IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LOST CREEK LAND & CATTLE CO., INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. 1516-K
RICHARD WILSON,	)	
Defendant.	)	

MASTER'S REPORT

Submitted Date: January 7, 2004
Draft Bench Ruling: January 7, 2004
Final Report: August 19, 2004
Corrected page 17: September 7, 2004

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GLASSCOCK, Master

BACKGROUND AND FACTS

This dispute involves a joint venture to grow potatoes in Kent County. The matter was tried before me on January 7, 2004 after which I issued a draft report from the bench. Exceptions were taken to the draft report, and the parties have briefed the exceptions. This is my final report. I incorporate into this final report my bench report, and my bench report and this written report shall form my final report.

The plaintiff, Kenneth Gooden,[1] and the defendant, Richard Wilson, are Kent County farmers of long acquaintance. In the fall or winter of 1999, Mr. Wilson approached Mr. Gooden with the idea that they form a partnership to grow potatoes. The catalyst for Mr. Wilson's idea was an upcoming auction sale of potato packing equipment which was to take place near Kitts Hummock. Gooden and Wilson agreed orally to become partners in a potato growing venture. The profits (and losses) were to be split between the two men evenly.

The men attended the Kitts Hummock auction and purchased equipment needed for the joint venture, which they financed through a leasing agreement with a leasing

[1]The titular plaintiff in this matter is Lost Creek Land and Cattle Company, Inc., the entity which owns the land that Mr. Gooden farms. Lost Creek, in turn, is owned by Amber Waves, Ltd., a corporation of the island of Nevis. Mr. Gooden is the principal, and the only principal, of both Amber Waves and Lost Creek. Because these corporate shells and Mr. Gooden are indistinguishable I will refer to the petitioner here as "Mr. Gooden."

firm, Telemark. The partners leased a structure owned by a neighbor, Dwight Myers, hired a crew of men, and began the task of installing equipment needed for packing the potatoes. They prepared 110 acres for planting potatoes. Around sixty of these acres were on land owned by Mr. Wilson and about 50 on land owned by Mr. Gooden. The partners purchased seed potatoes, cut them into pieces suitable for sowing and planted the 110 acres.

As work on the packing house and the year 2000 crop continued, Wilson began to grow dissatisfied with Gooden's work habits. While Wilson described Gooden's effort on behalf of the partnership as "fair," it was clear from the testimony that two men had a very different approach to their work. Wilson was ready to begin work each day at 6:00 a.m. or 6:30 a.m.; Gooden sometimes did not arrive until 9 o'clock. Wilson thought that the crop should be cultivated more intensely; Gooden was satisfied with less cultivation. According to Wilson, the "final straw" broke on a payday for the crew in late July. Although Gooden had told Wilson he would use his funds to make that payroll, he did not arrive with the money, and Wilson had to make the payment. Shortly thereafter, Mr. Wilson unilaterally withdrew from the partnership. Wilson was quite candid about his communication with Gooden that the partnership was terminated. He testified that he "could not stand" to work with Gooden any longer. When Wilson told Gooden that he was terminating the

partnership, Gooden protested that they had to at least finish the year and harvest the crop that was in the ground. Wilson refused to agree to this. He told Gooden, instead, that he would pay Gooden $300 an acre to "buy him out" and pay some of Gooden's out-of-pocket expenses connected with the partnership.

The primary dispute in this matter concerns Gooden's reaction to this settlement offer. According to Gooden, he unequivocally accepted the offer of $300 per acre plus expenses. According to Wilson, Gooden stood mute: he neither accepted nor rejected the offer. The parties agree, however, that the partnership was dissolved as of this point.

After speaking with Wilson, Gooden went to the structure that the partnership was renovating as a packing house and recovered his equipment and tools as well as his tractor, which was being used to power equipment at the packing house. These items Gooden took home and returned to his private use. Shortly thereafter, he contacted the lease-holder for the equipment, Telemark, told them that the partnership had terminated and that all operations were being taken over by Wilson. Telemark agreed to place the leases in Wilson's name solely.[2] Several times in August, Wilson left messages for Gooden asking him to submit "his bill" for out-of-pocket expenses.

