IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

TAYLOR A. DOEBLER, III	:	
Plaintiff	:	NO: 08-02288
	:	
vs.	:	
	:	
	:	
TUCKER ARENSBERG, P.C.	:	
Defendant	:	

O P I N I O N

This is a legal malpractice action arising out of the Defendant's representation of the Plaintiff and his company, Doebler Seeds, LLC (hereinafter "Doebler"). Plaintiff alleges that the Defendant gave him improper advice with regard to his separation from Doebler's Pennsylvania Hybrids, Inc. (hereinafter "DPH") and failed to provide the Plaintiff with proper advice related to the legal implications of Doebler competing in the retail corn seed market against his former employer, DPH. Plaintiff seeks damages for losses relative to alleged deficient legal advice in the form of legal fees and costs, loss of the value of the DPH stock, and losses that resulted from the entry of a preliminary injunction.

On June 22, 2010, the Defendant filed a Motion for Summary Judgment. A defendant is entitled to summary judgment when the evidentiary record shows that no genuine issues of material fact exist as to a necessary element of the cause of action or defense, and that the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035.2. The Defendant asserts five (5) grounds for entry of summary judgment. The Defendant contends that the Plaintiff does not have proper standing to

sue, that the statute of limitations precludes recovery, that the Plaintiff is precluded from recovery pursuant to his settlement of the underlying litigation, that the harm allegedly suffered is too speculative, and that causation cannot be established.

Standing to Sue

The Plaintiff alleges that as a result of the Defendants' negligence, he has suffered the following injuries and damages:

a. Plaintiff has incurred legal fees and expenses associated with the Trade Secret Litigation in the amount of $957,154.90;

b. Plaintiff has incurred legal fees and expenses associated with the Doebler Farmland Litigation in the amount of $316,269.15;

c. [dismissed on preliminary objections]

d. Loss of product and inventory, including enjoined seed product and related marketing materials in the amount of $504,981.82;

e. Loss of the value of Plaintiff's DPH stock;

f. Loss of past and future income and earnings;

g. Loss of business and goodwill associated with the use of the Doebler name in connection with the sale of agricultural product; and

h. [dismissed on preliminary objections]

(See Plaintiff's Amended Complaint, ¶ 61(a)-(h)).

Plaintiff's testimony as to damages claimed in Paragraph 61(a) and (b) is as follows:

> Q: The – if you want to look at it, I am going to ask you about 61-A. There you are claiming $957,154.90 described as legal fees and expenses associated with the trade secret litigation?
>
> A: Yes.
>
> * * * * * * * * * * *
> Q: Who paid the Tucker Arensberg bills?

A: Doebler Seeds.

Q: Doebler Seeds, LLC?

A: Correct.

* * * * * * * * * * *

Q: Well, maybe I can expedite this. If I would go down through the rest of the list of the people that are contained in the calculation of this 957,154, would it be correct that in each instance those bills were paid by Doebler Seeds or Doebler Farmland and not by you, Taylor Doebler?

A: That is – they were either paid by one company or the other but, again, I am going to throw in there that the company, at least all of Doebler Seeds, was either affecting me from a negative or a positive.

Q: The Doebler Farmland, I think we already indicated, or you have already indicated had other shareholders, you weren't the only shareholder in Doebler Farmland?

A: Correct.

Q: And it is a business corporation?

A: Excuse me, it is an S Corp.

* * * * * * * * * *

Q: Okay. If you want to look at Paragraph 61 again, in Subparagraph B, you are claiming $316,269 associated with the Doebler Farmland litigation; do you see that?

A: Correct.

* * * * * * * * *

Q: And would it be correct with respect to this item as well that these bills were paid by Farmland, Inc. and not you, Taylor Doebler?

A: They were paid by Farmland, Inc.

(Taylor A. Doebler, III Dep. 372-378, May 21, 2010).

Testimony of the Plaintiff as to damages alleged in Paragraph 61(d) was as follows:

Q: You are making a claim for $504,981.82 in this matter?

