxes assessed against the Partnership, totaling \$8,300.86.<sup>25</sup>

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<sup>21</sup> Geier Aff., Exh. 13, ¶ 5.

<sup>22</sup> Defendants' Response to Plaintiffs' First Request for Admissions ("Def. Resp. to RFA"), No. 4, attached as Exh. B to Plaintiffs' Opening Brief in Support of Motion for Summary Judgment ("POB"); Geier Aff. ¶ 12.

<sup>23</sup> Geier Aff. ¶ 12.

<sup>24</sup> Def. Resp. to RFA No. 3.

<sup>25</sup> Geier Aff. ¶ 10, Exh. 12.

Meade made no payments to Geier or the creditors with respect to any of the liabilities mentioned above. As described below in the summary of the parties contentions, Meade alleges that at the time he formed the Partnership with Geier, it was agreed that Geier would be responsible for all “pre-existing expenses and obligations” of the business. Meade further alleges that thereafter Geier might have used assets of the Partnership to pay such pre-existing liabilities.

## II. PROCEDURAL HISTORY

Geier filed and served his Complaint for an accounting in April 1996. After obtaining an extension to pursue efforts to settle,<sup>26</sup> Meade filed an Answer *pro se* on February 27, 1997.

Geier took written discovery in early 1999 and sought to take Meade’s deposition in April 1999. Meade requested a postponement, and the deposition was rescheduled for July 27, 1999. Meade appeared, but read a statement to the effect that he would not proceed without counsel.

On October 8, 1999, Geier moved to compel Meade’s deposition. Vice Chancellor Jacobs granted the motion and ordered one or both defendants to appear for deposition on February 14, 2000.<sup>27</sup> Plaintiff did depose Meade on that date.

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<sup>26</sup> POB 1. Geier described the procedural history of this action in his opening brief, and Meade did not dispute it. Unless otherwise noted, the description in the text is drawn from Geier’s opening brief.

<sup>27</sup> Docket Item (“D.I.”) 15.

At Geier's request a trial was scheduled for June 15, 2001. By then, Meade had obtained employment at a firm which offered a legal plan. At Meade's behest, the parties agreed to reschedule the trial for August 29, 2001. As described above, Meade appeared with counsel on August 29, 2001, but was not prepared to present his case.<sup>28</sup>

On or about March 21, 2002, Meade served a document request on plaintiff.<sup>29</sup> Geier produced some of the requested information informally and, on September 5, 2002, indicated that additional requested documents were available for inspection in his attorney's office.

On October 25, 2002, after Geier asked to reopen and conclude the prior hearing,<sup>30</sup> Meade's counsel moved to withdraw. Geier opposed the motion. In a telephone conference on January 6, 2003, Vice Chancellor Jacobs determined that there were equities on both sides and directed Mr. Brown to continue to represent Meade with respect to an anticipated dispositive motion by Geier.

Geier filed the instant summary judgment motion on March 4, 2003. Briefing followed and this Court heard argument on November 26, 2003.

### **III. THE PARTIES' CONTENTIONS**

Plaintiff, Geier, seeks an accounting to establish that Meade is liable for 50 percent of the amounts Geier has paid since the Partnership ceased operations to several

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<sup>28</sup> 8/29/01 Tr. at 4-5.

<sup>29</sup> POB at 4; D.I. 23.

<sup>30</sup> D.I. 25.



trade creditors – namely, Champion, Ed’s West, Asahi, Nike, and Diadora America – and to the IRS to satisfy debts of the Partnership.<sup>31</sup> Geier also seeks entry of judgment against Meade for the total of his 50 percent share of those debts, which is \$40,998.29.