[2]Gooden's testimony on this point is unrebutted, although it was several months later that Telemark confirmed the transfer of the leases.

Gooden did not respond; according to him, he was involved in negotiations over the amount owed for lease of a piece of partnership equipment, which delayed his production of the statement of expenses. At any rate, he did not deliver a statement to Wilson until December. Meanwhile, in August, potato prices declined. Around twenty acres of the partnership's land owned by Gooden had been harvested at the time the partnership ruptured, but these potatoes ultimately proved unsalable due to soft rot. On September 18, 2000, Wilson met with Gooden and told him he was withdrawing the buy-out agreement. The 30 acres of potatoes remaining unharvested on the Gooden portion of the partnership acreage were left to rot in the ground. The total harvest in 2000 on partnership property brought only $60,000. Wilson testified that he paid $190,000 of the partnership's total expenses for the year 2000.[3]

Gooden brought this suit, claiming to be entitled to the benefit of the buy-out agreement, and also seeking to be paid for other farming work which he did for Mr. Wilson outside the partnership. Wilson counterclaimed, arguing that no settlement agreement was accepted before the September revocation and that therefore the losses of the potato business from year 2000 should be allocated equally between the partners.

[3]It is not clear how much of this represents capital cost and how much was truly annual expense. Wilson testified that he payed the lion's share of the expenses.

The Bench Ruling

After hearing the evidence, I found that Wilson had unilaterally dissolved the partnership; that he had made an offer to "buy out" Gooden's interest in the partnership by paying him $300 an acre for use of his 50 acres, together with certain out-of-pocket costs, and that those out-of-pocket costs did not include any expense connected with planting, tilling or harvesting the crop (which expenses were covered in the $300 per acre term), but did include out-of-pocket expenses in connection with the setting up of the packing house. I asked Gooden to demonstrate in post-trial briefing what those out-of-pocket expenses were. I found no basis to award Gooden the value of work he did on the Wilson farm outside the partnership agreement, as part of this action. Because I found that Wilson had unilaterally dissolved the partnership and that Gooden had accepted Wilson's settlement offer, I found no basis for allocating the eventual losses of what had been the joint venture between the parties. I found that it would be inequitable to award interest on the amounts due to the plaintiff under the buy-out agreement, because I found he was responsible for the bulk of the delay in this action.

Wilson has taken exception to several aspects of my bench report.

The Law

The parties entered into a partnership for a particular undertaking, the production and sale of a potato crop, with each to share equally in profits and losses. The partnership was formed on an oral agreement subject to the provisions of the Partnership Act. *See* 6 Del.C. §15-103. The joint venture was terminated on July 29, 2000 when Wilson unilaterally dissociated himself from the partnership. *See* 6 Del.C. §§15-601(1), 15-801(1). Where a partnership is for a particular undertaking, a partners' dissociation from that partnership is wrongful where the partner withdraws by express will before the completion of the undertaking. 6 Del.C. §15-602(b)(2)(I). Because Wilson withdrew from the joint venture with the crop in the ground, despite Gooden's entreaty that the partnership must continue through the end of the harvest, I conclude that Wilson's dissociation was wrongful. Wilson's dissociation caused the dissolution of the partnership. In that case, absent an agreement to wind-up the affairs of the partnership on some other basis, Wilson is liable to the partnership for any damages caused by his disassociation, and the partnership must then be wound up, with each partner entitled to an accounting and a sharing of the charges or profits, on a 50-50 basis. 6 Del.C. §§15-602(c), 15-807; *see* Horizon CMS Healthcare Corp. v. Southern Oaks Healthcare, Inc., Fla. App., 732 So.Ed. 1156, 1160-61 (1999). As

stated above, I have found that the parties did reach such a valid agreement on the settlement of accounts and winding-up of the partnership.