A: Correct.

Q: And what does that relate to?

A: The inventory that we had to discard or product that was enjoined that we had to throw away or pay for and not receive –

Q: Okay.

A: --of the 21 enjoined products.

Q: Okay. Now, when the injunction was entered, the Doebler Seed, LLC company was enjoined from selling certain hybrids, 21, I don't know if you call them varieties or not, but that is a word that makes sense to me, is that – and that is what this is referring to?

A: That is what this is referring to and the related marketing materials.

Q: Okay. In fact, those seeds were owned by Doebler Seeds, LLC and not you, Taylor Doebler?

A: Well, they were produced by Doebler Seeds, LLC.

Q: Right. And they were owned by Doebler Seeds, LLC?

A: Yeah.

* * * * * * * * * * *

Q: And you didn't, personally, enter into any agreements to buy the raw materials or any of the agreements to grow the seeds, that was all done in the name of the company, correct?

A: Well, yeah, but I was the one that made the – I don't understand the question exactly because I was the one that made the contracts or not made the contracts, signed the contracts, but the company purchased the seed, yes.

Q: Right. And the contracts were all in the name of the company, not in your name individually?

A: Yeah. With me as President or manager or however it was decided.

Q: Right. You, as an employee of the company, you may have done this, but these contracts were entered into in the name of the company?

A: Yeah. Well, employee owner of the company.

* * * * * * * * * * *

Q: And when the injunction occurred, then Doebler Seeds, LLC was not permitted to sell those seeds?

A: Correct.

Q: And that is why a loss occurred?

A: A loss. Yes, the loss.

Q: And the loss you are claiming is the loss or the inability of Doebler Seeds, LLC to sell the seeds that it had contracted with these various people to grow?

A: Well, the loss we are claiming is the cost involved to grow the product ourselves and what we had to pay for the contracts to get out of.

* * * * * * * * * * *

Q: And then you had to pay separate sums to the people you had contracted with because you weren't going to sell the seed?

A: Correct.

Q: Okay. And all that money was paid by Doebler Seeds, LLC?

A: Yes.

* * * * * * * * * * *

Q: The marketing materials, they would have been purchased and paid for by Doebler Seeds, LLC?

A: Yes.

Q: Not you individually as Taylor Doebler?

A: No. But it flows through back to me. So I incur the loss or I incur the profit.

Q: Well, that – I understand that that may be the tax effect to you.

A: Okay.

Q: But the question I am asking you is whether you, personally, paid the marketing expenses or were they paid by Doebler Seeds, LLC?

A: They were paid by Doebler Seeds, LLC.

Q: Okay. And that would be true of all the numbers that go into this $504,981 calculation, those were expenses incurred or costs paid by Doebler Seeds, LLC and not you, Taylor Doebler?

A: Again, I am going to answer the same way I answered before, yes, but because it is what it is, it is incurred a loss or a profit back to myself.

(Taylor A. Doebler, III Dep. 364-372, May 21, 2010).

The Plaintiff's testimony regarding damages alleged in Paragraph 61(f) and (g) included the following:

Q: Look at 61-G , please.

A: Yes.

Q: There the claim being made that there is a loss of business and goodwill associated with the use of Doebler's name in connection with the sale of agricultural product. What are the facts supporting that assertion?

A: If we would have done something back in February that would have protected our name a little on either the Stock Redemption Agreement or negotiations, we would still have a right to use the Doebler name in commerce.

Q: As a result of the settlement, do you have the right to use the Doebler name in commerce now?

A: Well, as a result of the settlement, I can use T.A. Doebler, III in a written script form but not the name Doebler in a – in a business name.

Q: Would it be correct that the loss of the right to use the Doebler name would be a loss that was suffered by Doebler Seeds, LLC?

A: Well, in a loss for myself.

Q: Okay. How have you suffered a loss if you are permitted to use, I think you said, Tayloor Doebler, III as a business name in your own right?

