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PARTNERSHIPS-DISSOLUTION-SUFFICIENCY OF NOTICE TO PRIOR CREDITORS

Paul M.D. Harrison S.Ed.
University of Michigan Law School

PARTNERSHIPS—DISSOLUTION—SUFFICIENCY OF NOTICE TO PRIOR CREDITORS—Plaintiff brought suit on account for merchandise sold and delivered, alleging that the defendants were liable as partners. The defendants admitted that they had dealt with the plaintiff while they were a partnership, but averred that a corporation was formed which took over the partnership and that the merchandise in question had been purchased by the corporation. The trial judge instructed the jury that plaintiff must have notice or knowledge of the dissolution of the partnership to relieve defendants of personal liability, and that mere notice of the formation of the corporation was immaterial. *Held,* judgment for plaintiff affirmed. "The cases show that the notice may be an express notice or may be implied from the circumstances. However obtained, it must be sufficient to amount to actual knowledge where one who has been dealing with a firm before dissolution is involved."[1] *Letellier-Phillips Paper Co. v. Fiedler,* (Tenn. App. 1949), cert. denied (Tenn. 1949) 222 S.W. (2d) 42.

The same general problem as to the necessity and type of notice which must be given on dissolution of a partnership is involved when a partnership is succeeded by a corporation.[2] The Uniform Partnership Act, following the common law, recognizes a distinction between the type of notice that must be given to a person who extended credit to the partnership prior to dissolution and to the person who did not.[3] Either under the Uniform Act or at common law the difficult problem remains as to what amounts to sufficient notice to a person who has extended credit or dealt[4] with the partnership prior to dissolution. A direct statement made to the creditor personally would obviously be adequate notice of

[1] Principal case at 48. As observed at the end of this note, it may be questioned whether the language here quoted represents the decision of the court in the principal case. The other assignments of error brought up on the instructions, however, are not discussed.

[2] See, 8 FLETCHER, CYC. CORP. §4020 (1931). The basis of the requirement of notice is sometimes given as that of equitable estoppel. Simmel v. Wilson, 121 S.C. 358, 113 S.E. 487 (1922).

[3] Uniform Partnership Act, §35, Tenn. Code (Williams, 1934) §7874. The Uniform Laws Annotated supplement on Partnership lists thirty states which have adopted the act, 7 U.L.A. Supp. (1949).

[4] Many courts continue to use the word "dealing" instead of "creditor," even though the state has adopted the Uniform Partnership Act. The common law definition of "dealer" referred to a person who had extended credit to the partnership. A few courts under the common law, however, defined "dealer" as anyone who had business relations with the partnership. The continued use of the word "dealer" in jurisdictions of the latter group would appear to be in error. See 47 C.J. 1139 (1929); Commissioner's Note, 7 Uniform Laws Annotated 193 (1947).

dissolution,[5] but the courts normally do not require this.[6] The Uniform Act also permits delivery of a written statement,[7] yet a majority of cases hold that the receipt of the communication must be proved if challenged.[8] The filing of incorporation papers as required by law is not considered sufficient,[9] nor is recording of a conveyance of a partnership interest executed by one partner in trust for another partner.[10] Publication of notice of dissolution in a newspaper or journal is not alone considered to give notice to a prior creditor.[11] A change in the title of a firm, without more, is not considered adequate, nor is a substitution of a new letterhead on the stationery.[12] The principal case, in requiring that the notice which is given to the prior creditor be such as to amount to "actual knowledge," appears to have defined notice too narrowly. The Uniform Partnership Act provides that either notice or knowledge will release the former partners from liability for debts incurred after dissolution to persons who had extended credit prior to dissolution.[13] "Knowledge" may be either actual knowledge or such knowledge of the dissolution as would make the extension of credit to the dissolved firm bad faith.[14] It is very likely that this court was using language loosely, and meant to require no more than "actual notice" as that term was used at com-

[5] "(2) A person has 'notice' of a fact within the meaning of this act when the person who claims the benefit of the notice: (a) States the fact to such person. . . ." Uniform Partnership Act, §3.

[6] Burke Machine Co. v. Copenhagen, 138 Ore. 314, 6 P. (2d) 886 (1932); Mulkey v. Anglin, 166 Okla. 8, 25 P. (2d) 778, 89 A.L.R. 980 (1933); Principal case at 48. *Contra*: Southern States Supply Co. v. Lyon, 173 N.C. 445, 92 S.E. 145 (1917); Thompson v. Harmon, (Tex. Comm. App., Sec. A, 1919) 207 S.W. 909.

[7] "A person has 'notice' of a fact within the meaning of this act when the person who claims the benefit of the notice: . . . (b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence." Uniform Partnership Act, §3.

[8] Poage Milling Co. v. Joseph Howard and Co., 227 Ky. 353, 13 S.W. (2d) 266 (1929). See CRANE, PARTNERSHIP §361 (1938).

[9] Zaleski v. Wootton, 62 Ariz. 75, 153 P. (2d) 274 (1944); Herring v. Mishawaka Rubber and Woolen Mfg. Co., 192 Ark. 1055, 95 S.W. (2d) 1141 (1936). The basic assumption of the cases that have dealt with this question is that there is nothing inherently inconsistent in having the same persons at the same time engaged in a partnership and a corporation.

[10] American Wholesale Corp. v. Cooper, 194 N.C. 557, 140 S.E. 210 (1927).

[11] Robinson v. Floyd, 159 Pa. 165, 28 A. 258 (1893); Haynes v. Carter and Upton, 12 Heisk. (59 Tenn.) 7 (1873). Young v. Tibbitts, 32 Wis. 79 (1873) held that if the paper is one that is usually read, then there would be as much notice as a reasonable and prudent reader would have received. Jacob Martin v. William Walton and Co., 1 McCord (S.C.) *p. 16 (1821) declared that a notice printed in a Gazette is not conclusive, but may be a question for the jury.

[12] Roof v. Morrison, Plummer and Co., 37 Ill. App. 37 (1890); Overlock v. Hazzard, 12 Ariz. 142, 100 P. 447 (1909); Johnson Tire Co. v. Maddux, (Tenn. 1949) 221 S.W. (2d) 948. *Contra*: Kehoe v. Carville, 84 Iowa 415, 51 N.W. 166 (1892); Holt v. Allenbrand, 52 Hun. (59 N.Y.) 217, 4 N.Y.S. 922 (1889). Cf. Noyes v. Turnbull, 54 Hun. (61 N.Y.) 26, 7 N.Y.S. 114 (1889).

[13] Uniform Partnership Act, §35.

[14] Uniform Partnership Act, §3: "(1) A person has 'knowledge' of a fact within the meaning of this act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show bad faith."

mon law, in view of its express approval of the instructions of the trial court.[15] If, however, the court meant literally to require "actual knowledge," its construction of the statutory provisions for notice is highly questionable.

Paul M. D. Harrison, S.Ed.

[15] Principal case at 47.