The Exceptions

Wilson first objects to my finding that the July 29 buyout offer included $300 per acre for use of Gooden's land *and* some out-of-pocket costs. According to Wilson, these two offers were "either-or," and not two cumulative terms of a single offer.[4] Wilson contends that the $300 per acre offer represented the rental value of the land ($85 per acre) together with an amount sufficient to compensate Gooden for Wilson's termination of the partnership. Wilson claims under the second proposal, he "offered to reimburse the exact amounts Gooden had legitimately incurred in the partnership."[5] According to Wilson, these two offers are incompatible in that either

[4]Wilson also denies that he "unilaterally" dissolved the partnership. He argues that Gooden breached fiduciary duties to the partnership in a number of ways, including his "cavalier approach" to partnership funds and equipment, showing up late for work and failing to make "required financial contributions" (presumably, this is a reference to the payday where Wilson believed that Gooden was going to meet the payroll, but didn't). It was clear to me from the testimony that Wilson felt that Gooden was not pulling his weight in the partnership. Nothing indicates to me a breach of fiduciary duty on Gooden's part, however; instead what was clear was the basic incompatibility of the partners in their approach to the joint venture. The evidence indicates clearly that by July 29, Wilson had had enough and, over Gooden's protest that they should at least finish that year's harvest, unilaterally dissociated himself from, and caused the dissolution of, the partnership. If Wilson had felt that Gooden's behavior was disastrous to the partnership, Wilson's remedy was not wrongful dissociation, but instead an action in this Court. *See* 6 Del.C. §15-601(5).

[5]Op. Br., at 8.

alone would have made Gooden whole. Therefore, argues Wilson, they should be read as alternatives.

After carefully examining the transcript, however, I remain convinced that Wilson offered $300 per acre together with certain out-of-pocket costs. That certainly was the testimony of Mr. Gooden. I also find it to have been the testimony of Mr. Wilson. Wilson testified that he offered Gooden $300 per acre which would include the ground rent together with compensation for effort Gooden had made "in the ground" on behalf of the partnership. The $220 per acre that this represents in excess of the standard ground rent was to compensate Gooden for "what he had spent out of pocket in the crop." In other words, Gooden had made his land available to the partnership, and had provided labor and out-of-pocket costs in preparing the ground, preparing the seed potatoes, spraying the crop, etc. The $300 per acre portion of the buyout represented compensation for ground rent together with efforts "in the ground."

Wilson testified that he also offered to reimburse "some of [Gooden's] out-of-pocket expense for the packing house." This is an entirely different expense borne by Gooden on behalf of the partnership, an investment largely in a capital asset that would outlast the 2000 crop. Thus construing these two terms as part of the single agreement does not create any internal inconsistency. In fact, the only way I can find

to make harmonious Wilson's testimony with itself, and Wilson's testimony with Gooden's testimony, is to construe these as separate terms of a single agreement. Therefore, the exception is denied and I find that Wilson's offer to buy out Gooden's partnership interest was $300 per acre for 50 acres, together with out-of-pocket expenses on the packing house.

I note that this is also consistent with Wilson's testimony that he approached Gooden several times in August about Gooden's "bill." When asked by his attorney what relationship the $300 per acre bore to the out-of-pocket Gooden "bill," Wilson testified that this was "part of the arrangement" between the partners.

Wilson also excepts to my finding that Gooden accepted the buyout offer. Gooden, of course, testified that he immediately accepted the offer, and told Wilson to harvest the potatoes on Gooden's portion of the partnership acreage. Wilson testified that Gooden did not reply to the offer before it was withdrawn unilaterally by Mr. Wilson on the eighteenth of September. Because no agreement was reached, argues Mr. Wilson, each partner must enjoy the profits and be charged with the losses of the partnership. *See* 6 Del.C. §15-807(b).[6]

[6]Wilson suggests that (unsurprisingly) the Court should simply allocate the losses eventually incurred by the potato growing venture, as of the end of calendar year 2000, between Gooden and Wilson.

It is clear that it was Wilson who decided to dissolve the partnership and that Gooden objected that, if they were to dissolve, they would at least have to finish the season. Wilson refused to remain in the partnership through the harvest, unilaterally dissolved it and stated his terms to Gooden. Immediately thereafter, Gooden ceased working on behalf of the partnership and removed his tools and equipment from the partnership. He contacted suppliers and told them the partnership was terminated and that he would not be responsible for partnership bills incurred in the future. He contacted the lease-holder for the partnership equipment, Telemark, and had the leases changed into Wilson's name solely. It is clear to me that he had accepted the dissolution of the partnership and the offer made by Wilson.

