IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

DENNIS T.E. GLICK, CATHLEEN S. GLICK, DENNIS E. GLICK, and WGI/GLICK DEVELOPMENT COMPANY,	:	DECEMBER TERM, 2004
	:	No. 0347
Plaintiffs,	:	(Commerce Program)
v.	:	
NICHOLAS VALE, WHITE GLOVE OF ILIFF, L.P. and DENNICK DEVELOPMENT COMPANY,	:	
Defendants.	:	

O R D E R

AND NOW, this 4th day of February 2010, upon consideration of the evidence presented at a bench trial, the respective proposed findings of fact and conclusions of law and responses of the parties, the respective briefs and memoranda, all matters of record, and in accord with the Findings of Fact, Discussion and Conclusions of Law being filed contemporaneously with this Order, it is ORDERED that the court finds in favor of plaintiffs, Dennis T.E. Glick, Cathleen S. Glick, Dennis E. Glick and WGI/Glick Development Company and against defendants, Nicholas Vale, White Glove of Iliff, L.P. and Dennick Development Company. Defendants are liable to Dennis T. E.Glick, Sr. and Cathleen S. Glick in the amount of $194,969.00. Defendants are liable to Dennis E. Glick, Jr. in the amount of $201,099.00, totaling $396,068.00.

BY THE COURT,

_____

ALBERT W. SHEPPARD, JR., J

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

DENNIS T.E. GLICK, CATHLEEN S. GLICK, DENNIS E. GLICK, and WGI/GLICK DEVELOPMENT COMPANY,	:	DECEMBER TERM, 2004
	:	No. 0347
Plaintiffs,	:	(Commerce Program)
v.	:	
NICHOLAS VALE, WHITE GLOVE OF ILIFF, L.P. and DENNICK DEVELOPMENT COMPANY,	:	
Defendants.	:	

FINDINGS OF FACT, DISCUSSION
AND
CONCLUSIONS OF LAW

Albert W. Sheppard, Jr., J. …….. February 4, 2010

Introduction

In December 2004, plaintiffs, Dennis T.E. Glick ("Glick, Sr."), Cathleen S. Glick, Dennis E. Glick ("Glick, Jr.") and WGI/Glick Development Company ("WGI") filed a Complaint alleging breach of duty to provide an accounting,[1] conversion, unjust enrichment, breach of fiduciary duty and fraud against defendants, Nicholas Vale ("Vale"), White Glove of Iliff, L.P. ("White Glove Iliff") and Dennick Development Company ("Dennick"). The Complaint specifically alleges that defendants failed to pay distributions from the White Glove Iliff business venture to plaintiffs in spite of tax

[1] The Court finds that this claim is moot due to Plaintiff's pre-trial access and review of the relevant financial information including White Glove Iliff and Dennick tax returns. (N.T. 13-16, 5/15/08).

records indicating that said payments were made. Plaintiffs further allege that defendants converted these monies without consent or justification. Defendants argue these funds were appropriately withheld to offset proceeds owed to defendants from a separate business venture, namely, a car wash located on Harbison Avenue in Pennsylvania ("Harbison Car Wash"). A three day bench trial was conducted on May 13, 14, and 15, 2008, at which the following evidence was adduced.

FINDINGS OF FACT

BACKGROUND

1. Glick, Sr. began working for White Glove, Inc. in 1979 as an operations manager for various White Glove, Inc. car wash sites. (N.T. 29, 5/13/08). In this capacity, Glick, Sr. was responsible for development of new White Glove, Inc. car wash locations. (*Id*. at 31-32).
2. Glick, Sr. served in this position from his time of employment through White Glove, Inc.'s filing for bankruptcy in 1998. (*Id*. at 29-30).
3. Anthony Baker ("Baker"), a White Glove, Inc. employee, handled all of the financial records for White Glove, Inc. (N.T. 20, 5/14/08).
4. Vale was first introduced to White Glove, Inc., Baker and Glick, Sr. in the mid 1980's as a result of White Glove, Inc.'s acquisition of the Bryn Mawr car wash from Vale. (*Id*. at 56-57). Subsequent to this purchase, Vale became a consultant to White Glove, Inc. (*Id*.)

