IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MARJORIE A. ANDERSON,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	C.A. No. 2137-MA
	)	
SNYDER'S FISHING CLUB,	)	
A Partnership,	)	
	)	
DEFENDANT.	)	

MASTER'S REPORT

Date Submitted: February 23, 2007
Draft Report: June 13, 2007
Final Report: June 21, 2007

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And

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AYVAZIAN, Master

On May 9, 2006, Plaintiff Marjorie Anderson ("Anderson") filed an action in the Court of Chancery seeking a determination of the buyout price of her partnership share in a fishing club. The defendant, Snyder's Fishing Club ("Club"), opposes Anderson's claim that she is entitled to one-ninth of the fair value of the Club's only significant asset, a parcel of real estate improved by a mobile home located at 12 Walker Road, Long Neck, Delaware. A trial was held on February 23, 2007. This is my decision on Anderson's request for an accounting to determine the buyout price of her partnership share.

1. Factual Background

The facts of this case are, for the most part, undisputed. Anderson's grandparents, Eugene F. Snyder and Marguerite Snyder, owned a parcel of land near Massey's Landing in Sussex County. On October 1, 1990, ten of the Snyders' children and grandchildren signed a partnership agreement ("Agreement") to form the Club,[1] and on October 16, 1990, the Club purchased the Snyders' property for $29,000.[2] The Agreement required an initial capital contribution by each partner of $50.00 per month, of which $35.00 went to pay Eugene F. Snyder and $15.00 went to pay related

[1] The ten original partners were Anderson, Anderson's brother Theodore Snyder, Jr., Anderson's cousins Donna Biegler, Mark Snyder, Robin Noll, Lisa Pfleger, and Kathryn Ziegler, Anderson's uncles Kenneth Snyder and Martin Snyder, and Anderson's aunt, Patricia Gift.

[2] The transaction involved an interest-free loan from Anderson's grandfather to the Club for the entire purchase price which allocated $20,000 for the land and $9,000 for improvements.

expenses of the property, such as utilities and taxes.[3] The Club was never operated for profit, but was established to provide members of the Snyder family, all of whom apparently live in Pennsylvania, the opportunity to use the facilities and enjoy the shore. The facilities consist of a mobile home on a half-acre lot where partners may stay while visiting the shore. Partners may also bring guests who pay a nominal fee. Any guest fees are deposited in the checking account used to pay the Club's expenses.

Anderson was the Club's first president and she remained in that position until November 27, 2005 when other partners, disturbed by the fact that Anderson had not been paying bills in a timely fashion, voted to remove her as president. Anderson was so upset by their vote that she immediately informed them she was retiring from the partnership. By letter dated November 27, 2005, Anderson officially notified the partners that she was retiring from the partnership, and requested payment of her partnership share, $3,222.00 less the dues she owed according to her account.[4] Anderson later changed her mind about retiring, and on December 6, 2005, Anderson drafted a letter rescinding her previous letter because it had not provided sufficient notice.[5] However, she delayed mailing the letter in

[3] Article 2.1 of the Agreement. Exhibit A.
[4] Exhibit B.
[5] Exhibit C. Article 6.2 of the Agreement requires 60 days prior written notice to the other partners. *See* Exhibit A-6.

order to have an attorney first review it. On December 22, 2005, the same day Anderson mailed her second letter to the partners, Anderson received a letter dated December 19, 2005, from Martin Snyder, on behalf of the Club, informing Anderson that the partnership had accepted her letter of retirement, and would be forwarding a check for her share of the Club.[6] A check for $1,536.36, ostensibly representing one-half of Anderson's partnership interest, was duly forwarded to Anderson by letter dated February 9, 2006.[7] By letter dated February 22, 2006, Anderson's attorney returned the check to the Club with instructions that her partnership interest be determined pursuant to 6 Del. C. § 15-701, and take into account the fair value of real estate in Sussex County.[8] According to the February 22, 2006 letter, Anderson's share in the fair value of the Club's real estate was approximately $23,000.00

2. Legal Issues

Anderson's claim that she is entitled to a share in the increased value of the Club's real estate is based upon her interpretation of some terms found in Article 6.8 of the Agreement, which defines the value of a retiring

[6] Exhibit D.
[7] Exhibit E.
[8] Exhibit F.

partner's interest.[9] Anderson argues that the phrase "[a]ny other sums due and owing to him by the partnership" found in Article 6.8(a)(3) is consistent with section 15-701 of the Delaware Revised Uniform Partnership Act ("DRUPA"), which defines a retiring partner's interest as "an amount equal to the fair value of such partner's economic interest as of the date of dissociation."[10] Alternatively, Anderson argues that the term "capital account" used in Article 6.8(a)(1) may reasonably be construed as referring to a partner's proportional share of the partnership's capital, and not a fixed dollar amount, since the Club was never operated for profit. The Club, on the other hand, argues that DRUPA is irrelevant because the Agreement provides a specific and unambiguous formula for determining the value of a retiring partner's interest in the event that the remaining partners continue the partnership.[11] The Club cites *Black's Law Dictionary* in support of its position that a "capital account" represents a partner's contribution or investment in the partnership. Furthermore, according to the Club, "any

[9] Article 6.8 provides: "The value of a Partner's interest shall be: (a) The sum of: (1) His capital account, (2) His income account, (3) Any other amounts due and owing to him by the Partnership, (b) Less the sum of: (1) His drawing account, (2) Any other amounts due and owing by him to the Partnership."

