

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GEORGE S. BODINE, JR.,
Plaintiff

CIVIL ACTON NO. 15 -1,710

v.

TIADAGHTON AIR, INC., a
Pennsylvania corporation, LARRY W.
DIEFFENBACH, an adult individual,
CHRIS MOSER an adult individual,
RANDY SWANK, an adult individual,
and JOHN DOE 1, an adult individual,
Defendants

OPINION AND VERDICT

This is an action brought by Mr. George Bodine, Jr., for breach of contract against Tiadaghton Air, Inc., (“Tiadaghton”) and individuals who were members of the corporation. Following a non-jury trial held on March 6, 2018, the Court makes the following findings of fact and conclusions of law and renders verdict accordingly.

FINDINGS OF FACT

1. On or about March 1, 2011, Plaintiff George Bodine purchased a share and became a shareholder in the Tiadaghton Air, Inc. corporation by contributing \$7,500.
2. Parties entered a Shareholders’ Agreement, admitted into evidence as Plaintiff’s exhibits 1 and 2.
3. In July 2012, Mr. Bodine decided to retire and sell his share of Tiadaghton.
4. Mr. Bodine orally informed then President Larry Diffenbach and other members that Mr. Bodine was retiring to Florida and looking for buyers for his share of Tiadaghton.
5. Mr. Bodine found a buyer for his share, Randy Swank, and submitted his name to Tiadaghton for approval pursuant to Section 13(3) of the Shareholders’ Agreement.
6. On or about February 15, 2012, Mr. Diffenbach informed Mr. Bodine by email in essence that the past practice and custom of the corporation was to sell shares belonging to the

shareholders' who was waiting to sell the longest.

7. Mr. Bodine acquiesced in selling Mr. Satterfield's shares to Mr. Swank in keeping with the custom and practice for selling shares of Tiadaghton Air and with regard to the sale of Mr. Bodine's shares.¹
8. By email on or about February 16, 2012, in light of Mr. Satterfield having had his share for sale longer and still not sold, in order to move the matter forward, Mr. Bodine provided Mr. Swank with contact information of Mr. Diffenbach so that Mr. Satterfield's shares could be sold to Mr. Swank.²
9. In accordance with the custom and practice, Mr. Satterfield's shares were sold to Mr. Swank.
10. By email dated March 6, 2013, Mr. Diffenbach informed Mr. Bodine of the amounts due and that he was assuming Tiadaghton would deduct after the sale of Mr. Bodine's shares that Ed Watson was handling.
11. Mr. Bodine acquiesced in proceeding in a manner consistent with the March 6, 2013 email and did not object or produce any written document expressing objection to proceeding in that matter.
12. To the extent Mr. Bodine testified that he did object, the Court finds him not credible.
13. Tiadaghton regularly billed Mr. Bodine for his shares until the shares were sold.
14. Mr. Bodine did not object or produce any written document expressing objection to the bills.
15. To the extent Mr. Bodine testified that he did object, the Court finds him not credible.

¹ To the extent Mr. Bodine contends he did object, this Court does not find him credible. The documentary evidence contradicts any claim that Mr. Bodine objected to selling Mr. Satterfield's shares to Mr. Swank.

² Mr. Swank wrote that: "I have offered to Larry that since no progress has been made regarding Tim's (Mr. Satterfield's) buyer, the matter should be moved forward to a buyer meaning you[.]"

16. Without objecting to the regular billing, Mr. Bodine also retained a key to the hanger where the airplane was available for use.
17. An invoice dated August 28, 2014 showed an invoice for the plane's overhaul in the amount of \$15,336.
18. The plane was overhauled in September 2014.
19. Mr. Bodine did not object or produce any written document expressing objection to the overhaul.
20. To the extent Mr. Bodine testified that he did object, the Court finds him not credible.
21. By email dated October 8, 2014, Mr. Bodine sought information and provided suggestions as to the overhaul of the plane.
22. By email dated November 6, 2014, Mr. Bodine received the monthly invoice which indicated the amount past due that Tiadaghton would deduct from the proceeds of the sale of Mr. Bodine's shares.
23. After deductions consistent with the email exchanges, on January 5, 2016, Tiadaghton issued a check to Mr. Bodine in the amount of \$1,197.49 which was the correct amount owed to him.
24. Mr. Bodine did not provide written notice of any intent to withdraw from Tiadaghton under the withdrawal provision (Section 12) of the Shareholders' Agreement as required.
25. Despite non-payment, Mr. Bodine was not "dropped" from the Shareholders' Agreement pursuant to Section 19 of the Shareholders' Agreement.
26. The parties went forward in a manner consistent with the email exchanges as to the sale of Mr. Bodine's shares and amounts to be deducted from the sale.
27. Mr. Bodine did not act in a manner consistent with enforcement of any contractual

provisions of the Shareholders' Agreement that he claims were breached.

28. Mr. Bodine failed to produce any timely written objections to moving forward in a manner consistent with the email exchange.

29. Mr. Bodine was not credible to the extent he testified he raised oral objections to proceeding in a manner consistent with the email exchanges.

