

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

TERRY JOHNSON,	:	October Term 2008
Plaintiff,	:	
v.	:	No. 1972
PERFECT ORDER, INC., ET. AL.,	:	
Defendants.	:	Commerce Program
	:	
	:	Control Number 10092244

**ORDER**

**AND NOW**, this        day of January 2011, upon consideration of Defendants' Motion for Summary Judgment and Plaintiff's response in opposition, it hereby is **ORDERED** that Defendants' Motion for Summary Judgment is **granted in part** and Plaintiff's claims against Defendants Robert Joyce, Ian Jobson and Oliver Poppenberg are dismissed. All other aspects of the motion are **denied**.

**BY THE COURT,**

---

**ARNOLD L. NEW, J.**



Agreement by which the Shareholders sold their shares of stock in the two corporations POI and POMI, to defendant Versatile Systems, Inc. (“VSI”). VSI is the parent corporation and 100% shareholder of defendant Versatile Acquisition Corporation (hereinafter “VAC”). Defendant John Hardy is and was the Chairman and CEO of VSI and VAC. Defendant Frazer Atkinson was the secretary and treasurer of VSI and VAC.

In April 2005, plaintiff, Gomery and Kelly, executed a Side Letter Agreement. The Side Letter Agreement provided in pertinent part as follows:

- (a) Perfect Order, Inc. had accrued a “management bonus payable” in the financial statements for the year ending December 31, 2004 to Terry Johnson (“the Bonus”) in the amount of US \$400,000, payable over the subsequent three years. Terry Johnson subsequently agreed to waive his entitlement to payment of this Bonus, which was subsequently reversed in the audited financial statements.

...

- (1) Following Closing, Perfect Order Acquisition Corporation will pay to Johnson the sum of US \$400,000 for past service contributions (the “Johnson Payment”) on the earlier of:

- (a) the 10<sup>th</sup> day following the closing of an equity financing by Versatile Mobile Systems (Canada) Inc. completed after the Closing Date for the Transaction and in which aggregate net proceeds of greater than Cdn \$500,000; or

- (b) November 30, 2005.

On or about April 25, 2005, the parties closed the purchase and sale of stock of POI and POMI. The Share Purchase Agreement contains a provision requiring that certain disputes between the parties be arbitrated. On August 17, 2005, VSI and VAC commenced an arbitration proceeding against plaintiff seeking to recover damages resulting from alleged numerous misrepresentations made by plaintiff in the Share Purchase Agreement and for recovery of certain expenses that VSI and VAC allege were improperly paid. In the arbitration, plaintiff claimed he was to receive an additional \$400,000 from VSI and VAC pursuant to the Side Letter

Agreement. Plaintiff also attempted to add POI and POMI as defendants in the arbitration but the arbitrator denied the request since POI and POMI were not parties to the arbitration.

The arbitration occurred in two stages, stage one addressed whether Johnson was entitled to be paid \$400,000 from VSI and VAC<sup>1</sup> and stage two addressed VSI and VAC's claims against plaintiff. At the conclusion of the stage one proceeding, the arbitrator issued an interim award in favor of plaintiff and against VSI and VAC for breach of the Side Letter Agreement in the amount of \$400,000.<sup>2</sup> VAC deposited the sum into an attorney trust account pursuant to the arbitrator's interim award. During stage two the arbitrator found in favor of VSI and VAC and against plaintiff on VSI and VAC's affirmative claims against Johnson.

On October 16, 2008, plaintiff initiated the instant action seeking to recover the \$400,000 as well as his share of the capital contribution. After the filing of preliminary objections, VSI and VAC were dismissed by the court in favor of the arbitration agreement contained within the Share Purchase Agreement of March 2005. At this time, the only issue remaining in this dispute is whether Plaintiff Terry Johnson (hereinafter "Plaintiff") is entitled to statutory penalties and attorneys' fees under the Pennsylvania's Wage Payment and Collection Law, 43 P.S. § 260.1, et. seq. (the "WPCL") for \$400,000 already awarded and paid to plaintiff during an arbitration proceeding.

---

<sup>1</sup> The Arbitrator also considered whether plaintiff was entitled to repayment of his capital contribution to POI and POMI from VSI and VAC.

<sup>2</sup> The Arbitrator also issued an interim award to plaintiff for his capital contribution to POI and POMI. This claim is no longer at issue in this action.

