

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**CIVIL TRIAL DIVISION**

AARON WESLEY WYATT,	:	January Term, 2002
Plaintiff / Petitioner,	:	No. 4165
v.	:	Commerce Program
RICHARD G. PHILLIPS,	:	
Defendant / Respondent.	:	Control No. 031035

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**OPINION**

**Albert W. Sheppard, Jr., J. .... January 12, 2004**

At issue here is a petition to enforce a consent decree relating to the ownership of stock in certain corporations and limited partnerships. A five-day hearing was conducted on September 30, October 1-3, and October 9, 2003.

Based on the findings of fact and analysis set forth, the court **denies** the petitioner's First Amended Petition to Enforce the Consent Decree Dated November 21, 2002 ("Petition").

## Findings of Fact<sup>1</sup>

### The Parties

1. Petitioner Andrew Wesley Wyatt is an individual residing in Haverford, Pennsylvania. Compl., ¶ 1; Stipulated Facts<sup>2</sup>, ¶ 1.
2. Respondent Richard G. Phillips is an individual residing in Berwyn, Pennsylvania. Compl., ¶ 2; Stipulated Facts, ¶ 2.
3. Pilot Air Freight Corp. (“Pilot Air Freight”) is a Pennsylvania corporation, with offices located at 314 N. Middletown Road, Lima, Pennsylvania, whose business is domestic and international air freight transport. Stipulated Facts, ¶ 3. According to the Complaint, Pilot Air Freight regularly conducts business in Philadelphia. Compl., ¶ 3. Pilot Air Freight also has a nationwide franchise network. Stipulated Facts, ¶ 6.
4. In 1999, Wyatt and Phillips acquired the stock of Pilot Air Freight. Wyatt and Phillips caused Pilot Air Freight to borrow money to pay for one hundred percent of its stock held by the bankruptcy estate of John Edwards in a leveraged buyout. Tr. II, p. 15; Tr. V, p. 15.
5. In 1999, Wyatt and Phillips incorporated Pilot Holding Corp. (“Pilot Holding”), a Delaware close corporation, with offices located at 314 N. Middletown Road, Lima, Pennsylvania, for the purpose of implementing a

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<sup>1</sup> This Opinion references the seven transcripts as follows: Tr. I refers to the transcript of September 30, 2003, Morning Session; Tr. II refers to the transcript of September 30, 2003, Afternoon Session; Tr. III refers to the transcript of October 1, 2003, Morning Session; Tr. IV refers to the transcript of October 2, 2003, Morning Session; Tr. V refers to the transcript of October 2, 2003, Afternoon Session; Tr. VI refers to the transcript of October 3, 2003; Tr. VII refers to the transcript of October 9, 2003.

<sup>2</sup> The parties agreed upon certain Stipulated Facts. *See* Court Ex. 1; Tr. I, pp. 31-32. (The citation “Court Ex.” refers to the Court Exhibits (2003) And Excerpts of Transcripts of a prior hearing before Judge DiNubile (2002), filed by Wyatt on November 14, 2003.)

Settlement Agreement among Thomas Edwards, William Edwards, Wyatt and Phillips. Compl., ¶ 1; Stipulated Facts, ¶ 8.

6. Pilot Air Freight became and continues to be a wholly-owned subsidiary of Pilot Holding. Stipulated Facts, ¶ 9.

7. Wyatt and Phillips entered into a Stockholders' Agreement dated January 15, 1999, relating to their ownership and management of Pilot Holding. Pltf's Ex., Trial Binder I, Tab 9.<sup>3</sup>

8. After the closing of the Settlement Agreement with Thomas Edwards and William Edwards, Wyatt and Phillips each owned fifty percent of the capital stock of Pilot Holding and Pilot Air Freight. Compl., ¶ 1; Stipulated Facts, ¶ 11.

9. Wyatt and Phillips each owned five hundred shares of Pilot Holding Common Stock, par value \$.01 per share. Pltf's Ex., Trial Binder I, Tab 9.

10. Pursuant to Section 3 of the Stockholders' Agreement, at certain time intervals, either Phillips or Wyatt could offer to purchase the other's shares of Pilot Holding. Pltf's Ex., Trial Binder I, Tab 9, ¶ 3 ("Stockholder Offer"). The recipient of the offer could decide within thirty days whether to buy or sell at the offered price and payment terms. Id. at ¶ 3(a). The closing would have to take place within one hundred and fifty days of the date the offer was accepted or notice of the counteroffer was given, whichever was later. Id. at ¶ 3(a). If this buy-sell provision was triggered, and Wyatt or Phillips was required to sell his

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<sup>3</sup> The citation "Pltf's Ex." refers to the Consolidated Set of Petitioner's Trial Binders, filed by Wyatt on November 14, 2003, for the purpose of consolidating the four binders of exhibits referred to during the hearing. See Defendant's Proposed Findings of Fact and Conclusions of Law, p. 6, n.4.

shares but refused, then the Stockholders' Agreement provided that the closing would nevertheless take place at which time there would be a simultaneous delivery of consideration, cancellation of the seller's stock certificate and issuance of a new buyer's stock certificate. Id. at ¶ 3(b).

11. In addition, Wyatt and Phillips each entered into Employment Agreements with Pilot Holding and Pilot Air Freight. Court Exs. 17-18.

12. Phillips has served as the President, Chairman, Secretary and Chief Executive Officer of Pilot Air Freight and Pilot Holding. Compl., ¶ 2; Court Ex. 17, ¶ 6.

13. Wyatt has served as a Director of Pilot Air Freight and Pilot Holding. Compl., ¶ 1; Court Ex. 18, ¶ 6.

14. In 1999, Phillips incorporated Pilot Property Holding Corp. ("PPH"), a Delaware<sup>4</sup> corporation with offices located at 314 N. Middletown Road, Lima, Pennsylvania, for the purpose of being the general partner in three limited partnerships, PPH-Romulus, L.P., PPH-Lima, L.P. and PPH-Cheektowaga, L.P. ("Real Estate Limited Partnerships") Stipulated Facts, ¶ 10.

15. The Real Estate Limited Partnerships each own real estate which was previously owned by the Edwards Partnership. Stipulated Facts, ¶¶ 7, 10. PPH-Romulus, L.P. owns real estate in Romulus, Michigan. Stipulated Facts, ¶¶ 7, 10. PPH-Lima, L.P. owns real estate in Delaware County, Pennsylvania. Stipulated Facts, ¶¶ 7, 10. PPH-Cheektowaga, L.P. owns real estate in

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<sup>4</sup> The court notes a discrepancy, albeit a discrepancy which is not crucial to the ultimate issues in this case. The Stipulated Facts state that PPH was incorporated as a Pennsylvania corporation. Stipulated Facts, ¶ 10. In other documents, however, counsel refer to PPH as a Delaware corporation. Pltf's Ex., Trial Binder II, Tab 37 (Letter from Mr. Weir to Mr. Silverstein); Pltf's Proposed Conclusions of Law, ¶ 6.

