1968

Partnership (1959-1967)

Dudley Warner Woodbridge

William & Mary Law School

Repository Citation
http://scholarship.law.wm.edu/vabarnotes/22

Copyright c 1968 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
http://scholarship.law.wm.edu/vabarnotes
7. Hap, Hazard and Heck were partners trading under the firm name of Happy Go Lucky. The partnership articles provided that the partnership should continue until Jan. 1, 1965. Hazard, in contravention of the partnership agreement, effected a dissolution of the partnership. Hap and Heck consulted you, inquiring: (1) whether they may continue the business in the same name; (2) under what conditions they may retain the partnership property; (3) whether they are entitled to damages from Hazard for the wrongful dissolution of the partnership. What would you advise?

(PARTNERSHIP) (1) Yes, they may continue business in the same name until January 1, 1965, "provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable ***, and in like manner indemnify him against all present or future partnership liabilities." V#50-38(2)(b). (2) Same answer and same reference. (3) Yes, if they can be proved with reasonable certainty, for Hazard has broken his contract.

9. Elder, a retired businessman, and Younger, a young building contractor, both of Culpeper, saw a need for low-cost housing in their area, and they agreed to form a partnership in which Elder would contribute $5,000 and Younger would contribute machinery and equipment of the same value. It was agreed that Elder would be inactive in the business and that he would receive one-fourth of its profits. In the belief that the venture would be successful by the construction of pre-fabricated homes, they agreed that Younger should apply for a franchise for the partnership from Pre-Fab Homes, a manufacturer of pre-fabs in Cleveland, Ohio.

Younger conferred in Cleveland with the Pre-Fab Homes officials, who were hesitant to grant the franchise to the partnership because of the advanced age of Elder, and who suggested that it be granted to Younger in his sole name. Upon Younger's agreeing to this, Pre-Fab Homes, Inc., granted its exclusive franchise to Younger, and Younger commenced construction of the homes at a considerable profit to himself. Elder had been in Canada for several months and upon his return to Culpeper learned for the first time of Younger's visit to Cleveland and of his subsequent success with the homes. Elder instituted a proceeding by declaratory judgment, seeking to have himself decreed a partner of Younger and asking for an accounting and profits from the business. Assuming the above facts, is Elder entitled to the relief sought?

(PARTNERSHIP) No. Assuming that Younger was acting in good faith, and that it was impossible for him to get the franchise for the firm, then he was within his rights in taking it in his own name. Hence he was not engaged in the partnership business while acting under the franchise and need not account for any part of the profits he has made to Elder. The formation of the partnership was contingent on getting the franchise for the parties. See 193 Va. 350.

Or, Younger did not act in good faith, or at least a jury could so find. He eagerly gave in to the suggestion because of mere hesitancy. He did not "go to bat" for Elder. V#50-21, which is part of the Uniform Partnership Act, reads in part, "(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnerships or from any use by him of the property.

If partner get for himself what he should've gotten for the firm, he will have to account for it.
8. Tom and Jerry formed a partnership to conduct a clothing business, each contributing $15,000 toward its capital. The business made money for the first two years, then lost about half of its capital. Tom became discouraged and took a part-time job, but Jerry worked full time at the store. As a result of Jerry's activities, the business picked up and the partners sold out for $35,000. The partnership owed Wholesaler debts amounting to $20,000 and a note to the Bank of $3,500.

Tom and Jerry fell out and submit to you the following questions:

(1) Is Jerry entitled to compensation for working full time while Tom worked only part time?

(PARTNERSHIP) (1) No. There is no compensation for extra work by one partner (unless he is winding up the affairs of the firm) in the absence of an agreement therefor. Va. § 50-18(f).

(2) If other debts should come up so that the firm assets would not be sufficient to pay Wholesaler and the Bank in full, which, if either, would be paid first?

(PARTNERSHIP) (2) There is no preference. Each of these creditors is an unsecured general creditor of the firm.

9. Will White and Bob Blue were partners trading as the White and Blue Flag Co. Rob Red owned a dye plant which did much of the processing for the Flag Co. White and Blue decided to offer Red an interest in their Company in consideration for which Red would contribute his dye plant to the partnership. The new partnership would be called Red, White & Blue Flag Co. Red accepted the offer and was duly admitted as a partner.

