

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
September 18, 2000 Session

TONY REEVES, ET AL. v. CHARLES H. GRAVES, SR., ET AL.

**An Appeal from the Chancery Court for Gibson County
Nos. H-3033 and H-3065 George R. Ellis, Chancellor**

No. W1999-01828-COA-R3-CV - Filed July 19, 2001

This is a contract case. The plaintiffs sued the defendant for breach of an oral agreement to provide financing for a radio station they established. The trial court held that the agreement fell within the statute of frauds because, as a practical matter, it could not be performed within one year. It then found that the plaintiffs were entitled to the reasonable value of their services under the doctrine of *quantum meruit* and awarded them shares of the radio station stock pursuant to the original oral agreement. We reverse and remand, holding that the statute of frauds does not apply to this agreement because it was not impossible to perform within one year.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

L.L. Harrell, Jr., Trenton, Tennessee, for the appellants, Charles H. Graves, Sr. and Big Tenn Communications Company, Inc.

Sam J. Watridge, Humboldt, Tennessee, for the appellees, Tony Reeves and Bill Haney.

OPINION

In this contract case, Plaintiff/Appellees Tony Reeves and Bill Haney were employed at the car dealership of Defendant/Appellant Charles H. Graves Sr. in late 1990. At that time, Graves overheard Reeves and Haney discussing their longtime dream of owning and operating a radio station. Graves asked them if they wanted a partner, and they responded that they did. Graves told them that, if they established a station, he would provide the financing. In January 1991, the parties formed a corporation, Big Tenn Communications Company, Inc., to own and operate a radio station, with Graves owning 51% of the company's stock, Haney 35%, and Reeves 14%. Reeves and Haney then set up the station. Later, when Graves was unable to obtain the financing that he desired, he told Reeves and Haney that each of them would need to finance their respective shares of the

corporation. Subsequently, but before the radio station went on the air, Reeves quit working on the radio station. Haney eventually signed an instrument transferring his interest in the corporation to Graves. Reeves and Haney each filed suit against Graves and Big Tenn Communications for breach of contract and breach of fiduciary duty, seeking the value of their respective shares as well as punitive damages. Their cases were consolidated for trial.¹

A bench trial was held on September 3 and 10, 1997. At trial, Haney testified that, since 1984, he and Reeves had wanted to establish an FM radio station in Milan, Tennessee. Haney had been involved in radio in some form or another since 1955, and from 1967 to 1982 he was part owner of a station in Milan. Haney said that when Graves overheard he and Reeves discussing a possible station in Milan, he told them, “Y’all know something about radio stations. Y’all put the radio station on the air and I’ll get the financing.” After this, Haney and Reeves bought a “construction permit” to build a tower and transmitter, and hired a field engineer to assist in locating a suitable site. Haney and Reeves negotiated the purchase of the property and hired another engineer to assist in ordering equipment. They hired a law firm in Washington, D.C., to secure the necessary permits from the Federal Communications Commission (“FCC”). Haney and Reeves also obtained studio space. Haney testified that he and Reeves worked closely together during this time, and that Graves did not assist them but paid all of the station’s expenses out of the car dealership’s bank accounts.

The parties signed an agreement sometime in 1991 that Haney would be paid \$250 per week for his work until the station went on the air. The agreement stated that “[a]ll monies to Big Tenn Communications, Inc. paid by Chuck Graves Chev-Olds-Cad-GMC, Inc. is to be reimbursed when loan for Big Tenn is secured.” Haney soon began working full-time on the radio station. After the radio station went on the air in June 1992, Haney acted as general manager and received a salary of \$2,000 per month.

Sometime in late 1992, Graves approached Haney and asked him to transfer his interest in Big Tenn Communication to Graves. Haney testified that when Graves asked him to sign the agreement, Haney was very stressed and felt “lousy” because of heart bypass and valve replacement surgery that he underwent in February 1992. He said that he did not intend, by signing the agreement, to get out of the radio station. However, he admitted that he knew when he signed the agreement that he was no longer an owner of the station. On cross examination, Haney admitted testimony in his earlier deposition that he signed the agreement because “I just didn’t want to be a part of the radio station. I didn’t want to be an owner.” At the time the agreement was signed, Haney and Graves agreed that Haney would continue working at the station as general manager.

