

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

MELISSA PARTIN :
Plaintiff : **CASE NO. 2010 CVH 02616**
vs. : **Judge McBride**
BECKY HUTCHENS : **DECISION/ENTRY**
Defendant :

Gary A. Rosenhoffer, attorney for the plaintiff Melissa Partin, 302 E. Main Street, Batavia, Ohio 45103.

Crowe and Welch, Robert H. Welch, III, attorney for the defendant Becky Hutchens, 1019 Main Street, Milford, Ohio 45150.

This cause came before the court for trial on October 6, 2011 and, at the conclusion of the presentation of evidence, the court took the matters raised at trial under advisement. After the trial concluded, this court held a meeting with counsel at which time the parties were given approximately one month to come to a resolution of this matter extrajudicially. However, as the parties have not contacted the court to notify it of any agreement, the court assumes that the parties were unable to resolve the matter amongst themselves.

Upon consideration of the record of the proceeding, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

The plaintiff Melissa Partin and the defendant Becky Hutchens were partners in the operation and ownership of All About You Hair & Tanning from May 2006 until December 9, 2010. On that date, Partin indicated her intention to leave the partnership, collected several items, and left the salon.

The partnership has assets in the form of personal property, including but not limited to tanning beds, multiple items of furniture, a flat screen television, a washer and dryer, and various hair and beauty products. Partin asks this court to value various items such as the tanning beds at the price for which they were purchased. However, many of these items were purchased at least several years ago, and some more than five years ago. As a result, the property would have naturally depreciated in value to some extent. Furthermore, there is testimony before the court that the items at issue are not in new, pristine condition; instead, they have some stains and chips in them, some items were purchased used to begin with (including the reception desk, waiting area furniture, and station chairs), and the items have simply been used over time and have normal wear and tear.

Therefore, the court finds that it cannot use Melissa Partin's valuation of the property as it does not take into account any depreciation in the property's value. The

only other testimony before the court as to the value of the property is that of Becky Hutchens and her testimony takes into account depreciation of the property's value over time based on its current condition. Therefore, the court finds the testimony of Becky Hutchens to be credible as to the present value of the partnership property.

Hutchens valued the partnership property as follows: (1) tanning beds: \$3,000 (2 at \$1,500 apiece); (2) flat screen television: \$25.00; (3) four stations: \$400 (\$100 per station); (4) 3 shampoo chairs: \$100 (\$50 for two functional chairs, no value for broken chair); (5) 3 shampoo bowls: \$75.00 (\$25.00 per bowl); (6) cabinetry: \$400; (7) shelving and products for sale in the salon on the date of disassociation: \$1,100; (8) reception desk: \$25.00; (9) cash register: \$25.00; (10) 8 waiting room chairs: \$80.00 (\$10.00 per chair); (11) station chair: \$25.00; (12) lights: \$25.00; (13) washer and dryer: \$50.00; (14) 2 large storage cabinets: \$95.00 (\$75.00 for newer cabinet, \$25.00 for older cabinet); (15) working product, color bowls, etc.: \$2500.00; (16) manicure table and chair: \$20.00; (17) manicure supplies: \$40.00; (18) DVD player: \$5.00; (19) style books: \$25.00; (20) 6 mats: \$150.00 (\$25.00 per mat); (21) steam mop: \$75.00; (22) 2 full length mirrors: \$2.00 (\$1.00 per mirror); and, (23) 2 rugs: \$20.00 (\$10.00 apiece).

Therefore, the personal property belonging to the partnership is valued at a total of approximately \$8,262.00. Additionally, a statement of the partnership checking account for the latest date prior to the day of disassociation shows an available balance of \$1,521.34¹, bringing the total partnership assets to \$9,783.34 on the date of disassociation.

¹ Plaintiff's Exhibit 2.

The partnership used a Chase credit card to pay for various partnership expenses each month. The credit card balance as of the date of disassociation was \$9,915.66.² Furthermore, Becky Hutchens has continued to use the credit card for the operation of the business and the balance on the card as of December 28, 2011 was \$10,943.91.

When Melissa Partin left the partnership, approximately \$500.00 was still owed on the payment for the tanning beds; however, Hutchens testified that she paid off the total amount due and owing in February 2011.

In the month of December 2010, the partnership had the following bills: (1) \$135.37 to Cincinnati Bell; and, (2) \$403.76 to Duke Energy.³ Furthermore, Hutchens testified that, in order to begin to wrap up the partnership, she paid (1) \$463.09 in sales taxes owed and (2) \$246.39 in various employee taxes.⁴

LEGAL ANALYSIS

After this court's previous decision on summary judgment, the only claim remaining for the court's consideration at this time is the defendant's counterclaim requesting an accounting and judicial supervision of the winding up of the partnership.