Cheektowaga, New York. Stipulated Facts, ¶¶ 7, 10.

16. The limited partnership agreements for the Real Estate Limited Partnerships were never signed by Wyatt and Phillips. Pltf's Ex., Trial Binder II, Tab 37; Tr. I, p. 56; Tr. VI, p. 85.

17. Wyatt contests the validity of the creation of Pilot Property Holding and the Real Estate Limited Partnerships. Stipulated Facts, ¶ 10; Petition, p. 4, n.1.

18. Wyatt and Phillips each owned 50% of PPH. Stipulated Facts, ¶ 11.

19. PPH, as the general partner, owned 1% each of the Real Estate Limited Partnerships. Tr. I, p. 57; Stipulated Facts, ¶ 10.

20. Wyatt and Phillips each owned 49.5% of the Real Estate Limited Partnerships. Tr. I, pp. 56-57; Petition, ¶ 10(c).

21. Phillips served and continues to serve as the President of PPH. Stipulated Facts, ¶ 10.

22. Throughout the relevant documents, pleadings and argument at the hearing, the parties refer to ownership rights in Pilot Air Freight, Pilot Holding and the Real Estate Limited Partnerships as "Pilot Interests." Stipulated Facts, ¶ 12.

#### Procedural History

23. In July 2001, Wyatt attempted to purchase Phillips' Pilot Interests pursuant to Section 3 of the Stockholders' Agreement. Pltf's Ex., Trial Binder I, Tab 9.

24. On January 2, 2002, Wyatt filed a Complaint in equity against Phillips, alleging that Phillips converted the corporate assets of Pilot Air Freight and Pilot Holding for his own benefit.<sup>5</sup> Compl., ¶¶ 12-16. The Complaint presented causes of action for unjust enrichment (Count I), breach of fiduciary duties (Count II), oppression of shareholder (Count III), and injunction pending arbitration (Count IV).

25. On February 5, 2002, in the same case, Wyatt filed a preliminary injunction and temporary restraining order against Phillips which he later withdrew without prejudice. On February 15, 2002, Wyatt again filed a preliminary injunction and temporary restraining order against Phillips.

26. A hearing was held in July 2002 before Judge DiNubile, and by Order dated July 17, 2002, Judge DiNubile held in favor of Phillips and against Wyatt.

27. Wyatt filed an appeal to the Superior Court of Judge DiNubile's Order.

28. By letter dated July 31, 2002, Wyatt offered to purchase Phillips' Pilot Interests for \$9,500,000, pursuant to Section 3 of the Stockholders' Agreement. Pltf's Ex., Trial Binder I, Tab 10.

29. By letter dated August 28, 2002, Phillips counter-offered and stated that he opted to buy Wyatt's Pilot Interests, rather than sell his own Pilot Interests, pursuant to Section 3 of the Stockholders' Agreement. Pltf's Ex., Trial Binder I, Tab 10.

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<sup>5</sup> That action was docketed as Wyatt v. Phillips, January Term, 2002, No. 04165 (Pa. Com. Pl., Phila. Jan. 2, 2002), which is the same docket number assigned to the instant Petition.

### The Consent Decree

30. Ultimately, in September 2002, Wyatt withdrew his appeal of Judge DiNubile's Order.

31. However, in October 2002, Wyatt filed a Complaint for Mandatory Injunction, Specific Performance and Declaratory Judgment, seeking the court's declaration that Wyatt had the right to purchase Phillips' Pilot Interests. See Wyatt v. Phillips, October Term 2002, No. 00382 (Pa. Com. Pl., Phila., Oct. 8, 2002).

32. The parties, each represented by counsel, reached an agreement in principle to resolve who would buy the other's Pilot Interests, as well as their other claims against one another. Defendant's Answer to First Amended Petition to Enforce Consent Decree ("Answer"), ¶ 33; Plaintiff's Reply to New Matter ("Reply"), ¶ 33; Tr. VI, pp. 81-82. Thereafter, Mr. Silverstein, Wyatt's counsel, drafted a form of the agreement. Id. After several drafts, the parties, through their counsel, agreed upon and signed the final form of their agreement, entitled Stipulation and Consent Decree ("Consent Decree"), dated November 21, 2002. Id.; Pltf's Ex., Trial Binder I, Tab 10. The court also signed the Consent Decree. Id.

33. The Consent Decree provided a period of time during which Phillips could purchase the Pilot Interests held by Wyatt. If Phillips failed to do so, then the Consent Decree provided a period of time during which Wyatt could purchase the Pilot Interests held by Phillips.<sup>6</sup> Pltf's Ex., Trial Binder I, Tab 10.

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<sup>6</sup> Throughout the pleadings and the hearing, the parties refer to these provisions as "the shotgun."

34. The Consent Decree also stated that the injunction filed by Wyatt against Phillips would be dismissed, and that the parties would release their claims against one another, except for Wyatt's claim for attorney's fees for which the parties agreed there would be a bench trial. Pltf's Ex., Trial Binder I, Tab 10.

35. On January 6, 2003, Mr. Weir, counsel for Phillips, sent a letter to Mr. Silverstein, counsel for Wyatt, which stated that Phillips intended to cause Wyatt's Pilot Interests to be purchased. Pltf's Ex., Trial Binder II, Tab 37; Tr. II, p. 58; Tr. VI, p. 88.

36. On January 6, 2003, Mr. Weir met with Mr. Silverstein at Mr. Weir's office and discussed what Mr. Weir intended to accomplish to cause Wyatt's Pilot Interests to be purchased. Tr. II, pp. 58-59; Tr. VI, pp. 86, 92-93.

37. In addition, Mr. Weir notified Mr. Silverstein of the date for the dry closing with the lender. Tr. II, p. 61; Tr. VI, p. 92.

38. Mr. Weir testified that he later transmitted documents to Mr. Silverstein which were required by the lender for financing of the purchase. Tr. VI, pp. 87-89.

39. Mr. Silverstein testified that upon reviewing Mr. Weir's letter of January 6, 2003, Mr. Silverstein understood that Mr. Phillips intended to cause Pilot to borrow the funding which would be used to pay Wyatt for his Pilot Interests. Tr. II, pp. 59-60.

40. Mr. Weir testified that prior to the funds being transferred, he did not receive any objections from Wyatt or Mr. Silverstein regarding the fact that Phillips intended to cause Pilot Holding to purchase Wyatt's Pilot Interests. Tr.

VI, pp. 93, 95.

41. Shortly after January 6, 2003, Mr. Weir decided that based on the Consent Decree, he could proceed with the transaction on behalf of Phillips without Wyatt. Tr. VI, p. 96.