Unknown to Red at the time he was admitted as a partner was the fact that the partnership was on the verge of insolvency. Numerous debts had been incurred which White and Blue had been unable to meet. About three months after Red joined the partnership a textile firm obtained a judgment against the partnership in the amount of $50,000. This debt represented an unpaid balance which had existed before Red joined the Company.

The textile firm has now brought a suit in equity to subject the partnership property, including the dye plant, to the satisfaction of its judgment. The bill also prays that in the event the judgment is not satisfied by sale of the partnership property, that Red's home be sold to supply the balance. Red contends that since the debt was incurred before he became a partner that neither the dye plant nor his home should be liable for it. White and Blue own nothing but their interest in the partnership property. What should be the result (a) with regard to the dye plant, and (b) with regard to Red's home?

(PARTNERSHIP) Under sections 17 and 41 of the Uniform Partnership Act, which is in force in Virginia, Red is liable for the old debts, but only what he has contributed to the firm can be taken unless he has assumed payment of them. In this case there was no such assumption, so the dye plant can be reached by the partnership creditors for the old debts, but Red's home cannot.

10. Tom and Dick Driver were brothers living in Charlotte County, Va. Dick was desirous of going into the trucking business but lacked the necessary capital with which to buy a truck. Tom, who was a successful merchant in the Town of Drake's Branch, offered to purchase a truck for Dick's use and pay the necessary State license taxes for its operation. It was agreed that Tom would retain ownership of the truck but Dick would furnish all gasoline and oil and keep it in good mechanical condition, and would have sole authority to make contracts for the hauling of produce and other goods without consulting Tom; that Dick would have absolute possession and control of the truck and would collect all monies for work done by it; and that in consideration of the above Dick would pay Tom one-half of the gross earnings of the trucking business and keep the other half for himself. Pursuant to this agreement, the truck was purchased.

Dick has now incurred considerable indebtedness in the operation of the trucking business, and you are consulted by several of his creditors who want to know whether there exists any relationship between Tom and Dick by which Tom could be held liable for the debts. What should you advise?

(PARTNERSHIP) There is no such relationship. There was no agreement to share losses, nor is Tom to have any voice in the business. Hence there is no agency and no partnership. See 139 Va. 171.
9. Brooks, Carter, Samson and Parsons are partners engaged in the manufacture of furniture and trading under the name Cherry Hill Furniture Co. Each partner contributed equally to the partnership capital. Being in poor health, Parsons sold and assigned all of his interest in the partnership to Warbuck. Shortly thereafter Warbuck demanded the right to participate in the management of the partnership business affairs and the right to examine all of the partnership books and contracts. Upon being denied the right to take part in the management of the partnership business and to examine the books and contracts of the partnership, Warbuck commenced a suit in equity seeking a declaratory judgment finding that he is entitled to take part in the management of the partnership business, entitled to examine the books and contracts of the partnership, and entitled to receive one-fourth of the specific partnership property. Brooks, Carter and Samson employ you to represent them. They inquire whether Warbuck is entitled to each item of relief which he seeks. How would you advise them?

(PARTNERSHIP) I would advise him that Warbuck is not entitled to any of the relief he seeks. Warbuck's only rights are to his share of the profits and the right to require a dissolution. He cannot be forced upon the other partners as a partner against their wishes. Note that the sale by one of the partners of his interest to an outsider does not in and of itself terminate the partnership. See Section 27 of the U.P.A. which is 50-27 of the Code of Virginia.

9. Clark and Edwards formed a partnership to conduct a specialty business. The articles of partnership provided that Clark would contribute $30,000 as capital to finance the business and that Edwards, because of past experience, would contribute his skill and labor and manage the business. The articles were silent as to division of profits, return of capital and payment of salaries. The articles of partnership were complied with and the venture was highly successful, but, unfortunately, Clark died during its third year of operation. Edwards, without Clark's knowledge, had paid himself from the firm assets $250 a month until Clark's death and after the death of Clark he operated the business for several months and then sold the business as a going concern. After paying all claims of third parties, the partnership had $50,000 left. The following questions have arisen:

(a) As Clark devoted but little time to the operation of the business, was Edwards entitled to receive $250 a month as compensation for his services rendered prior to Clark's death?

