

IN THE COURT OF APPEAL OF BELIZE AD 2014
CIVIL APPEAL NO 25 OF 2012

JULIAN PATT

Appellant

v

NATHAN FUNK

Respondent

BEFORE

The Hon Mr Justice Dennis Morrison
The Hon Mr Justice Douglas Mendes
The Hon Mr Justice Samuel Awich

Justice of Appeal
Justice of Appeal
Justice of Appeal

Mr Hubert Elrington SC for the appellant.
Mr Phillip Zuniga SC for the respondent.

12 March 2014

MORRISON JA

[1] This is the judgment of the court.

[2] In this matter, the learned trial judge had before him a claim arising out of an oral partnership agreement between the appellant and the respondent. Both parties agreed that it was a term of their agreement that each would contribute certain items of equipment owned by them to the work of the partnership, and that at no time during the partnership, or thereafter, would either party have an interest in the other's equipment.

Both parties also agreed that the partnership came to an end by mutual agreement in or around September 2006.

[3] The respondent sought a return of the equipment belonging to him which had been used for the purposes of the partnership and which was under the control of the appellant. The appellant refused to return the equipment and the respondent sued for their return, as well as for damages based on reasonable hire charges for the equipment. There were also other claims which do not now arise for consideration.

[4] After a trial, essentially on disputed facts, Legall J found that (i) the respondent was entitled to recover the equipment claimed by him under the agreement referred to above; and (ii) certain other items of property were partnership assets. The appellant was ordered to deliver the various items which are listed at paragraph 19.1 of the learned judge's judgment to the respondent. And, in relation to those items which the learned judge found to be partnership assets, it was declared that they were owned in equal shares by the appellant and the respondent and that, after valuation of the assets, each party would be entitled to sell his share to the other party.

[5] The learned judge also made an order for damages whereby the appellant was ordered pay to the respondent (a) nominal damages in the sum of \$4,000.00 for conversion; (b) \$47,000.00 as overpayment to the appellant by the respondent for the construction of roads; (c) interest on these sums at 6% per annum from 16 August 2012 until payment; and (d) costs in the sum of \$2,000.00.

[6] Before this court on appeal, Mr Elrington SC makes a simple point: that is, that irrespective of whether one party or the other to a partnership retains ownership in assets used for the purposes of the partnership, upon a dissolution of the partnership those assets cannot be dealt with otherwise than by way of an action for an account and a winding-up of the partnership. Mr Zuniga SC for the respondent points out that this contention was never pleaded, which led Mr Elrington in reply to say that, in partnership law, the question of pleading does not arise.

[7] Mr Elrington cited no authority for either proposition, both of which, in our view, were startling and plainly unsustainable. Albeit a special branch of the law, partnership, like many other legal relationships, is founded on agreement. Legall J's determination was fully in accordance with the agreement of the parties and the orders which he made were, in our view, entirely open to him on the evidence.

[8] In those circumstances, we have come to the clear conclusion that the appeal must be dismissed, with costs to the respondent, to be agreed or taxed.

MORRISON JA

MENDES JA

AWICH JA