> A: It is just a loss of using my own name in commerce. So how did I – how did I lose – I lost the name to use it in commerce.
>
> Q: Okay. But the commerce that you are referring to is the commerce that you conduct through Doebler Seeds, LLC?
>
> A: Yeah, but also there could be, you know, a subsequent company that could be myself, you know, I mean it is pretty much – if it was done correctly to start with, we would still have some use of that in the – in the marketplace.
>
> (Taylor A. Doebler, III Dep. 395-397, May 21, 2010).

Following a review of the Plaintiff's testimony, it is clear that damages claimed were not incurred by the Plaintiff, individually, but by Doebler Seeds, LLC and Doebler Farmland, Inc.

A corporation is a distinct legal entity whose existence is separate from its shareholders, even if the stock is held entirely by one person. College Watercolor Group, Inc. v. William H. Newbauer, Inc., 360 A.2d 200, 207 (Pa. 1976). The Pennsylvania Supreme Court has held:

> [A]ny court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception….Care should be taken on all occasions to avoid making the entire theory of corporate entity *** useless. Lumax Industries, Inc. v. Aultman, 669 A.2d 893, 895 (Pa. 1995), *citing* Zubik v. Zubik, 384 F.2d 267, 273 (3d Cir. 1967).

Likewise, a limited liability company is a distinct legal entity whose existence is separate from its members. A limited liability company has the power to sue or be sued in its own name (15 Pa.C.S.A.§ 8991), has the ability to acquire property (15 Pa.C.S.A.§ 8923) and has the legal capacity of a natural person to act (15 Pa.C.S.A.§ 8921).

Corporate shareholders and limited liability company members do not have standing to sue on behalf of the corporation or limited liability company. Orgain v.

City of Salisbury, 521 F.Supp.2d 465, 476 (D.Md., 2007) *citing* Domino's Pizza v. McDonald, 546 U.S. 470 (2006) and Smith Setzer & Sons, Inc. v. S. Carolina Procurement Rev. Panel, 20 F.3d 1311, 1317 (4th Cir. 1994)(rejecting shareholder's argument that the corporation's loss of revenue resulted in loss of income to him as well).

In Sams v. Redevelopment Authority of New Kensington, 244 A.2d 779 (Pa. 1968), the Redevelopment Authority adopted a resolution condemning a parcel of land individually owned by Mr. Sams and Mr. Mannarino, which was being used as a scrap yard for the receipt and shipping of scrap metal. At the time of taking, Mr. Sams and Mr. Mannarino also owned another parcel of land located on the opposite side of the street through Kensington Sales and Rentals, Inc., which was being operated as a foundry. When awarding damages, the board of viewers awarded damages to Mr. Sams and Mr. Mannarino, both individually and as copartners, trading and doing business as Ken Iron and Steel Company. Following the award of damages, the Redevlopment Authority appealed on the basis that evidence should not have been admitted concerning the foundry property, as the foundry was not owned by the same owner and used for the same purpose. In assessing the ownership issue, the Pennsylvania Supreme Court held:

> Here we have separate parcels of land being used by distinct legal entities, i.e., the condemned parcel, the scrap yard was operated by appellees individually as copartners, and the uncondemned parcel, the foundry, was operated by New Kensington Sales and Rentals, Inc., a Pennsylvania Corporation, the latter of which we now hold cannot, as a matter of law, be considered as a unit for condemnation purposes.
>
> * * * * * * * * * * *
>
> Here, the corporate shareholders are requesting that the corporate enterprise, voluntarily formed for certain business advantages, ought to be disregarded

> for their benefit in order to receive increased damages as a result of the present condemnation proceedings. This we refuse to do.
>
> * * * * * * * * * * *
>
> In our view, one cannot choose to accept the benefits incident to a corporate enterprise and at the same time brush aside the corporate form when it works to their (shareholders') detriment. The advantages and disadvantages of the corporate structure should be seriously considered and evaluated at the time such organization is contemplated and after incorporation has been selected, the shareholders cannot be heard to argue that the court should not treat them as a corporation for some purposes and as a corporation for other purposes, whichever suits their present economic interest. Id. at 781.