HARBISON CAR WASH

5. On May 19, 1988, Glick, Sr. and Baker formed WGI to lease, acquire, develop and operate various White Glove, Inc. car washes, including the site located at

6500 Harbison Avenue, Philadelphia, Pennsylvania. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 2; N.T. 31-32, 5/13/08).

6. The Harbison Car Wash was built by WGI and White Glove, Inc. with financing from Continental Bank, which was later acquired by PNC Bank. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 3; N.T. 31-33, 5/13/08). Baker coordinated the financing of the property, and neither Glick, Sr. nor Vale put forward any money for the Harbison Car Wash. (*Id*.)

7. Until the bankruptcy of White Glove, Inc. in 1998, Baker handled the financial records for WGI, and more specifically, Harbison Car Wash. (N.T. 20, 5/14/08; N.T. 44-45, 5/13/08).

8. After the White Glove, Inc. bankruptcy, Baker halted payment of monies owed by White Glove, Inc. and WGI, including lease payments, taxes, bank loans and payments to creditors. (N.T. 43-44, 47-48, 5/13/08; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 3).

9. Following the bankruptcy, Glick, Sr. assumed responsibility for the finances of WGI and the Harbison Car Wash, which included becoming a personal guarantor of the PNC bank loan, along with resolving indebtedness to the Internal Revenue Service, the City of Philadelphia, and the Commonwealth of Pennsylvania. (N.T. 47-48, 50-54, 5/13/08). Additionally, Glick, Sr. handled payments to vendors and Harbison Car wash personnel. (*Id*.)

10. Despite Glick, Sr.'s efforts, since the White Glove, Inc. bankruptcy in 1998, the Harbison Car Wash has been operating at a loss, and has not generated enough money to cover its debts. (N.T. 31, 49-50, 5/15/08).

DENNICK DEVELOPMENT

11. In 1990, Glick, Sr. and Vale formed a partnership under the name of Dennick Development to build a self-serve coin operated car wash on an unused plot of land located at the Harbison Car Wash site. (N.T. 34, 5/13/08; N.T. 60, 5/14/08).
12. Glick, Sr. and Vale each invested one hundred fifty thousand dollars ($150,000.00), for a total of three hundred thousand dollars ($300,000.00) in Dennick to fund the construction of the coin operated car wash. (N.T. 34, 5/13/08; N.T. 23-24, 5/14/08).
13. Between 1990 through White Glove, Inc.'s bankruptcy in 1998, Dennick received regular distributions stemming from the coin operated car wash – these distributions totaled two hundred thousand dollars ($200,000.00) to Glick, Sr. and two hundred thousand dollars ($200,000.00) to Vale. (N.T. 32, 5/14/08). Distributions to Dennick were made by WGI. (N.T. 10, 32-33, 5/15/08; N.T. 34-35, 5/13/08).

CAR WASH AGREEMENT

14. On December 15, 1990, a separate partnership agreement was formed titled WGI/Glick Limited Car Wash ("Car Wash Agreement"). (N.T. 18, 5/14/08). There were three parties to this agreement; WGI served as the general partner, and Glick, Sr. and Vale served as limited partners. (*Id*. at 19-20; Defendants Proposed Findings of Fact and Conclusions of Law, p. 12).
15. The Car Wash Agreement was created to operate and manage all car wash facilities located at the Harbison Car Wash which included both the full serve and the coin operated car wash on site. (Defendants Proposed Findings of Fact and

Conclusions of Law, p. 12; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 6).

16. The Car Wash Agreement stated that the limited partners would be compensated for their investment on the basis of a guaranteed 15% return on their respective investments plus 4% of annual gross revenues generated from the self serve coin operation. (Defendants Proposed Findings of Fact and Conclusions of Law, p. 12-13).

17. The Car Wash Agreement also stated that the revenues of the partnership would be utilized "first to pay all operating expenses including, but not limited to, rental payments, equipment lease payments, mortgage interest and principal amortization, employee compensation, real estate taxes, insurance and the Guarantee Payments to the Limited Partners. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 6).

18. In spite of the existence of the Car Wash Agreement, both Glick, Sr. and Vale acknowledge that it was not followed since its inception, and instead, the Harbison Car Wash was managed as one unit, without regard to the Car Wash Agreement clause requiring a separate accounting of monies from the full serve and coin operated facilities. (N.T. 27-28, 5/14/08; N.T. 26-27, 5/15/08). Further, no bank account was ever opened under the Car Wash Agreement, no taxes were filed under the Car Wash Agreement, no contracts were made under the Car Wash Agreement; instead, Glick, Sr. and Vale continued to operate under the umbrella of Dennick and WGI. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, pp. 7-8; N.T. 25-26, 5/14/08; N.T. 26-27, 29, 5/15/08).

