

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

AARON WESLEY WYATT	: MARCH TERM, 2003
<i>Plaintiff</i>	
v.	: No. 2070
GRANT THORNTON LLP,	: (Commerce Program)
<i>Defendant</i>	: Motion Control No. 061552

ORDER

AND NOW, this 14th day of November 2006, upon consideration of defendant, Grant Thornton LLP's Motion for Summary Judgment, plaintiff, Aaron Wesley Wyatt's answer in opposition, the respective memoranda, all other matters of record and in accord with the Opinion being entered contemporaneously, it is **ORDERED** that Grant Thornton's Motion for Summary Judgment is **GRANTED** and all claims are **Dismissed**.

BY THE COURT

ALBERT W. SHEPPARD, JR., J.

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<i>Defendant</i>	
	: Motion Control No. 061552

OPINION

Albert W. Sheppard, Jr., J.November 14, 2006

Defendant, Grant Thornton LLP, moves for Summary judgment. Essentially, the issue is whether financial information allegedly withheld in breach of contract caused Wyatt to relinquish certain shares of stock at a discounted price.

For the reasons discussed, the Motion for Summary Judgment is granted and the Complaint is dismissed.

BACKGROUND

In 1998, Aaron Wesley Wyatt (“Wyatt”) and Richard G. Phillips (“Phillips”), entered into a Settlement Agreement to stabilize their intertwined but contentious affairs. Under this agreement, Wyatt and Phillips became respectively 50% owners of Pilot Air Freight Corporation and of its holding company, Pilot Holding Company (collectively, “Pilot”).¹ This agreement

¹ Wyatt v. Phillips, 2004 Phila. Ct. Com. Pl. LEXIS 89 at *1 aff’d, 880 A.2d 20 (Pa. Super. 2005). Exhibit 2 to Grant Thornton’s memorandum of law in support of its Motion for Summary Judgment.

specified that Ernst & Young LLP should replace Grant Thornton LLP (Grant Thornton), as auditor of Pilot.² In 1999, Wyatt and Phillips entered into a separate Stockholders' Agreement.³ Under the Stockholders' Agreement, either Wyatt or Phillips could offer to buy the shares of the other on certain dates.⁴ The offeree could either accept the offer and sell his shares, or reject the offer and buy-out the offeror. In either case, the buy-out price was fixed by the original offer.⁵ Under the Stockholders' Agreement, Phillips retained "all the responsibilities and control" over Pilot's operations.⁶ As in the Settlement Agreement, the Stockholders' Agreement also provided that Ernst & Young should replace Grant Thornton as auditor of Pilot.⁷

The Complaint avers that in 1999, an associate of Phillips asked Wyatt to consider extending Grant Thornton's retention "in the best interests of Pilot."⁸ Wyatt agreed to consider the request, and held meetings with Grant Thornton.⁹ According to the Complaint, Wyatt and Grant Thornton allegedly reached the following oral agreement - - In consideration for Wyatt's agreement to forego his right to replace Grant Thornton with Ernst & Young, Grant Thornton, while acting as auditor of Pilot, would disclose to Wyatt all of Pilot's financial records, and would report to Wyatt any of Phillips' breaches of the Settlement Agreement.¹⁰

² Settlement Agreement, attached as Exhibit A to defendant Grant Thornton's Motion for Summary Judgment at ¶ 13(b).

³ Stockholders' Agreement attached as Exhibit B to defendant Grant Thornton's Motion for Summary Judgment at ¶ 3.

⁴ Id.

⁵ Id.

⁶ Id. at 4.

⁷ Id. at ¶ 4(h).

⁸ Complaint at ¶ 7.

⁹ Id. at 8-9.

¹⁰ Id. at ¶¶ 9-12.

Wyatt, distrustful of how Phillips handled Pilot's assets, tried to buy-out Phillips in July 2001. To determine Pilot's worth and to fix the price of his bid, Wyatt invoked the alleged oral contract with Grant Thornton, and demanded that Grant Thornton disclose not only all of Pilot's financial statements, but also any alleged breaches of the Settlement Agreement committed by Phillips. According to Wyatt, Grant Thornton refused to comply.¹¹ Grant Thornton, however, contends that it produced the pertinent financial statements, and disclosed its knowledge of Phillips's managerial conduct, pursuant to a subpoena issued on June 5, 2001 by the Court of Common of Delaware County, in a separate lawsuit.¹² Wyatt neither admits nor denies that it received this information.¹³ Following these alleged events, Wyatt placed his bid.

The Complaint alleges that Wyatt, lacking the pertinent information, and unable to assess Pilot's worth, placed conditions on his bid in violation of the plain language of the Stockholders' Agreement.¹⁴ As a result of this defect, a court voided Wyatt's bid and preserved the status-quo between the two shareholders.¹⁵

¹¹ Id. at ¶¶ 13-14.

¹² Pilot Holding Company and Pilot Air Freight Corporation v. Aaron Wesley Wyatt, No. 01-2262 (Pa. Com. Pl. Del. June 5, 2001), exhibit F and attached Exhibit A to defendant Grant Thornton's memorandum in support of its Motion for Summary Judgment.

¹³ Grant Thornton's first set of requests for admission directed to plaintiff Wyatt, and plaintiff Wyatt's response. Exhibits 3, 4 to Grant Thornton's memorandum of law in support of its Motion for Summary Judgment, questions 12-13.