(See also Kelleher v. Commonwealth of Pennsylvania, 704 A.2d 729, 731 (Pa.Commw. 1997)).

In the present action, the Plaintiff similarly seeks to recover individually for losses allegedly incurred by corporate entities in which he has an ownership interest. Plaintiff asserts that these corporate structures should be disregarded because the damages ultimately flow to him. In Sams, *supra*, however, the Supreme Court took note of the fact that Mr. Sams and Mr. Mannarino were the sole owners of the corporate entity, and held that the corporate form could not be "brushed aside" or disregarded because it suited the shareholders' economic interests at the time. Moreover in the present action, the corporate structures are not owned solely by the Plaintiff. Doebler Farmlands, Inc. has multiple shareholders, and Doebler Seeds LLC is owned by the Plaintiff and his wife. (See Taylor A. Doebler, III Dep. 23-29; 66, May 21, 2010).

As damages claimed in Paragraph 61(a)(b)(d)(f) and (g) were not incurred by the Plaintiff, individually, but by entities not parties to this lawsuit, this Court finds that the Plaintiff does not have standing to sue, and accordingly the Plaintiff's allegations for damages in Paragraph 61(a)(b)(d)(f) and (g) of Plaintiff's Amended

Complaint are hereby DISMISSED with prejudice, and the only item of damages remaining are those associated with the loss of the value of Plaintiff's DPH stock, as set forth in Plaintiff's Amended Complaint Paragraph 61(e).

Statute of Limitations

The elements of a legal malpractice action, sounding in negligence, include: (1) employment of the attorney or other basis for a duty; (2) failure of the attorney to exercise ordinary skill and knowledge; and (3) that such failure was the proximate cause of the harm to the plaintiff. Wachovia Bank, N.A. v. Ferritti, 935 A.2d 565, 570-571 (Pa.Super. 2007), *citing* Bailey v. Tucker, 621 A.2d 108, 112 (Pa. 1993). Count I of Plaintiff's Complaint includes a claim for negligence. The statute of limitations for legal malpractice actions sounding in negligence is two (2) years. See 42 Pa.C.S.A. § 5524. In Wachovia, *supra*, the Superior Court analyzed the issue of when the statute of limitations begins to run, or is "triggered" in a legal malpractice action. The Superior Court concluded as follows:

> [T]he trigger for the accrual of a legal malpractice action, for statute of limitations purposes, is **not the realization of actual loss, but the occurrence of a breach of duty**. Pennsylvania law provides that:
>
> > the occurrence rule is used to determine when the statute of limitations begins to run in a legal malpractice action. **Under the occurrence rule, the statutory period commences upon the happening of the alleged breach of duty.** Bailey v. Tucker, 533 Pa.237, 251, 621 A.2d 108, 115 (1993). An exception to this rule is the equitable discovery rule which will be applied when the injured party is unable, despite the exercise of due diligence, to know of the injury or its cause. Pocono Raceway v. Pocono Produce, Inc., 503 Pa. 80, 85, 468 A.2d 468, 471 (1983). Lack of knowledge, mistake or misunderstanding, will not toll the running of the statute. Id. 503 Pa. at 85, 468 A.2d at 471.
>
> Robbins & Seventko Orthopedic Surgeons, Inc. v. Geisenberger, 449 Pa.Super. 367, 674 A.2d 244, 246-47 (Pa.Super. 1996)(emphasis added). Id. at 572-73. (Emphasis added).