19. Both Glick, Sr. and Vale acknowledge that any and all distributions received pertaining to the coin operated car wash were not made under the name of Car Wash Agreement, but rather, were made to Dennick by WGI. (N.T. 31-33, 5/14/08; N.T. 35-37, 5/13/08).

20. Following the bankruptcy of White Glove, Inc. and Glick, Sr. taking over the financial affairs of Harbison Car Wash in 1998, no distributions have been made to either Glick, Sr. or Vale because there were insufficient revenues to cover operating expenses once WGI assumed all of the outstanding debts left by White Glove, Inc. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 8; N.T. 60, 5/13/08; N.T. 31-32; 5/15/08).

WHITE GLOVE ILIFF

21. On November 1, 1992, Glick, Sr., Vale, Baker, Matthew W. Baker and Kim M. Baker formed a limited Pennsylvania partnership titled White Glove of Iliff, L.P. (Defendants Proposed Findings of Fact and Conclusions of Law, pp. 15-16; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 9). The purpose of this partnership was to acquire, lease and develop a car wash facility located on Iliff Avenue in Denver, Colorado. (N.T. 6-8, 5/14/08; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 9).

22. Initially, Baker served as the general partner, and the others served as limited partners. (*Id*.)

23. During the mid 1990's. Glick, Jr. purchased a limited partnership interest in White Glove Iliff. (N.T. 91, 5/14/08; Defendants Proposed Findings of Fact and

Conclusions of Law, p. 16; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 10).

24. In 1998, Vale purchased the general partnership interest from Baker, and assumed the position of general partner at that time. (Defendants Proposed Findings of Fact and Conclusions of Law, p. 16).

25. That same year, 1998, Matthew W. Baker, and Kim M. Baker sold their interest in White Glove Iliff to Vale. (N.T. 9, 5/14/08; N.T. 68-70, 5/13/08).

26. On January 1, 2001, Glick, Sr. transferred half of his interest in White Glove Iliff to his wife, Cathleen S. Glick. (N.T. 64, 5/13/08).

27. As of December, 2001, the mortgage was paid off on White Glove Iliff, and thereafter, the business operated with a positive cash flow making distributions to partners possible. (N.T. 64-65, 5/13/08; Defendants Proposed Findings of Fact and Conclusions of Law, p. 19; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 10).

28. Despite the positive cash flow at White Glove Iliff, Vale has not made any distributions to Glick, Sr., Cathleen S. Glick, or to Glick, Jr. (N.T. 9-10, 15-16, 5/14/08; Defendants Proposed Findings of Fact and Conclusions of Law, p. 20).

29. Rather than make distributions to the limited partners, Vale offset money he believed he was owed under the Car Wash Agreement against the distributions he was supposed to make as general partner of White Glove Iliff to the limited partners. (N.T. 16-17, 5/14/08).

30. Vale acknowledges that the Glick family never received a distribution of any kind for their interest in White Glove Iliff even though the 2007 Schedule K-1 for

Dennick Development indicates that a payment was made to Glick, Sr. in the amount of $162,792.00. (N.T. 71-75, 5/14/08; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 11). Moreover, Vale acknowledged that in his role as general partner of White Glove Iliff he took money from the capital account of Glick, Sr., Cathleen S. Glick, and Glick, Jr. and transferred those monies to himself to pay off a debt he believed he was owed based upon the Car Wash Agreement. (*Id*.)

31. Glick, Sr. never authorized Vale to offset White Glove Iliff distributions against the monies Vale believed he was owed under the Car Wash Agreement. (N.T. 63, 5/13/08).

32. Glick, Jr. has never authorized Vale to offset White Glove Iliff distributions against the monies Vale believed he was owed under the Car Wash Agreement. (N.T. 92, 5/14/08). Also, Glick, Jr. does not have a partnership interest in WGI, Dennick or the Car Wash Agreement. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 2; N.T. 31-32, 34, 5/13/08; N.T. 19-20, 105, 5/14/08).

