

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAMSPORT ORTHOPEDIC ASSOCIATES, LTD., : **No. 00-01781**
 :
 :
vs. : **CIVIL DIVISION**
 :
 :
BRIAN A. BATMAN, M.D., :
Defendant : **1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's Order issued on or about June 10, 2002. The reasons for the Court's Orders issued on or about June 10, 2002, which denied both parties post trial motions to the Court's verdict after a non-jury trial.

FINDINGS OF FACT:

1. Williamsport Orthopedic Associates, Ltd. (hereinafter "WOA") is a professional corporation with a principal place of business situate at 1705 Warren Avenue, Williamsport, Pennsylvania 17701.
2. Brian A. Batman, M.D. (hereinafter "Dr. Batman") is an orthopedic surgeon.
3. On December 13, 1999, WOA and Dr. Batman entered into a Stock Purchase Agreement (Plaintiff's Exhibit 3), a Shareholder's Agreement

(Plaintiff's Exhibit 4) a Practice Management Agreement (Plaintiff's Exhibit 5) and a Note (Plaintiff's Exhibit 6).

4. The Practice Management Agreement had an initial term of two (2) years beginning January 1, 2000. Plaintiff's Exhibit 5, para. 3.

5. The Practice Management Agreement refers to WOA as "Company" and Dr. Batman as "Customer".

6. Paragraph 5 of the Practice Management Agreement states, in relevant part:

Customer shall pay Company in advance on the first day of each calendar month during the term of this Agreement, a fee set from time to time by Company which can be adjusted periodically to reflect increases and decreases in expenses. The fee shall initially be Twenty seven thousand four hundred dollars (\$27,400.00). This agreement has been executed contemporaneously with the purchase, by Customer, of shares of Company and, therefore, the amount of the fee shall be, at all times, no greater than that paid by the other shareholders and Customers of Company, who are maintaining full time practices with Company.

Plaintiff's Exhibit 5, para. 5 (emphasis added).

7. Dr. Worobec is a shareholder of WOA.

8. During the year 2000 when Dr. Batman was a shareholder and practiced orthopedics with WOA's other shareholders, Dr. Worobec did not pay a practice management fee. N.T., March 18, 2002, at pp.23, 58, 154, 188-9.

9. From January 1, 2000 to October 31, 2000, Dr. Batman had 3,582 patient visits and Dr. Worobec had 1,095 patient visits. N.T., March 25, 2002, at p.12.

10. During the year 2000 and for two or three years previous thereto, Dr.

Worobec did not have a full time practice. N.T., March 18, 2002, at pp. 17-18, 22-23, 62, 151, 174; see also N.T., March 25, 2002, at pp. 11-13, 17-18.

11. In a memo dated September 30, 2000 to Frank Tripoli, the administrator of WOA, Dr. Batman resigned and terminated his affiliation with WOA effective November 1, 2000.

12. Thereafter, Dr. Batman began a fee-for service orthopedics practice in Sunbury Pennsylvania under the name Valley Orthopaedics & Sports Medicine. Plaintiff's Exhibits 13, 14; see also N.T., March 18, 2002, at pp. 99-100, 128, 149-50.

13. Paragraph 9 of the Practice Management Agreement states:

In the event that Customer, for any reason, changes or loses his/its status as an independent, fee-for-service practice providing professional services at its practice location(s), this Agreement will be suspended. However, all rights, liabilities and obligations of each party which have accrued prior to suspensions hereunder shall remain in effect. If Customer does not return to his/its status as an independent, fee-for-service practice providing professional services at its practice locations within one (1) year of the date of his/its status change, this Agreement will terminate at the end of said one (1) year period. If Customer returns to his/its status as an independent, fee-for-service practice providing professional services at his/its practice locations any time within one (1) year of the date of its status change, this Agreement will continue in full force and effect between the Company and Customer for the period remaining under this Agreement.

Plaintiff's Exhibit 5, para. 9.

14. Dr. Batman did not change or lose his status as an independent, fee-for-service practice.

15. As a result of Dr. Batman leaving WOA as of November 1, 2000, Dr. Straley and Dr. DiSimone each pay an additional \$6,000 per month in practice management fees. N.T., March 18, 2002, at pp. 41, 43, 186.

16. Generally, WOA recruited new physicians within six (6) months or less. N.T., March 18, 2002, at p. 192.

17. Sometime after Dr. Batman left, WOA interviewed two (2) candidates to replace Dr. Batman. N.T., March 18, 2002 at p. 187.