In the present action, the Plaintiff alleges that he consulted with the Defendant in January of 2003. Advice was sought concerning the Plaintiff's plan to expand Doebler Seeds business operations in competition with DPH. (Amended Complaint, ¶ 21). Advice sought included whether "any legal impediments or issues" existed relative to Plaintiff's competition with DPH. (Amended Complaint, ¶ 23). In reliance upon legal advice received, the Plaintiff alleges that he sold his stock. Subsequently on June 27, 2003, DPH initiated litigation against the Plaintiff and Doebler Seeds for common law unfair competition, breach of the board member confidentiality agreement, misappropriation of trade secrets, and breach of fiduciary duty. (Amended Complaint, ¶ 40). The Plaintiff seeks damages relative to alleged deficient legal advice received which resulted in injuries and damages in the form of legal fees and costs and loss of the value of the DPH stock. According to Plaintiff's expert witness, David J. Wolfsohn, the Defendant failed to properly advise the Plaintiff "with respect to how best to lower the risk of litigation" relative to the use of a surname, and failed to properly advise the Plaintiff "regarding how best to avoid litigation over misappropriation of trade secrets…" (Report of David J. Wolfsohn, p. 6).

As set forth above, the "trigger" for the accrual of a legal malpractice action is not when actual losses are realized, but the occurrence of a breach of a duty. Pennsylvania favors strict application of the statutes of limitation. Glenbrook Leasing Co. v. Beausang, 2003 Pa.Super. 489, 839 A.2d 437, 441 (Pa.Super. 2003). Although the equitable discovery rule applies to legal malpractice actions, it is applied only

when "the injured party is **unable**, despite the exercise of due diligence, to know of the injury or its cause." Wachovia, *supra*, p. 572 (Emphasis added). Lack of knowledge, mistake or misunderstanding does not toll the running of the statute.

In the present action, the Plaintiff received a letter from counsel for DPH advising him that of litigation risks associated with the use of the Doebler name, and potential litigation relative to his use of trade secret information. This letter was received by the Plaintiff on April 25, 2003. The Plaintiff's testimony regarding this letter was as follows:

> Q: I am going to show you what I will mark as Exhibit 28, it is an April 25 fax from you to Mr. Silverman?
>
> Q: It encloses a letter from an attorney on behalf of DPH?
>
> A: Okay.
>
> Q: You read this letter when you received it on the 25th?
>
> A: Yes.
>
> Q: When you read it, you understood, did you not, that the letter was objecting to Doebler Seeds competing with Doebler's Pennsylvania Hybrids, Inc.?
>
> A: Yes.
>
> Q: You understood that they were objecting to your using the name Doebler?
>
> A: Yes.
>
> Q: You understood that they were objecting to you hiring employees away from them who had confidential information?
>
> A: That is what they were objecting to, yes.
>
> Q: You also understood that they were telling you that if you didn't do certain things they were going to sue you?

A: Yes.

Q: And they identified the things that they wanted you to do to avoid being sued?

A: They identified, say that again.

Q: They identified the things that they wanted you to do to avoid being sued?

A: Yeah. Yeah. I guess. That is in here. Yes. Yeah.

Q: Okay. It is in the -- in Page 2. They were also objecting to the fact that confidential information had been taken, correct?

A: Correct.

Q: And they told you that in order to avoid being sued, they wanted you not to compete; correct?

A: Correct.

Q: Not use the name Doebler?

A: Right.

Q: Not use their confidential information; correct?

A: Correct.

Q: Not take their employees?

A: Correct.

(Taylor A. Doebler, III Dep. 344-346, May 21, 2010).

The Plaintiff alleges that he consulted with the Defendants in order to avoid litigation. Pursuant to the Plaintiff's testimony, it is clear that Plaintiff was aware as early as April 25, 2003 that litigation was imminent. Even if this was insufficient to place the Defendant on notice, suit was filed against the Plaintiff and Doebler Seeds

on June 27, 2003. On July 24, 2003, DPH moved for a preliminary injunction against the Plaintiff and Doebler Seeds, LLC.