33. Harvey Richards ("Richards") a certified public accountant, reviewed the White Glove Iliff tax returns and the Dennick tax returns to calculate the amount of money the Glick's were owed for their interest in White Glove Iliff. (N.T. 13-15, 5/15/08).

34. Based on Richard's calculations, Glick, Sr. and Cathleen S. Glick are owed $206,439.00 for their interest in White Glove Iliff and Glick, Jr. is owed $212,569.00 for his interest in White Glove Iliff. (*Id*. at 19).

35. Also under Vale's stewardship, White Glove Iliff spent $68,820.00 to conduct a land valuation survey, and to collect delinquent rent payments. (N.T. 37-39, 5/15/08).

36. Glick, Sr. and Cathleen S. Glick share a one-sixth (1/6) interest in White Glove Iliff, and Glick, Jr. holds a one-sixth (1/6) interest in White Glove Iliff. (N.T. 63-64, 5/13/08; N.T. 91, 5/14/08).

37. Glick, Sr. and Cathleen S. Glick are owed $194,969.00, which represents the monies that should have been distributed to them (i.e., $206,439.00) minus one-sixth (1/6) of the legitimate survey and rent collection expenses totaling $11,470.00. (N.T. 19, 37-39 5/15/08; N.T. 63-64, 5/13/08).

38. Glick, Jr. is owed $201,099.00 which represents the monies that should have been distributed to him (i.e., $212,569.00) minus one-sixth (1/6) of the legitimate survey and rent collection expenses totaling $11,470.00. (N.T. 19, 37-39, 5/15/08; N.T. 91, 5/14/08).

DISCUSSION

A. Defendant is liable for conversion.

Conversion is defined as "the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification."[2] Pennsylvania courts have further stated that "[m]oney may be the subject of conversion."[3]

[2] McKeeman v. Corestates Bank, N.A., 751 A.2d 655, 659 n.3 (Pa. Super. 2000)(*quoting* Stevenson v. Economy Bank of Ambridge, 197 A.2d 721, 726 (Pa. 1964).

[3] McKeeman, 751 A.2d at 659 n.3 (*quoting* Shonberger v. Oswell, 530 A.2d 112, 114 (Pa. Super. 1987).

Instantly, Vale admits that he has offset money owed to Glick, Sr., Cathleen S. Glick, and Glick, Jr. for their interest in White Glove Iliff based upon his belief that Glick, Sr. owed him money stemming from the Car Wash Agreement. (N.T. 16-17, 5/14/08). The testimony and evidence elicited at trial also make clear that none of the plaintiffs ever gave Vale the needed consent to offset money from White Glove Iliff. (N.T. 63, 5/13/08); (N.T. 92, 5/14/08).

In lieu of consent, Vale argues that he was justified in diverting payments to himself based upon Glick, Sr.'s failure to pay him distributions for his interest under the Car Wash Agreement. (N.T. 16-17, 5/14/08). Vale's argument, however, must fail because the record demonstrates that neither Cathleen S. Glick nor Glick, Jr. had any interest in the Car Wash Agreement, and therefore cannot be penalized by Vale for monies he believed he was owed under that agreement. (N.T. 19-20, 5/14/08; Defendants Proposed Findings of Fact and Conclusions of Law, p. 12).

Additionally, Vale's argument that his actions were justified must fail as it pertains to Glick, Sr. because the evidence shows Glick, Sr. was unable to make distributions under the Car Wash Agreement in that there were no profits to be had. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 8; N.T. 60, 5/13/08). If Glick, Sr. made any such distribution, he would have been in violation of Pennsylvania law which states that any "transfer made or obligation incurred by a debtor is fraudulent. . . [if the debtor] believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due."[4] Thus, Vale's insistence that the offsets were justified based upon money owed to him under the Car Wash

[4] Presbyterian Medical Center v. Budd, 832 A.2d 1066, 1073 (Pa. Super. 2003); 12 Pa.C.S. §5105 (2009).

Agreement are unpersuasive due to the financially precarious situation of the Harbison Car Wash as testified to by Glick, Sr. and Richards. (Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 8; N.T. 60, 5/13/08; N.T. 31-32; 5/15/08). Specifically, the Harbison Car Wash was not making a profit, but rather was struggling to meet its debt obligations. Thus, distributions to partners were impractical. *Id*.