Meade does not dispute that Geier paid the amounts averred. Rather, he alleges that when he agreed to join in with Geier in August, 1988, and Sports Fans was opened in Dover Mall, “it was agreed that all pre-existing expenses or bills for the business would be paid by the Geiers and it would be a fresh start in the [Dover] location with a new name.”<sup>32</sup> Meade further alleges that, when he was brought into the Athletic Attic business in 1989, “it was further agreed there would be no expenses for the company at the time of the buy in and all pre-existing expenses and obligations would be paid by Geier. The books have not been produced to show in fact what expenses did exist and who paid the expenses.”<sup>33</sup>

To the extent Meade disagrees with anything else averred by Geier, Meade contends that he was less active in the day-to-day management of the Partnership and did not have access to the books and records of the businesses sufficiently to provide a more

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<sup>31</sup> Geier also alleged that he paid his share of an outstanding Partnership debt to the accountant, Mr. Cranston. POB at 6; Geier Aff. ? 9, Exh. 11. As Geier’s counsel confirmed at argument, Geier is not seeking any specific relief based on the amounts he paid for accounting services. 11/26/03 Tr. at 18-19.

<sup>32</sup> Affidavit of Michael Meade (“Meade Aff.”) ? 3.

<sup>33</sup> *Id.* ? 4.

detailed response.<sup>34</sup> As to the amounts Geier allegedly paid to the named trade creditors, for example, Meade stated in his Affidavit:

Unless there is a trial, there is no way your affiant can contest [the alleged] payments. . . . The concern that your affiant has is that they **may** have been paid from the proceeds of the Rehoboth store sale, or the Athletic Attic inventory sale in Dover. Those assets should not have been used to pay pre-existing bills and it appears that these bills **may** have pre-existed the partnership of the parties.<sup>35</sup>

Although this action has been pending for well over seven years and Meade was able to take discovery throughout that period, he has not provided any more detailed information to support his conjectural allegations. At argument, Meade's counsel confirmed that nothing has prevented Meade from looking at the Partnership's records. Similarly, Meade's counsel agreed that, apart from considerations of cost, nothing prevented Meade from deposing Geier or the Partnership's accountant, Cranston.<sup>36</sup>

#### IV. ANALYSIS

Summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ch. Ct. R. 56(c). Rule 56(e) further provides:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by

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<sup>34</sup> See Meade Aff. ?? 6, 7, 9, 10, 12 and 13.

<sup>35</sup> *Id.* ? 12 (emphasis added).

<sup>36</sup> 11/26/03 Tr. at 23.

affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Ch. Ct. R. 56(e). The moving party on a motion for summary judgment has the burden of establishing to the satisfaction of the Court the absence of any genuine issue of material fact, and any doubt regarding the existence of such an issue will be resolved against the movant.<sup>37</sup>

The record adduced on Geier's motion for summary judgment clearly demonstrates that there is no genuine issue as to at least the following material facts:

First, Geier and Meade were 50-50 partners in the Partnership that by 1989 operated two Sports Fans stores, one in Dover and the other in Rehoboth Beach, and the Athletic Attic store in Dover. Meade admitted that.<sup>38</sup>

And second, the trade debts to creditors totaling \$73,695.73 and the withholding taxes claimed by the IRS in the aggregate amount of \$8,300.86, that form the basis for Geier's motion, were paid by Geier with no contribution from Meade. Geier presented convincing evidence on these points.<sup>39</sup> Meade failed to present any contrary evidence, beyond a conclusory denial.<sup>40</sup>

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<sup>37</sup> *Scureman v. Judge*, 626 A.2d 5, 10-11 (Del. Ch. 1992).

<sup>38</sup> Def. Resp. to RFA No. 3.

<sup>39</sup> *E.g.*, 8/29/01 Tr. at 21-22 (Cranston); PTX 4, 5.

<sup>40</sup> Meade Aff. ?? 5, 6, 10-12.

The only arguments Meade raises against entry of summary judgment are: (1) that he had an agreement with Geier to exclude from the Partnership any pre-existing debts Geier had incurred in his prior business; (2) that he has been unable to determine whether any of the payments for which Geier seeks to recover on his motion constitute payments of such pre-existing debts; and (3) although this is not entirely clear, Meade might also be arguing that, even if none of the specific debts underlying Geier's claims pre-dated the Partnership, Geier still might have used Partnership funds to pay other pre-existing debts. If the latter were true and Meade proved the parties' agreement excluded such debts, Meade might seek a setoff or other relief.