[10] 6 Del. C. § 15-701.

[11] Articles 6.1, 6.6, and 6.7 provide that if dissolution occurs due to the retirement, death, disability or bankruptcy of a partner, the remaining partners have the right to continue the partnership business under the same name, by themselves or with any other person or persons they may select. If the partnership continues, then the remaining partners shall pay to the other partner "the value of his interest as of the date of dissolution, as determined under Paragraph 6.8 and no more." *See* Article 6.7. Exhibit A-6.

other sums due and owing" are limited to additional capital contributions, such as when another partner purchased a used trailer for the Club. To the extent there is any ambiguity, however, the Club argues that extrinsic evidence, including evidence of the partners' intent, should be examined to determine the meaning of the Agreement's terms.

As an initial matter, Anderson contends that it is uncertain whether she effectively retired from the partnership in light of the attempt to withdraw her notice of retirement. It was undisputed at trial that Anderson received the Club's letter officially accepting her letter of retirement on the same day she mailed her letter rescinding her notice.[12] As a result, Anderson's attempt to revoke her retirement letter was unavailing. *See, e.g.*, *Mitchell v. Brimer*, 1987 WL 5319 (Del. Ch.) (Mem. Op. at *3) ("Where the revocation is accomplished by mail or telegram, it does not become effective until it is received by the offeree. 17 AM. JUR. 2D *Contracts* § 35."). Anderson thus effectively retired from the partnership when the Club posted its acceptance of Anderson's notice of retirement on or about December 19, 2005. *See generally Schenley Industries, Inc., v. Curtis*, 152 A.2d 300, 302 (Del. 1959) (when an acceptance has been posted in the mail, a contract becomes complete and binding).

[12] Anderson's certified letter to Kathryn Ziegler was postmarked December 22, 2005. Exhibit S-1.

Since the Agreement expressly provides a method for determining the value of a retiring partner's share in the partnership, the issue before me is governed by Article 6.8 of the Agreement,[13] and not section 15-701 of DRUPA.[14] *Compare Kirkpatrick v. Caines Landing Wildlife Preserve Assoc.*, 1992 WL 332104 (Del. Ch.) (where partnership agreement is silent, the Court looks to Delaware Uniform Partnership Law and the common law), *aff'd, Caines Landing Wildlife Preserve Assoc. v. Kirkpatrick*, 1993 WL 397606 (Del. Supr.). According to Article 6.8, Anderson is owed the sum of her "capital account", "income account", and "any other amounts due and owing" to her by the partnership **less** the sum of her "drawing account" and any other amounts due and owing by her to the partnership. The difficulty here lies in the fact that the Club was organized for the simple purpose of acquiring and owning a piece of real estate,[15] and not for the purpose of running a business for profit. At first glance, therefore, Anderson's position that she is entitled to share in the appreciated value of the Club's only significant asset appears reasonable since there were never any profits in which she could share. However, given the fact that the

[13] Exhibit A.
[14] Section 15-103(a) provides: "Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership."
[15] *See* Article 1.2 of the Agreement. Exhibit A.

remaining partners exercised their right under the Agreement to continue operating the family fishing club after Anderson's retirement, the Club's position limiting Anderson to the return of her capital investment appears equally reasonable given the nature of this partnership. Accordingly, I find the terms used in Article 6.8 of the Agreement, while appropriate in the context of a profit-seeking business partnership, are fairly confusing and ambiguous when applied to a family fishing club. In order to understand what the partners intended when they drafted Article 6.8 of the Agreement, therefore, I turn to the extrinsic evidence presented at trial, including the actual accounts and documents maintained by the Club, as well as the partners' testimony. *See Comrie v. Enterasys Networks, Inc.*, 837 A.2d 1, 13 (Del. Ch. 2003).

The evidence shows that Anderson and Kenneth Snyder initially worked with an attorney to draft a partnership agreement. Prospective partners then reviewed the draft and considered, among other matters, how a partnership interest would be bought out if someone retired. Notes written by Anderson during a meeting on September 5, 1990, reflect that the prospective partners intended, in the first place, that ownership in the club would belong exclusively to the Snyder family member, and not his or her

spouse.[16] If a member chose to withdraw from the club, the notes further state that the member could "sell his share to another Snyder family member or the remaining club members may buy him out. ***The price to be equal to the dollar amount paid into the club by the withdrawing member.***"[17] After some minor revisions, the partnership agreement was signed on October 1, 1990.

