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IN THE COMMON PLEAS COURT OF AUGLAIZE COUNTY, OHIO
CIVIL DIVISIONJEAN HECKSTROTH
CLERK OF COURTS

PAUL MASTRONARDI	*	CASE NO: 2017-CV-144
Plaintiff,	*	
-VS-	*	
LUIS CHIBANTE, <i>et al.</i> ,	*	JOURNAL ENTRY—GRANTING
Defendants.	*	FINAL JUDGMENT, RULINGS ON
		MOTIONS TO ASSESS RECEIVER'S
		FEES AND EXPENSES AS COSTS,
		AND ASSESSING COURT COSTS

This action was brought by Plaintiff after a breakdown in trust and communication between the two major participants in the entities, Paul Mastronardi and Luis Chibante, in the managing corporate partner and the limited partnership. Plaintiff Paul Mastronardi sued for dissolution of the entities, and sought and obtained appointment of a receiver who eventually wound up the affairs of the entities after the court ruled upon all claims against the entities from various creditors, and distributed the proceeds of the \$29 Million sale of the assets of the entities.

Plaintiff Paul Mastronardi and Defendant Luis Chibante were previously ordered to each pay half of the costs of the Receiver's fees and the Receiver's legal fees through a point after the dissolution of the entities through the sale of the entities' assets; thereafter the court has assessed such costs to be paid from the proceeds of sale; all by separate journal entries.

The Receiver has completed his work, with an outstanding balance of \$3,645.45 left in the hands of the Clerk for distribution by the court, which includes the various parties' deposits for court costs. These funds will be disbursed as set forth in paragraphs below.

This action came on for trial before the Court and a jury, the issues being duly tried; the Court by separate journal entries granted motions for directed verdicts with respect to some issues prior to submission of those issues to the jury (see Journal Entries with findings documenting those rulings dated February 1 and February 4, 2019); and the jury having duly rendered its verdict on the remaining issues in favor of the Plaintiff, Paul Mastronardi, and against the Defendant, Luis Chibante, in the amount of \$727,343.47 compensatory damages on January 31, 2019; and whereupon the parties entered into a stipulation on February 1, 2019, awarding punitive damages to the Plaintiff, Paul Mastronardi, and against Defendant, Luis Chibante, in the amount of \$350,000.00 plus attorney fees in the amount of \$425,000.00, for a total of \$1,502,343.47.

After trial on the torts alleged by Plaintiff, Plaintiff next requested the court to assess court costs to the Defendant, Luis Chibante, as a result of the verdict and stipulations, and the judgment which is arising from that verdict as to the tort claims.

Upon Plaintiff's motion, and without objection and by stipulation as to the amount, the court will order the costs of a deposition transcript regarding Clara Mager in the amount of \$637.03 be assessed as court costs, to be paid by Defendant, Luis Chibante.

In addition, however, Plaintiff's motion is requesting that the portion of the previously-paid Receiver fees and costs (as ordered to be paid in prior orders of the court) that Paul Mastronardi was ordered to pay during the course of the Receivership, now be assessed against the Defendant, Luis Chibante, as court costs in this action.

Ohio follows the "American Rule," which provides that a prevailing party in a civil action may not generally recover its attorney fees as part of the "costs of litigation" unless attorney fees are provided for by statute, the non-prevailing party acts in bad faith or there is an enforceable contract that "specifically provides for the losing party to pay the prevailing party's attorney fees." *Wilborn v. Bank One Corp.*, 121 Ohio St.3d 546, 2009-Ohio-306, ¶ 7.

The instant case involved the appointment of a receiver pursuant to Chapter 2735, wherein the receiver's fees, including attorney fees of the receiver, are provided for in R.C. §2735.04(C):

"(C) Any funds that are expended by or on behalf of the receiver, including receivership fees, fees for professionals assisting the receivership, and those expended in entering into or performing contracts under division (B)(4) of this section, including those for the completion of construction work authorized by the court, shall be taxed as court costs **or otherwise treated as an administrative expense of the action.....**" (*Emphasis added.*)

Additional authority is found at Ohio Revised Code Section 2746.09:

"In addition to any other applicable fees or costs set forth in this chapter, a court shall tax as costs **or otherwise require the payment of the following fees, costs, or expenses:** (*emphasis added*) * * *

(E) Fees to which a receiver appointed under section 2715.20 or 2735.01 of the Revised Code may be entitled;

(F) Fees allowed to a receiver under any applicable rule of court.

Accordingly, receivership fees, fees for professionals assisting the receivership are "provided for by statute" within the context of *Wilborn, supra*, and it is within the discretion of the court whether to assess these as court costs, or to **"otherwise require the payment of"**

such fees. The court initially ordered the two main parties, Mastronardi and Chibante, equally to pay the fees, and assessed none to Defendant 1797540 Ontario, Inc. The court followed this in subsequent occasions, putting on several orders requiring these two parties to individually pay for such fees. Plaintiff's current motion requests that those payments Mastronardi made during the Receivership now be assessed against Chibante because of Chibante's loss on the tort claims.

The Court finds that the equities of the case require such fees and costs of the Receivership should be paid equally by these two parties. With the advantage of hindsight, the totality of the evidence before the court from all of the hearings conducted in the case during both the receivership-related matters and the tort portion of the case reaffirms that the entities were underwater, insolvent, and continuing to lose money. Under the practices established by the parties, these two men equally advanced funds, and the scheme of their organizations they established (and re-established through various entities in the beginning,) was to share the profits and losses equally prior to the filing of this action. While sale of the property by agreement of the parties would have saved the millions in fees that the parties incurred, including the bank's legal fees, and the interest and penalties assessed against the entities by their bank, this action was brought instead.