Haney testified that working with Graves was difficult. He said that the parties agreed that Graves would be a “silent” partner because they did not want to deter other car dealerships from buying advertising from the station. Haney testified that Graves told he and Reeves “I won’t ever

¹Charles H. Graves, Sr. died before trial. His widow, Louise Graves, was substituted as a defendant to represent the interests of his estate.

be over there. I'll see you guys about once a month and y'all handle the station." However, after an article about the radio station published in The Jackson Sun newspaper failed to mention Graves's involvement, Graves became angry and told Haney that he was "important" and should not have been left out of the article. Later, after the station went on the air, Graves unilaterally decided to switch the station's sports coverage from the University of Tennessee-Martin to Memphis State University, without consulting Haney. This event precipitated Haney's exit from the station in April 1993.

Haney estimated that the value of his services in establishing the radio station totaled \$104,350 but admitted that he kept no record of the hours he spent working on the station. Haney acknowledged that, beginning in late 1991, he was paid a salary.

Tony Reeves's testimony at trial corroborated Haney's version of the events surrounding the parties' agreement. Reeves testified that it was agreed that Haney would act as general manager of the station, and Reeves would broadcast and make commercials for the station. Reeves testified that Graves said to them: "You boys got expertise in the radio business. Y'all know what you're doing. You been in [it] a long time. Got a lot of experience in the radio business. Y'all get the station on the air and I'll take care of the financing." Reeves said that Graves called him by the nickname "Big Apple." Reeves testified that Graves once said to he and Haney, "Big Apple . . . you get 14%. Bill, don't worry about Big Apple's part. I'll take care of Big Apple. He's been a good employee for me." Reeves maintained that the parties said nothing else about the details of how the station would be financed. Like Haney, Reeves also estimated the value of the services he performed in setting up the station. Reeves estimated the value of his services as between \$30,000 and \$35,000, although Reeves also did not keep records of the hours he spent working on the station. Reeves stated that he and Haney worked after hours and on holidays and weekends to get the station started. Unlike Haney, Reeves never received a salary.

Reeves testified that, in February 1992, while Haney was in the hospital for his surgery, Graves called Reeves into his office and said, "Tony, I'm paying cash for my part. You and Haney need to come up with y'all's money." Reeves reminded Graves that the parties had originally agreed that Graves would provide the financing, to which Graves responded, "Things change." Reeves told him that there was no way he could come up with his share of the money. Soon thereafter, in March or April 1992, Reeves left Graves's car dealership to work at another car dealership. Reeves said that he did this in order to earn more money. Reeves testified that he and Graves never discussed his involvement with the radio station after Reeves left Graves's car dealership, and that Reeves never had the opportunity to do any broadcasts or record any commercials for the radio station.

In a deposition, Graves testified that he agreed to provide financing for the radio station only until the parties secured a construction permit. Graves testified that, once a construction permit was secured, the corporation would have sufficient collateral to obtain a bank loan, and it was his understanding that each party would then borrow his share of the money to finance the start-up of the station. Graves testified that bank officials assured him that they would have no trouble obtaining a loan at prime rate, and that he offered to co-sign for Reeves or Haney if necessary.

Graves said that, when the bank asked him to put \$50,000 of his own money into the corporation, he backed out and said to the bank official, “you can do what you said you’d do or I’m getting out. I’ll handle it on my own. . . . I’ll take care of my money. What Mr. Reeves and Mr. Haney does is strictly up to them. They can go through your bank or any bank they want to, but I am not going to borrow money from your bank.”

Graves testified that Reeves resigned from employment at his car dealership to take a better paying job at another car dealership. Reeves did not expressly resign from the radio station, but Graves surmised that Reeves had resigned from the radio station when he resigned from the car dealership because Reeves “hadn’t put any money in it.” Graves said that he offered Reeves’s stock to Haney. Graves said that Haney initially accepted Reeves’s share of the stock, but later decided that he did not want it. Graves denied that Reeves’s involvement in the station was dependent on his employment at Graves’s car dealership.

Graves testified that in late 1992, Haney approached him, Graves, about transferring Haney’s ownership in the station, because Haney and his wife did not want to put up their house as collateral for a loan, and because he did not want the added pressure to aggravate his heart condition. Graves said that he later approached Haney to ask him to sign the transfer agreement, but Graves denied putting any pressure on Haney to do so.

Several other witnesses testified, including Joe Gray, an employee at Graves’s car dealership. Gray corroborated the testimony of Haney and Reeves regarding the conversations that formed the basis for the parties’ agreement. James Wolfe testified on behalf of Haney and Reeves as an expert on starting radio stations. Wolfe said that setting up a radio station required a “sound knowledge” of the radio business. Wolfe opined that the value of the services performed by Haney and Reeves in setting up the station was about \$265,000. Brad McCoy, an employee of the radio station while Haney was manager, testified that Haney told him that he did not want to be an owner of the station, but wanted to continue as manager. Darrell Boyd, owner and operator of three radio stations, testified that it typically took a year and a half to two years to set up a radio station, and that most of this time involved waiting, not working. Sue Trimmer, the bookkeeper for Graves’s car dealership, testified that the dealership paid all of the radio station’s expenses before it went on the air and began receiving revenue. She testified that the radio station had not yet earned a profit, and that it owed the car dealership \$363,632.44.