(b) How should the $50,000 be divided between Clark's estate and Edwards?

How should these questions be answered?

(PARTNERSHIP) (a) No. In the absence of agreement partners are not entitled to compensation for their work. They must look to the profits of the operation. The only exception to this rule is that a liquidating partner is entitled to reasonable compensation. (b) First Clark gets his $30,000 back as return of capital. Then the $20,000 left should be credited with the amounts wrongfully taken by Edwards as salary and debited by a reasonable amount as compensation for Edward's work, if any, in winding up the partnership affairs. The amount left should then be equally divided as profits between Edwards and Clark's estate. See V#50-18.

10. Julia and Babs operated a dress shop in the City of Fredericksburg as a co-partnership under the trade name of "Style Mart."

After considerable financial loss, the partners have now prevailed upon Ezra Stull to become a partner with them in the business and to bring his knowledge of business affairs into the operation of the shop. Under the agreement with Ezra he is not required to put up any money, but is entitled to share and share alike in the profits.

Ezra consults you for advice. He states that he has confidence in his ability to get the shop on a firm financial basis. However, he fears that by entering into the agreement he has become personally liable for all debts of the partnership incurred before his admission as a partner.

How ought you to advise Ezra as to his personal liability on pre-existing partnership debts?

(PARTNERSHIP) I would advise him that he is not liable for the old debts except to the extent of his interest in the firm. Since he is not investing any property in the firm he would be liable for them only to the extent of any unpaid profits he may not have withdrawn. V#50-17.
Although George was under the attempt to leave the City City of Richmond in which his motion for judgment alleged that George and Sand had been general partners operating a men's clothing store in the City of Richmond under the firm name of "George & Sand"; that thereafter the partnership was dissolved, but that prior to such dissolution on June 15, 1963 while he, Ricks, was in the store examining wearing apparel and while George was absent, he was approached by Sand who, mistaking him for another customer, demanded payment of a debt of $60 owed by the other customer for clothing purchased from the partnership; that he failed to convince Sand that he had no obligation to the partnership; that, on his attempting to leave the store, Sand cursed him and knocked him to the floor as a result of which he suffered humiliation and painful injury; and that thereby George became liable to him for assault and battery and for the payment of damages in the amount of $5,000 for which he prayed judgment. George has demurred to the motion for judgment. How should the Court rule on the demurrer?

(PARTNERSHIP) The demurrer should be overruled. Sand's tort was committed within the scope of the partnership business and George and Sand were jointly and severally liable therefor. 135/6.

Brooks, Carter, Samson and Parsons are partners engaged in the manufacture of furniture and trading under the name Cherry Hill Furniture Co. Each partner contributed equally to the partnership capital. Being in poor health, Parsons sold and assigned all of his interest in the partnership to Warbuck. Shortly thereafter Warbuck demanded the right to participate in the management of the partnership business affairs and the right to examine all of the partnership books and contracts. Upon being denied the right to take part in the management of the partnership business and to examine the books and contracts of the partnership, Warbuck has commenced a suit in equity seeking a declaratory judgment that he is entitled to take part in the management of the partnership business, to examine the books and contracts of the partnership, and that he is entitled to receive one-fourth of the specific partnership property. Brooks, Carter and Samson employ you to represent them. They inquire whether Warbuck is entitled to the relief which he seeks. How would you advise them?

(PARTNERSHIP) Warbuck is not entitled to the relief sought. He is an interloper and need not be accepted as a partner. His only rights under the U.P.A. (V 50-27) are (1) to receive whatever profits Parsons would have been entitled to and, (2) upon dissolution to receive the share Parsons would have been entitled to had he remained a partner. Note that Parsons' sale to Warbuck did not dissolve the partnership.

White, Gray and Black formed a partnership, under the name of White and Company, to buy and sell livestock and feed. The business borrowed money from time to time evidenced by notes to which different partners signed the name "White and Company." These notes were either paid at maturity, or curtailed and renewed. After several years, Black signed the firm name to a note for $10,000, but instead of placing the money thus realized to the firm's credit, took it himself and absconded with all the firm's liquid assets.