The parties agree and the court finds that All About You Hair & Tanning was a partnership as that is defined by R.C. 1776.01(M), namely "an association of two or more persons to carry on as co-owners a business for-profit formed under section

² Defendant's Exhibits B and C.

³ Defendant's Exhibits G and H.

⁴ Defendant's Exhibits I and J.

1776.22 of the Revised Code, a predecessor law, or a comparable law of another jurisdiction.”

“A partner is disassociated from a partnership [when] * * * [t]he partnership has notice of the partner's express will to withdraw as a partner, on the date of the notice or on a later date the partner specifies.”⁵ Melissa Partin clearly expressed her will to withdraw as a partner on December 9, 2010 and, therefore, she was disassociated from the partnership as of that date. Due to the fact that this was a two-person partnership, Partin’s disassociation results in a dissolution of the partnership. A partnership may continue after dissolution only for the purpose of winding up its business.⁶

Pursuant to R.C. 1776.63:

“(A) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on the application of any partner, a partner's legal representative, or a transferee, the court of common pleas for good cause shown, may order judicial supervision of the winding up.

* * *

(C) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge or make reasonable provision for the partnership's liabilities, distribute the assets of the partnership pursuant to section 1776.67 of the Revised Code, settle disputes by mediation or arbitration, and perform other necessary acts.”

Becky Hutchens was a partner in All About You and she has not wrongfully disassociated from the partnership, in that she has not breached any express provision

⁵ R.C. 1776.51(A).

⁶ R.C. 1776.62.

of the partnership agreement.⁷ Therefore, pursuant to R.C. 1776.63(A) she had the right to request judicial supervision of the winding up. The court finds that request to be proper and it shall be granted.

R.C. 1776.67 is the closest the most recent version of the partnership statutes comes to laying out a roadmap for a winding up and it states in pertinent part as follows:

“(A) In winding up a partnership's business, any assets of the partnership, including the contributions this section requires the partners to make, shall be applied to discharge or make reasonable provision for its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under division (B) of this section.

(B) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account.

(C) A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 1776.36 of the Revised Code.

(D) If a partner fails to contribute the full amount required under division (C) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 1776.36 of the Revised Code.

* * *

⁷ R.C. 1776.52(B)(1).

(F) A partner or partner's legal representative may recover from the other partners any contributions the partner has made to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 1776.36 of the Revised Code.”

Based on the evidence and findings of fact set forth above, the partnership’s debts exceeded the value of its assets at the time of disassociation. Pursuant to R.C. 1776.67(A), upon winding up, a partnership must first make all reasonable efforts to pay its creditors and satisfy its debts before any assets are distributed to the individual partners. R.C. 1776.67(A) is clear that creditors are to be paid first with any *surplus* to be distributed to the partners in accordance with their rights under that statute and its subsections.

The parties in the present case, in requesting various items of property or monetary amounts for those items, appear to have lost sight of the fact that “a partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily.”⁸ In other words, Melissa Partin and Becky Hutches are not the co-owners of the items of property discussed above; instead, it is the partnership that owns this property and all partnership assets.

As previously stated, the partnership’s debts exceed its assets. The majority of the partnership’s assets are items of personal property which must be sold for their value to be liquidated in order to pay the partnership’s creditors. Therefore, this court sees no other logical course in the present matter except to order liquidation of the assets, payment to any and all creditors, and then the distribution of any surplus to the plaintiff and defendant as appropriate. In *Cortell v. Koch* (Dec. 19, 1986), 11th Dist. No.

⁸ R.C. 1776.47.

1275, 1986 WL 14580, the trial court ordered the appointment of a receiver for the partnership and ordered that receiver to file an accounting of the assets and liabilities of the partnership and a plan of liquidation.⁹ This court finds that the appointment of a receiver is the only practical way to go forward with judicial supervision of the winding up in the present case and such an appointment shall be ordered.

CONCLUSION

Based on the above analysis, the court finds that the partnership is dissolved and the process of winding up must occur. The court further finds that the defendant's request for judicial supervision of the winding is well-taken and is hereby granted. The court hereby orders the appointment of a receiver for All About You Hair & Tanning. Each party is hereby ordered to submit the name of one proposed receiver to the court within thirty (30) days of the date of this decision. The court will review the qualifications of the two proposed receivers and appoint either of the proposed receivers, or a receiver selected by the court, to be the receiver of the partnership. Once a receiver is appointed, the court shall order the receiver to provide an accounting of the partnership's current assets and liabilities in accordance with this decision and to submit

⁹ *Cortell* at *2.

a plan of liquidation of those assets and liabilities to the court for its approval.

IT IS SO ORDERED.

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of this Entry were e-mailed/faxed/mailed by regular U.S. Mail on this 19th day of January 2011 to all counsel of record and unrepresented parties.