IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

STEVEN CONFAIR, et al.,	:	CIVIL ACTION
Plaintiffs	:	
	:	
vs.	:	Docket Nos: 06-01777
	:	06-02684
	:	07-00482
CONFAIR COMPANY, INC., et al.,	:	07-00483
Defendants	:	07-01035
	:	07-01656

O P I N I O N AND O R D E R

The Plaintiffs have initiated six separate lawsuits against the Defendants relating to the operation of Confair Company, Inc.(hereinafter "CCI"), a family-owned and operated corporation. It is undisputed by the parties that on or about December 30, 1996, Richard H. Confair and his wife, Diane M. Confair, entered into four separate irrevocable trust agreements. The four trusts included the following: (a) the Steven M. Confair GST Trust; (b) the Jason T. Confair Trust; (c) the Michael M. Confair Trust; and (d) the Benjamin S. Confair Trust. On that same date, as well as on subsequent dates, shares of stock in CCI were transferred into each of the trusts. On or about June 28, 2006, the Board of Directors of CCI voted to purchase any and all shares of CCI stock owned by Steven M. Confair and the four trusts. On November 22, 2006, a letter was sent by counsel for CCI to the Plaintiff, Steven M. Confair, individually and as trustee, advising him of CCI's notice of intent to purchase the stock. Although the Defendant, CCI, has subsequently rescinded its decision with respect to shares of stock owned by the Steven M. Confair GST Trust, the Plaintiffs contest the purchase of stock

owned by Steven M. Confair, the Jason T. Confair Trust, the Michael M. Confair Trust, and the Benjamin S. Confair Trust.

The Defendants have moved for summary judgment seeking dismissal of three of the actions filed by the Plaintiffs, namely 06-02684, 07-00483, and 07-01035. The Plaintiffs have similarly filed a motion for summary judgment. The principle issue before this Court centers upon the interpretation and application of a contract, specifically, a Stock Purchase Agreement executed by CCI shareholders on November 24, 1989. Following review of the parties numerous briefs, argument by counsel, and a careful review of the Stock Purchase Agreement, this Court concludes that the Stock Purchase Agreement gives CCI the option to purchase the shares of each shareholder "at any time." Specifically, paragraph 4 of the Stock Purchase Agreement provides:

> Option of Corporation. Each SHAREHOLDER hereby grants unto CORPORATION an option to purchase all SHARES of stock owned by SHAREHOLDER in CORPORATION **at any time** upon written notice from CORPORATION to any or all of the SHAREHOLDERS at least thirty (30) days prior to said purchase. (Emphasis added).

The Stock Purchase Agreement provides that stock certificates "subject to this Agreement" must be endorsed with the following legend:

> Shares of stock as evidenced by this Certificate are under and subject to a certain Stock Agreement between CONFAIR COMPANY, INC. of Williamsport, Pennsylvania and R. Craig CONFAIR, STEVEN M. CONFAIR, REBECCA A. CONFAIR, MEGAN L. CONFAIR and DAVID S. CONFAIR dated November 24, 1989. A copy of said Agreement is on file in the office of CONFAIR COMPANY, INC."

All of the stock transferred into the respective trusts was transferred by Richard and Diane Confair. Pursuant to the terms of the Stock Purchase Agreement, all but three of the 23 stock certificates gifted to the Trusts included the express legend language set forth in the Stock Purchase Agreement.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Stone v. York Haven Power Co., 749 A.2d 452, 458 (Pa. 2000). Interpretation of a contract is a matter of law and summary judgment is appropriate on such issues. Maloney v. Valley Med. Facilities, Inc., 946 A.2d 702 (Pa.Super. 2008). See also Donegal Mut. Ins. Co. v. Baumhammers, 938 A.2d 286 (Pa. 2007).

It is well-settled in Pennsylvania that when a contract is unambiguous, "the intent of the parties as set forth by the clear language is given effect." Weisman v. Green Tree Ins. Co., 670 A.2d 160, 161 (Pa.Super. 1996). A contract provision is not considered ambiguous simply because the parties do not agree upon the proper construction. Id.

Although the Plaintiffs argue that the Stock Purchase Agreement is not "trigged" pursuant to introductory language contained within the Stock Purchase Agreement, Pennsylvania law clearly provides that when constructing the meaning of a contract, the specific language of a contract controls the general. Trombetta v. Raymond James Fin. Servs., 907 A.2d 550, 560 (Pa.Super. 2006). This Court finds that the language which empowers CCI to exercise its option to purchase stock "at any time" is very specific in nature and accordingly, such language controls over introductory material which states a general intent to restrict the sale of CCI stock on the open market. Moreover, this Court's reading of the Stock Purchase Agreement gives effect to all parts of the Agreement. AK Steel Corp. v. Viacom, Inc., 835 A.2d 820 (Pa.Super. 2003).