The trial court issued a detailed memorandum opinion and order, in which it stated that “the parties agree that the Statute of Frauds applies, inasmuch as the contracts were oral and were never reduced to writing and the venture, contracted for, covered more than a year.” It framed the issue as “whether Haney’s partial performance of the contracts takes the parties’ agreements out of the Statute of Frauds,” and held that Haney’s performance did not take the contract out of the statute of frauds because Haney did not alter his position in such a way that it would be unjust or unconscionable not to enforce the agreement. The trial court held that equitable estoppel did not apply because there was no proof that Graves fraudulently induced Haney and Reeves into performing their part of the bargain. The trial court found that Haney’s agreement to transfer his

shares to Graves was not signed under duress because there was no proof that Graves put external pressure on Haney to sign the agreement. However, the trial court found that Reeves and Haney should be compensated under the doctrine of *quantum meruit* and awarded Reeves his original 14%, and Haney his original 35%, minus the salary Haney received from June 1992 until he left the station. The trial court did not specify a value of the corporation, nor did it specify the manner in which Haney and Reeves should be paid. From this order, Graves now appeals. On appeal, Graves argues that Haney and Reeves were not entitled to *quantum meruit* recovery.²

An appeal from a bench trial is reviewed *de novo*, with a presumption of correctness in the trial judge's findings of fact. *See* Rule 13(d) of the Tennessee Rules of Civil Procedure. We review questions of law *de novo* with no presumption of correctness. *See Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

Tennessee Code Annotated § 29-2-101, Tennessee's version of the statute of frauds, states "[n]o action shall be brought . . . [u]pon any agreement or contract which is not to be performed within the space of one (1) year from the making of the agreement or contract," unless it is in writing. Tenn. Code Ann. § 29-2-101(a)(5) (2000). Tennessee courts have traditionally construed this provision of the statute of frauds very narrowly, because it is preferable to give effect to a contract rather than defeat it. *See Davidson v. Holtzman*, No. E2000-01091-COA-R3-CV, 2000 WL 1641236, at *6 (Tenn. Ct. App. Nov. 2, 2000); *Price v. Mercury Supply Co.*, 682 S.W.2d 924, 932 (Tenn. Ct. App. 1984). In particular, the words "not to be performed" have been held to mean "not performable." *See Talkington v. Anchor Gasoline Corp.*, 821 F. Supp. 505, 510 (M.D. Tenn. 1993). "The question is not what the probable, expected, or actual performance of the contract may be, but whether, according to the reasonable interpretation of its terms, it requires that it should not be performed within the year." *Price*, 682 S.W.2d at 932 (quoting *Boutwell v. Lewis Bros. Lumber Co.*, 27 Tenn.App. 460, 464, 182 S.W.2d 1,3 (Tenn. Ct. App. 1944)). Thus, if the contract is capable of performance within one year, the statute of frauds does not apply. *See Talkington*, 821 F. Supp. at 510.

In this case, the parties did not specify the time frame in which Haney and Reeves were required to set up the station. There was testimony at trial that it typically took a year and a half to two years to set up a station, but there was no evidence that it was impossible to set up the station within a year. Consequently, we must conclude that the statute of frauds is inapplicable.

We next consider whether there was an enforceable contract among the parties. Even if the statute of frauds does not apply, a party seeking to recover on a contract must show that the agreement was supported by adequate consideration, that there was mutual assent to its terms, and that it was sufficiently definite to be enforceable. *See Price*, 682 S.W.2d at 933. It is undisputed that the parties agreed that Haney and Reeves were to set up a station, that Graves would own 51% of the stock, Haney 35%, and Reeves 14%, and that Graves would provide the "financing." Graves

² In his brief, Graves outlines seven issues in his "Issues for Review," but in the body of his brief states that the claim of *quantum meruit* is "the only issue that appellant is raising in its appeal."

testified that he agreed to provide financing for the station only until they secured a construction permit, although he in fact continued to finance the station's expenses after a construction permit was obtained. Graves testified that he told Haney and Reeves that they needed to finance their own shares after the bank told him that he needed to invest \$50,000 of his own money in the corporation. Haney and Reeves, on the other hand, understood that they would not be required to finance their shares of the corporation. They understood that Haney would receive 35% of the stock in exchange for setting up the station and being general manager for the station, while Reeves would receive 14% of the stock in exchange for setting up the radio station and doing broadcasts and commercials.

