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PARTNERSHIP--PARTNER'S RIGHT TO COMPENSATION FOR SERVICES TO PARTNERSHIP AS A GOING CONCERN

C. E. Lombardi, Jr.
University of Michigan Law School

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PARTNERSHIP—PARTNER'S RIGHT TO COMPENSATION FOR SERVICES TO PARTNERSHIP AS A GOING CONCERN—Plaintiff and defendant bought a fishing boat, which they operated in partnership for a number of years, under an agreement embodied in a series of informal letters. Both plaintiff and defendant at times ran the boat, but apparently they never operated it together. The partner in charge received the customary share of the crew's two-thirds of the "catch," plus compensation for services rendered as captain; each of them received half of the "boat's share" of the catch. Defendant bought materials for some special nets,

which he designed and constructed; he informed plaintiff that he was doing so, and that it would cost "quite a lot" and be "lots of work." Subsequently, without informing plaintiff, defendant took half of the boat's share of the catch as rent for the nets, on the theory that the purchase of materials and construction of the nets was not a transaction within the partnership agreement. In an action for accounting, defendant maintained that even if he were denied rent, he was entitled to compensation for the work he had done in designing and constructing the nets with no assistance whatever from plaintiff. *Held*, decision denying compensation to defendant affirmed. *Waagen v. Gerde*, (Wash. 1950) 219 P. (2d) 595.

The universally accepted general rule is that, in the absence of express agreement to the contrary, a partner is not entitled to compensation for services rendered to the partnership.¹ The rule is applied without regard to inequality of services.² The rule itself is comparatively clear-cut, but difficulty is encountered in applying the commonly recognized exception that compensation will be allowed when an agreement to compensate may be fairly implied from the circumstances.³ The agreement may be implied from the "general course of deal-

¹ 1 ROWLEY, *MODERN LAW OF PARTNERSHIP* 401-407 (1916). Several reasons are given for the rule: (1) The essence of the usual partnership is that the partners are on a "common ground," each engaging to do all he can for the common good. *Marsh's Appeal*, 69 Pa. 30 (1872). Therefore, while a partner can do less than he has engaged to do for the partnership, he cannot do more. (2) If one partner desires compensation for his special attributes or extra services he must bargain for it, as otherwise the partnership is on a quantum meruit, rather than a contractual basis. *Frazier v. Frazier*, 77 Va. 775 at 794 (1883). (3) It is simply impracticable, in the ordinary case, to make a comparative evaluation of the services rendered by the different partners. *Caldwell v. Leiber*, 7 Paige Ch. (N.Y.) 483 (1839).

² *Williams v. Pedersen*, 47 Wash. 472, 92 P. 287 (1907); *Gordon v. Gordon*, 291 Ky. 244, 163 S.W. (2d) 454 (1942). Thus one partner will not be compensated for services rendered for a sick partner, as this is considered a risk assumed when the partnership is entered. *Cole v. Cole*, 119 Ark. 48, 177 S.W. 915 (1915). And while default in duty may be ground for dissolution, it is not ground for compensation for the diligent. *Godfrey v. White*, 43 Mich. 171, 5 N.W. 243 (1880). But a sick partner may be required to pay the expense of hiring an extra man to do his work. *Hart v. Meyers*, 12 N.Y.S. 140, 28 N.E. 250 (1890). And where a partner agrees to perform certain services and neglects to do so, he is chargeable with the value of these services. Such payments are considered to be damages for the breach of contract, and not compensation to other partners for services rendered. *Olivier v. Uleberg*, 74 N.D. 453, 23 N.W. (2d) 39 (1946). In one case compensation was awarded to a partner for services rendered after he had wrongfully excluded his co-partner from the business, on the rather dubious basis of an analogy to compensation to a surviving partner who has carried on the business. *Drummond v. Batson*, 162 Ark. 407, 258 S.W. 616 (1924).

³ Whether such an agreement existed is in some cases considered a question of fact, so that review, on appeal, is limited to whether the finding was supported by evidence. *Mondamin Bank v. Burke*, 165 Iowa 711, 147 N.W. 148 (1914); *Levy v. Leavitt*, 257 N.Y. 461, 178 N.E. 758 (1931); *McClellan v. Hammett*, 203 Ark. 1147, 160 S.W. (2d) 216 (1942); *Combs v. Ritter*, (Calif. 1950) 222 P. (2d) 252. In other cases it is apparently considered a question of law, and is reviewed *de novo*. *Wisner v. Field*, 11 N.D. 257, 91 N.W. 67 (1902); *Morris v. Griffin*, 83 Iowa 327, 49 N.W. 846 (1891). In still others, as in the principal case, it is not clear whether the question is regarded as one of law or of fact. These differences may well explain some apparently conflicting decisions on similar fact situations, but are insufficient to explain all such decisions. Some courts have seemed to be more liberal than others in their application of the rather nebulous concept of "implied

ing,"⁴ from acquiescence on the part of the other partners,⁵ from custom,⁶ or, when a certain amount of work or some other definite contribution was expressly stipulated for in the agreement, from the fact that the partner has gone beyond this contribution.⁷ It is stated as a second exception to the general rule that a partner may recover compensation for services to the firm not required of him as a partner, but rather rendered outside of the relation, and in a private capacity.⁸ This would seem to be, in effect, an application of the "implied agreement" exception, for the scope of the partnership relation is a matter of contract, and thus whether or not particular services are outside the relation must be a contractual question. It has also been stated as a third exception that a partner is entitled to compensation, even in the absence of express agreement, if he is appointed by the firm as agent for a special purpose.⁹ Again, this seems but another application of the "implied agreement" exception. In the principal case, any claim for compensation for services must be based on an "implied agreement," or "services outside the scope of the partnership," if this is any different. In view of the informal nature of the partnership agreement, the fact that it was understood that each partner would draw "salary" and an extra share of the catch while running the boat might be the basis for at least considering the possibility of an agreement, implied from the "general course of dealing," that each partner would be compensated for any extensive services to the firm. But the opinion does not really disclose enough facts to justify much speculation on this point.¹⁰

C. E. Lombardi, Jr.

agreement," or at least to give more weight to objective facts as conclusive of subjective agreement. And in one case the court was accused, in a dissenting opinion, of crossing the line into the area of quantum meruit. *Emerson v. Durand*, 64 Wis. 111, 24 N.W. 129 (1885). Such decisions probably entered into the court's conclusion, in the principal case, that, "Each case must depend largely on its own facts, and thus other cases are generally of little or no assistance in deciding the case at hand." Principal case at 603. The courts seem not to agree even as to what is sufficient to constitute an express agreement. Cf. *McClelland v. Hammett*, supra this note, and *Groseclose v. Hocking*, (Mo. 1949) 22 S.W. (2d) 754.

⁴ *Morris v. Griffin*, 83 Iowa 327, 49 N.W. 846 (1891).

⁵ *Neilsen v. Holmes*, 82 Cal. App. (2d) 315, 186 P. (2d) 197 (1947).

⁶ *Rains v. Weiler*, 101 Kan. 294, 166 P. 235 (1917).

⁷ *Lewis v. Moffett*, 11 Ill. 392 (1849); *Gaston v. Kellogg*, 91 Mo. 104, 3 S.W. 589 (1887).

⁸ *Godfrey v. White*, 43 Mich. 171, 5 N.W. 243 (1880); *Stone v. Fowlkes*, 29 App. D.C. 379 (1907).

⁹ *Bradford v. Kimberly*, 3 Johnson Ch. (N.Y.) 431 (1818).

¹⁰ For an extensive annotation on the subject in general, see 17 L.R.A. (n.s.) 384 (1907).