Paragraph 1 of the Agreement entitled "Restriction of Shares" restricts shareholder encumbrance or disposal of stock without written consent of the Board of

Directors. The Board is given sixty days after the receipt of notice to give written notice of its desire to purchase the shares. Paragraph 4(f) entitled "Disposition or Encumbrances by Shareholder Shares" sets forth payment under this scenario, specifically stating, "Corporation shall pay Shareholder the purchase price over a period of ten (10) years in equal annual installments plus interest…" Paragraph 2 of the Agreement entitled "Death of Shareholder" permits the Corporation to purchase the stock of a deceased shareholder upon the shareholder's death. Paragraph 4(d) entitled "Payment of Shares Upon Death of a Shareholder" provides the corresponding framework for payment – "within sixty (60) days after qualification of the legal representative of the estate of the Shareholder…" Paragraph 3 entitled, "Option of Corporation" permits the Corporation to purchase shares of stock at any time by written notice at least thirty days prior to purchase. Paragraph 4(e) entitled, "Payment for Shares Upon Exercise of Corporation's Option" requires that payment under this scenario be made as follows: "$50,000.00 within sixty (60) days after receipt by Shareholder of Corporation's election to purchase Shareholder's Shares and the balance of said purchase price to be paid in equal installments over a period of five (5) years plus interest…" Although Plaintiffs assert that "there is no reason to have the options set forth in Paragraph 1 and Paragraph 2 of the Stock Purchase Agreement" if Paragraph 3 permits the Corporation to purchase stock "at any time" without justification, such an argument ignores the language contained in Paragraph 4(d)(e) and (f) which provides a different framework for each purchase option. Additionally, although Plaintiffs assert that the introductory language sets forth the parameters or "trigger" for application of the Stock Purchase Agreement, such a reading fails to account for why a different

payment mechanism is provided, specifically Paragraph 4(e) which requires a lump sum of $50,000.00 be paid within sixty days if the Corporation exercises its option to purchase, as opposed to a payout over a period of ten years if the Shareholder wishes to dispose of or encumber his or her shares. See Paragraph 4(f). As set forth in the briefs filed by Plaintiffs and Defendants, under the general rules of contract construction under Pennsylvania law, "[o]ur rules of construction do not permit 'words in a contract to be treated as surplusage…if any reasonable meaning consistent with the other parts can be given to it." See Tenos v. State Farm Insurance Company, 716 A.2d 626, 631 (Pa.Super. 1998).

Contracts among shareholders conferring option rights are "enforced by courts without hesitation." In re Estate of Mather, 189 A.2d 586, 590 (Pa. 1963). Provisions in contracts among shareholders providing for the purchase of shares "at any time" are enforceable. Shapiro v. Shapiro, 204 A.2d 266 (Pa. 1964).

Accordingly, this Court finds that the Stock Purchase Agreement clearly permits the Corporation to purchase shares of stock "at any time." Although all of the Trustees did not sign the Stock Purchase Agreement, those shares "subject to" the Agreement are those shares endorsed with the legend which references application of the Stock Purchase Agreement. With regard to the three stock certificates that do not bear the legend, this Court finds that they are not subject to the Stock Purchase Agreement, and accordingly the corporation is not free to exercise its option to purchase these shares "at any time."

Beyond their argument that the Stock Purchase Agreement was not "triggered" pursuant to the introductory language contained in the agreement, Plaintiffs assert that payment amount rendered by the Defendants for the shares was "simply absurd."

The Stock Purchase Agreement sets forth the price at which CCI must purchase the shares under three different scenarios. Paragraph 4 of the Agreement provides that if the purchase occurs within one year of the execution of the Agreement then the purchase price would be $30.22 per share. Thereafter, pursuant to paragraph 4(a) of the Stock Purchase Agreement, the price of the stock is either: (1) fixed by the shareholders at their annual meeting as evidenced by a certificate of net worth, or (2) in the absence of a certificate of net worth, the purchase price is to be determined by the book value of the company "as determined by the accountant then in the employ of the Corporation…" See ¶ 4(c)(mislabeled ¶ 4(b) in the Stock Purchase Agreement). Because CCI did not have in place a Certificate of Net Worth, the purchase price was calculated pursuant to Paragraph 4(c). Plaintiffs do not dispute the accountant's valuation of the book value, or calculation of the figures, just application of provisions of the Stock Purchase Agreement. As the Stock Purchase Agreement expressly provides a method of valuation which was followed by the Defendant, this Court finds that terms of the Stock Purchase Agreement relating to valuation and payment are definite, clear and enforceable and the contract terms prevail. Mather Estate, 189 A.2d 586 (Pa. 1963). Moreover, as the Stock Purchase Agreement was executed November 24, 1989, and the Plaintiff was clearly employed by CCI and on the Board of Directors for a number of years, creating, building, and operating CCI[1] this Court finds that the