Gooden's actions subsequent to July 29 are those, to me, of a partner who has accepted the unilateral dissolution of a partnership and the settlement terms offered thereunder. His quick actions to disaggregate his assets from those of Wilson, and to disaggregate his obligations from those of the partnership, indicate to me that he had accepted Wilson's offer. Wilson testified that he contacted Gooden several times in August and early September about "the bill" for Gooden's out-of-pocket costs, but never again mentioned to him the $300 per acre buy-out provision. That is because, I think, both parties were operating under the assumption that the buy-out offer had been accepted, with the only remaining term the amount of the "out-of-pocket" costs.

It is true that Gooden was dilatory in establishing those out-of-pocket costs.[7] This to me is not inconsistent with his acceptance of the buy-out agreement, but is in fact consistent with the "do it tomorrow" attitude to which Wilson objected so strenuously in his partner.

Wilson also points out that Gooden paid bills on partnership accounts after the termination of the partnership agreement on July 29. Wilson suggests that this indicates that Gooden did not consider the partnership terminated according to Wilson's offer (although both parties concede that the partnership was in fact dissolved on July 29). According to Wilson "the continued payment of bills would be an act of a former partner who expects to settle accounts at a future time in accordance with the partnership agreement."[8] Gooden's testimony at trial, which was believable, indicated that he had signed personally for these accounts and felt constrained to make payments on them. I do not find these actions to be inconsistent with his acceptance of the settlement offer.

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[7]In fact, he has never demonstrated the amount of these costs.

[8]Opening Brief at 11. Wilson also points to an entry in Gooden's post-trial submission in support of the claim for out-of-pocket costs, indicating that Wilson leased a tractor after the partnership was dissolved; Wilson argues that this must have been to harvest potatoes on the Gooden portion of partnership land, indicating (according to Wilson) that Gooden had not accepted the July settlement offer. This is unsupported speculation, however, and (as I indicate, infra., in my decision on failure to prove out-of-pocket expenses) the time for such proof is past. In any event, the tractor rental came after Wilson's unilateral attempt to withdraw the settlement offer, and as such can have little relevance.

When Wilson attempted to terminate the buy-out agreement in September, 2000, Gooden told him to come and harvest his acreage that had been subject to the joint venture. Wilson refused because (according to him) he could not enter another man's land without a written lease agreement. Wilson argues that this bolsters his position that Gooden had never accepted the settlement; in other words, Wilson would have harvested Gooden's portion of the joint venture acreage if Gooden had accepted the settlement, and it was only Gooden's failure to enter the settlement and provide a written lease agreement that kept Wilson off Gooden's land.

This testimony rings false. Gooden and Wilson had proceeded in a joint venture requiring large amounts of capital expenditure, time and equipment based upon the most casual of oral agreements. To claim, as Wilson does now, that he needed a "written lease agreement" to enter the premises is simply incredible. What is credible is that by July of 2000 these two former friends disliked each other quite intensely. Wilson considered Gooden to be a lazy and irresponsible partner. Gooden was distrustful and angry at Wilson because Wilson had unilaterally dissolved the partnership. I do not believe that Wilson's failure to harvest resulted from lack of a written lease. Most likely, it resulted from a stiff-necked failure on both sides to move forward with the buy-out agreement they had entered into. Moreover, as time went

by and potato prices fell it surely became apparent to Wilson that there would likely be no profit in the 2000 crop.[9]

THE STATUTE OF FRAUDS

Wilson contends that, even if Gooden accepted the terms of the settlement agreement, those are terms invalid because those provisions involve a "lease of land," and are thus an unenforceable oral agreement under the statute of frauds. 6 Del.C. §2714(a). The buy-out provisions were not a lease of land, however: Gooden's land was already subject to the joint venture. The partners together had put it in potatoes. They expected to harvest potatoes at the end of the year and sell that crop for a profit. They expected to continue this partnership in future years. At the time of the dissolution of the partnership Gooden's land was subject to the use of the partners, and Gooden expected to share in the profit of that partnership.

