

I

Facts and Travel

Donbro Realty Associates (Donbro) is a general partnership existing under the laws of the State of Rhode Island. At the time of its formation in 1986, Donbro had seven general partners. Two of the partners, John C. Donatelli (Clark) and Richard Donatelli (Richard), were brothers.

On June 10, 2004, Richard and Clark purportedly entered into an agreement (the 2004 Agreement) wherein each brother's interest in Donbro was said to equal 10 percent. Prior to reaching the 2004 Agreement, Richard's interest in Donbro (18.75 percent) was three times larger than Clark's (6.25 percent). Apparently in exchange for reducing his own interest in Donbro, and for allowing his brother to have a larger share, Richard received the right to collect the first \$9000 from any future distribution of partnership profits. Richard denies having made the deal, and no amendments reflecting the transaction were ever made to Donbro's Partnership Agreement (the Partnership Agreement). Furthermore, the 2004 Agreement, which resulted in a modification of the brothers' respective interests in Donbro, was never approved by Donbro's general partners.

On February 10, 2005, Clark passed away, and his interest in Donbro was transferred to his wife, Martha. Martha maintains that her ownership interest in Donbro is valid, and that it is equal to Richard's. Richard disputes her claim, and Craig has requested a declaratory judgment regarding the rights of the respective parties.¹

¹ Although Craig admits that he has "no horse in this race," Pl.'s Mem. at 7, he seeks a declaratory judgment so as to effectuate the transfer of an interest in Donbro from the estate of a deceased former partner to the decedent's grandsons. Pursuant to the

II

Standard of Review

A trial justice presented with a motion for summary judgment may not rule on the weight or credibility of the evidence presented. See Indus. Nat'l Bank v. Peloso, 121 R.I. 305, 307, 397 A.2d 1312, 1313 (1979). Instead, his or her only function is to determine whether any issues of material fact exist and, if they do, to deny the motion for summary judgment. See id.; see also Super. R. Civ. P. 56(c). “[A] litigant opposing a motion for summary judgment has the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions, or mere legal opinions.” Manning Auto Parts, Inc. v. Souza, 591 A.2d 34, 35 (R.I. 1991).

III

Analysis

Here, Martha acknowledges that the Partnership Agreement gave Donbro’s general partners the right to pass on any transaction which resulted in the transfer of partnership interests. Martha also admits that Donbro’s general partners never expressly approved of either the 2004 Agreement or of her acquisition of Clark’s purported interest in the partnership. However, Martha argues that Donbro’s general partners have never done business in accordance with the terms of the Partnership Agreement and have consistently failed to object to prior violations of the express terms of the Partnership Agreement.

Partnership Agreement, the transfer is prohibited absent a waiver of its provisions by the surviving general partners. Martha and Richard have agreed to provide such a waiver, but only after a determination is made regarding the extent of their respective interests in the partnership.

In support of her contentions, Martha cites, inter alia, to the deposition of Donbro's accountant, Robert Bucu (Bucu). See Dep. of Robert Bucu, CPA, Dec. 27, 2013. During his deposition, Bucu was asked, "do you recall the last time you had a partnership meeting with DonBro," and he replied in the following manner: "At least two years ago, maybe more, it's been awhile." Id. at 28. Additionally, in response to the question, "are there any records, formal ownership records showing the specific ownership interests of each partner in Donbro or basically are your partnership tax returns the only records reflecting distributions," Bucu answered, "[t]he partnership tax returns and the actual distributions that are made every month which is in the same percentage as the tax returns which no one has ever objected to." Id. at 45-46. Because the Partnership Agreement requires that "[t]he net profits of the partnership shall be divided among the partners . . . in the respective percentages set forth in the [Partnership Agreement]," Partnership Agreement Art. 6, and because the net profits of the partnership are not divided in the respective percentages set forth in the Partnership Agreement, compare Partnership Agreement Art. 5 with Deposition of Robert Bucu at 26, Martha argues that Bucu's testimony evidences a failure by the partners to conduct business in accordance with the terms of the Partnership Agreement. Thus, Martha asserts that, by and through their course of conduct, Donbro's general partners effectively modified the Partnership Agreement and waived their rights to invoke its restrictions.²

² "[W]aiver is the voluntary intentional relinquishment of a known right," and may occur as the result of action or inaction. Lajayi v. Fafiyebi, 860 A.2d 680, 687 (R.I. 2004) (quoting Haxton's of Riverside v. Windmill Realty, Inc., 488 A.2d 723, 725 (R.I. 1985)). Whether waiver has occurred is a question of fact, and therefore is to be answered by a jury. See id.; see also Delaney v. Kusminski, No. C.A. 02-7096, 2005 WL 1109625, at *3 (R.I. Super. May 4, 2005) (Silverstein, J.).

In support of his own Motion for Summary Judgment, Craig notes that Richard receives Schedule K-1 Forms indicating that his interest in Donbro is 18.75 percent. Furthermore, Craig alleges that Martha receives Schedule K-1 Forms indicating that her interest in Donbro is 6.25 percent. During his deposition, Bucu stated that on Richard's most recent Schedule K-1 Form, his interest in Donbro is indicated to be 18.75 percent. Dep. of Bucu at 29.

IV

Conclusion

Both Martha and Craig have presented the Court with competent evidence sufficient to create a genuine issue of fact as to Martha's interest in Donbro. Thus, their Motions for Summary Judgment must be denied.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Donatelli v. Donatelli, et al.

CASE NO: PB13 -1950

COURT: Providence County Superior Court

DATE DECISION FILED: May 26, 2016

JUSTICE/MAGISTRATE: Silverstein, J.

ATTORNEYS:

For Plaintiff: Thomas A. Tarro, III, Esq.

For Defendant: Michael A. Kelly, Esq.
 Robert A. Mitson, Esq.