This court also notes that Vale's claim that his actions were justified based upon his reliance on the Car Wash Agreement must fail because the record further demonstrates that none of the parties to the Car Wash Agreement ever adhered to it. (N.T. 27-28, 5/14/08; N.T. 26-27, 5/15/08). For these reasons, Vale is liable on plaintiff's claim of conversion.

B. Defendant is liable for breach of fiduciary duty.

Pennsylvania courts have held that general partners possess the same fiduciary obligations to their limited partners as those held by corporate officers to their shareholders.[5] As stewards of the partnership, general partners "must devote themselves to the corporate affairs with a view to promote the common interests and not their own, and they cannot, either directly or indirectly, utilize their position to obtain any personal profit or advantage other than that enjoyed also by their fellow [partners]."[6]

Vale abused his position as general partner of White Glove Iliff by taking proceeds from the business, which rightfully belonged to the limited partners, and transferred their would-be distributions to himself. (N.T. 71-75, 5/14/08; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 11). This conduct is in direct

[5] Alan Wurtzel Commerce Program v. Park Towne Place Apartments L.P., 2001Phila. Ct. Com. Pl. LEXIS 79, *18 (Phila. C.C.P. 2001).

[6] InfoSAGE, Inc. v. Mellon Ventures, L.P., 896 A.2d 616, 636 (Pa. Super. 2006).

contravention to the fiduciary duty owed, which specifically prohibit general partners from utilizing their position for their own benefit or advantage.[7] This Court has already determined that Vale's actions were performed without consent or justification, and there can be no conclusion other than that which holds that Vale has breached his fiduciary duties to the limited partners of White Glove Iliff.

C. Plaintiff has not proven claims of unjust enrichment or fraud

Plaintiffs claim based on a theory of unjust enrichment must be dismissed. In order to prove a successful claim under unjust enrichment, one must show the following: "benefits conferred on defendants by plaintiffs, appreciation of such benefits by defendants, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendants to retain the benefit without payment of value."[8] These elements are further restricted by Pennsylvania law holding that the doctrine of unjust enrichment is "inapplicable when the relationship between parties is founded upon a written agreement or express contract."[9] Instantly, both parties concede that there is a written agreement which governs the functioning of White Glove Iliff. (Defendants Proposed Findings of Fact and Conclusions of Law, pp. 15-16; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 9). Due to the existence of this writing, plaintiffs' claim under the doctrine of unjust enrichment fails.

[7] *See* InfoSAGE, Inc. 896 A.2d at 636.

[8] Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa. Super. 1999).

[9] Wilson Area Sch. Dist. v. Skepton, 895 A.2d 1250, 1254 (Pa. 2006).

Similarly, the claim of fraud must also be dismissed because plaintiff has not proven all of the necessary elements. In order to prove fraud, one must show evidence of "(1) a misrepresentation; (2) a fraudulent utterance; (3) an intention by the maker that the recipient will thereby be induced to act; (4) justifiable reliance by the recipient upon the misrepresentation; and (5) damage to the recipient as a proximate result."[10] Here, the evidence put forth at trial does not demonstrate that plaintiff relied upon defendants actions in any manner. Therefore, despite Vale's preparation of tax returns showing phantom distributions were made to the plaintiffs for their interest in White Glove Iliff, there is insufficient proof that the Glick's relied upon these non-existent distributions to their detriment. (N.T. 71-75, 5/14/08; Plaintiffs Proposed Findings of Fact and Conclusions of Law, p. 11-13). Based upon this, plaintiff's fraud claim must be dismissed.

CONCLUSION

1. Plaintiff's claim based on breach of a duty of accounting is moot.
2. Defendants are not liable for unjust enrichment.
3. Defendants are not liable for fraud.
4. Defendants are liable for conversion as it pertains to offsets from White Glove Iliff.
5. Defendants are liable for breach of fiduciary duty.
6. This Court finds the testimony of Richards to be credible.
7. Defendants are liable to Dennis T. E. Glick, Sr. and Cathleen S. Glick in the amount of $194,969.00.
8. Defendants are liable to Dennis E. Glick, Jr. in the amount of $201,099.00.

[10] Ellison v. Lopez, 959 A.2d 395, 398 (Pa. Super. 2008).

BY THE COURT,

_____

ALBERT W. SHEPPARD, JR., J.