#### **A. The Parties' Agreement**

At trial, Meade's counsel introduced the signed Partnership Agreement for Sports Dynamics, trading as Sports Fans, dated August 2, 1988, but it provides no support for Meade's position.<sup>41</sup> There is no mention in that document of any agreement to exclude from the Partnership prior obligations incurred by Geier related to the business. Moreover, the Agreement includes an integration clause that explicitly states that the Agreement "sets forth all of the agreements between [Geier and Meade]; . . . supercedes, any other prior agreement between them; and may be altered only by a writing signed by both Geier and Meade."<sup>42</sup>

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<sup>41</sup> DTX 1; 8/29/01 Tr. at 52 (Geier).

<sup>42</sup> DTX 1, ? 1.

The circumstances surrounding the addition of the Athletic Attic store to the Partnership also undercut Meade's allegation of an agreement to exclude pre-existing obligations. This is especially true for amounts owed to trade creditors, such as those for which Geier seeks contribution in this action. The undisputed evidence shows that, in early 1989, Meade received a document prepared by Geier's accountant, entitled, "Athletic Attic Value of Business December 31, 1988."<sup>43</sup> The document stated that the "net value" of a 1/2 interest in Athletic Attic was \$85,134. In early 1989, Meade agreed to pay Geier approximately that amount (\$80,000) to buy into the Athletic Attic and include it as part of the Partnership.<sup>44</sup> Notably, in arriving at the \$85,134 valuation as of December 31, 1988, the accountant subtracted from the total assets, liabilities of \$73,551 for "Actual Accounts Payable" on purchases only and "Actual Notes." This strongly suggests Meade recognized that at least those "pre-existing obligations" were the responsibility of the Partnership, not just Geier.<sup>45</sup>

The record also includes trial testimony from the Partnership accountant, Cranston, contrary to Meade's position. He testified that at the time Geier and Meade originally formed the Partnership in 1988, there were no preexisting debts.<sup>46</sup> Likewise,

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<sup>43</sup> PTX 1.

<sup>44</sup> 08/29/01 Tr. at 49-51 (Geier).

<sup>45</sup> *Id.* at 53.

<sup>46</sup> *Id.* at 28 (Cranston).

Cranston confirmed that the price at which Meade bought into the Athletic Attic business in 1989 took into account its liabilities.<sup>47</sup>

Meade's evidence regarding the terms of the parties' agreement is general, vague and conclusory. In his Answer filed in 1997, Meade alleged:

Plaintiffs were liable for some debts defendants were liable for some debts and plaintiffs & defendants were liable jointly for some debts. All together defendants were liable for as much as if not more than plaintiffs.<sup>48</sup>

In opposition to the present motion, Meade filed an affidavit on March 20, 2003, but it does not state much more. In particular, Meade asserted that:

I agreed to join in with [Geier] in August, 1988, and Sports Fans was open in Dover Mall. It was agreed that all pre-existing expenses or bills for the business would be paid by the Geiers and it would be a fresh start in this location with a new name.

Your affiant was then bought in to the Athletic Attic and it was further agreed there would be no expenses for the company at the time of the buy in and all pre-existing expenses and obligations would be paid by Geier. The books have not been produced to show in fact what expenses did exist and who paid those expenses.<sup>49</sup>

In response to Meade's Affidavit, Geier filed a Supplemental Affidavit. There, Geier stated that:

There was never any agreement, oral or written, that he would pay from personal, nonbusiness funds, the liabilities of the business existing at the time Meade purchased a one-half interest in the business. The purchase price for a one-half interest in the business was determined by taking into account all assets and liabilities, and in buying a one-half interest in the

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<sup>47</sup> *Id.* at 29.

<sup>48</sup> Answer (D.I. 5) ? 4.

<sup>49</sup> Meade Aff. ?? 3-4.

business, Meade took on all of the liabilities and assets as an equal business partner.<sup>50</sup>

The Court notes, however, that Geier's earlier testimony at the partially completed trial was more equivocal. Under cross-examination by Meade's counsel, Geier testified as follows:

Q. In Exhibit 1 which is the value of business statement, when that was provided to my client and you and he negotiated that, did you represent to him that there were no outstanding debts for the Athletic Attic?