Gooden's entitlement to participate in the profits of the business was purchased by Wilson, for $300 per acre plus reimbursement of the out-of-pocket expenses connected with the packing house. This buy-out was neither a lease of real property

[9]Wilson points out that after he unilaterally attempted to terminate the settlement agreement he offered to harvest the potatoes on Gooden's portion of the land subject to the joint venture for $1.00 to $1.50 per hundred. Wilson argues that I ignored this testimony in my draft report and that it bolsters his argument that there was never an accepted "buy-out" agreement. Since this offer came after his attempt to terminate the settlement, however, I do not find it relevant on that issue.

nor a purchase of goods subject to the Uniform Commercial Code. It was a settlement of rights under a partnership agreement.

For the foregoing reasons, the defendant's exceptions are denied.

The Amount of the Out-of-Pocket Costs

I allowed Gooden to submit an exhibit post-trial to demonstrate his out-of-pocket expenses. Consistent with my bench report, these were to be expenses only pertaining to capital investments in the packing house and not those expenses involved in the farming operations, which I found to be compensated by the $300 per acre payment called for in the buy-out agreement. I directed the plaintiff, in post-trial briefing, to demonstrate, or attempt to demonstrate, the amount of the out-of-pocket costs which should be paid under the agreement.

The plaintiff's post-trial brief, however, simply seeks in its conclusion $50,467.49. Presumably, $15,000 of this amount is established by the "$300 per acre" term of the buy-out agreement, leaving more than $35,000 for supposed out-of-pocket costs relating to capital expenditures in the creation of the packing house. There is not a single reference in the brief, however, to the exhibit which I permitted Wilson to produce, after trial, in support of his out-of-pocket expenses. Moreover, even a

cursory examination of the post-trial submission,[10] indicates that it is inaccurate, includes expenses specifically disallowed in the draft report, and is the product of gross over-reaching. The largest single entry, for instance, a payment to Milford Fertilizer Company, appears to relate only to expenses in the farming operation itself, expenses which I found were covered in the $300 per acre provision.

It is, of course, the plaintiff's burden to demonstrate the amount of the out-of-pocket costs to which he is entitled under the July buy-out agreement under which the partnership was dissolved. Mr. Gooden failed to submit "the bill" for these out-of-pocket costs in a timely manner to Mr. Wilson, a failure without which this lawsuit may not have arisen. He has again failed to demonstrate the amount of these out-of-pocket costs. I find that the plaintiff has not met his burden to demonstrate the amount of out-of-pocket expenses to which he is entitled under the agreement between the parties.

Therefore, the amount due the plaintiff under the partnership agreement is $300 per acre for the 50 acres used by the partners in the joint venture, or $15,000.

[10]Plaintiff's exhibit 11.

CONCLUSION

As of July, 2000, both Wilson and Gooden, per their agreement, had the right to participate in the profits accruing from this joint venture to grow potatoes. Both men had invested time, equipment, land, and cash in the venture. For reasons he felt sufficient, Wilson unilaterally dissociated himself from the joint venture, causing the partnership to be dissolved at a point when the ultimate undertaking, the growing, harvest and sale of the 2000 potato crop, remained uncompleted. He offered to settle up the partnership on the following terms: Wilson would pay Gooden $300 per acre of Gooden's ground used in the venture, plus certain out-of-pocket costs; and Wilson would receive the opportunity represented by Gooden's share, as well as his own, in the joint venture. What neither party knew at the time was that, due to falling prices, potato disease and the inability of the two men to work together even to implement the settlement, the potato venture would turn out to be a losing proposition. Having assumed both the opportunity and risk of the potato venture, Gooden must bear the loss, and he is not thereby relieved from completing his agreement with Wilson.

Once this report becomes final, the plaintiff should submit a form of order.

/s/ *Sam Glasscock, III*
Master in Chancery

efiled.