

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KEITH and KAREN ARMSON,
Plaintiffs

vs.

MARK HELSEL and PINNACLE BASEBALL, LLC, d/b/a
U.S. ELITE BASEBALL,
Defendants

: NO. 16 – 1572
:
: CIVIL ACTION - LAW
:
:
: Determination of
: Percentage Ownership

OPINION AND ORDER

The parties appeared before the court on September 15, 2017 on Plaintiff's Motion for Sanctions and at that time agreed that a preliminary determination by the court of Plaintiffs' ownership interest in Pinnacle Baseball, LLC would serve to expedite resolution of this matter. A hearing for that purpose was held October 27, 2017. The parties presented most of the facts through a stipulation marked as Plaintiffs' Exhibit 1.

The parties agree that Plaintiffs initially invested \$35,000 in the company in exchange for a 15% ownership interest and at that time, Defendant Mark Helsel owned 65% and one Jay Mathieu owned 20%. The primary dispute arises with respect to \$33,320 loaned to the company by Plaintiffs after that initial investment, and a secondary dispute centers on Mr. Mathieu's interest which was redeemed at some point after the initial investment.

In support of their argument that the \$33,320 investment provided them with a contractual right to an additional 15% interest, Plaintiffs rely on the following document executed August 17, 2015, attached to Plaintiffs' Exhibit 1 as Exhibit "A":

Armson's agree to loan 35K to Pinnacle Baseball in return for the following:

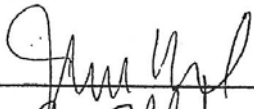
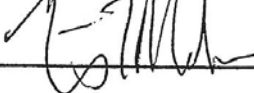
- A. 15% ownership of Pinnacle Baseball. See below.
- B. Loan repayment at 8% APR with payments beginning 1/1/16 for 36 months.
- C. Armson's two son's play at no charge when they have been selected to a team.

Pinnacle Baseball agrees to the terms above based on an understanding and expectation of receiving additional financing through the Armson's, via conventional lending, or other sources.

Should Pinnacle Baseball receive an offer to be acquired by a third party it reserves the right for a period of 120 days from August 17, 2015 to buy out the Armson's for 35K, plus 8% APR.

Should Pinnacle Baseball receive an offer to be acquired by a third party for fair market value after 120 days from August 17, 2015 the Armson's would receive ownership percentage of the sale price, or 35K at 8% APR, whichever is greater.

Pinnacle Owners

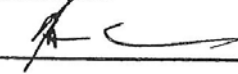
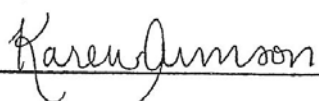
Mark Helsel  Date August 17, 2015
Jay Mathieu  Date 8/17/15

Percentage of Ownership of Pinnacle Baseball after 35K and before any additional monies.

Mark Helsel 65%
Jay Mathieu 20%
Keith and Karen Armson 15%

Anticipated Percentage of ownership after additional money from bank OR investor OR personal loan from Armson's:

Mark Helsel-55%
Jay Mathieu-15%
Keith and Karen Armson 30%

Keith Armson  Date 8/17/15
Karen Armson  Date 8/17/15

"A"

Plaintiffs point to the final provision in the document, which awards them a 30% interest “after additional money from ... personal loan from Armsons.”

Defendant Helsel agrees that the additional \$33,320 was invested, but contends that “additional money” meant \$150,000 and Plaintiffs are thus not entitled to any additional ownership interest at this time.

Clearly, “additional money” is not spelled out in the document. While Defendant Helsel testified that he wanted \$150,000 before Plaintiffs would acquire the additional 15% interest, Plaintiff Keith Armson testified that he doesn’t remember a specific figure being discussed before the initial investment, and that he would never say \$150,000 was attainable.

Defendant Helsel drafted the document and could easily have stated: “Anticipated percentage of ownership after additional \$115,000 from bank OR investor OR personal loan from Armsons.” Further, the court questions why an investment of \$35,000 garners a 15% interest, while a further investment of \$115,000 is deserving of only another 15%. In light of these issues, the court believes the contract should be interpreted according to its plain meaning. The subsequent loans totaling \$33,320 clearly and plainly fulfill the requirement of “additional money”. Plaintiffs are therefore entitled to a 30% interest as of the date of the additional investment.¹

The second issue raised by Plaintiffs centers on the interest held by Jay Mathieu. The parties agree that Mr. Mathieu no longer has an interest in the company and it appears from the testimony that such interest was transferred in late 2016. The parties disagree on whether Mr. Mathieu’s interest was transferred to the company and is thus shared (Plaintiffs’ position), or whether it was

¹ Unfortunately, that date was never provided.

transferred directly to Defendant Helsel in its entirety (Defendant Helsel's position).

According to Defendant Helsel, Mr. Mathieu worked for the company but was not paid for his work and instead was given a 20% interest in the company. One day, according to Mr. Helsel, Mr. Mathieu said he no longer wanted the interest and he "just gave it back". Mr. Helsel also testified that the company paid Mr. Mathieu's back taxes. He insisted that such was done because "the company was not set up the right way and he should not have had to pay taxes", and that the payment was *not* in exchange for the return of the interest. Defendant Helsel also claims that Mr. Mathieu gave his interest to Mr. Helsel, not to the company. The court finds this claim unsupported by the evidence, however, and determines that the interest was returned to the company in exchange for the consideration of having his back taxes paid by the company.

Because there is no evidence of when Plaintiffs made the additional investments, the court is unable to determine their exact percentage ownership. If the investment was made prior to Mr. Mathieu's return of his ownership interest, Plaintiffs are entitled to 35.29411%² of 15%, or 5.29%, in addition to the 30%, for a total of 35.29%. If Mr. Mathieu returned his ownership interest before Plaintiffs made any additional investment, Plaintiffs are entitled to 18.75%³ of 20%, or 3.75%, in addition to the 30%, for a total of 33.75%.

² With a 30% interest, Plaintiffs have a 35.29411% interest in the 85% owned outside of the 15% interest being divided, and with a 55% interest, Defendant Helsel has a 64.70588% interest in that ownership.

³ With a 15% interest, Plaintiffs have a 18.75% interest in the 80% owned outside of the 20% interest being divided, and with a 65% interest, Defendant Helsel has a 81.25% interest in that ownership.

ORDER

AND NOW, this 31st day of October 2017, for the foregoing reasons, the court finds Plaintiffs' ownership interest to be either 35.29% or 33.75%, depending on whether the additional \$33,320 was loaned to the company before or after Mr. Mathieu returned his interest to the company.⁴

BY THE COURT,

Dudley N. Anderson, Judge

cc: Michael Zicolello, Esq.
Phillip Robertson, Esq.
314 Allegheny Street
Hollidaysburg, PA 16648
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson

⁴ This date is to be set at the date the back taxes were paid by the company.