42. Phillips caused Pilot Air Freight and the Real Estate Limited Partnerships to finance the purchase of Wyatt's Pilot Interests. These entities "effectuated a refinancing of Pilot's existing credit relationship by obtaining a \$3,750,000 loan [from LaSalle Business Credit, LLC ("LaSalle")] secured by the real estate owned by the three related real estate partnerships [the Real Estate Limited Partnerships] and an increase in its [Pilot Air Freight's] existing line of credit from \$15,000,000 to \$20,000,000. In addition, Phillips and Pilot effectuated a \$2,225,000 loan [to Pilot Air Freight] from private sources."

Answer, ¶ 39; Tr. I, pp. 46-47; Tr. VI, pp. 101-102.

43. The private sources who lent \$2,225,000 to Pilot Air Freight were primarily franchisees and senior management members of Pilot Air Freight. Tr. V, p. 87; Tr. VI, p. 102.

44. Before making the loan, LaSalle performed due diligence on Pilot Air Freight and Pilot Air Holding to determine the companies' ability to service the debt. Tr. II, pp. 24-27; Tr. IV, pp. 23-26, 38.

45. LaSalle was represented by Harvey Forman, Esquire, a partner at Blank Rome, LLP, in connection with Pilot's borrowing. Tr. II, p. 32.

46. Phillips, individually, did not borrow funds from LaSalle or provide any guarantees for the transaction. Tr. I, pp. 45-46; Tr. II, p. 8.

47. A closing between LaSalle and Pilot Air Freight took place on January 9, 2003. Tr. II, p. 33. (The closing documents are found in Pltf's Ex., Trial Binder 3. Tr. II, p. 70.)

48. Neither Wyatt nor Mr. Silverstein were invited to the closing between LaSalle and Pilot Air Freight. Tr. II, pp. 70-71.

49. LaSalle funded the loan to Pilot Air Freight on the afternoon of January 10, 2003. Tr. II, p. 7; Tr. V, p. 96.

50. Mr. Weir testified that Pilot Air Freight, the borrower, loaned the funds to Pilot Holding. Tr. VI, p. 102.

51. LaSalle transferred the borrowed funds from a Pilot Holding account to Wyatt's account. Tr. II, p. 67. Specifically, on January 10, 2003, "\$9,500,000, plus the balance due Wyatt under his employment contract, \$287,405.20, for a total of \$9,787,405.20, [was] wire transferred to [Wyatt's] designated account." Answer, ¶¶ 6, 39-40; Tr. VI, pp. 101-102.

52. Wyatt received the \$9,787,405.20 wire transfer on January 10, 2003. Tr. II, p. 66.

53. There was no testimony at the hearing that Wyatt returned or attempted to return the \$9,787,405.20 to Pilot Holding.

54. On March 11, 2003, Wyatt filed a Petition to Enforce the Consent Decree Dated November 21, 2002, and Phillips subsequently filed an Answer to that Petition.

55. Then, on May 16, 2003, Wyatt filed an Amended Petition. On June 27, 2003, Phillips filed an Answer to the amended Petition. In response, on

August 5, 2003, Wyatt filed a Reply to Phillips' New Matter.

56. This court conducted a hearing over the course of five days: September 30, October 1-3, and October 9, 2003.

57. On November 14, 2003, counsel for both Wyatt and Phillips submitted Proposed Findings of Fact and Conclusions of Law.

58. On December 3, 2003, counsel for Wyatt submitted Plaintiff's Response to Defendant's Proposed Findings of Fact and Conclusions of Law, as well as Plaintiff's Response to Defendant's Proposed Findings of Fact and Conclusions of Law with Respect to the Tax Distribution and Attorney's Fees.

59. Also on December 3, 2003, counsel for Phillips submitted Reply Memorandum of Respondent Phillips in Opposition to Petitioner's Proposed Findings of Fact and Conclusions of Law.<sup>7</sup>

### **Discussion**

In his Petition, subsequent submissions, and at the hearing, Wyatt contended that Phillips failed to purchase Wyatt's Pilot Interests pursuant to the Consent Decree, and that instead, Phillips caused Pilot Holding to redeem Wyatt's Pilot Interests in violation of the Consent Decree, the Stockholder's Agreement, and Delaware law. Petition, ¶¶ 16, 23; Tr. I, pp. 63, 65. Wyatt asks the court to invalidate the purported redemption and to declare that Wyatt has the right to purchase Phillips' Pilot Interests within ninety days, as delineated by the Consent Decree. Tr. I, pp. 48-49. The only money damages Wyatt seeks relate

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<sup>7</sup> In a prior related hearing, Judge DiNubile permitted a group of Pilot franchisees to intervene in this litigation. And, in connection with the present dispute, Findings of Fact and Conclusions of Law have been filed on behalf of these "intervenor-franchisees". See page 31, infra; See also Finding of Fact Number 43.

to a distribution by Pilot Holding for Wyatt's taxes and attorney's fees incurred by Wyatt in connection with several pieces of litigation. Tr. I, p. 103. (The court will address Wyatt's attorney's fee claim in a separate Opinion.)

The Acquisition by Phillips of the  
Pilot Interests Did Not  
Violate the Consent Decree.

In considering Wyatt's Petition, this court sits in equity because the Consent Decree at issue was arrived at in an equity action. The original Complaint filed by Wyatt against Phillips in February 2001, alleged equitable claims for unjust enrichment (Count I), breach of fiduciary duties (Count II), oppression of shareholder (Count III), and sought an injunction pending arbitration (Count IV). The parties later entered into the subject Consent Decree which, by its terms, dismissed that Complaint, Wyatt's injunction action against Phillips, and all other claims except for Wyatt's claim for attorney's fees. Pltf's Ex., Trial Binder I, Tab 10, ¶¶ 6(a)-(b), 13.

Aside from the equity-law distinction, there remains the question of the applicable substantive law. The Consent Decree does not contain a choice of law provision, though it does state that this court would retain jurisdiction to enforce and interpret the Consent Decree. Pltf's Ex., Trial Binder I, Ex. 10, ¶ 20. The Consent Decree generally provides that except as specifically modified, all aspects of the written agreements between the parties remain in full force and effect. *Id.* at ¶ 19. One such agreement, the Stockholders' Agreement, states that Delaware law should govern.<sup>8</sup> Pltf's Ex., Trial Binder I, Ex. 9, ¶ 13(b). For

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<sup>8</sup> The Stockholders' Agreement contains the stockholder offer provision (the "shotgun") which is the basis of the dispute.

this reason, Wyatt contends that Delaware substantive law should apply, and this court agrees.<sup>9</sup>

The parties concur that the court must analyze and interpret the Petition to Enforce the Consent Decree “according to ordinary principles of contract interpretation.” Pltf’s Proposed Conclusions of Law, ¶ 3; Tr. I, pp. 12-13, 20-21. Consent decrees, in this sense, are deemed settlement agreements. “When parties agree to settle a lawsuit, a binding contract is deemed to have been created.” Rowe v. Rowe, No. Civ. A. 16119, 2002 WL 1271679, \*3 (Del.Ch. May 28, 2002). Thus, “[a] settlement agreement is construed using the principles of contract interpretation.” Id. at \*3.<sup>10</sup>

