

STATE OF MAINE

YORK, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. RE-08-042

JAMES E. HARRIS,

Plaintiff

RECEIVED NOV 28 2009

v.

**ORDER AND DECISION**

BENTLEY W. WARREN, III,  
et al.,

Defendants

The plaintiff has filed an 18-count complaint against Bentley Warren and Mr. Warren's business Bentley's Saloon, LLC. The first amended complaint has duplicate Counts V and VIII. A motion for summary judgment was argued and summary judgment was granted to the defendants on Counts IV, X, XI, XII, XIV and XVI. The remaining counts were tried without a jury and have been briefed.

PARTNERSHIP

James Harris was centrally involved in the re-creation of Bentley's Saloon in Arundel from a run down bar with few patrons, little revenue, an inept manager and little to recommend it to an apparently attractive, vibrant destination with better food, excellent music, much increased revenues and a substantial loyal following. The central dispute in this highly contentious case is whether Jim Harris was a partner with Bentley Warren or whether he was solely the manager. Both Mr. Harris and Mr. Warren are very social individuals whose stories vary as to crucial details.

There is no dispute that Harris was hired to manage Bentley's Saloon. Bentley Warren ran a separate also apparently successful business in Massachusetts, traveled extensively and loved motorcycles and fast cars. He did not want to and did not run his bar in Maine on a daily basis. Harris was hired as the replacement manager with a salary of \$1,000.00 a week net and either 2% of the gross or 2% of the net. He also claims to have been a partner.

While Mr. Harris often worked very hard, had many of the ideas that contributed to the revitalization of Bentley's Saloon as a successful dynamic business and was involved in multiple aspects of the ever expanding Bentley's Saloon and related gift shop and campground, I do not find that he ever was a partner.

No written partnership agreement exists or probably ever existed. None of the actions that demonstrate that a partnership existed were carried out. No partnership documents exist. No partnership tax accounting was ever done. Profits and losses were not shared.

I have also listened very carefully to the witnesses and have drawn conclusions about them. It is my firm impression that Bentley Warren, which is his right, is not a person who takes on a partner. His own daughter is not yet a partner in his trucking business despite working for her father for a generation. Warren wants to be in charge in the end. Though he does hire managers, he does not have partners. I was not convinced by a preponderance of the evidence that a partnership was ever formed. Alcohol fueled musings about a possible partnership are insufficient. The supporting testimony of Roger Bintliff, a close friend of James Harris, does not change the conclusion.

## WAGES

Mr. Harris has a claim for unpaid wages which is unusual in many respects. The first question is what should the pay be. I find Mr. Warren's testimony that it should be 2% of the net to be more convincing given his concerns that using gross numbers is subject to abuse. I do recognize that a net figure can also be manipulated. Second, the accounting in this case was challenging. Bookkeepers changed frequently. The business had separate accounts for the saloon, the campground and the gift shop, called the Booty Shop. It is not clear that cash was properly accounted for and that inventory was sufficiently controlled. Funds came from the various business lines and from the separate businesses of Mr. Warren. Expenses and capital items were often confused.

Third, James Harris was in charge of paying himself. Sometimes he had his rent, truck or motorcycle payments deducted from his pay often in what was an improper pre-tax payment. He sometimes did not pay himself at all for reasons that are not fully clear.

Fourth, there were a variety of side ventures. Harris supposedly supplied Warren with a claw machine and display cases. The Booty Shop was run by an independent contractor who hired her own staff and sold both Bentley's Saloon items and her separate products for either cash or by credit card.

Fifth, both Harris and Warren had bar tabs which were used either to entertain clients and customers or just to have a good time with friends. The nature of those arrangements and the accuracy of the accounting are not certain.

Ultimately I have reached the conclusion that Harris is entitled to recover for unpaid gross wages including indirectly the tax portions of those wages in the amount of \$212,068 minus \$122,400 for payments received, minus \$21,500 for a claw machine

and "showcases" for which there is no documentation, and minus \$11,000 for a dubious last minute payment that Mr. Harris made to himself for a total of \$57,168.

Normally that amount would be subject to the enhanced penalties found at 26 M.R.S.A. §626-A. In this rare case Harris decided not to pay himself as the money was earned and therefore should not be permitted to receive attorney's fees or additional double damages.

### VEHICLES

In keeping with the unorthodox nature of their financial arrangements we have a final dispute involving a pickup truck and two motorcycles.

One of the motorcycles is a 2006 Harley Davidson Softail Springer. Here the evidence was compelling that Mr. Warren gave that motorcycle to Mr. Harris. Mr. Warren shall within 30 days transfer the title to the motorcycle to Mr. Harris.

The ownership and financial arrangements for the other motorcycle, a 2006 Harley Sportster for Mr. Harris' girlfriend, and a 2006 GMC truck are much more tangled. Both vehicles were purchased in Mr. Warren's name as he had the ability to get a better price and better financing terms than did the less credit worthy Mr. Harris. Harris was to repay the loans through his wages. That arrangement worked for a time until Mr. Harris was terminated. He has both motorcycles and the truck apparently in Florida while Mr. Warren has the titles and the loans. Within 30 days Mr. Harris shall either return the Sportster and truck to Mr. Warren at a location in New England of Mr. Warren's choice, or Mr. Harris shall reimburse Mr. Warren for all payments made by him and also pay off the existing loan balances in return for receiving title to the vehicles. A separate decision may be made concerning the truck and motorcycle.

COUNTERCLAIMS

I find that no additional sums are owed to the defendants as any amount due has been deducted from the wage claim for ease of computation.

In summary the plaintiff was not a partner with Mr. Warren but is owed \$57,168, interest and court costs. The Harley Springer Softail belongs to the plaintiff and ownership of the other two vehicles will be resolved within 30 days.

The entry is:

Judgment for the plaintiff against the defendant Bentley's Saloon, Inc. on Counts I, II and III of the first amended complaint in the amount of \$57,168 with costs and statutory pre-judgment and post-judgment interest.

Judgment for the defendant Bentley's Saloon, Inc. on the first Count V. Judgment for the plaintiff against Bentley W. Warren, III on the second Count V if the plaintiff reimburses Bentley Warren within 30 days for all payments made by Bentley Warren toward the 2006 Harley Davidson Sportster and pays in full the balance of any remaining payments. If those payments are made then the plaintiff shall receive title to the motorcycle, if not the plaintiff shall return the motorcycle to Bentley Warren within 30 days at a location in New England designated by Bentley Warren.

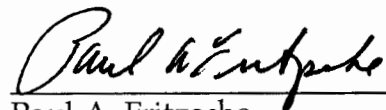
On Count VI judgment concerning the 2006 GMC truck will be same as in the second Count V with the same procedures and time limits.

On Count VII judgment for the plaintiff against the defendant Bentley Warren, III. Title shall be transferred to the plaintiff within 30 days.

On Counts VIII, IX, XIII, XV judgment for the defendants.

Judgment for the plaintiff on the counterclaim.

Dated: November 24, 2009



Paul A. Fritzsche  
Justice, Superior Court