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Contracts—Interpretation of Legal Partnership Agreement

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ment was indispensable. As to the necessity for consent, it is not entirely clear from the opinion whether the Court proceeded on the theory that the contract involved personal services, the hiring of Bass as a booking agent, or that the contract conveying dramatic rights was of such a character that it was non-assignable without the consent of the original owner.⁸ The fact that Bass did nothing to secure lecture engagements and thereby breached his managerial obligations is available not only to Nijinsky but also to the plaintiff and affords another ground for giving priority to plaintiff's claim.⁹

INTERPRETATION OF LEGAL PARTNERSHIP AGREEMENT

It is settled law in New York State that as between the statutory partnership laws and a partnership agreement, the latter is controlling.¹⁰ From this it follows that unless a partnership agreement establishes a different relationship between the partners, a partner, upon dissolution of a partnership, is entitled to what he would have received on dissolution under the Partnership Laws.¹¹

The Court of Appeals in *Jackson v. Hunt, Hill and Betts*,¹² construed a partnership agreement. It held that the plaintiff, who withdrew from a law firm located in New York City, was entitled not only to his share of the fees paid to the firm prior to the date of withdrawal, but also to all fees earned but unpaid, whether billed or unbilled, on the date of his withdrawal. This decision reversed a judgment of the Appellate Division,¹³ dismissing plaintiff's amended complaint. The Appellate Division had reversed an interlocutory judgment entered upon a decision by the Supreme Court,¹⁴ ordering an accounting in favor of plaintiff.

The decision of the court revolved around whether the term "Net profits" as used in the partnership agreement included fees that were earned but uncollected, or only such as were already collected by the firm at the time when the partner withdrew.

The Court relied on the meaning the partnership agreement intended in using the term "net profits." This term was defined as "net fees" less 10% allocated to the capital account. "Net fees" in turn was defined under Article III of the agreement as the balance remaining after expenses of the firm incurred for that year were subtracted from the gross fees earned by the firm for that year. This indicated to the court that "net fees" were determined on

8. *Ibid.*

9. *Israel v. Wood Dolson Co.*, 1 N.Y.2d 116, 151 N.Y.S.2d 1 (1956).

10. *In re Eddy*, 290 N.Y. 677, 49 N.E.2d 628 (1943); *Lanier v. Bowdoin*, 282 N.Y. 32, 24 N.E.2d 732 (1939); *Hermes v. Compton*, 260 App. Div. 507, 23 N.Y.S.2d 126 (2d Dep't 1940).

11. N.Y. Partnership Law ch. 39, § 1 et seq.

12. 7 N.Y.2d 180, 196 N.Y.S.2d 647 (1959).

13. 4 A.D.2d 414, 187 N.Y.S.2d 168 (1st Dep't 1959).

14. 12 Misc. 2d 797, 177 N.Y.S.2d 388 (Sup. Ct. 1958).

the basis of what the firm earned, not merely on what was collected in any particular year.

The term "net profits" was employed in another context in the agreement. The partnership agreement established what it labelled a "Participation Schedule." Net profits of the firm uncollected during any one year were to be distributed in accordance with this schedule in the year such fees were paid. However the section referring to this "Participation Schedule" expressly applied only to those members remaining with the firm, and excluded withdrawing partners. This would seem to divest plaintiff of his interest in the uncollected fees, except for a savings clause in the case of withdrawing partners contained in Article IV of the agreement. This clause provided that in the case of a withdrawal of a partner, a prompt estimate be made of the "net profits" of the firm on the date of withdrawal. The Court pointed out that if the term "net profits" was meant to include only cash on hand, there would have been no need of an estimate, for an exact computation would have sufficed.

The Court excluded respondent's argument that "net profits" meant only cash net profits on hand as of the date of a withdrawal of a partner. If this argument was sustained, the section containing the Participation Schedule would have been meaningless.

Other partners in the law firm who retired at the same time as plaintiff were not deprived of participating in unbilled or uncollected fees of the law firm. The Court saw no apparent reason to treat plaintiff any differently.

CONTRACTS OF INSURANCE CONSTRUED AGAINST THE INSURER

The problem presented by *Sperling v. Great American Indemnity Company* involves the interpretation of insurance contracts.¹⁵ The insured's 16 year old daughter stole an automobile, with which she negligently injured the decedent. The daughter was covered by a "Family Automobile Policy" in her mother's name, issued by the defendant.

The pertinent parts of the policy in question stated:

- (A) "With respect to the owned automobile . . . provided the actual use thereof is with the permission of the named insured."
- (B) "With respect to a non-owned automobile . . . any relative, but only with respect to a private passenger automobile or trailer not regularly furnished for the use of such relative."^{15a}

Plaintiff sued the insured in a wrongful death action which the defendant refused to defend, or to pay the judgment. Plaintiff then sued the defendant and was awarded a summary judgment,¹⁶ from which this appeal was taken.

The defendant claimed that the policy implies that in order for it to be liable the car must have been "furnished," and that since the accident occurred

15. 7 N.Y.2d 442, 199 N.Y.S.2d 465 (1960).

15a. *Id.* at 446, 199 N.Y.S.2d 468.

16. 8 A.D.2d 986, 191 N.Y.S.2d 150 (1st Dep't 1959).