

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

ALFONSO J. SEBIA and PAMELA SEBIA	:	February Term 2009
Plaintiffs,	:	
v.	:	No. 4636
STANLEY J. COSTELLO, JR., ANGELA	:	
L. COSTELLO, ALL STAFFING, INC.,	:	COMMERCE PROGRAM
COSTELLO'S RESTAURANT,	:	
DALRADA FINANCIAL	:	Control Number 10083859
CORPORATION, LONGVIEW FUND, LP,	:	
LONGVIEW EQUITY FUND, LP.,	:	
LONGVIEW INTERNATIONAL EQUITY	:	
FUND, LP. ALPHA CAPITAL	:	
AKTIENGESELLSHAFT, FENIX	:	
CAPITAL AKTIENGESELLSHAFT,	:	
FENIX CAPITAL LLC, BALMORE SA,	:	
BRIAN BONAR and DANIEL F.	:	
ZIEGLER,	:	
Defendants.	:	

**OPINION**

This is a dispute between longtime business partners, plaintiff Alfonso Sebia (“Sebia”) and defendant Stanley Costello, Jr. (“Costello”).<sup>1</sup> In 1993, Sebia and Costello formed All Staffing, Inc. (“ASI”). ASI is a professional employment organization that provides businesses with payroll, human resource support and various other services to clients in Philadelphia and the United States. Sebia and Costello were each directors of ASI and fifty (50) percent owners, each owning thirty-five (35) percent of ASI’s issued common stock. The remaining stock was held as treasury stock. Sebia held the title of vice president and Costello held the title of president. Costello’s wife Angela functioned as ASI’s chief operating officer.

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<sup>1</sup> In addition to the Costello’s, plaintiffs also sued various entities which allegedly played some role in defrauding plaintiffs of their interests in All Staffing Inc.

In 1994, Sebia and Costello formed A&S Associates, a general partnership.<sup>2</sup> The partnership was formed to generate income through the acquisition, sale, use and rental of certain real estate and personal property including but not limited to the following:

1. Real property and improvements located at 100 West Ridge Street, Lansford, Pennsylvania;
2. Real property and improvements located at 105-107 Carbon Street, Weatherly Pennsylvania, 18255;
3. Real property and improvement located on the north and south sides of Route 443 in Andreas, West Penn Township, Schuylkill County, Pa.;
4. Time share in real property at the Flagship Hotel in Atlantic City, Atlantic County, New Jersey;
5. Real property and improvements located at 2626 South Atlantic, Daytona Beach, Florida;
6. 239 shares of stock in Prudential Financial, Inc.;
7. 2003 Chevrolet Suburban vehicle; and
8. 2003 Dodge Ram vehicle.

In March 2005, Al Sebia was diagnosed with pancreatic cancer and was forced to take a medical leave of absence from ASI. Sebia alleges that during his absence from ASI, Costello engaged in discussions to sell ASI to Dalrada Financial Corporation, a publically traded company. Sebia alleges that Costello and the other defendants named in the lawsuit deprived him of his ownership interest, expectancy interest and due consideration for his interest in ASI. Costello denies this claim.

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<sup>2</sup> A genuine issue of material fact exists as to whether A&S Associates' partnership agreement is oral or written.

In the spring of 2008, ASI was in need of financial support and according to Costello required an infusion of cash to satisfy certain outstanding obligations including payroll. At the time, ASI was attempting to collect from a client a million dollars in fees and had exhausted ASI's line of credit that Sebia and Costello and their wives personally guaranteed. Costello attempted to obtain additional financing for ASI but was unable to without additional security. Costello requested Sebia to provide the additional security and act as guarantor for the additional financing for ASI. Sebia agreed to do so provided Costello and Sebia reached an agreement regarding the dissolution of A&S Associates and the division of assets. Costello agreed.

On May 16, 2008, Sebia and Costello entered into a Dissolution Agreement for A&S Associates. The Dissolution Agreement dissolved A&S Associates and distributed the assets of the partnership as follows:

2. Stanley J. Costello, Jr., hereinafter referred to as "Costello", shall convey all of his right, title and interest in and to the following partnership assets to Alfonso J. Sebia, hereinafter referred to as "Sebia":
  - (1) Real Property at 105-107 Carbon Street Weatherly, Pennsylvania 18255;
  - (2) Route 443 Farm, Andreas, Pennsylvania;
  - (3) Time Share, Atlantic City, Flagship Hotel;
  - (4) 239 Shares of Prudential Stock;
  - (5) Funds held at Penn Business, will equal \$30,000 minus current value of stock.
  - (6) 2003 Chevrolet Suburban;
  - (7) 2003 Dodge Ram.
3. Costello shall satisfy the debt of Sebia due to All Staffing, Inc. with an approximate debt of \$77,500.00. Additionally Costello will satisfy the debt of Sebia to All Staffing, Inc. in the approximate amount of \$38,000,000.
4. At the time of signing this Agreement, by way of clarification, Sebia shall owe nothing to All Staffing, Inc., A&S Associates, J.C. Data, and/or any and all entities that have existed or do exist by and between Costello and Sebia and further, Sebia shall owe nothing personally to Costello.