Plaintiff initiated the instant legal malpractice action by writ of summons filed on September 2, 2005, clearly following the expiration of the statute of limitations period. Accordingly, Count I of Plaintiff's Amended Complaint alleging negligence, shall be DISMISSED.[1]

The Plaintiff is Precluded from Recovery Pursuant to His Settlement of the Underlying Litigation

In addition to the issue of standing, and the statute of limitations, the Defendants argue that the Plaintiff's claims should be dismissed because the same allegations for damages were previously made in a counterclaim against DPH in the underlying litigation. Pennsylvania courts have held that courts will not allow a person more than one satisfaction in damages. See Rossi v. State Farm Auto Ins. Co., 465 A.2d 8 (Pa.Super. 1983), *citing* Muise v. Abbott, 160 F.2d 590 (1st Cir. 1947) *affirming* 60 F.Supp. 561 (D.Mass. 1945). See also Embrey v. Borough of West Mifflin, 390 A.2d 765, 771-772 (Pa.Super. 1978); Smialek v. Chrysler Motors Corp., 434 A.2d 1253, 1259 (Pa.Super. 1981). This rule is based on the theory that duplicate recovery results in unjust enrichment. Rossi, *supra*, at 10. Plaintiff's testimony regarding settlement in the underlying suit was as follows:

> Q: Look at Paragraph 61 again, and I am going to ask you about D. This is the loss of product inventory subject to the injunction.
>
> A: Uh-huh.
>
> Q: Am I correct that you made a claim in the lawsuit against DPH for these same losses; do you recall that?

[1] The only remaining claim is Plaintiff's claim for loss of value of his DPH stock under Count II of Plaintiff's Amended Complaint.

A: Yes. Yeah. There was a –there was a claim, yes.

Q: And so in that lawsuit against DPH, you were claiming that DPH was responsible for the losses that you – that Doebler Seeds suffered?

A: Yeah. I think we were claiming that they were responsible for it but –

Q: Now – I am sorry, if you weren't done?

A: No. Go ahead.

Q: Okay. The lawsuit with Doebler Pennsylvania Doebler's Pennsylvania Hybrids was concluded by a settlement, correct?

A: Yes. We did settle.

Q: And there was a settlement agreement?

A: There was a settlement agreement.

Q: And it is correct, is it not, that as part of that settlement, you gave up the counterclaim or claims that you had made against DPH for the $504,981 in damages that Doebler Seeds, LLC suffered by virtue of the enjoined seeds?

A: What was the question out of that?

Q: The question was you, in the settlement, you gave up the claim you were making against Doebler's Pennsylvania Hybrids that they should pay you this money?

A: It was a global settlement that we made to conclude the litigation. We – I don't think either of us could go on because we were both about out of money. So, you know, it was a settlement to conclude everything.

(Taylor A. Doebler, III Dep. 394 - 395, May 21, 2010).

As damages sought in the present action were incurred by entities other than the Plaintiff, previously sought in the underlying litigation, and the subject of a global settlement, Paragraph 61(d) is hereby DISMISSED.

The Harm Allegedly Suffered is Too Speculative/Causation Cannot Be Established

The Defendants final arguments relate to the speculative nature of claims made and the Plaintiff's inability to prove an undertaking by the Defendants, or causation. As this Court has already dismissed Count I of Plaintiff's Complaint, and the only remaining claim for damages is Plaintiff's claim for the loss of the value of Plaintiff's DPH stock, this Court will analyze this argument in terms of Plaintiff's sole remaining claim - breach of contract relative to loss of the value of Plaintiff's DPH stock.