A. I can't recall. I mean Frank [Cranston] prepared it.

Q. Did you indicate to him that he would not be responsible for any pre-existing debts that you --

A. Sure, yes.

Q. So as of August 2nd -- I'm sorry, when he made the purchase in mid-'89, he was buying into your business without any debts?

A. Correct.

Q. And you two were going on from that point.

A. That's correct.

Q. Now, how did those debts which appear to be about, at least from these documents, \$73,000, how were they paid, the pre-existing debts? Who paid those debts?

A. Well, the business did. If I can retract, I'm not really sure how that was set up between the asking price and if there were previous debts. I don't know. I can't give you an honest answer on that.

All I know is that Mike's [Meade's] accountant had asked for accounts payable, inventory figures, and I don't know, but the negotiation really was between the numbers that Frank had presented and the numbers were given to Mike and his accountant up in Wilmington.

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<sup>50</sup> Geier Supp. Aff. ? 2.

Q. If Mr. Meade testifies that the agreement was that the business, and he therefore, would not be responsible for any debts that pre-existed in the merging of Athletic Attic in mid-'89, you would not disagree with his statement?

A. I don't know if I can answer that statement. I don't remember.<sup>51</sup>

Viewing this evidence in the light most favorable to Meade, he just barely may have presented enough evidence to create a genuine issue of fact as to whether or not the parties' Partnership Agreement excluded certain, unspecified pre-existing debts of Geier. Based on the evidence, however, the Court concludes that there is no genuine issue of material fact that the allegedly excluded pre-existing debts do not include the accounts payable referred to in PTX1 for purposes of determining the net value of a 1/2 interest in the Athletic Attic business. In the Court's view, no reasonable finder of fact could conclude otherwise on the record presented here.

Even if Meade had shown the existence of a disputed issue of fact regarding the amounts owed to trade creditors when he bought into the Athletic Attic, however, that issue would not be material for purposes of avoiding summary judgment. The reason is that questions remain as to whether: (1) any of the specific debts upon which Geier bases his claim for 50 percent reimbursement constitute allegedly excluded "pre-existing debts"; and (2) if not, whether he has presented sufficient evidence to support a potential

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<sup>51</sup> 8/29/01 Tr. at 52-54 (Geier).



finding that Geier improperly used Partnership funds to satisfy other “preexisting debts.”<sup>52</sup>

### **B. The Post-1993 Payments to Trade Creditors**

Geier presented extensive evidence that, after 1993, he made payments totaling \$73,695.73 to Champion, Ed’s West, Asahi, Nike, and Diadora American. Meade made no contribution to those payments.

Based on the evidence presented, the Court holds that the only reasonable conclusion is that none of those payments was for a debt that pre-dated the formation of the Partnership in 1988 or 1989. Each of the creditors named above, except Ed’s West, was included in PTX 4, a spreadsheet of trade debts of the businesses as of December 31, 1994. Geier and Cranston both testified that no debts owed to any of those creditors as of 1988 remained unpaid by the time the Partnership ceased operations in 1993 or 1994.<sup>53</sup> Geier also submitted an affidavit stating that Ed’s West was among the Partnership’s creditors when it sold its equipment and inventory to Pickering and Henry in 1993.<sup>54</sup> The Contract of Sale for that transaction, dated July 1, 1993, contains an affidavit signed by Geier identifying Ed’s West as a creditor on the debts retained by the sellers (Geier and

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<sup>52</sup> None of the documentary evidence supports Meade’s contention in this regard. Furthermore, Meade’s own assertions are vague and ambiguous in terms of what is encompassed by the phrase “preexisting debts.”

<sup>53</sup> 8/29/01 Tr. at 38 (Geier), 19-23 (Cranston); PTX 4.

<sup>54</sup> Geier Aff. ? 11.

Meade) in that transaction.<sup>55</sup> The Contract of Sale is signed by Meade, although the attached affidavit is not.<sup>56</sup> In addition, the fact that the trade debts remained unpaid in 1993, over three years after Meade joined the Partnership and bought into the Athletic Attic business, supports an inference that those were not “preexisting debts.”

