

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

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THOMAS T. BOOTH,	:	October Term 2001
	:	
Plaintiff,	:	No. 04484
	:	
v.	:	Commerce Program
	:	
FRANK ZARZECKI,	:	
	:	
Defendant.	:	

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**ORDER**

**AND NOW**, this 5<sup>th</sup> day of February, 2004, upon consideration of Plaintiff's Complaint, the response in opposition, the respective memoranda, all other matters of record and following a hearing on the matter, it hereby is **ORDERED** and **DECREED**, in accordance with the Memorandum Opinion being contemporaneously filed with this Order, that judgment be entered in favor of Plaintiff Thomas Booth and against Defendant Frank Zarzecki, in the total amount of \$212,500.00, representing the balance due under the terms of the Stock Purchase Agreement, reasonable attorney's fees and interest.

**BY THE COURT:**

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**C. DARNELL JONES, J.**

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

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THOMAS T. BOOTH,	:	August Term 2001
	:	
Plaintiff,	:	No. 02561
	:	
v.	:	Commerce Program
	:	
FRANK ZARZECKI,	:	
	:	
Defendant.	:	

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**FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

Following a hearing on the matter which was held before the court on October 16, 2003 and based on the findings of fact and analysis set forth herein, this court finds in favor of Plaintiff Thomas Booth (“Booth”) and against Defendant Frank Zarzecki (“Zarzecki”) as follows:

**FINDINGS OF FACT**

**A. Stock Purchase Agreement**

1. Booth and Zarzecki were each 1/3 shareholders in an ambulance business known as Lifetech Ambulance, Inc. (“Lifetech”), which is the subject of the instant litigation.

2. Booth and Zarzecki were also 1/3 shareholders in an affiliated corporation known as Paramedical Transportation Systems, Inc. (“Paramedical”). Paramedical is not the subject of this litigation.

3. The other shareholders of both corporations were Plaintiff’s brother, Jacob J. Booth (22.2%) and Plaintiff’s nephew, Jacob T. Booth (11.2%).

4. On October 15, 1996, all shareholders of Lifetech, including Booth and Zarzecki, entered into a Shareholder Agreement which was drafted by John Swaim, Esquire, corporate counsel for Lifetech (“Swaim”). Exh. P-1 (“Shareholder Agreement”).

5. On or about December 16, 1999, shareholder Jacob J. Booth notified the corporation and the other shareholders that he was retiring, and offered his shares for sale to the corporation in accordance with the Shareholder Agreement. Exh. D-2.

6. Following at least two meetings of the shareholders, the corporation declined to purchase Jacob J. Booth’s shares. However, Zarzecki individually agreed to purchase the 222 shares for the sum of \$500,000.00. This agreement was reduced to writing in a document dated January 14, 2000, which was also drafted by Swaim. Exh. D-3A.

7. Although he had always been a 1/3 minority shareholder, Booth expressed that he did not want to continue as a minority shareholder if the Zarzecki acquired Jacob J. Booth’s shares and became a majority shareholder. Therefore, Booth requested that Zarzecki purchase his 1/3 interest in Lifetech.

8. Zarzecki agreed to purchase Booth’s 333 shares for the sum of \$750,000.00 and an agreement similar to that executed in connection with the sale of Jacob J. Booth’s shares. This document was also prepared by Swaim and was submitted to Booth for review (the “Stock Purchase Agreement”). Exh. P-2.

9. Booth sought further legal representation regarding the proposed Stock Purchase Agreement and, in connection therewith, retained Matthew S. Wolf (“Wolf”), Esquire, who was referred to him by his son, Thomas T. Booth, Jr., Esquire.

10. On behalf of Booth, Wolf revised the Stock Purchase Agreement and submitted it to Zarzecki for at the closing of the sale of Booth's stock on January 14, 2000 (the "Closing").

11. At the time of the Closing, Wolf, on behalf of Booth, prepared and submitted corporate resolutions which provided that all restrictions on the transfer of shares provided in the By-Laws and in the Shareholder Agreement were deemed waived and modified in order to effectuate the sale of the Booth's shares to the Zarzecki (the "Corporate Resolutions"). The Corporate Resolutions were executed by both parties. Exh. P-2.