The Plaintiff tendered his stock to DPH and DPH shareholders on December 18, 2002. (Taylor A. Doebler, III Dep. 91-93, May 21, 2010). On January 15, 2003, DPH accepted Plaintiff's December 18, 2002 offer to sell his stock to DPH and proposed a stock redemption agreement. (Id. at 123-4). On January 15, 2003, Plaintiff sought deletion of certain sections of the proposed stock redemption agreement. (Id. at 127-8). On January 16, 2003, all of the Plaintiff's proposed changes to the stock redemption agreement were accepted. (Id. at 129). Although causation would normally be a question of fact for the jury, there are no triable issues of fact, as it is clear that the Plaintiff's actions involving the stock redemption agreement preceded any involvement by the Defendants. Plaintiff's testimony on this issue was as follows:

> Q: Okay. I want to – I want to go to the third page of this document, it is the January 17, '03 fax; correct?
>
> A: Third page. Okay. Got you. Yep.
>
> Q: It is correct, is it not, that this is the first time you communicated with Dennis Sheaffer regarding Doebler's Pennsylvania Hybrids or any of the issues you wre encountering with respect to Doebler's Pennsylvania Hybrids?
>
> Mr. Haines: Objection to the form of the question.

Q: You may answer.
A: As far as I am concerned, yes.

* * * * * * * * * * *

Q: As far as you are concerned, Taylor Doebler, this is the first communication you have with anyone at Tucker Arensberg about Doebler's Pennsylvania Hybrids; correct?

Mr. Haines: Objection, asked and answered.

The Witness: Yes.

(Taylor A. Doebler, III Dep. 141-3, May 21, 2010).

As it is clear from the Plaintiff's testimony that the decision to sell his DPH stock and the subsequent negotiations relative to that sale did not involve the Defendants, there was no undertaking by the Defendants to advise the Plaintiff and accordingly, the Defendants claim for damages relative to losses associated with the sale of stock as set forth in Plaintiff's Amended Complaint, Paragraph 61(e) shall be DISMISSED.

Although the Plaintiff asserts that the Defendants should be held liable for failing to negotiate the terms of the Stock Redemption Agreement to protect the Plaintiff's right to compete, such claims are purely speculative. In order to prove causation with respect to Plaintiff's allegations, Plaintiff must prove "but for" the Defendants' failure to advise Plaintiff to include provisions in the Stock Redemption Agreement to protect his right to compete, DPH would have agreed to the provisions. (Myers v. Robert Lewis Seigle, P.C., 751 A.2d 1182 (Pa.Super. 2000)(To prove actual injury, the plaintiff must demonstrate that he would have prevailed in the underlying action in the absence of the defendants' negligence). Plaintiff's testimony on this issue was as follows:

Q: Well, you say put it in the Stock Redemption Agreement as though putting it in means there would be an agreement –

A: Well –

Q: Correct? Are you telling me that you know what agreement Camerer or Jones would reach?

Mr. Haines: Objection, asked and answered. He said there was no way he would know.

Q: Well, if you agree with that, I will accept that answer and move on.
A: There, I mean –

Mr. Haines: It is on the record what he said.

The Witness: You know, after the fact, I understand that the Stock Redemption Agreement was a contract for closing. Okay. You can put in anything in that contract and take it out and negotiate or accept or not accept any pieces. So if you put in a piece or Steve wanted to put something in and said, hey, in order to protect your rights, you need to put this in here, okay, before this sale is done, let's put it in and see what they – see what they, what they will accept and not accept.

Q: And if they –

A: I mean, there is no way in the world, you know, that we will know what they would accept and what they wouldn't accept. And even if you ask them today doesn't mean that back in that time period they would give you the right answer today.

(Taylor A. Doebler, III Dep. 303-304, May 21, 2010).

As Plaintiff cannot prove any undertaking, or causation with regard to Plaintiff's allegation for damages related to the sale of his DPH stock, to allow a jury to consider Plaintiff's claim for damages would amount to mere speculation, and accordingly, Paragraph 61(e) of Plaintiff's Amended Complaint is hereby DISMISSED.

O R D E R

AND NOW, this 20th day of August, 2010, for the reasons set forth above, the Defendant's Motion for Summary Judgment is hereby GRANTED, and Plaintiff's Amended Complaint is DISMISSED with prejudice.

BY THE COURT,

_____
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