Meade failed to present evidence sufficient to support a reasonable inference that Geier incurred one or more of the trade debts in issue before the Partnership was formed. In his affidavit, Meade “disagrees” with the list of creditors provided with the July 1, 1993 Contract of Sale, which included Champion, Ed’s West, Asahi, and Nike. Meade further alleged “that some of these creditors only did business with Athletic Attic before your affiant’s entry as an owner in the partnership. For those accounts then, they would be the sole responsibility of the Geier’s.”<sup>57</sup> More generally, Meade averred that, unless there is a trial, “there is no way your affiant can contest the payments” allegedly made by Geier. Meade explained in his affidavit that: “The concern that your affiant has is that they may have been paid from the proceeds of the Rehoboth store sale, or the Athletic Attic inventory sale in Dover. Those assets should not have been used to pay pre-existing

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<sup>55</sup> *Id.*, Exh. 13.

<sup>56</sup> Geier served a request for admission seeking Meade’s agreement that the list of debts attached to the Contract of Sale had been incurred by the sellers and would not be assumed by the buyer. Meade denied that request, but did not provide any explanation for his denial. Def. Resp. to RFA No. 2.

<sup>57</sup> Meade Aff. ? 11.

bills and **it appears that these bills may have preexisted the partnership** of the parties.”<sup>58</sup>

Meade’s arguments are simply too little, too late. This case is now over seven years old. Nothing has prevented Meade from discovering the information he claims to need to provide more specific evidence to support his position. The documents he claims to need are presumably those he requested in his Request for Production of Documents Directed to Plaintiff served March 21, 2002. Copies of some of those documents, however, were sent to Meade and the others were made available for his inspection.<sup>59</sup> Similarly, Meade failed to take a single deposition or pursue any other type of discovery.

This Court’s Rules require more than mere denials and speculation to defeat a motion for summary judgment. Rule 56(e) provides that a party confronted with a properly supported summary judgment motion “may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” The Delaware courts have granted summary judgments in comparable situations. *See, e.g., Feinberg v. Makhson*, 407 A.2d 201, 203 (Del. 1979)(affirming grant of summary judgment where the opposing party’s affidavit did “little more than affirm their doubt as to the proof of movant’s assertion” and the action’s 15 year pendency constituted an “inordinate” amount of time to demonstrate the

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<sup>58</sup> *Id.* ? 12 (emphasis added).

<sup>59</sup> POB 4.

existence of a genuine issue of material fact); *Tanzer v. Int'l General Industries, Inc.*, 402 A.2d 382, 385-86 (Del. Ch. 1979)(granting defendants' motion for summary judgment where plaintiffs had "abundant opportunity" to produce contrary evidence); *Highline Financial Services, Inc. v. Rooney*, 1996 WL 663100, at \*2 (Del. Super. Oct. 25, 1996)(granting plaintiff's motion for summary judgment where defendants despite "abundant opportunity . . . failed to dispute a single relevant fact.").

Based on these authorities and Rule 56(e), the Court holds that Meade has failed to demonstrate the existence on any disputed issue of material fact in opposition to Geier's allegation that each of the trade debts in issue were incurred after the formation of the Partnership in 1988 and 1989. Accordingly, the Court will treat that fact as established for purposes of its analysis.

### **C. The Post-1993 Payments to the IRS**

Geier also presented detailed evidence that he made payments to the IRS after 1993, totaling \$8,300.86. For example, Geier's Affidavit avers that he and Meade are "equally liable to the IRS for withholding taxes assessed against the partnership." Geier further stated that he paid the IRS the full balance that was due.<sup>60</sup> PTX 5 shows the amounts owed to the IRS by the Partnership (and paid by Geier) were for the tax periods December 1992, March 1993 and June 1993, all after its formation.<sup>61</sup>

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<sup>60</sup> Geier Aff. ? 10, Exh. 12.

<sup>61</sup> 8/29/01 Tr. at 23 (Cranston); PTX 5.

Regarding the payments to the IRS, Meade's Affidavit states: "Your affiant cannot confirm or deny the allegation of the IRS payments by [sic: Geier], nor does your affiant agree at this time that those payments were owed as a result of his action or inaction."<sup>62</sup> Meade failed to produce any other evidence on this issue.