## DISCUSSION

### **I. Defendants' motion for summary judgment based on violation of the WPCL is denied.**

In their motion for summary judgment, defendants argue that plaintiff's claim for liquidated damages and attorney's fees under the WPCL must be dismissed because plaintiff's claim is barred by the applicable statute of limitations and because any amount due from POI and POMI is not wages due to an employee from an employer under the WPCL. A review of the evidence demonstrates the existence of genuine issues of material fact. As such, defendants' motion for summary judgment is denied.

### **II. The Individual Defendants Joyce, Jobson and Poppenberg are entitled to summary judgment on plaintiff's claims because plaintiff executed a valid release in their favor.**

In April 2005, Johnson and defendants Joyce, Jobson and Poppenberg entered into a Settlement Agreement and Mutual Release as a result of the POI and POMI Share Purchase Agreement.<sup>3</sup> "It is axiomatic that releases are construed in accordance with traditional principles of contract law...." <sup>4</sup> Thus, "a release not procured by fraud, duress, or mutual mistake is binding between the parties."<sup>5</sup> Therefore, parties with possible claims may settle their differences with each other upon such terms as are suitable to them.... However improvident their agreement may

---

<sup>3</sup> In addition to Johnson, the Settlement Agreement and Mutual Release was also signed by Versatile Mobile Systems, POI, POMI, Perfect Order Acquisition Corporation, John Gormery, John C. Kelly, Horst A. Bernhard and Mitchell S. Silverstein.

<sup>4</sup> Clark v. Philadelphia College of Osteopathic Medicine, 693 A.2d 202, 207 (Pa.Super. 1997), appeal granted, 550 Pa. 697, 705 A.2d 1303 (1997), appeal dismissed as improvidently granted, 557 Pa. 487, 734 A.2d 859 (1999).

<sup>5</sup> Strickland v. University of Scranton, 700 A.2d 979, 986 (Pa. Super. 1997).

be or subsequently prove for either party, their agreement, absent fraud, accident or mutual mistake, is the law of their case.<sup>6</sup>

Here, the Mutual Release provides as follows:

In consideration of the mutual covenants and agreements set forth herein...each of the Contracting Parties (plaintiff) on the one hand, and each of the Departed Shareholders (Jobson, Joyce, Poppenberg) on the other, do hereby release, acquit, remise, quit-claim and forever discharge one another and of and from any and all actions, causes of action, suits, claims, demands, losses or damages of whatsoever kind, in law or in equity, vested or contingent, known or unknown, from the beginning of time to the date of these presents including, without limiting the generality of the foregoing, any claim for fraud in the inducement of this Agreement, but in any event **relating solely to any and all disputes between the Contracting Parties, on the one hand, and the Departed Shareholders, on the other, concerning the acquisition of PO and POM by VMS and POAC.** Nothing in this Agreement shall be deemed to affect any Party's rights, obligations or benefits arising out of or pursuant to any other agreement, arrangement or understanding between or among any other Party or Parties except as specifically set forth herein. (emphasis added).

This Settlement Agreement and Mutual Release unequivocally bars plaintiff's WPCL claim against Joyce, Jobson and Poppenberg. Plaintiff agreed to release and forever discharge Joyce, Poppenberg and Jobson from **any and all** actions which are vested or contingent, known or unknown including claims or disputes related to the sale of POI and POMI to VSI and VAC. The record evidence clearly demonstrates that plaintiff's claim against Joyce, Poppenberg and Jobson arises directly from and relates solely to the acquisition of POI and POMI by VSI and VAC.<sup>7</sup> Since no evidence was produced demonstrating fraud, accident or mistake and since the court finds the language of the mutual release to be unambiguous, defendants' motion for summary judgment is granted and defendants Joyce, Jobson and Poppenberg are dismissed as defendants.

## CONCLUSION

---

<sup>6</sup> Clark, *supra* at 207 (citing Buttermore v. Aliquippa Hospital, 522 Pa. 325, 328-29, 561 A.2d 733, 735 (1989)).

<sup>7</sup> See Side Letter Agreement dated April 18, 2005.

For the foregoing reasons, defendants' motion for summary judgment is granted in part and denied in part. Defendants Joyce, Jobson and Poppenberg are dismissed as defendants.

**BY THE COURT,**

---

**ARNOLD L. NEW, J.**