18. The male candidate interviewed could have been hired, but WOA didn't like him. N.T., March 18, 2002 at p.35.

19. The malpractice situation in Pennsylvania, which purportedly was part of the female candidate's reasons for declining a position with WOA, was not an issue when Dr. Batman left WOA on November 1, 2000. N.T., March 18, 2002 at p. 94, 187.

20. The malpractice issue arose more than six (6) months after Dr. Batman left WOA. See N.T., March 18, 2002 at p. 94.

21. At the end of 1999 or the beginning of 2000, Dr. Straley became ill and could not pay his practice management fee. N.T., March 18, 2002 at p.70.

22. WOA told Dr. Batman that Dr. Straley's practice management fee would be split equally and paid by Dr. DiSimone, Dr. Bailey and Dr. Batman. N.T., March 18, 2002, at pp. 70, 92.

23. WOA assessed Dr. Batman an extra \$9,133 in practice

management fees, which represented one-third of Dr. Straley's practice management fee. N.T., March 18, 2002 at pp. 70, 92.

24. Dr. Batman was told that the extra practice management fees would be refunded to him. N.T., March 18, 2002, at p. 93.

25. Dr. Batman paid an extra \$9,133 in practice management fees to WOA as he was directed to do by WOA. N.T., March 18, 2002 at p. 71, 93.

26. In his counterclaim against WOA, Dr. Batman sought the refund of the \$9,133, which was promised to him.

27. Pursuant to the Shareholder Agreement, Dr. Batman purchased eleven (11) shares of WOA stock. N.T., March 18, 2002 at pp. 19-20.

28. Dr. Batman paid \$15,000 toward the purchase of the stock and signed a note for the remaining \$40,000. N.T., March 18, 2002 at pp. 26-27; Plaintiff's Exhibit 3, para. 2 and Plaintiff's Exhibit 6.

29. The parties stipulated that if the Court awarded WOA and sums on its claims, Dr. Batman would get a credit or set-off for \$15,000 and he would relinquish his stock in WOA. N.T., March 18, 2002, at p. 47.

CONCLUSIONS OF LAW:

1. Dr. Batman breached the Practice Management Agreement when he left WOA as of November 1, 2000.

2. The Practice Management Agreement was not suspended under paragraph 9 because Dr. Batman did not change or lose his status as a fee-for-service orthopedics practice.

3. WOA suffered damages in the amount of \$12,000 per month as a result of Dr. Batman's breach.

4. WOA could have hired another physician within six (6) months of Dr. Batman's exodus.

5. Therefore, WOA incurred damages in the amount of \$72,000 as a result of Dr. Batman's breach.¹

6. Dr. Batman is entitled to a credit of \$15,000 relating to the relinquishment of his stock.

7. Dr. Batman is entitled to a refund from WOA of the \$9,133 in extra practice management fees he paid in late 1999 or early 2000.

8. The net result is an award against Dr. Batman and in favor of WOA in the amount of \$47,867.

DISCUSSION

WOA sought over \$300,000 in damages from Dr. Batman for his breach of the Practice Management Agreement fourteen (14) months prior to the expiration of its term. WOA claimed its damages were the full amount of Dr. Batman's twenty-seven thousand four hundred dollar (\$27,400) practice management fee per month for fourteen (14) months. The testimony of Dr. DiSimone, however, established that WOA's actual financial loss was \$12,000 per month. N.T., March 18, 2002, at p. 50.

Dr. Batman asserted WOA was not entitled to any monies for several reasons. First, Dr. Batman alleged he did not owe any practice management fees because Dr. Worobec did not pay any such fees. Dr. Batman relied on the

language of paragraph 5 of the Practice Management Agreement which stated t he amount of Dr. Batman's fees would be no greater than that of the other shareholders. That provision, though, only applies to shareholders who are maintaining full time practices. The testimony presented at trial established Dr. Worobec did not maintain a full-time practice. Both Dr. DiSimone and Frank Tripoli testified that Dr. Worobec was in his seventies and no longer practicing full-time. See Finding of Fact 10. Even Dr. Batman acknowledged Dr. Worobec no longer performed major surgeries. See N.T., March 18, 2002, at p. 85. Nevertheless, Dr. Batman contended Dr. Worobec had a full-time office practice. Although he came into the office several days per week, Dr. Worobec did not spend full days in the office. N.T., March 18, 2002, at pp. 62, 172, 174. Moreover, when Dr. Batman's office visits are compared to Dr. Worobec's, Dr. Batman saw three (3) times as many patients as Dr. Worobec. See Finding of Fact 9. Based on this evidence, Dr. Worobec clearly did not have a full-time practice.