As with the trade debts, Meade's general and equivocal denial of liability for his 50 percent share of the amounts paid to the IRS are insufficient to overcome the showing made by Geier in support of his motion. Meade's Affidavit suggests that, upon review of the documents and other available information, he might develop some evidence that some or all of that amount might not be chargeable to him. If this case still were at the initial pleading stage, perhaps that might be an adequate response. At the summary judgment stage, after a prolonged period for discovery, Rule 56(e) requires that Meade do more. Because Meade has failed to overcome the showing made on Geier's motion, the Court concludes that there is no genuine issue of material fact that the \$8,300.86 Geier paid to the IRS since 1993 was for debts incurred during the Partnership.

#### **D. Meade's More General Allegations Regarding Preexisting Obligations**

Throughout this litigation, Meade has maintained that the Partnership Agreement he entered into with Geier required that Geier not use Partnership assets to pay for any preexisting obligations. Meade first made that allegation in February 1997, when he filed his Answer. To a limited extent, Meade took the same position again in March 1999, when he responded "no" to certain of Geier's requests for admissions. Meade reiterated

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<sup>62</sup> Meade Aff. ? 10.

his position yet a third time in the affidavit he filed in March 2003 in opposition to the pending motion for summary judgment. Despite his consistency in claiming that Geier remains responsible for certain unspecified “preexisting obligations,” however, Meade has never produced any evidence more specific than the conclusory allegations described above to support that claim.

In contrast, Geier has adduced convincing evidence that there were no such excluded, preexisting obligations. That evidence includes the 1988 Partnership Agreement that makes no mention of the exclusion Meade alleges and explicitly states that it “supercedes [ ] any other prior agreement [and] is the entire agreement between [the parties].” It also includes the document prepared by Geier’s accountant Cranston reflecting a “Net Value of 1/2 Interest” in Athletic Attic as of December 31, 1988, of just over \$85,000, which closely approximates the \$80,000 Meade agreed to pay to purchase a 1/2 interest in that business a few months later, and the testimony of Cranston and Geier.

As noted above, the Court has concluded that Geier has established that any agreement he might have had with Meade to exclude certain “preexisting obligations” from their Partnership did not apply to amounts owed to trade creditors of the Athletic Attic at the time Meade bought into it. Even if the Court were to conclude, however, that Geier might have agreed to pay for any prior obligations, including those to trade creditors, entry of summary judgment remains appropriate. The reason is that Meade has failed completely to meet his obligation under Rule 56(e) to “set forth specific facts

showing that there is a genuine issue for trial.” Meade has not identified one single preexisting debt that he claims Geier improperly paid using Partnership funds.

Moreover, Meade has repeatedly ignored the efforts of Geier and the Court to develop the factual record sufficiently to enable a prompt resolution of this dispute. In early 1999, Geier noticed Meade’s deposition. Meade delayed for months before ultimately appearing and reading a statement that he would not proceed because he did not have counsel, necessitating a motion to compel. On August 29, 2001, after more than one postponement to accommodate Meade, the Court attempted to hold a trial. Meade, however, was not prepared to proceed and only Geier presented his case. At the trial, the Court also discussed further proceedings and Meade’s counsel agreed that the disputes regarding the relevant debts could be done on a paper record. Geier’s pending motion presented Meade the opportunity to do just that. Nonetheless, Meade has continued to rely solely upon the same types of conclusory allegations contained in his 1997 Answer.

This is not a complicated case. The documents involved are not that voluminous. All of the participants and likely witnesses, including the accountants, reside or work in Delaware. Consequently, the Court cannot excuse Meade’s failure to present any specific evidence to support his claim that the amounts sought by Geier should be adjusted to account for one or more preexisting debts paid by the Partnership. Geier therefore is entitled to entry of summary judgment in his favor.

#### **E. Conclusion**

For the foregoing reasons, the Court holds that Geier has demonstrated that there is no genuine issue of material fact and that he is entitled to the entry of judgment as a

matter of law that Meade is liable to him for 1/2 of the amount Geier paid to the identified trade creditors and the IRS, which totals \$40,998.29. Accordingly, the Court grants Geier's motion for summary judgment.

An appropriate form of Order will be entered.