5. Costello shall receive real property at 100 West Ridge Street, Lansfeild, Pennsylvania and real property at 2626 South Atlantic Daytona Beach, Florida.
6. Costello shall be responsible for all mortgage payments due on 105-107 Carbon Street, Weatherly Pennsylvania 18255 which have an approximate balance of \$80,000.00 and shall be further responsible for all mortgage payments due on the Route 443 Farm, Andreas, Pennsylvania, with an approximate balance of \$200,000.00.
7. All obligations for mortgage payments and debt payments to be made by Costello shall be guaranteed by a judgment note:
  - (a) A Judgment Note executed by Costello given to Sebia.
8. The parties acknowledge and agree that any documents signed by Sebia and his spouse relative to financing arrangements with Penn Business Credit L.L.C. are done solely for the purpose of facilitating the release of Sebia and his spouse from any guarantees supporting said line of credit with Penn Business Credit L.L.C. and collateral pledge by same. Should the financing arrangements with Penn Credit not be resolved whereby Sebia and his spouse are released as Guarantees and their collateral is not released by Penn Credit, L.L.C., the execution of any documents by Sebia shall be null and void and shall be treated as if same were never executed.

As required by paragraphs 6 and 7 of the Dissolution Agreement, Costello executed and delivered two judgment notes to Sebia. The first judgment note obligated Costello to pay two hundred thousand dollars (\$200,000.00) to plaintiffs if Costello failed to make any installment payment due on the business loan/mortgage for the real estate located on Route 443 Farm Andreas, Pennsylvania. The second judgment note obligated Costello to pay sixty seven thousand (\$67,000.00) to plaintiffs if Costello failed to make any installment payment due on the business loan/mortgage for the real estate located at 105-107 Carbon Street, Weatherly, Carbon County, Pennsylvania.

On June 30, 2008, Costello declared the Dissolution Agreement *void ab initio*. Costello claimed that the partnership agreement required an equal distribution of assets or the submission of the dispute to arbitrators. Costello also stated that Sebia breached his duty of good faith and

fair dealing by taking unfair advantage and forcing him and his wife to sign the Dissolution Agreement. Costello also cancelled the judgment notes referenced within the Dissolution Agreement which were executed by Costello and his wife.

In August, 2008, Costello demanded arbitration to dissolve the A&S Partnership based on the written partnership agreement dated March 23, 1994. On August 21, 2008, Sebia filed a petition to stay arbitration in the Court of Common Pleas of Carbon County, Pennsylvania, Costello v. Sebia, 08-2443. The basis for the stay is Sebia's allegation that Sebia's signature on the March 23, 1994 Partnership Agreement is forged. Costello and Sebia agreed to stay the arbitration and the Carbon County Court entered an order staying the matter. The matter currently remains stayed.

On February 27, 2009, Sebia filed a lawsuit against Costello and his wife as well as various other defendants alleging breach of contract, breach of fiduciary duty, intentional misrepresentation, negligent misrepresentation, shareholder oppression, and conspiracy. Sebia also seeks an injunction and the appointment of a receiver. On April 6, 2009, Costello filed preliminary objections to the complaint. On April 27, 2009, plaintiffs filed their first amended complaint. On or about May 15, 2009, Costello filed preliminary objections to plaintiffs' first amended complaint. On November 23, 2009, this court entered an order sustaining Costello's preliminary objections to counts V (intentional misrepresentation) and XII (breach of fiduciary duty) for lack of specificity and overruled the remainder of Costello's preliminary objections. The court also granted plaintiffs leave to file a second amended complaint. In the second amended complaint, plaintiffs set forth a variety of causes of action against various defendants and specifically against the Costello's for breach of contract (count XIV) and for dissolution of A&S Associates (count XVIII).

On January 13, 2010, Costello filed an answer and new matter to the second amended complaint and a counterclaim. The counterclaim consisted of two counts, breach of fiduciary duty (count I) and a request for accounting (count II). Presently before the court is Sebia's partial motion for summary judgment. Specifically, Sebia seeks the entry of summary judgment on Costello's counterclaim for breach of fiduciary and Sebia's direct claim against Costello for dissolution of A&S Associates (count XIV) and breach of contract arising from Costello's anticipatory repudiation of two judgment notes (count XVIII).