Essentially, the authority of the court in reviewing a consent decree is limited to construing or interpreting it. “While a court may construe or interpret a consent decree as it would a contract, the court has neither the power nor the authority to modify or vary the decree unless there has been fraud, accident or mistake.” Cecil Township v. Klements, 821 A.2d 670, 673-74 (Pa. Commw. 2003); See also Keystone Fuel Oil Co. v. Del-way Petroleum, Inc., 364 A.2d 826,

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<sup>9</sup> In addition, although in his submissions Phillips does not explicitly state that Delaware law should be applied, the submissions analyze specific provisions of Delaware law in connection with the purchase of Wyatt’s Pilot Interests by Pilot Holding and support the application of Delaware law. See Reply Memorandum of Respondent Phillips in Opposition to Petitioner’s Proposed Findings of Fact and Conclusions of Law, pp. 3-15.

<sup>10</sup> Similarly, the federal district court in Delaware has stated that a consent decree “is to be construed as a contract for the purposes of enforcement of its terms.” United States v. Witco Corp., 76 F.Supp/2d 519, 525 (D. Del. 1999) (citations omitted).

829 (Del. Super. 1976).<sup>11</sup> Nevertheless, “[t]he line between clarification and modification of a consent decree is often difficult to ascertain.” Cecil Township, at 674.

To construe a consent decree, the court must review carefully the terms of the contract and determine whether an ambiguity exists within its material terms. According to the plain meaning rule of contract interpretation, if a contract is “clear on its face, the court should rely solely on the clear literal meaning of the words.” Sanders v. Wang, No. 16640, 1999 WL 1044880, \*6 (Del.Ch. Nov. 8, 1999), citing Eagle Indus., Inc. v. DeVilbiss Health Care, Inc., 702 A.2d 1228, 1232 (Del.Super. 1997). “A contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings.” Rhone-Poulenc Basic Chemicals Co. v. American Motorists Ins. Co., 616 A.2d 1192, 1196 (Del.Super. 1992). “The true test is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.” Id. at 1196 (citation omitted).

What is important here is that counsel agree that the Consent Decree and the Stockholders’ Agreement are not ambiguous regarding any material issue, and for the reasons discussed, the court agrees. Tr. I, p. 118; Pltf’s Proposed Conclusions of Law, ¶ 2. The two main documents to be interpreted are the

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<sup>11</sup> The Third Circuit Court has similarly stated that “as consent decrees have many of the attributes of contracts, we interpret them with reference to traditional principles of contract interpretation,” and “we must not strain the decree’s precise terms or impose other terms in an attempt to reconcile the decree with our own conception of its purpose.” United States v. State of New Jersey, 194 F.3d 426, 431 (3<sup>rd</sup> Cir. 1999) (citation omitted).

Consent Decree and the Stockholders' Agreement for Pilot Holding.

The Consent Decree provides the means by which Wyatt's Pilot Interests could be purchased:

4. To consummate his acquisition of Wyatt's Pilot's Interests, Phillips must, by 5:00 p.m. February 7, 2003:
  - a. Pay \$9,500,000 to Wyatt by wire transfer (Wyatt shall provide Phillips with wiring instructions within five days of the date of this Order); and
  - b. Cause Pilot Holding and Pilot Air Freight Corporation (collectively "Pilot") to honor the remaining term of Wyatt's employment agreement with Pilot.

If Phillips consummates his acquisition of Wyatt's Pilot Interests, as described herein, Wyatt's stock in Pilot Holding shall be cancelled, Wyatt's interests in the related real estate (i.e. Romulus, Lima and Cheektowaga) shall be terminated, and ownership and management of Pilot and the three related partnerships shall vest exclusively in Phillips.

Pltf's Ex., Trial Binder I, Tab 10, ¶ 4. In the next paragraph, the Consent Decree provides:

5. During the period from now until February 7, 2003:
  - a. Wyatt shall not, directly or indirectly, contact Pilot's franchisees, LaSalle Bank, Pilot employees, Pilot creditors or otherwise interfere with Phillips' and Pilot's efforts to obtain financing to consummate the acquisition of Wyatt's Pilot Interests.
  - b. Wyatt shall not, directly or indirectly, otherwise interfere with Pilots'/Phillips' efforts to obtain financing by contacting Pilot's vendors or customers.
  - c. Phillips shall not cause Pilot to engage in any transactions outside the normal course of business.

Pltf's Ex., Trial Binder I, Tab 10, ¶ 5. The Consent Decree further provides that if Phillips fails to acquire Wyatt's Pilot Interests, Wyatt would have ninety days from February 7, 2003, to purchase Phillips' Pilot Interests. Pltf's Ex., Trial Binder I, Tab 10, ¶¶ 7-9.

Admittedly, the Consent Decree does not explicitly state that to acquire Wyatt's Pilot Interests, Phillips may cause Pilot (meaning Pilot Holding and Pilot Air Freight, as the Consent Decree defines) to make the purchase. However, this court must interpret Section 4 (a) and Sections 5(a) and 5(b), together with a view to having the document as a whole make sense. With this as its guide, this court interprets the Consent Decree to mean that Phillips and/or Pilot must pay Wyatt to acquire his Pilot Interests.

This interpretation that Phillips and/or Pilot could purchase Wyatt's Pilot Interests is fair in that it gives meaning to Sections 5(a) and 5(b). Section 5(a) states that "During the period from now until February 7, 2003: a. Wyatt shall not, directly or indirectly, contact Pilot's franchisees, LaSalle Bank, Pilot employees, Pilot creditors or otherwise interfere with Phillips' and Pilot's efforts to obtain financing to consummate the acquisition of Wyatt's Pilot Interests." (emphasis added). The phrase "Pilot's efforts to obtain financing to consummate the acquisition of Wyatt's Pilot Interests" is absolutely clear, and its placement in the document leads to the conclusion that Phillips could cause Pilot to obtain financing for the purchase. In addition, Section 5(a) explicitly maintains that Wyatt may not interfere with Phillips' efforts and **Pilot's efforts** to obtain such financing, and Wyatt waives his right to object.

Further, Section 5(b) conveys to the reader the sense that Phillips could, in an effort to acquire Wyatt's Pilot Interests, cause Pilot to obtain the necessary financing. Section 5(b) states: "During the period from now until February 7, 2003, Wyatt shall not, directly or indirectly, otherwise interfere with Pilots'/Phillips'

efforts to obtain financing by contacting Pilot's vendors or customers." (emphasis added). Section 5(b) reinforces the interpretation that Pilot could obtain the financing to acquire Wyatt's Pilot Interests, and Wyatt agreed to waive any objection to Pilot's efforts.

