



09/10/79 BARNES v. WOLF

1979 | Cited 0 times | Court of Chancery of Delaware | September 10, 1979

WILLIAM MARVEL, CHANCELLOR

UNREPORTED OPINION

In the spring of 1975, the defendant Jeannette Barnes and her husband Herman T. Barnes, the latter being familiarly known to his friends as Jack, appear to have been engaged in a ceramics business known as J & J Ceramics in Dover. Later, in the fall of 1975, the plaintiff Jeannette Barnes, the defendant Mary Wolf and a Mrs. Fields, all of whom had been separately involved in the business of making and selling ceramics, began to discuss the possibility of forming a combined ceramics business to be called Ceramic Heaven in which their respective husbands would also become partners.

A step in this direction was thereafter taken when the three individuals named above and their respective husbands conferred with officers of the Farmers Bank in Dover with the purpose in mind of setting up a joint business account. A form submitted to them for execution in connection with such proposed banking account read in part:

"We, the undersigned, being all the general partners doing business under the firm name of Ceramic Heaven * * *"

Mr. Barnes testified at a recent evidentiary hearing on the issue as to whether or not he was in fact a partner in the business of Ceramic Heaven that he had signed such form solely as a convenience for the signing of checks for his wife's and the Wolf's business. However, according to the bank's records, the only persons authorized to sign checks for the proposed business were to have been Jeanette Barnes and Mary Wolf. In any event, the proposed venture of the six persons involved quickly fell through upon the withdrawal of the Fields, and Ceramic Heaven began business with the Wolfs and Mrs. Barnes and possibly Mr. Barnes as putative partners. Significantly, the phone service for the business was listed and billed to Howard T. Barnes, although the latter now takes the position that this was again done as a convenience because of credit requirements as well as for the purpose of saving money for the business here involved.

Next, it is argued by counsel for the Wolfs that the entire inventory of J & J Ceramics was in fact contributed to the new business by Mr. and Mrs. Barnes as well as cash in the amount of \$1500 received as insurance for damage caused to ceramics in storage at the Barnes home. Furthermore, when the business of Ceramic Heaven was ultimately discontinued, and a dispute over custody of its



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business books and records arose, Mrs. Barnes filed a replevin action for the same in which she averred under oath:

"That in September, 1975, she and her husband, Herman Barnes, formed a general partnership doing business as Ceramic Heaven with the defendants James Wolf and Mary Wolf."

Mrs. Barnes now takes the position that when she signed such affidavit she was under stress and was unaware of the significance of such averment which she now disavows.

Later, when this litigation was instituted on April 12, 1976 by Mrs. Barnes, the answer and counterclaim of the Wolfs averred that Herman T. Barnes was an indispensable party to the litigation and that both Mrs. Barnes and her husband should be required to account to the Wolfs in connection with the conduct of alleged partnership business although no attempt was made at the time to have Mr. Barnes actually joined as a party.

In replying to such counterclaim, Mrs. Barnes denied that Mr. Barnes had been a partner in the project but also pleaded that Mr. Barnes should be joined since "*** in his absence complete relief could not be accorded on Defendants' Counterclaim among those already parties."

Efforts were thereafter made by counsel for the Wolfs to have Mr. Barnes joined as a party by stipulation, and before that, with such purpose in mind, the taking of Mr. Barnes' deposition had been noticed but not taken. Thereafter, trial having commenced on May 7, 1979, on the following day, on motion of the Wolfs, an order was entered joining Mr. Barnes as a party. On May 21, 1979, however, independent counsel for Mr. Barnes moved to dismiss the claim against Mr. Barnes on the ground of laches and also on the ground that he was not at any time a partner in the business of Ceramic Heaven. An evidentiary hearing on such issue was held on June 19, 1979, and counsel for the Wolfs and for Mr. Barnes have briefed the issue of whether or not Mr. Barnes should remain in this action as a litigant.

Having considered the evidence adduced at the May 21 hearing and taken note of the fact that Mr. Barnes was closely affiliated with the business here in issue during its existence either as an employee or as a partner, and inasmuch as he will have had an opportunity to familiarize himself with the brief trial proceedings herein which took place prior to his being named as a party that he should remain as such at least until the end of the pending trial. The Court will then determine whether or not the claims made against him as a putative partner should be dismissed. In the meantime action on the pending motion will be reserved.

IT IS SO ORDERED this 10th day of September 1979.