One of the original ten partners, Robin Noll, fell behind on her contributions and withdrew from the partnership a year or so after it was formed, while the Club was still making loan repayments to Eugene F. Snyder. Noll was paid $350 for her partnership share in June 1992,[18] which Noll understood to equal half of what she had paid into the Club, plus her share of a payment for a load of sand.[19] Not long after Noll retired, Eugene F. Snyder died. The Club satisfied the remainder of its debt to Snyder by offsetting the amounts already contributed by the nine remaining partners against their shares in the estate of Eugene F. Snyder ("inheritance

[16] Exhibit I(1). Additionally, if the Snyder family member died, then ownership would pass to his or her adult children, or put in escrow if the child or children were under the age of 18. One of the ten original partners, Patricia Gift, died in 2002, and Gift's share was given to her daughter, Suann Brown. *See* Exhibit M1. According to Anderson's testimony, when Brown became a member of the Club she was only required to pay the back dues outstanding in her mother's account.
[17] Exhibit I(1) (emphasis added).
[18] Exhibit N-10. The account for Robin Noll, unlike the accounts of the remaining nine partners, was recorded on a standard preprinted three-column account book sheet.
[19] Contrary to Article 6.7 of the Agreement, which requires payment of the remainder within twelve months of dissolution, Noll was not paid the remaining amount of her partnership share until after Anderson retired.

settlement" amounts).[20] Once the Club owned the property free and clear of any debt, each partner had what amounted to a capital investment of $3222.00 in the Club.[21] Each partner's account, including Anderson's account, reflects this capital investment.[22]

Sometime after the inheritance settlement occurred, Anderson started to record each partner's account on a standard preprinted four-column account book sheet. Each account book sheet reflects an individual partner's financial contributions to the Club. The first three columns of the account sheet contain the following handwritten headings: (1) "Debits"; (2) "Credits"; and (3) "Balance." The space above the fourth column is blank. The first handwritten entry in each account sheet, "Aug 93 Inheritance Settlement," lists the number "3222.00" under the fourth column.[23] The second handwritten entry in each account sheet, "*Dues Owed 10/90 – 12/95," lists a credit of 945.00 and a negative balance of 945.00.[24] Thereafter, any payment made by a partner is entered in the "debits" column, and at the start of each year the annual dues owed for that year (12 months x $15.00 = $180.00) is entered in the "credits" column. Included in

[20] Exhibit K ("Inheritance Reconciliation").
[21] The number 3222 multiplied by nine equals 28,998, which rounds off to 29,000, the purchase price of the Club's real estate.
[22] *See* Exhibit N1-9.
[23] Exhibit N1-9.
[24] Exhibit K indicates that $945.00 was calculated by multiplying the number of months during this period (63) by the monthly dues amount ($15.00).

the "debits" column are payments toward dues or payments for such items as supplies, postage, insurance, taxes, etc. [25]

Handwritten notes from a partnership meeting that took place in 1991 reveal that the partners apparently discussed or understood that "you only get out what you put in" and "only in event partnership is desolved [sic] we get going value."[26] Several witnesses - Martin Snyder, Kenneth Snyder, Robin Noll, and Kathryn Linderman - testified that Anderson and other members always said "you only get out what you put in," or words to that effect when the issue of the buyout price for a share was discussed during the Club's meetings. Examination of two documents from meetings that occurred in 1996 and 2003 reveals the following handwritten notes: "3,222 each share" and "$3220.00 amount per share, when getting out[.]"[27]

The documents and testimony to which I have referred are relevant to demonstrate "the reasonable shared expectations of the parties at the time of contracting." *Comrie,* 837 A.2d at 13. From the time the partnership was formed in 1990 until Anderson retired in 2005, all the partners intended and understood that if a partner retired and the remaining partners chose to continue operating the Club, the retiring partner's buyout price was limited

[25] Exhibit N6. Even the cost of purchasing and transporting a used mobile home for the Club ($3425.00) was listed as a debit in Kenneth Snyder's account to be applied toward his future dues.
[26] Exhibit J3.
[27] *See* Exhibits J7 and J8.

to his or her net capital investment in the Club. The limitation is a reasonable one given the purpose of this partnership. The extended Snyder family established its small, private, fishing club in 1990 not as an investment, but as a place where family members and their guests could enjoy an inexpensive vacation. By all appearances, the Club has operated for 15 years on a limited budget,[28] supported by annual dues that have been affordable by most of its members. The Club would no longer be able to exist if Anderson were paid the buyout price she has demanded.

Since the Agreement supplies the formula by which Anderson's partnership share must be calculated, there is no need for an accounting of the partnership assets and liabilities. The date of dissolution in this case occurred on or about December 19, 2005, when Anderson's retirement became effective. Therefore, Anderson's buyout price equals Anderson's capital investment of $3222.00 less the outstanding balance shown in her account before that date (November 26, 2005 - $164.31) reduced by a fraction (12/31) of the $15 dues owed by Anderson for December 2005.[29] My decision moots any need to address the defenses raised by the Club. In addition, I find it appropriate that both parties pay their own attorney's fees.

[28] *See* Exhibit L1. "Snyder's Fishing Club Annual Report 1996".
[29] *See* Exhibits B and N8.