Analysis of Section 4(b) in conjunction with the language of Sections 4(a), 5(a) and 5(b) of the Consent Decree also suggests that the court's interpretation is a fair one. Section 4(b) requires **Phillips to "Cause [Pilot]** to honor the remaining terms of Wyatt's employment agreement with Pilot". This court submits that it makes sense to construe Section 4 of the Consent Decree in its entirety. Hence, if Phillips could cause Pilot to effect one result, Phillips may be deemed to be able to effect the other result, that is, to cause Pilot (through Phillips) to pay \$9,500,000 by wire transfer.

Sections 4 and 5 of the Consent Decree should be read together because they both relate to the terms and conduct pursuant to which Wyatt's Pilot Interests would be purchased. Despite Wyatt's vigorous protest, the court submits that a reasonable person in the position of the parties would read these provisions together to mean that Phillips and/or Pilot could purchase Wyatt's Pilot Interests by February 7, 2003, for the consideration set forth in Section 4.<sup>12</sup>

In addition, the Consent Decree provided that Wyatt would release his claims, except for his claim for attorney's fees, if his Pilot Interests were

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<sup>12</sup> Phillips contends that had Wyatt wanted to, he could have attempted to negotiate a provision in the Consent Decree prohibiting the right of Pilot to purchase Wyatt's Pilot Interests, but Wyatt failed to do so. Tr. I, pp. 115-116.

purchased. The Consent Decree states:

6. If Phillips consummates his acquisition of Wyatt's Pilot Interests **as described in paragraph 4 above:**
  - a. Wyatt shall waive and release any and all claims he may have against Phillips (as well as Phillips & Campbell, P.C.) and Pilot except for his contractual claims for attorney's fees;
  - b. Wyatt's attorney's fees claim shall be resolved by bench trial before this Court;
  - c. Phillips and Pilot shall waive and release any and all claims they may have against Wyatt.

Pltf's Ex., Trial Binder I, Tab 10, ¶ 6. (emphasis added).

Therefore, when Wyatt executed the Consent Decree, one of three things occurred; either (1) the Consent Decree modified all of the relevant documents to the extent necessary to authorize Phillips and/or Pilot to purchase Wyatt's Pilot Interests, (2) Wyatt waived all of his rights to vote, object or otherwise participate in Phillips' and/or Pilot's transaction to purchase Wyatt's Pilot Interests, or (3) Wyatt consented to all votes and actions to allow Phillips and/or Pilot to purchase Wyatt's Pilot Interests. Whether the Consent Decree constitutes a modification of the relevant documents, a waiver by Wyatt or a consent by Wyatt is not necessary to differentiate for purposes of this dispute. In the end, the result of Wyatt's execution of the Consent Decree is the same. Wyatt received \$9,787,405.20 in consideration for his agreement to have his Pilot Interests purchased by Phillips and/or Pilot and released all claims to object otherwise.

The Acquisition by Phillips of the  
Pilot Interests Did Not  
Violate the Stockholders' Agreement.

Wyatt also urges that various steps in the transaction to acquire Wyatt's Pilot Interests, including borrowing funds, encumbering assets as security for loans, and voting on board of director resolutions, violated the Stockholders' Agreement. Petition, ¶ 16; Pltf's Proposed Conclusions of Law, ¶¶ 38-42, 47. Initially, Wyatt stresses that the Stockholders' Agreement was incorporated by the Consent Decree as follows:

19. Except as specifically modified by the terms of this agreement and decree, all aspects of the written agreements between the parties remain in full force and effect.

Pltf's Ex., Trial Binder I, Tab 10, ¶ 19.

Given the premise that the Stockholders' Agreement was incorporated into the Consent Decree, Wyatt argues that Phillips was not authorized to act on behalf of the Board of Directors to cause Pilot Holding to borrow funds, encumber assets as security for loans, or to vote on the acquisition of Wyatt's Pilot Interests because those actions qualified as Major Issues. Pltf's Ex., Trial Binder I, Tab 9, ¶ 4. The Stockholders' Agreement defines Major Issues as actions such as "amendment of the Certificate of Incorporation, Bylaws or other organizational instruments," "issuance of additional shares of stock," "purchase of an asset in excess of \$5,000,000," "share exchanges of similar transactions" and "determination to seek through public or private offering of debt and/or equity securities additional financing or equity[,] excluding asset-backed lender financing that is in the ordinary course of business." Id. at ¶ 4(a). Wyatt argues

that without his vote, Phillips was unauthorized to cause Pilot Holding to engage in any actions which would be deemed Major issues. Id. at ¶ 4.

These arguments based on the Stockholders' Agreement fail because the Consent Decree did specifically modify the Stockholders' Agreement regarding Phillips' authority to take steps necessary to acquire, or to cause Pilot Holding to acquire, Wyatt's Pilot Interests. The provisions in the Stockholders' Agreement, to the extent they were specifically modified by the Consent Decree, were no longer in full force and effect. Pltf's Ex., Trial Binder I, Tab 10, ¶ 19.

As discussed, Wyatt agreed to be bound by the Consent Decree. In doing so he: (1) agreed to the modification of the relevant documents to authorize Phillips and/or Pilot Holding to purchase Wyatt's Pilot Interests, or (2) waived his rights to object to the actions taken by Phillips and/or Pilot Holding to purchase Wyatt's Pilot Interests, or (3) consented in all votes to allow Phillips and/or Pilot Holding to take the actions necessary to make the purchase. Most significantly, once Pilot Holding transferred \$9,787,405.20 to Wyatt, Wyatt released any claims he may have had pursuant to the Stockholders' Agreement. Pltf's Ex., Trial Binder I, Tab 10, ¶ 6(a).

The Acquisition by Phillips of the  
Pilot Interests Did Not Violate  
Delaware Law In That It Constituted  
A Purchase of Stock and Not a  
Stock Redemption.

Aside from the arguments that the acquisition of his Pilot Interests violated the Consent Decree and the Stockholders' Agreement, Wyatt asserts that the acquisition of his shares constituted an unauthorized, *ultra vires* redemption by

Pilot Holding.<sup>13</sup> Wyatt argues that the redemption was void *ab initio* because Delaware law requires that a redemption be authorized by a corporation's certificate of incorporation, and neither the certificate of incorporation, nor the Stockholders' Agreement, authorize such a redemption. Plaintiff's Proposed Conclusions of Law, ¶¶ 7-28; Del. Code Ann. tit. 8, §§ 151(a)-(b), 160. Phillips, on the other hand, contends that the acquisition of Wyatt's Pilot Interests was a purchase, not a redemption, and Delaware law does not require a corporation's certificate of incorporation to authorize a corporation to repurchase shares of its own stock. Reply Memorandum of Respondent Phillips In Opposition to Petitioner's Proposed Findings of Fact and Conclusions of Law, pp. 2-10. The court agrees with Phillips that the transaction at issue was a purchase rather than a redemption.