¹⁴ Complaint at ¶ 20.

¹⁵ Wyatt v. Phillips, 2002 Phila. Ct. Com. Pl. LEXIS 30 at *10-11 petition denied, 2004 Pa. Ct. Com Pl. LEXIS 89.

One year later, in July 2002, Wyatt placed a second bid. This time, under the terms of the Stockholders' Agreement, Phillips rejected and counter-offered, raised sufficient funds, and bought-out Wyatt for the price of the original offer. This court, in 2004, enforced the transaction through a consent decree.¹⁶

Following the events above, Wyatt sued Grant Thornton under several theories: breach of contract (Count I), promissory estoppel (Count II), aiding and abetting a fiduciary's breach (Count III), and negligence (Count IV).

DISCUSSION

At the onset, the court notes that in Pennsylvania, summary judgment will be granted when a party bearing the burden of proof fails to offer evidence of facts that are indispensable to the jury at trial.¹⁷

I. WYATT HAS NOT SHOWN THAT GRANT THORNTON'S ALLEGED BREACH CAUSED HIM INJURY.

Wyatt argues that Grant Thornton's alleged breach negated his July 2001 bid and caused him to relinquish his stock at a discounted price.¹⁸ The court disagrees.

In a breach of contract, recovery may follow upon a showing that the breach caused the loss. Logan v. Mirror Printing Company of Altoona, Pa., 410 Pa. Super. 446, 447, 600 A.2d 225, 226 (1990) (citing Exton Drive-In v. Home Indemnity Co., 436 Pa. 480, 261 A.2d 319 (1969)).

¹⁶ Wyatt v. Phillips, 2004 Phila. Ct. Com. Pl. LEXIS 89 at *15 aff'd, 880 A.2d 20 (Pa. Super. 2005). Exhibit 2 to Grant Thornton's memorandum of law in support of its Motion for Summary Judgment.

¹⁷ 401 Fourth St., Inc. v. Investors Ins. Group, 583 Pa. 445, 461, 879 A.2d 166, 175 (2005) (citing Pa. R.C.P. 1035.2(2)).

¹⁸ Complaint at ¶ 20.

In Mirror Printing, a political candidate entered into an advertising contract with a newspaper.¹⁹ Under the contract, the newspaper agreed to run five advertisements in support of the candidate's election. However, the newspaper breached the agreement by running only three of the five promotions. The candidate, having been defeated by few votes, sued the newspaper, claimed the loss of any future pension benefits as damages, and alleged that his injury was the natural or foreseeable consequence of the breach. The trial court disagreed and entered summary judgment for the newspaper.²⁰ The candidate appealed.

Upholding summary judgment, the Superior Court stated that “to recover for damages pursuant to a breach of contract, the plaintiff must show a causal connection between the breach and the loss.”²¹ Furthermore, the Court held that the candidate, unable to “establish with certainty that the results of the election would have been different if the [newspaper] had printed the two additional ads,” could not claim injury as a result of the newspaper's breach.²²

Here, Grant Thornton asserts that Wyatt received all of Pilot's available financial statements and all of Grant Thornton's knowledge on how Phillips managed Pilot. Most importantly, Grant Thornton asserts that it made all the required disclosures, if not by complying with the terms of an alleged contract, then by obeying to a court's subpoena.²³ Wyatt, however, fails to rebut this assertion. In light of Grant Thornton's un-rebutted assertion that Wyatt received what he wanted, Wyatt cannot show that the results of his bid would have been different if Grant Thornton, instead of providing the information pursuant to a subpoena, had produced it

¹⁹ See Mirror Printing, 410 Pa. Super. at 448.

²⁰ Id. at 449.

²¹ Id. at 448.

²² Id. at 450-51.

²³ Grant Thornton's memorandum of law in support of its Motion for Summary Judgment at 21-22.

by performing under the alleged contract. Simply stated, Wyatt cannot show the causal connection between the alleged breach and the alleged injury.

II. WYATT CANNOT RECOVER UNDER PROMISSORY ESTOPPEL (COUNT II).

Wyatt contends that he relied upon the alleged promises made by Grant Thornton, and that he suffered injury when Grant Thornton allegedly breached its promises. The court disagrees.

In Pennsylvania, promissory estoppel is available to the party who can establish that: "(1) the promisor made a promise that he should have reasonably expected would induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise."²⁴

Here, Grant Thornton asserts that pursuant to a subpoena, Wyatt received all of Pilot's financial statements and all of Grant Thornton's knowledge on how Phillips managed Pilot. Based on this un-rebutted assertion, Wyatt cannot show that injustice can be avoided through the enforcement of Grant Thornton's alleged promise. Stated differently, Wyatt, having received what he was promised, cannot show that he suffered injustice.

For these reasons, the Motion for Summary Judgment is granted.²⁵ The court will issue an Order consistent with this Opinion.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

²⁴ Crouse v. Cyclops Indus., 704 A.2d 1090, 1093 (Pa. Super. Ct. 1997)

²⁵ Wyatt concedes that he cannot prove the claim of aiding and abetting a fiduciary's breach (Count III). Oral Argument, August 16, 2006 at 56:15-57:2. Wyatt admits also that there is no proof of negligence (Count IV). The last minute appeal for more time is unavailing. Discovery had closed and the facts were apparent to all. Oral Argument, August 16, 2006 at 45:24-46:7.