12. The only two parties to the Stock Purchase Agreement are Booth and Zarzecki; both parties signed the document. Exh. D-3A.

13. Booth was paid \$550,000.00 by wire transfer from the Zarzecki. The remaining \$200,000.00 which was due and owing Booth under the Stock Purchase Agreement was to be paid in accordance with the terms set forth in the Stock Purchase Agreement.

**B. 1999 K-1 Income Attributed to Booth**

14. Thereafter, Booth received a K-1 from LifeTech for tax year 1999, which attributed income to him in the amount of \$26,692.00. Exh. P-3.

15. Booth never received the income attributed to him on the 1999 K-1.

16. Booth paid \$11,400 to the Internal Revenue Service as payment of taxes for the income attributed to him on the 1999 K-1 (the "Tax Payment"). Exh. P-3.

### C. Underlying Action

17. In May of 2000, fourteen (14) months before the next payment was due under the Stock Purchase Agreement, Booth, who was represented by Wolf, the same attorney who represented him at the Closing, instituted suit by Writ of Summons in the Court of Common Pleas of Philadelphia County, styled Thomas T. Booth v. Frank Zarzecki, Jacob J. Booth, Jacob T. Booth, Life-Tech Ambulance, Inc. and Paramedical Transportation Systems, Inc., May Term, 2000, No. 4724. (the “Underlying Action”).

18. On July 10, 2000 Booth filed a complaint against all defendants which contained six (6) counts and claimed damages for breach of fiduciary duty, breach of contract, civil conspiracy, and claims for punitive damages. In the initial complaint, Plaintiff contended that:

- a. “Plaintiff was not paid full value on his shares by Zarzecki;”
- b. The Defendants entered into agreements (the Stock Purchase Agreement) “causing a diminution in value to Plaintiff’s shares;” and,
- c. Plaintiff sustained damages which “include loss of value of Plaintiff’s shares, loss of employment with the company, loss of income and benefits, and other losses which have yet to be quantified.”

19. On September 12, 2000 Plaintiff filed his First Amended Complaint against the same defendants which also contained six (6) counts and claimed damages for breach of fiduciary duty, breach of contract, civil conspiracy, breach of oral employment agreement and claims for punitive damages.

20. On October 30, 2000 Plaintiff filed his Second Amended Complaint which contained twelve (12) counts and claimed damages for breach of fiduciary duty, trespass, outrage, breach of contract, civil conspiracy, negligence and conversion.

21. All of the claims set forth in twelve (12) counts of Plaintiff's Second Amended Complaint sought monetary damages in excess of \$600,000.00 and damages in excess of the consideration agreed upon by Plaintiff and Defendant (\$750,000.00).

22. Zarzecki orally agreed to settle the Underlying Action by paying the total sum of \$11,400.00 to Booth, representing the amount of the Tax Payment.

23. The remaining Defendants requested a release of all claims. Defendants then instructed their counsel to prepare a Settlement Agreement and General Release.

24. On November 20, 2000, a draft Settlement Agreement and General Release was prepared by Zarzecki's counsel, Swain, and forwarded to Booth's attorney, Matthew S. Wolf, Esquire, for review (the "Settlement Agreement"). Exhs. D-5, P-7.

25. Wolf, on behalf of Booth reviewed the draft Settlement Agreement and requested modifications thereto in correspondence dated December 7, 2000. Exh. D-6.

26. On December 8, 2000, Defendants agreed to the requested modifications to the Settlement. Exh. D-7.

27. Booth signed the Settlement Agreement on December 18, 2000 in the presence of Wolf, who executed same as a witness.

28. On December 28 2000, the day before the Release was executed by all parties, Zarzecki admitted at trial that the remaining \$200,000.00 which was due and owing Booth under the Stock Purchase Agreement was still owed to Booth in accordance with the terms set forth in the Stock Purchase Agreement.