What, if any, is the personal liability of White and Gray on this note?

(PARTNERSHIP) White and Gray are personally liable. In a trading partnership (as here), each of the partners has implied authority to bind the firm. The bank is not a guarantor of the integrity of each member of the firm. It had no notice that Black intended to use the proceeds of the note improperly. In addition we have a course of dealing indicative of the fact that each member of the firm had authority to borrow money by giving notes in the firm name.
9. Manny, Moe, and Marvin formed a retail clothing partnership by the name of "M" Clothiers and conducted such a business in Norfolk, Va., for a number of years, buying most of their clothing from Hall, a wholesaler. On January 15, 1964, Marvin retired from the business, but Manny and Moe decided to continue the same. As part of the retirement agreement, Manny and Moe agreed in writing with Marvin that Marvin would not be responsible for any of the partnership debts, either past or future. A news item concerning Marvin's retirement appeared in the local newspaper on Jan. 15, and on the same date, a new and proper partnership certificate was filed in the clerk's office of the Corporation Court of the City of Norfolk, continuing the name of the firm as "M" Clothiers but showing the change of partners.

Prior to Jan. 15, 1964, Hall was a creditor of "M" Clothiers to the extent of $10,000 and, on Jan. 30, extended credit for $5,000 more. Hall was not advised and did not, in fact, know of Marvin's retirement and the change of the partnership and had not seen the newspaper article or the new certificate. On January 30, Robert, a competitor of Hall, extended credit for the first time to "M" Clothiers in the amount of $3,000.

On February 1, 1964, Manny and Moe left for parts unknown and left no partnership assets with which to pay the above debts. Marvin consults you as to his liability, if any, (a) to Hall and (b) to Robert. How should you advise him?

(PARTNERSHIP) (a) Marvin is liable to Hall. A general announcement which does not actually come to the attention of existing and prior creditors of the firm at the time of its publication is not enough to prevent the retiring partner from being liable. Such creditors are entitled to actual notice. Hence Marvin is liable to Hall for the old $10,000 debt and the new $5,000 one. An agreement among the partners that Marvin shall not be liable is not binding on creditors who have not assented. There was no novation. (b) Marvin is not liable to Robert who had not previously dealt with the firm. The general announcement of dissolution and the new properly filed partnership certificate were sufficient notice to Robert that Marvin was no longer connected with the firm. See Mechem Elements of Partnership 2d Ed. #387 et seq.

10. Henry Smith and William Jones, married men, formed a partnership under the name of "Smith-Jones Real Estate Co.", to purchase, develop and sell suburban real estate. The partnership purchased several parcels of land but took title as hereinafter indicated:

State which, if any, of the following purported conveyances of partnership realty would pass complete title to the purchaser:

(a) Title taken in name of Smith-Jones Real Estate Co. Deed executed in that name by Henry Smith, Partner.

(b) Title taken in names of Henry Smith and William Jones jointly. Deed executed by Henry Smith, Partner, and William Jones, Partner, but their respective wives did not execute deed.

(c) Title taken in name of Smith-Jones Real Estate Co. After death of Jones, Smith, while in the process of winding up the affairs of the partnership, sold this land. Deed executed in firm name by Henry Smith, Surviving Partner.