The distinction between a purchase and a redemption has been discussed by various corporate treatises. One treatise states:

A corporate acquisition of its shares may be effected through a mechanism called . . . a 'purchase,' or through a 'redemption.' A purchase consists of the acquisition by a corporation of its own shares through purchases on the open market or privately.

. . . .

A redemption of its own shares by a corporation differs from a purchase in that a corporation redeeming shares calls for redemption shares (usually preferred) issued subject to redemption. And while a purchase may be made from any one or more shareholders, a redemption usually must be made of all the shares of the class or series subject to redemption or, if of less than all, either pro rata or by lot.

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<sup>13</sup> The court notes that Wyatt did not raise this argument in the Petition. But see Pltf's Proposed Conclusions of Law, ¶¶ 7-28. In addition, in the argument, Wyatt adds that the redemptions by PPH and the Real Estate Limited Partnerships were unauthorized. This argument does not make sense with respect to PPH and the Real Estate Limited Partnerships, however, because redemption indicates the purchase of a corporation's own stock, and the facts do not indicate that PPH or the Real Estate Limited Partnerships purchased their own stock.

Zolman Cavitch, Business Organizations With Tax Planning, Vol. 11, § 147.01[2]

(Matthew Bender & Company, Inc. 2001). Another treatise explains:

A redemption right held by the issuing corporation allows the corporation, at its option, to call in all or a pro rata portion of its redeemable shares, and buy them back at a specified price plus accrued dividends.

William Meade Fletcher, Fletcher Cyclopedia of the Law of Private Corporations,

Vol. 11, § 5308 (West, a Thomson business 2003).

Unlike a purchase, if a corporation wants to later redeem certain shares the corporation's certificate of incorporation or the corporation's board of directors must set forth a redemption right for those shares of stock.

The terms of any redemption right attaching to a class of shares must be set out in the provision of the articles of incorporation authorizing the shares, unless the articles empower the board to set such terms for authorized shares.

. . . .

The retirement or redemption is not an organic or fundamental change in the composition or business of the corporation, when unanimously agreed upon by the shareholders and authorized by the statute, but is rather a part of the corporate business which devolves upon the board of directors, and is to be distinguished from a purchase of its own stock by the corporation.

Fletcher Cyc. § 5308; See Del. Code Ann. tit. 8, §§ 160(a), 151(b) (both of these provisions are quoted below).

The distinction between a purchase and a redemption is sometimes blurred because a redemption is simply a specific kind of purchase by a corporation, and the end result is the same. One treatise acknowledges:

The distinction made here between the terms 'purchase' and 'redemption' is not universally recognized. Modern state corporation statutes governing stock repurchases no longer distinguish between redeemable shares and other types of shares. The Internal Revenue Code refers to all corporate distributions to shareholders in return for their stock as 'redemptions.' The major stock exchanges have a tendency to do likewise. In addition, there

are courts that use the term 'redemption' as the generic term for all corporate share reacquisitions. The imprecision of terminology is understandable, as the end result is similar whether there is a purchase or a redemption.

Business Organizations with Tax Planning, at § 147.01[2].<sup>14</sup>

Despite the blurring of terminology in other contexts, Delaware law precisely distinguishes between a purchase and a redemption, and recognizes the words' separate meanings. Section 160 of Title 8 of the Delaware Code states:

- (a) Every corporation may purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; provided however, that no corporation shall . . .
  - (1) Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation . . .
  - (2) Purchase, for more than the price at which they may be redeemed, any of its shares which are redeemable at the option of the corporation; or
  - (3) Redeem any of its shares unless their redemption is authorized by subsection (b) of 151 of this title and then only in accordance with such section and the certificate of incorporation.

Del. Code Ann. tit. 8, § 160(a) (emphasis added).<sup>15</sup>

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<sup>14</sup> The federal district court in the Southern District of New York acknowledged that "a redemption is at best a specialized type of purchase," yet upheld the distinction between the two words in its interpretation of a provision of the Investment Company Act of 1940. Securities and Exchange Comm'n v. Sterling Precision Corp., 276 F. Supp. 772, 773 (S.D.N.Y. 1967), *aff'd*, 393 F.2d 214 (2<sup>nd</sup> Cir. 1968).

<sup>15</sup> Section 151(b) states: "Any stock of any class or series may be subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event; provided however, that immediately following any such redemption the corporation shall have outstanding 1 or more shares of 1 or more classes or series of stock, which share, or shares together, shall have full voting powers . . . ." Del. Code Ann. tit. 8, § 151(b).

Here, the acquisition of Wyatt's Pilot Interests was not a redemption because Wyatt's shares, by their nature, were not issued with redemption rights. The five hundred shares of Pilot Holding stock which Wyatt owned were Pilot Holding Common Stock, par value \$.01 per share. Pltf's Ex., Trial Binder I, Tab 9. Wyatt has not pointed to any corporate document or board of directors' action which attached redemption rights to his shares. Thus, there are no facts which support the proposition that Wyatt's Pilot Interests were subject to redemption. Aside from redemption, Delaware law provides that a corporation may purchase its own shares, and that is what happened when Wyatt's Pilot Interests were acquired. Del. Code Ann. tit. 8, § 160(a).

Delaware law does impose restrictions on a corporation's purchase of shares of its own stock, but none of those restrictions were implicated by the purchase of Wyatt's Pilot Interests. The first restriction holds that "no corporation shall . . . (1) Purchase or redeem its own shares of capital stock for cash or other property when the capital of the corporation is impaired or when such purchase or redemption would cause any impairment of the capital of the corporation . . ." Del. Code Ann. tit. 8, § 160(a)(1). "Impairment of capital," means that:

A company's capital is impaired if the value of its assets is less than the aggregate amount of all the shares of its capital stock. Thus, a stock repurchase impairs capital if the funds used to obtain the stock exceed the amount of the corporation's surplus, i.e., the excess of net assets over the par value of the corporation's issued stock.

Business Organizations With Tax Planning, at § 147.03[1].

Here, Wyatt failed to demonstrate that the capital of Pilot Holding was impaired at the time that his Pilot Interests were acquired. Moreover, it would not

make sense to so conclude (i.e., that the equity value of the business was not at least \$10, or \$.01 par value times 1000 Pilot Holding Common Stock shares), in a situation where Wyatt agreed in the Consent Decree to purchase half of Pilot Holding's capital stock for \$9,025,000 if Phillips failed to purchase Wyatt's shares.

Delaware law's second restriction on a corporation's purchase of shares of its own stock is that "no corporation shall . . . (2) Purchase, for more than the price at which they may be redeemed, any of its shares which are redeemable at the option of the corporation." Del. Code Ann. tit. 8, § 160(a)(2). This restriction is not implicated with respect to Wyatt's Pilot Interests because no redemption price ever existed with which to compare the purchase price. No terms of redemption were provided by the certificate of incorporation or by the board of directors for Pilot Holding.