29. The Settlement Agreement was executed by all parties on December 29, 2000. Exh. P-7.

30. The Underlying Action was marked settled, discontinued and ended by the Prothonotary on February 6, 2001. Exh. D-11.

31. The present lawsuit (the “Instant Action”) was instituted by Booth against only Zarzecki and seeks payment of remaining \$200,000.00 due and owing pursuant to the Stock Purchase Agreement.

35. In defense of this lawsuit, Zarzecki claims, *inter alia*, that he is no longer obligated to pay Booth the balance due under the Stock Purchase Agreement because the terms of the Settlement Agreement released him from that obligation.

### **CONCLUSIONS OF LAW**

The testimony and evidence presented at trial reveals the following

1. Zarzecki’s alleged claims against Booth for abuse of process and malicious prosecution are not the subject of any current legal action and therefore have no bearing on the Instant Action.
2. Any potential claims against Booth for underpayment or overpayment of Medicare claims would have expired prior the execution of the Settlement Agreement, due the applicable statute of limitations.
3. The facts and circumstances surrounding the execution of the Settlement Agreement reveals that it was not the parties’ intention that Zarzecki would be released from his obligation to pay the balance due under the Stock Purchase Agreement. This conclusion is supported by the trial testimony of Zarzecki himself.
4. There was no discussion of nor any intent expressed to rescind, reform or modify the obligations set forth in the Stock Purchase Agreement in connection with the

settlement of the Underlying Action, nor does the phrase “Stock Purchase Agreement” appear anywhere in the Settlement Agreement.

5. At no time prior to the execution of the Settlement Agreement was there a breach of the Stock Purchase Agreement by either party.

6. The Stock Purchase Agreement was neither rescinded nor modified by the parties and remains a binding contract between Booth and Zarzecki.

7. The facts and circumstances surrounding the execution of the Settlement Agreement reveals that there was no consideration given for any waiver of Zarzecki’s obligation to pay Booth the balance due and owing under the Stock Purchase Agreement.

8. The \$11,400.00 paid by Zarzecki to Booth in connection with the Settlement Agreement represented the amount of the Tax Payment and did not extinguish Booth’s claims under the Stock Purchase Agreement.

9. The execution of the inartfully drafted Settlement Agreement allowed Booth to collect the Tax Payment and to give up his claim for damages in connection with the Underlying Action. Booth never intended to give up his right to the \$200,000.00 which was undisputedly owed to him under the Stock Purchase Agreement. Any other interpretation of the Settlement Agreement is wholly unsupported by the record and would effectuate an absurd result.

10. There is no dispute as to the terms of the Stock Purchase Agreement.

11. Zarzecki is in default of the Stock Purchase Agreement in that he failed to pay \$50,000.00 to Booth on Monday, July 16, 2002 and further failed to begin payments of \$1,000.00 per week thereafter to Booth, in accordance with the terms of the Stock Purchase Agreement.

12. Zarzecki has not paid late fees, interest or attorney' fees, as specified by the Stock Purchase Agreement.

13. In accordance with the unambiguous terms of the Stock Purchase Agreement, the entire balance of \$200,000.00 is immediately due and owing, including interest, costs and attorney' fees.

14. The interest, as calculated by Plaintiff, from July 23, 2001 until the date of trial (October 16, 2003) is \$1,860.00. Pl. Prop. Findings. ¶ 43. To date, Defendant has not contested this calculation.

15. Plaintiff incurred \$10,640.00 in attorney's fees in connection with this matter. Pl. Prop. Findings, Exh. A. Based upon a review of the uncontroverted Plaintiff's Affidavit regarding same, the court finds such fees to be reasonable and appropriate under the circumstances.

### **CONCLUSION**

Based on the foregoing findings of fact and conclusions of law, this court orders that judgment be entered in favor of Plaintiff Thomas Booth and against Frank Zarzecki

12. There is no dispute as to the terms of the Stock Purchase Agreement. in the total amount of \$212,500.00, representing the balance due under the terms of the Stock Purchase Agreement, reasonable attorney's fees and interest.

**BY THE COURT:**

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***C. DARNELL JONES, J.***

Dated: February 5, 2004