30. Pursuant to the email exchanges, Mr. Bodine was entitled to payment of \$1,197.49 following the sale of his shares.

CONCLUSIONS OF LAW

31. Mr. Bodine did not meet his burden of proof of establishing a breach of contract that warranted damages.

32. Tiadaghton did not breach the Shareholders' Agreement by selling Mr. Satterfield's shares to Mr. Swank instead of Mr. Bodine's shares.

33. Under the circumstances of this case, Mr. Bodine was not dropped from the corporation by Tiadaghton under Section 19 of the Shareholders' Agreement.

34. Under the circumstances of this case, Tiadaghton did not breach the withdrawal provision (Section 12) of the Shareholders' Agreement.

35. The parties went forward in a manner consistent with the email exchanges as to the sale of Mr. Bodine's shares and amounts to be deducted from the sale.

36. Tiadaghton did not drop Mr. Bodine pursuant to Section 19 of the Shareholders' Agreement.

37. Since the parties were in privity of contract, Plaintiff cannot recover under a claim of unjust enrichment.

38. Even if the parties had not been in privity of contract, Mr. Bodine did not meet his burden of proof of establishing a claim for unjust enrichment.

DISCUSSION

In an action for breach of contract, the party must establish the existence and essential terms of a contract, a breach of a duty imposed by the contract and damages flowing from the breach. Hart v. Arnold, 884 A.2d 316, 332 (Pa. Super. 2005). In this case, Plaintiff has not established a breach of contract by a fair preponderance of the evidence. Nor has plaintiff established unjust enrichment.

In the present case, Mr. Bodine did not meet his burden of proof to establish a breach of contract that warranted damages. Tiadaghton did not breach the Shareholders' Agreement by selling Mr. Satterfield's shares instead of Mr. Bodine's shares to Mr. Swank. Mr. Bodine acquiesced and facilitated that sale and is not entitled to damages for such sale. Mr. Bodine was not dropped from the corporation under Section 19 of the Shareholders' Agreement, in light of the email exchanges, the receipt of regular bills without objection or correction, and the retention of the keys to the hanger where the airplane remained available. Mr. Bodine did not timely object to having his dues deducted from the proceeds he would obtain upon the sale of his shares. In addition, under the circumstances of this case, Tiadaghton did not breach the withdrawal provision (Section 12) of the Shareholders' Agreement in part because Mr. Bodine did not provide written notice of withdrawal as required. Instead, without objection, Mr. Bodine moved forward with the sale of his shares in a manner consistent with the email exchanges and invoices as to the sale of Mr. Bodine's shares and amounts to be deducted from the sale.

As to unjust enrichment, it is a bright line rule that unjust enrichment is not available to parties in contractual privity. Wilson Area Sch. Dist. v. Skepton, 586 Pa. 513, 520–21, 895 A.2d 1250, 1254 (Pa. 2006). "A quasi-contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives

unjust enrichment at the expense of another.”” Stoeckinger v. Presidential Fin. Corp. of Del. Valley, 948 A.2d 828, 833 (Pa. Super. 2008), *quoting*, AmeriPro Search, Inc. v. Fleming Steel Co., 787 A.2d 988, 991 (Pa. Super. 2001). When, as in the instant case, the parties have a written, expressed and/or implied agreement, the terms of that agreement “define their respective rights, duties, and expectations. Wilson Area Sch. Dist., *supra*, 895 A.2d at 1254, *quoting*, Curley v. Allstate Insurance, 289 F.Supp.2d 614, 620-621 (E.D.Pa.2003). Here the parties were in contractual privity and not entitled to seek claims of unjust enrichment.

Even if the parties’ rights were not governed by contract, Mr. Bodine failed to establish a claim of unjust enrichment. To establish a claim for unjust enrichment, a party must establish: "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." Styer v. Hugo, 422 Pa.Super. 262, 619 A.2d 347, 350 (1993)(citations omitted). Tiadaghton was not unjustly enriched. Mr. Bodine acquiesced and facilitated the sale of Satterfield’s shares to Swank. Then Mr. Bodine remained silent in the face of repeated invoices and emails by Tiadaghton as to amounts that would be deducted from his proceeds upon the sale of his shares. Despite repeated invoices as to ongoing fees, Mr. Bodine retained the hanger key with access to the plane. The Court concludes it was not unjust under the circumstances to make the deduction for the outstanding balance, including the overhaul.

Accordingly, the Court enters the following verdict.

VERDICT

AND NOW, this 14th day of **March, 2018**, for the foregoing reasons, the Court finds in favor of Defendants, Tiadaghton Air, Inc., a Pennsylvania corporation, Tiadaghton Air, Inc., a Pennsylvania corporation, Larry W. Dieffenbach, an adult individual, Chris Moser an

adult individual, Randy Swank, an adult individual, and John Doe 1, an adult individual, and against Plaintiff, George S. Bodine, Jr. Accordingly, Verdict is entered in favor of Defendants, Tiadaghton Air, Inc., a Pennsylvania corporation, Larry W. Dieffenbach, an adult individual, Chris Moser an adult individual, Randy Swank, an adult individual, and John Doe 1, an adult individual, and against Plaintiff, George S. Bodine, Jr.

Defendants shall return the funds in the amount of \$1,197.49 to Mr. Bodine, consistent with this verdict and opinion.

BY THE COURT,

March 14, 2018
Date

Richard A. Gray, J.

c: Christopher H. Kenyon, Esquire
Michael J. Zicoello, Esquire