Obviously, the degree of financing to which Graves agreed was a key term. After learning that he would have to provide the financing for his shares, Reeves told Graves he could not do so, and soon thereafter left Graves's car dealership. Haney apparently considered financing his share of the stock, but decided not to do so. Graves testified that Haney's transfer of his stock to Graves was in part because Haney and his wife did not want to utilize their home as collateral for a loan to finance his shares of the radio station's stock.

The question then becomes whether (a) the parties did not have a meeting of the minds on the financing term of the contract and, consequently, no enforceable agreement, or (b) whether they had an enforceable agreement that was later breached. This issue turns on a determination of the parties' credibility. The trial court did not reach this issue because it held that the statute of frauds applied, making any agreement unenforceable. As noted above, we hold in this appeal that the statute of frauds is inapplicable. Consequently, the case must be remanded to the trial court to determine the parties' relative credibility on whether there was an initial meeting of the minds on the issue of whether Graves agreed to finance the setup of the station only until a construction permit was secured, as Graves asserted, or whether the parties' initial understanding was that Haney and Reeves would receive their shares of the corporation in exchange for their non-financial contributions in starting the radio station, Haney acting as general manager and Reeves doing broadcasts and commercials. If there was an initial meeting of the minds on this issue, and therefore an enforceable contract, the trial court must determine the terms of the agreement and by whom it was breached.

The trial court below ordered recovery for Haney and Reeves under the doctrine of *quantum meruit*, premised on its finding that any oral agreement was not enforceable because of the statute of frauds. In order to recover under the doctrine of *quantum meruit*, there must be no enforceable agreement among the parties. *See Swafford v. Harris*, 967 S.W.2d 319, 324 (Tenn. 1998). Therefore, in this case, if there was an initial meeting of the minds on financing and an enforceable agreement that was breached, there would be no recovery under *quantum meruit*. Instead, the party or parties seeking to enforce the contract would be entitled to be placed in the position they would have been in had the other party not breached the contract. *See Hiller v. Hailey*, 915 S.W.2d 800, 805 (Tenn. Ct. App. 1995).

If there was an enforceable agreement among the parties, the effect of Haney's agreement to transfer his stock to Graves also depends on the trial court's determination of the parties' credibility.

It is undisputed that Haney agreed to transfer his interest in the corporation to Graves, and the trial court found that Haney's execution of this agreement was not the result of duress. However, Graves acknowledged that Haney was motivated, at least in part, by the prospect of having to mortgage his home to finance his stock. If the parties' initial agreement was that Haney would receive his shares of stock in exchange for his non-financial contribution, as Haney and Reeves assert, and Graves breached this agreement, it may be that Haney would never have transferred his interest in the corporation to Graves. If, however, the parties' initial agreement was as Graves testified, Haney would clearly be bound by his agreement to transfer his interest in the corporation to Graves, and would therefore be entitled to no recovery. Likewise, Reeves's right to recover depends on the terms of the parties' initial agreement. Reeves testified that he left Graves' car dealership in order to make more money at another dealership. It is undisputed that Reeves never did broadcasts or commercials for the parties' radio station. If the initial agreement was as Graves asserted, Reeves would be entitled to no recovery, since he did not perform his obligation under the agreement. However, if the initial agreement was as Haney and Reeves assert, Reeves's decision to leave the radio station may have been motivated by Graves's breach of the agreement. However, the record does not support a finding that Graves prevented Reeves from performing his non-financial obligation to record broadcasts and commercials.

If there was no initial meeting of the minds on financing, and therefore no enforceable agreement, the doctrine of *quantum meruit* would have to be considered. If the doctrine of *quantum meruit* is applicable, Haney would be bound by his agreement to transfer his interest in the corporation to Graves. In effect, Haney received compensation for his efforts in setting up the station and acting as general manager, and he voluntarily agreed to transfer part of his compensation, the shares of stock, to Graves. Consequently, if the parties had no enforceable agreement, Haney would be entitled to no recovery under *quantum meruit*. Reeves, on the other hand, performed a valuable service to Graves in assisting in setting up the station, although he never did any broadcasts or commercials for the station. He received no compensation for his efforts in setting up the station. Under these circumstances, he may be entitled to some monetary recovery under the doctrine of *quantum meruit*.

Consequently, we reverse the decision of the trial court and remand the cause for further proceedings consistent with this Opinion. Costs of this appeal are taxed equally to the Appellants, Charles H. Graves, Sr. and Big Tenn Communications Company, Inc., and to the Appellees, Tony Reeves and Bill Haney, and their sureties, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, JUDGE