



IN THE CHANCERY COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

JEANNINE HOLLAND,)
)
 Plaintiff,)
)
 v.) C.A. Number 2318-S
)
 JEANI MOORE-KENTON,)
)
 Defendant.)

MASTER'S REPORT

Date Submitted: February 15, 2005
Draft Issued From Bench: February 15, 2005
Modified Bench Ruling: February 17, 2005
Final Report: March 2, 2005

Deidre O'Shea, Esquire, Smith, O'Donnell, Procino & Berl, Georgetown, Delaware;
Attorney for Plaintiff.

Craig A. Karsnitz, Esquire, Young, Conaway, Stargatt & Taylor, Georgetown,
Delaware; Attorney for Defendant.

GLASSCOCK, Master

This matter involves the dissolution of a partnership formed between the plaintiff and the defendant to operate a retail business known as “Splish Splash Soap” (the “business”). The plaintiff dissociated herself from the partnership at the end of 2002. This dissociation was not wrongful. *See* 6 Del. C. §15-602(b). The defendant continues to run the business. The only issue is the value of plaintiff’s share of the business as of the time of the dissolution of the partnership. *See* 6 Del. C. §15-701(b).

The matter came before me on February 15, 2005. After a trial, I issued a bench draft report. Exceptions have been taken to the bench draft report (as modified by my Letter Order of February 17, 2005). Together with this written final report, I adopt my bench draft report as my final report, modified as set forth below.¹ Because the facts and law are adequately set out in the bench report, this written report will address only that area where I have modified the bench report, together with my response to the defendant’s exceptions.

Modification of the bench report.

One issue at trial was whether an asset of the business, cash-on-hand, should be valued as demonstrated by an accounting submitted by the plaintiff (\$8,630), or by the amount of cash actually in the partnership account at the time of dissolution

¹ I hereby withdraw my Letter Order of February 17, 2005 in favor of this final report. To the extent that my bench report is in conflict with this final report, I withdraw that portion of my bench report and substitute this written final report therefor. All other aspects of my bench report of February 15, 2005 remain in effect and constitute my final report in this matter.

(\$2,966). In my bench draft report I held that, because the plaintiff had failed to demonstrate that the discrepancy between theoretical and actual cash-on-hand was the result of malfeasance on the part of the defendant, the \$2,966 figure was the appropriate amount to use in calculating the value of the assets of the partnership. After reflecting upon this matter, however, the following facts persuade me that my initial determination was in error: 1) the testimony from the plaintiff was that a review of the records of the business indicate that \$8,630 cash should have been on hand at the end of December 2002; 2) the plaintiff's testimony was that the bulk of the discrepancy between that figure and the actual cash-on-hand arose during the November and December 2002 period when the plaintiff's participation in the business was significantly reduced, meaning that most of the sales and banking transactions during that period would have been handled by the defendant.

Taken together, I find these facts support the demand for an accounting against the defendant. The defendant's testimony, however, was limited to her assertion that she had not misappropriated the money, and that the operation of the business by both parties was "informal," suggesting that sloppy accounting and/or handling of assets on the part of one or both of the partners (or a third party) led to the discrepancy between the theoretical and actual cash figures.

In this context, requiring the plaintiff to demonstrate conversion or other malfeasance on the part of the defendant was improper. While I remain of the opinion that the evidence was inadequate to demonstrate conversion of assets by the defendant, the fact that she was unable to account for the discrepancy requires, in my view, that cash-on-hand as demonstrated by the plaintiff's accounting be treated as an asset of the partnership business, and that amount must be used to compute the value of the plaintiff's share of the partnership. *See* 6 Del. C. §15-404(b). Therefore counsel, in crafting the form of order I called for in my bench report of February 15, 2005 should use the figure set forth in the plaintiff's accounting to represent the cash assets of the partnership. Because it is unclear to me whether this amount, \$8,630, has been adjusted to reflect draws taken by the partners prior to the termination of the partnership, I leave it to the parties to calculate the appropriate cash-on-hand figure as an asset of the partnership, consistent with this Report. If the parties cannot agree on this or other calculations to be used in a final order, I retain jurisdiction to decide that issue.²

The Defendant's Exceptions

The defendant has taken exception to two findings in my draft report.

² I also retain jurisdiction over issues involving the determination, for partnership-valuation purposes, of the tax liability for tax year 2002.

1) The draft report directs the parties to value the hard assets of the business at their acquisition cost. The defendant takes exception to my failure to adjust the value of these assets for depreciation. The business had operated for several months at the time the partnership dissolved. The plaintiff herself stated on cross-examination that she felt a 10% depreciation figure for these assets was “fair.” However, the issue is not whether, as “used” items, the assets employed in the business had less market value in December 2002 than they had when new in the spring of that year. The issue is their value to the ongoing business, which before plaintiff’s dissociation belonged to the partnership but which now belongs to the defendant. There is nothing in the record that indicates to me that the value of these assets *to the business* had deteriorated in the months that the business was in operation, nor is there anything in the record indicating the useful life of these assets or in any sense demonstrating what depreciation figure, if any, is appropriate. Therefore, this exception is denied.

2) The defendant takes exception to my finding that the “cash-on-hand” demonstrated by the accounting be considered an asset of the business for the purpose of valuing the plaintiff’s share. The defendant points to the reasoning in Family Court “lost asset” cases, in which that court has determined that assets of a marriage which have been lost during the marriage cannot be used as a basis for determining a division of property upon divorce. I find that rationale to be an inapposite here, however. The

situation here is that of a partnership where one partner has exercised her statutory right to dissociate from the partnership, and the other partner retains the business which was the subject of the partnership. The question is the value of that business at dissolution. Here, an accounting indicates that cash-on-hand, an asset, should have existed in the amount of \$8,630. Some \$5,000 of this amount was missing as of the time the defendant closed the partnership account. The testimony indicated that the business was largely under the defendant's control during the time the majority of the discrepancy occurred. Given those facts, equity requires that the cash-on-hand as demonstrated by the accounting be considered an asset of the partnership's business in computing the share due the plaintiff. Therefore, the exception must be denied.

The parties should submit a form of order consistent with this Report.

 /s/ Sam Glasscock
Master in Chancery

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