[1] See Plaintiffs' Brief in Opposition to Defendants' Motion for Partial Summary Judgment, Page 4, footnote 4.

Plaintiff, Steven Confair, had ample opportunity to address any issues regarding the valuation of stock as set forth in the Stock Purchase Agreement.

The final arguments asserted by Defendant involve Counts II – IV raised in the fourth lawsuit filed by the Plaintiffs, specifically *Steven M. Confair, et al. v. Confair Company, Inc. et al. (07-00483).* In Counts II and III of this lawsuit, Plaintiffs claim that the majority shareholders of CCI engaged in an improper "freeze out" of the minority shareholders and breached fiduciary duties owed to Steven Confair and the Trusts by excluding minority shareholders from their proper share of corporate benefits and terminating Steven M. Confair from his employment with CCI. Because this Court finds that the Stock Purchase Agreement empowered CCI to purchase the Plaintiffs shares of stock "at any time" for the book value of the stock as determined by the Corporation's accountant, Plaintiffs claims that they were frozen out must fail. Similarly, it is undisputed that Steven M. Confair was an at-will employee and thus subject to termination at any time. Count IV of Plaintiffs' fourth lawsuit asserts a claim for **"**concerted tortious conduct" by the majority shareholders. Although Defendants assert that "Pennsylvania does not recognize such a cause of action," in Sovereign Bank v. Ganter, 914 A.2d 415 (Pa.Super. 2006), the Pennsylvania Superior Court clearly held, "Based upon the foregoing, we hold that concerted tortious action…is a recognized civil cause of action under Pennsylvania law." Id. At 427. Accordingly, Defendants argument as to Count IV of Plaintiffs' fourth lawsuit must fail.

O R D E R

AND NOW, this 9th day of June, 2008, for the reasons stated in this opinion, the Defendants' Motion for Summary Judgment is hereby GRANTED as it pertains to the lawsuits captioned *Steven M. Confair, et al. v. Confair Company, Inc., et al.*, Nos. 06-02684 and 07-01035[2] with the exception of the three stock certificates owned by the Benjamin Confair Trust, the Michael M. Confair Trust, and the Jason T. Confair Trust which do not bear the legend set forth in the Stock Purchase Agreement. These three (3) certificates are as follows: (a) a certificate dated January 15, 1997, evidencing that on December 30, 1996, 7,800 shares of Defendant Confair Company, Inc. stock were transferred into the Jason T. Confair Trust through his parents as trustees; (b) a certificate of that same date evidencing a similar transfer of 7,800 shares into the Michael M. Confair Trust again on December 30, 1996, through his parents as trustees; and, (c) a certificate of that same date evidencing a similar transfer of 7,800 shares into the Benjamin S. Confair Trust again on December 30, 1996, through his parents as trustees. As for these three (3) stock certificates, the Plaintiffs' Motion for Summary Judgment is GRANTED as this court finds that the Stock Purchase Agreement does not apply to these three stock certificates. In all other respects, Plaintiffs' Motion for Summary Judgment is hereby DENIED. As for *Steven M. Confair, et al. v. Confair Company, Inc. et al.* No. 07-00483, Defendants' Motion for Summary Judgment as to Counts I, II and III is hereby GRANTED. Defendants' Motion for Summary Judgment

[2] This Court believes that this action and Judge Brown's Order dated December 6, 2007 are largely moot as a result of this Order on the parties' Motions for Summary Judgment. To the extent that this Order provides that Steven Confair and the respective Trusts are not shareholders, no right to the corporate records would exist. As for the shares of stock explicitly excluded from application of the Stock Purchase Agreement, those shareholders would have a right to corporate records without the necessity for a Court Order.

as to Count IV, however, is DENIED as Pennsylvania recognizes a cause of action for concerted tortious conduct.

BY THE COURT,

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