No matter what, the continued operation of the facility by the parties would have resulted in equal additional investment by the two parties, as was demonstrated by the communications between the parties and their financial officers and employees. So whether the parties sold the business or its assets privately, or continued operating, the costs would have been shared by both.

The court notes that the Receivership was created as a part of the complaint for dissolution of the entities independent of the tort claims. The costs of establishing and administering the Receivership inured to the benefit of all parties who had an interest in the entities, and that Paul Mastronardi effectively owned half of those entities, while Chibante effectively controlled 1797540 Ontario, Inc. and owned it together with his wife. The reality of this case was that the two men in control of the direction of this case and the fate of the entities were Mastronardi and Chibante.

The court further notes that the post-sale receivership fees and expenses were previously ordered to be paid from the proceeds of sale of the assets, which were really borne totally by the unsecured creditors of the entities, not the owners, as payment from the proceeds of sale reduced the money available to pay the unsecured claims. The court notes that the unsecured claims of both Plaintiff Paul Mastronardi and Defendant Luis Chibante were settled by the Receiver.

The court further notes that all secured claims, including the claims of Plaintiff's father, his grandparents, and their related corporations and partnerships, were settled by negotiated agreement with the Receiver in terms this court views as liberal and beneficial to those parties, but also benefitting the remaining creditors by achieving finality and allowing timely distribution to all creditors, including Plaintiff Paul Mastronardi and Defendant Luis Chibante. Hence, the court approved those settlements in spite of potential rulings that would have reduced the moneys paid to Plaintiff, his father, grandparents and the various corporations that Plaintiff and his family had an interest in.

The Receiver's work that kept the tomato plants alive and producing, and allowed the assets to be sold with maximizing the production value of those assets resulted in a sales price of \$29 million, which was more than either party herein was willing to pay and more than their evaluation as to the assets' value. The Receiver's work through the point of sale primarily benefitted Mastronardi and Chibante, as it maximized the assets' value while providing the parties the time these parties were allotted by statute to reorganize the limited partnership by naming a new general partner and ending the Receivership at that time.

The court also notes that Plaintiff's attorney fees as stipulated in the trial in the amount of \$425,000.00 are herein recovered as a judgment against said Defendant, Chibante. That stipulation at trial did not specify if those attorney fees were for the entire case including the dissolution actions, including the attorney fees paid by the receivership, the attorney fees for all of the tort actions including those that were dismissed, or only the attorney fees arising out of the tort action that succeeded. The court can draw no conclusion from that stipulation as to the issue before the court.

The court, after consideration of the evidence, the memoranda and the arguments of the parties, and considering the equity of the totality of the circumstances in this case, makes the following findings and orders with respect to court costs, including final distribution of the remaining assets after discharge of the Receiver:

1. The Receiver's final report was approved and his final fees were paid from the proceeds of sale of the assets. The Receiver has completed his work and has been discharged with an outstanding balance of \$3,645.45 in the hands of the Clerk for distribution by the court. These funds will be disbursed as set forth below.
2. In consideration of all of the record, and in exercise of its equitable powers and in the exercise of its discretion under R.C. 2735.04(C) and R.C. 2746.09, the court will not order Luis Chibante to reimburse Paul Mastronardi for the Receivership costs and fees already assessed and paid, and will not assess them as court costs against Luis Chibante; instead, the prior orders requiring each of the parties done to pay half by separate entry

shall stand, and accordingly, except as set forth in the paragraphs below, the plaintiff's motion is DENIED.

3. The court orders the costs of deposition transcript regarding Clara Mager in the amount of \$637.03 be and is hereby assessed as court costs to be paid by Defendant, Luis Chibante, as per the agreement of the parties herein noted in the record.
4. The court orders that all deposits for court costs deposited by the various parties from the net proceeds of sale, totaling \$3,645.45 and still held by the Clerk, shall be applied to the court costs herein.
5. The remainder of the court costs (other than any Receivership fees and costs as approved by any prior separate journal entry and already paid by the parties) the court hereby assesses against the Defendant, Luis Chibante and in favor of Plaintiff, Paul Mastronardi, with judgment rendered for said costs. These are for court costs, and not for the fees and expenses of the Receiver.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be and is hereby granted in favor of Paul Mastronardi and against Luis Chibante in the sums of \$727,343.47 for compensatory damages, \$350,000.00 for punitive damages and \$425,000.00 for attorney fees, for a total JUDGMENT of ONE MILLION FIVE HUNDRED TWO THOUSAND, THREE HUNDRED FORTY-THREE DOLLARS and FORTY-SEVEN CENTS (\$1,502,343.47).

IT IS FURTHER ORDERED that the Clerk apply all deposits for costs she is still holding toward the court costs; that JUDGMENT be and is hereby rendered against Luis Chibante and in favor of Plaintiff Paul Mastronardi for the remaining court costs as assessed above.

As this may be a final appealable order, the Clerk shall further cause a copy of this journal entry to be served upon all counsel of record and all parties (including non-party claimants and their counsel) in a manner prescribed by Civ.R. 5(B)(2) and note the service in the appearance docket, all in accordance with Civil Rule 58. Where possible, the Clerk shall accomplish the same through electronic means. The Clerk shall also post a link to a copy of this Journal Entry on the Clerk's website with her Notice to Creditors of the entities involved until the appellate time has run, or until any appeal is disposed of, whichever is later.

IT IS SO ORDERED.

TO THE CLERK:
This Journal Entry **MAY** be
a final appealable order.
Copies to parties and attorneys
in accordance with Civil Rule 58.



Judge Frederick D. Pepple

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