Second, Dr. Batman claimed the Practice Management Agreement was suspended pursuant to paragraph 9, because he moved his office to Sunbury, Pennsylvania and no longer practiced at 1705 Warren Avenue, Williamsport, Pennsylvania. This Court could not agree. It is well settled that contracts must be construed as a whole and one part cannot be interpreted so as to annul another part. Murphy v. Dusquesne Univ. of the Holy Ghost, 565 Pa. 571, 591, 777 A.2d 418, 429 (2001), citing Felte v. White, 451 Pa. 137, 143, 302 A.2d 347, 351 (1973); Shehadi v. Northeastern Nat'l Bank, 474 Pa. 232, 236, 378 A.2d 304, 306 (1977);

Purdy v. Purdy, 715 A.2d 473, 475 (Pa.Super. 1998); Brown v. Cooke, 707 A.2d 231, 233 (Pa.Super. 1998). Paragraph 9 states: “In the event that Customer, for any reason, changes or loses his/its status as an independent, fee-for-service practice providing professional services at its practice location(s), this Agreement will be suspended.” Dr. Batman focused on the phrase ‘at its practice location’ and argued that, by simply moving from 1705 Warren Avenue, the Practice Management Agreement would be suspended. Such an interpretation, however, would render paragraph 3 (which provides a two-year term for the agreement) and paragraph 10 (which prohibits Dr. Batman from practicing in competition with WOA or its shareholders within a fifty (50) mile radius for a two-year period) a nullity. Instead, the Court found that paragraph 9 required a change or loss of status and contemplated situations such as Dr. Batman’s license or hospital privileges being suspended, Dr. Batman suffering a disability that would prevent him from practicing orthopedics, Dr. Batman joining the peace corps or Dr. Batman practicing orthopedics at a free clinic.

Dr. Batman next contended he was only responsible for one-half the financial losses suffered by WOA because Dr. Bailey also left WOA. The Court rejected this contention because, essentially, Dr. Connolly replaced Dr. Bailey. N.T., March 18, 2002, at p. 170.

In the alternative, Dr. Batman asserted WOA’s damages should be limited to a period of six (6) months, because WOA could have hired another physician to replace him in that time frame. The Court agreed. In the past, it took

WOA six months or less to recruit a new physician. Finding of Fact 16. It only took WOA three (3) months to hire Dr. Connolly. N.T., March 18, 2002, at p. 68. WOA claimed it did not and could not hire a replacement because of the medical malpractice situation in Pennsylvania. This situation, however, did not arise until more than six months after Dr. Batman left WOA. Findings of Fact 19 and 20.² Furthermore, WOA could have hired the male candidate it interviewed.³ Therefore, the Court awarded damages for a six (6) month period rather than fourteen (14) months as requested by WOA.

With respect to Dr. Batman's counterclaim regarding his stock in WOA, the parties stipulated that Dr. Batman would surrender his stock and receive a \$15,000 credit or set-off if damages were awarded to WOA. N.T., March 18, 2002, at p. 47. Given this stipulation, the Court does not understand why WOA is appealing this credit.

On the issue of the extra \$9,133 in practice management fees paid by Dr. Batman, WOA asserted that Dr. Batman had to seek a refund from Dr. Straley. This Court could not agree. WOA told Dr. Batman he had to pay these extra fees, and WOA assessed these fees against Dr. Batman. Dr. Batman was told these monies would be refunded to him. He paid the monies to WOA and not to Dr. Straley. Dr. Straley did not ask Dr. Batman to pay one-third of his practice

² As an aside, the Court notes the malpractice situation in Pennsylvania became a "hot" issue when PHICO Insurance Company commenced rehabilitation on or about August 16, 2001. The rehabilitation was changed to liquidation on or about February 1, 2002. Koken v. PHICO Ins. Co., Order of Liquidation, 427 M.D. 2001 (Pa.Comm. 2002).

³ Dr. DiSimone testified that WOA felt the male candidate was "not well enough qualified." N.T., March 18, 2002, at p.36. The way this statement came across to the Court was that WOA elected not to hire the male candidate and his failure to come to WOA had nothing to do with the malpractice situation in

management fees; rather, WOA demanded the payment from Dr. Batman. See Findings of Fact 21-26. Under these circumstances, the Court found WOA was required to refund the \$9,133 to Dr. Batman.

For the foregoing reasons, the Court entered a non-jury verdict in favor of WOA and against Dr. Batman in the amount of \$47, 867.

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: William Carlucci, Esquire
J. David Smith, Esquire
Law Clerk
Work file
Superior Court (original & 1)
Gary Weber, Esquire (Lycoming Reporter)