(PARTNERSHIP) Complete title passes in all instances as any partner may convey the partnership realty in (a) the partners may convey the property owned by them jointly and acquired with partnership funds in (b) and the surviving partner has the authority to dispose of the partnership property in (c) Va. Code #50-8, 50-10, and 50-37. (Note that this is a commercial partnership whose business consists in buying and selling real estate.)
Joe Smith and Burt Jones were energetic young men of the City of Norfolk, who together successfully constructed and marketed a small residential subdivision in the City's suburbs. Feeling that they could expand their talents by developing a much larger subdivision, they called upon Albert Cash, a retired and wealthy building contractor, and asked whether he would be willing to join with them in their new venture by contributing $100,000 of capital in the enterprise. Cash agreed that he would do so and would share in the profits, but only on the condition that he would not be liable for anything more than his investment in the event the enterprise failed. To this Smith and Jones agreed and the three executed and duly recorded a limited partnership agreement, proper in form, which recited the name of the firm to be "Smith & Jones Developers," and fixed the status of Cash as a limited partner. Cash contributed $100,000 to the firm's capital, and shortly thereafter, construction of the new subdivision was commenced. For the first few months all went well, but then the operation began showing a loss because of the poor management of Smith and Jones. On learning of this, in January of 1966, Cash threatened to withdraw his investment from the firm, but decided not to do so when Smith and Jones agreed that Cash would thereafter have the final decision on all major business decisions. From that time forward Cash did have a voice in the general management of the business, but in October of 1966 the firm became totally without funds and was dissolved. Brick Supply, Inc., has now brought an action against Smith, Jones, and Cash jointly and severally, to recover $150,000 owed it for brick sold and delivered to "Smith & Jones Developers." In defense of the action, Cash asserted that, being a limited partner, he is liable only for his capital investment of $100,000, that such capital investment has been exhausted in payment of obligations of the firm prior to the action brought by Brick Supply, Inc., and that he therefore is immune from judgment. To what extent, if any, should the defense of Cash be sustained? Abstinence from participation in fact or in name in the transaction of the business of the partnership is essential to a special or limited partner's exemption from liability for the debts of the firm. Under the facts of this case, Cash should be jointly and severally liable with the other partners. Cash could no longer claim the exemption of a limited partner after he took part in the management of the firm and exercised a controlling power in the firms transaction. See 68 CJS, partnerships, p. 1029 and Virginia Code, Section 50-50.

Hank and Plank were partners engaged in a large wholesale business, the assets of which had a market value of $200,000. The business had become quite extended, with the result that the partnership owed obligations totaling $300,000. The partners persuaded Shank to invest $50,000 in the capital of the partnership and to become a full partner, assuming him that his financial contribution would enable the partnership to get over its financial hurdle and that it would soon be a prosperous thriving business. Six months after Shank became a partner it became evident that the partnership could not successfully continue as it still had assets having a value of only $200,000 and obligations totaling $300,000. In a suit to wind up the partnership affairs the court was called upon to decide:

(1) Whether the $50,000 contribution made by Shank was available for the payment of creditors who had claims against the partnership prior to Shank's entry into the partnership;

(2) Whether Shank was personally liable for the debts of the partnership that existed prior to the time that he became a partner.

How should the Court rule on these questions?

(PARTNERSHIP) (1) Yes. Va.Code 50-8(1) All property originally brought into the partnership or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property.

(2) No. Va. Code 50-17. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership owing before his admission as though he had been a partner when such obligations were incurred except that this liability shall be satisfied only out of partnership property.

(i.e. only liable personally to subsequent debts.)
Mike and Pat had been partners for many years in a mercantile business, but their once friendly and trusting relationship had changed to strictly an arm's-length relationship, with each one carefully checking the activities of the other. Their relationship deteriorated to the point where Mike threatened to file a suit for an accounting and dissolution of the firm. Thereupon, Pat offered to buy Mike's interest in the partnership for $25,000, which offer was refused, with Mike advising that he would take no less than $36,000. Shortly thereafter, Algy approached Pat and advised that he had inside information that a proposed street change would greatly benefit the business and that he, Algy, would buy the entire business for $100,000 or buy a one-half interest in the business for $50,000. Pat approached Mike and made him a final offer of $35,000 for his interest, which offer Mike accepted, and the transaction was completed. Thereafter, Pat sold the one-half interest to Algy for $50,000.

Several months later, Mike learned for the first time of the transaction between Pat and Algy and consulted his lawyer as to whether or not he, Mike, had any legal recourse against Pat. How should the lawyer advise Mike?

(PARTNERSHIP) Mike has a cause of action against Pat. A purchasing partner is bound to exercise the utmost good faith in dealing with his partner. A failure to disclose valuable offers for the property or a part of it is a fraud upon the rights of the vendor and a trust will be impressed upon his one-half of the profits realized by the subsequent sale of the property. See 112 Va. 870.