Delaware common law imposes a third restriction on a corporation's purchase of shares of its own stock, namely, a purchase will not be permitted if the purchase is not in good faith or is achieved for an improper motive or purpose. Business Organizations with Tax Planning, at § 147.04. Wyatt asserts that the caselaw prevents an acquisition where the purpose is to get rid of certain stockholders where their presence is "undesirable." Pltf's Proposed Conclusions of Law, 22, citing Greene v. E.H. Rollins & Sons, Inc., 2 A.2d 249 (Del.Ch. 1938). This restriction does not apply, however, because Wyatt consented to the purchase of his Pilot Interests by executing the Consent Decree. As discussed, Wyatt waived his claim that the purchase was not in good faith by consenting to

the purchase of his Pilot Interests.

In summary, in that none of the restrictions on a corporation's purchase of shares of its own stock are operable here, the court finds that Pilot Holding was authorized to purchase Wyatt's Pilot Interests pursuant to Delaware law, and that the purchase should not be invalidated as being void *ab initio*.<sup>16</sup>

The Acquisition by Phillips of Pilot Interests  
Should Not Be Invalidated Based On  
Claims That the Acquisition May Be Deemed  
A Fraudulent Transfer or That  
Phillips Engaged In Illegal Activity.

Wyatt next argues that Phillips improperly caused Pilot Holding to acquire Wyatt's Pilot Interests with Wyatt's own assets. In support, Wyatt presented Andrew Carron, Ph.D., an expert witness in transactional valuation and financial economics, who testified that "up until ... the moment of the transaction, he [Wyatt] was half owner of this enterprise [Pilot Air Freight] and any asset of the enterprise or any payment by the enterprise would be attributable 50 percent to him [Wyatt], to his assets, to his liabilities, his cash flows." Tr. III, p. 8. Furthermore, Wyatt argues that in February 2003, Pilot Holding advanced \$3.7 million to Phillips as a distribution (Tr. VI, pp. 102-107), and that this distribution illustrates that "Wyatt's own funds were being used to finance the acquisition." Tr. VII, pp. 13-14.

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<sup>16</sup> Wyatt also asserts that a comparison of Section 2 and 3 of the Stockholders' Agreement shows that if a third party offered to buy shares of Pilot Holding, then Pilot Holding would have an opportunity to redeem the shares, whereas if Wyatt or Phillips offered to buy the shares of the other, the Stockholder Agreement did not provide for Pilot Holding's redemption of the shares. Pltf's Ex., Trial Binder I, Tab 9, ¶¶ 2-3. Wyatt argues that based on these provisions, the court should find that Phillips was not authorized pursuant to the Stockholders' Agreement to cause Pilot Holding to redeem Wyatt's shares. Tr. I, pp. 96-98. Based on the reasons discussed, the acquisition of Wyatt's Pilot Interests did not constitute a redemption, and therefore this argument is not persuasive.

The court does not find these arguments persuasive for two reasons. First, Wyatt received \$9,500,000 in consideration for his Pilot Interests. Moreover, those interests are now encumbered by debt. Second, Sections 5(a) and (b) of the Consent Decree contemplated the financing by Pilot to which Wyatt now objects, and Wyatt bound himself to the Consent Decree.

Wyatt next argues that Pilot's purchase of Wyatt's Pilot Interests could be challenged by a creditor as a fraudulent transfer and that the third party could attempt to recapture the funds transferred to Wyatt. Tr. II, pp. 52, 54; See Del. Code Ann. tit. 8, § 174. Wyatt raises this argument as a potential danger in the future to justify invalidating the acquisition of Wyatt's Pilot Interests. To rebut this argument, Phillips presented the testimony and report of Barclay Clark, Esquire, who testified that a fraudulent transfer claim, whether intentional or constructive, would fail. Tr. V, pp. 37-43, 49; Court Ex. 2. Despite the experts' competing testimony about whether a fraudulent transfer claim would be successful, there is no pending fraudulent transfer claim and the future existence of such a claim is speculative. This court deems it appropriate to not rule on the merits of this argument.<sup>17</sup>

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<sup>17</sup> Wyatt, with the agreement of Phillips, presented H. Andrew Drescher's Stipulation in Lieu of Testimony, which outlined questions to which Mr. Drescher would invoke his Fifth Amendment privilege against self-incrimination. Court Ex. 22. In addition, Wyatt's counsel alleged that Mr. Drescher, an employee of Pilot Air Freight, had received a target letter regarding a federal grand jury investigation of Pilot. Pltf's Proposed Findings of Fact, ¶¶ 78-79. Wyatt argues that the court should draw a negative inference from Mr. Drescher's Stipulation and find that the payment to Wyatt is subject to a fraudulent conveyance claim because Mr. Drescher "was and still is the Chief Financial Officer of the various Pilot entities and loaned money to Pilot as part of the challenged transaction." Pltf's Proposed Conclusions of Law, ¶ 68. The court declines to draw such an inference.

Wyatt also alleges that Phillips engaged in “substantial illegal and criminal activity” (Petition, ¶ 19) and that Phillips has used control over Pilot Holding to “convert millions of dollars of corporate assets” (Petition, ¶¶ 20-21). But, Wyatt waived these claims by executing the Consent Decree. Pltf’s Ex., Trial Binder I, Tab 10, ¶ 6(a). However, because this court is acting as a Chancellor, it deemed it appropriate, despite the waiver, to search the record for any evidence that Phillips engaged in illegal and criminal activity, and could find none.

The Claim for Reimbursement of Wyatt’s  
Tax Liability for the Fourth Quarter of 2002.

Wyatt claimed that Pilot should have made a distribution to him to cover his tax liability for the fourth quarter, 2002 as a sub-chapter S, fifty percent shareholder. The court addressed this issue during the hearing and ordered from the bench that this claim should be paid. In that the propriety of that Order remains at issue, this court here reviews and confirms its bench Order.

By way of background, Section 4 of the Stockholders’ Agreement provides:

- (e) Taking into account that any net income distributed shall be distributed on a pro rata basis to Company’s Subchapter S Shareholders in order to maintain Company’s S corporation status, net income of Company shall be distributed to its shareholders as follows:
  - (i) An amount of net income sufficient to provide its shareholders with funds to reimburse the shareholders for amounts incurred by them in federal and state income taxes on Company’s [Pilot Holding’s] and/or Pilot’s [Air Freight’s] income during the year shall be distributed to its shareholders;

Pltf’s Ex., Trial Binder I, Tab 9, ¶4(e).

Wyatt contended that in February 2003, Phillips caused Pilot Air Freight to distribute \$700,000 to reimburse himself for taxes he incurred for the fourth quarter, 2002, and argued therefore, that Phillips should be compelled to cause the corporation to reimburse Wyatt as well. Phillips' counsel denied that the distribution Phillips received in February 2003 constituted a reimbursement for taxes. Tr. VI, p. 107. Nonetheless, this court ruled from the bench that Wyatt should be reimbursed a sufficient amount to cover the tax liability he incurred for the fourth quarter, 2002 based on the net income to the corporation. As a result, on October 9, 2003, at the bar of the court, Phillips' counsel delivered a Pilot Air Freight check in the amount of \$847,601 payable to Wyatt. Tr. VII, p. 3.

In his submissions after trial, Phillips asks the court to reconsider its ruling. Def's Proposed Conclusions of Law, ¶¶ 72-87.<sup>18</sup> Phillips argues that the Stockholders' Agreement did not require Pilot Air Freight to make a distribution. Id. at ¶¶ 72-74. Phillips also contends that once Wyatt received the consideration for his Pilot Interests, he released any claim to be reimbursed for taxes. Id. at ¶¶ 79-85. Phillips further argues that Wyatt's claim for taxes is a claim against Pilot Air Freight, not against Phillips individually. Id. at ¶ 87, n.29. Moreover, Phillips asserts that any claim Wyatt had would have terminated because the Stockholders' Agreement ceased to exist once Phillips became the sole shareholder. Id. at ¶¶ 86-87.

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<sup>18</sup> Wyatt rejoins that the court's ruling should not be overturned because Phillips failed to file a motion for reconsideration within ten days of the ruling. See Pltf's Response to Defendants Proposed Findings of Fact and Conclusions of Law With Respect to the Tax Distribution and Attorney's Fees, p. 3.

Despite these arguments, the court reaffirms its bench ruling that Wyatt should be reimbursed for his taxes based on the Consent Decree as well as plain fairness. Admittedly, the Consent Decree provided that “If Phillips consummates his acquisition of Wyatt’s Pilot Interests . . . Wyatt shall waive and release any and all claims he may have against Phillips (as well as Phillips & Campbell, P.C.) and Pilot except for his contractual claims for attorney’s fees.” Pltf’s Ex, Trial Binder I, Tab 10, ¶ 6(a). But, the claims being released involved those arising from the on-going and ugly dispute having to do with control of the Pilot Interests and the alleged mismanagement of the company by Phillips. Furthermore, this practice (of tax reimbursement) was on-going and acknowledged as appropriate in the past by the two shareholders. There is nothing in the documents to suggest that the claim for reimbursement of taxes from the company was contemplated by the parties as subject to being released when they entered into the Consent Decree.

Phillips also argues that Wyatt’s claim for the tax reimbursement was a claim against Pilot Air Freight, not against Phillips, individually. This court is disappointed in Phillips and his counsel for their having the chutzpah to make this argument. Although technically true, this position flies in the face of Phillips’ primary argument that the Consent Decree permits Phillips to cause Pilot to pay Wyatt for his Pilot interests. Thus, Phillips argues, on the one hand, that when the Consent Decree says that “Phillips must . . . pay,” that should be interpreted to mean that he could cause Pilot to pay for Wyatt’s Pilot Interests. Yet, at the same time here, Phillips argues that Wyatt’s claim for taxes fails because Pilot

Air Freight is not a party, and that entity is responsible for distributions for taxes, not Phillips. This court views this argument of Phillips to be disingenuous and not worthy of further comment.

Finally, this Chancellor submits that basic fairness requires that Wyatt's claim for reimbursement of his tax liability for the fourth quarter, 2002, should be paid. Thus, this court denies Phillips' request for reconsideration of the bench Order and confirms the court's intention that that claim was to be paid as valid.

The Court Acknowledges the Submissions  
Of The Intervenor-Franchisees,  
But Does Not Rely On Those Materials  
In Reaching Its Decision.

In an earlier proceeding before Judge DiNubile involving these parties and the continuing problems between them, certain Pilot franchisees were permitted to intervene in this litigation. At the hearing before this court, certain of these intervenor-franchisees testified on behalf of Phillips and through counsel submitted findings of fact and conclusions of law. Essentially, the intervenor-franchisees strenuously advanced Phillips' position, arguing that Wyatt's request to set aside the transaction should be denied.

The court acknowledges the testimony and submissions proffered by the intervenors. However, because the court made its determination without specific reference to those materials, a discussion of the intervenors' arguments is not required here.

### **Conclusions of Law**

Based on the foregoing findings of fact and analysis:

1. Wyatt's Amended Petition to Enforce Consent Decree is **Denied**.
2. Wyatt's request to find Phillips in contempt of the Consent Decree is **Denied**.
3. Pursuant to the Consent Decree, Phillips legally purchased Wyatt's Pilot Interests.
4. Wyatt's Petition to find that the purchase was null and void is **Denied**.
5. Wyatt's further request to allow him to acquire Phillips' Pilot interests is **Denied**.
6. Wyatt's request for an award of punitive damages is **Denied**.
7. Wyatt's request for an award of compensatory damages is **Denied**.
8. The distribution from Pilot to Wyatt in the amount of \$847,601.00 to reimburse Wyatt for sub-chapter S tax liability for the fourth quarter, 2002, is and was appropriate.

This court will enter a contemporaneous Order consistent with this Opinion and the resultant Conclusions of Law.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**CIVIL TRIAL DIVISION**

AARON WESLEY WYATT,	:	January Term, 2002
Plaintiff / Petitioner,	:	No. 4165
v.	:	Commerce Program
RICHARD G. PHILLIPS,	:	
Defendant / Respondent.	:	Control No. 031035

**ORDER**

AND NOW, this 12<sup>th</sup> day of January 2004, upon consideration of plaintiff's Amended Petition to Enforce Consent Decree, the response in opposition, the respective memoranda, all other matters of record, a five-day hearing, and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED and Decreed** that:

1. Wyatt's Amended Petition to Enforce Consent Decree is **Denied**;
2. Wyatt's request to find Phillips in contempt of the Consent Decree is **Denied**;
3. Pursuant to the Consent Decree, Phillips legally purchased Wyatt's Pilot Interests;
4. Wyatt's Petition to find that the purchase was null and void is **Denied**;

5. Wyatt's further request to allow him to acquire Phillips' Pilot interests is **Denied**;
6. Wyatt's request for an award of punitive damages is **Denied**;
7. Wyatt's request for an award of compensatory damages is **Denied**;
8. The distribution from Pilot to Wyatt in the amount of \$847,601.00 to reimburse Wyatt for sub-chapter S tax liability for the fourth quarter, 2002, is and was appropriate;
9. The court has held under advisement for further consideration the issue of what attorney's fees, if any, Phillips is required to pay Wyatt; and
10. The case is listed for a status hearing on Monday, February 9, 2004 at Noon in courtroom 513, City Hall.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**