## **DISCUSSION**

### **I. Plaintiffs are entitled to summary judgment on Count I of Costello's counterclaim for Breach of Fiduciary Duty.**

In Count I of the counterclaim, Costello purports to state a claim for breach of fiduciary duty against Sebia. Costello alleges Sebia breached his fiduciary obligation to him and/or A&S Associates through self dealing, forcing Costello to enter into dissolution under duress and misrepresentations. Sebia argues he is entitled to summary judgment on this claim since Costello has failed to establish duress that would render a contract void.

The formation of a valid contract requires the mutual assent of the contracting parties. Mutual assent to a contract does not exist when one of the contracting parties elicits the assent of the other contracting party by means of duress.<sup>3</sup> Duress has been defined as follows:

That degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness....The quality of firmness is assumed to exist in every person competent to contract, unless it appears that by reason of old age or other sufficient cause he is weak or infirm...Where persons deal with each other on equal terms and at arm's length, there is a presumption that the person alleging duress possesses ordinary firmness...Moreover, in the absence of threats of actual

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<sup>3</sup> Degenhardt v. The Dillon Company, 543 Pa. 146, 669 A.2d 946 (Pa. 1996).

bodily harm there can be no duress where the contracting party is free to consult with counsel....<sup>4</sup>

Economic duress, also known as business compulsion, is a variant of the duress theory recognized by the Pennsylvania courts. The important elements of economic duress are (1) there exists such pressure of circumstances which compels the injured party to involuntarily or against his will execute an agreement which results in economic loss, and (2) the injured party does not have an immediate legal remedy.<sup>5</sup> Of course, another essential element is that the party against whom the defense of duress is asserted must have placed the contracting party in the position which eliminated the party's exercise of free will.<sup>6</sup>

Here, a review of the record demonstrates that the only instances of where Costello mentions its economic duress claim is the counterclaim itself, his June 30, 2008 letter repudiating the Dissolution Agreement and in response to plaintiffs' motion for partial summary judgment. The court finds that Costello has failed to sustain his burden to show economic duress.

Pa. R. Civ. P. 1035.3 specifically provides

- (a) ....the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying
  - (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
  - (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Absent from the record is any evidence of ASI's alleged financial condition at the relevant time, its debt with Penn Credit Company and exhaustion of ASI's line of credit with

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<sup>4</sup> *Id.* (quoting Carrier v. William Penn Broadcasting Co., 426 Pa. at 431, 233 A.2d at 521 (1967).

<sup>5</sup> Litten v. Jonathon Logan, Inc., 220 Pa. Super. 274, 282, 286 A.2d 913 (1971).

<sup>6</sup> National Auto Brokers Corporation v. Aleeda Dev. Corp., 243 Pa. Super. 101, 364 A.2d 470 (1976).

Penn Credit Company, ASI's balance sheets, financial statements, financial reports or an analysis of ASI's cash flow, ASI's attempts to obtain financing with financial institutions and their refusal to provide same based on a lack of security. Moreover, the record fails to indicate the avenues pursued by Costello to find a solution to ASI's financial problems and how Costello was forced to rely upon Sebia as his only means to obtain financing. Costello's assertion of duress is nothing more than conclusory allegations without any support.

As for Costello's breach of fiduciary duty claim which rests upon the allegation of self dealing and misrepresentations, Costello again has not produced any evidence of same. Based on the foregoing, Sebia's motion for summary judgment to count I of the counterclaim, breach of fiduciary duty, is granted.<sup>7</sup>

**II. Plaintiffs' Partial Motion for Summary Judgment to Counts XVIII and XIV is granted, the Dissolution Agreement is an enforceable contract and A&S Partnership is subject to Dissolution pursuant to the terms of the Dissolution Agreement.**

In Count XVIII of the second amended complaint, plaintiffs purport to set forth a cause of action for enforcement of the Dissolution Agreement signed by Costello and Sebia on May 16, 2008. Alternatively, Sebia requests an order dissolving A&S Associates pursuant to 15 Pa. S. C. A. § 8354. Costello argues the Dissolution Agreement is null and void because a material term of the Dissolution Agreement, releasing Sebia as a guarantor on the Penn Business line of credit, was never satisfied.

The Dissolution Agreement constitutes a binding, lawful agreement between Sebia and Costello regarding the voluntary dissolution of A&S Associates and the division of assets and liabilities. The court has already determined economic duress does not void the agreement.

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<sup>7</sup> The court finds that Costello's reliance on Litten v. Jonathon Logan, Inc., 220 Pa. Super. 274, 286 A.2d 913 (1971) is misplaced. In Litten, the Superior Court concluded that the evidence presented to the jury, which consisted of more than conclusory allegations, was sufficient to withstand a judgment notwithstanding the verdict. Here, unlike Litten, Costello failed to present any evidence of duress.



Moreover, the alleged existence of a prior partnership agreement between Sebia and Costello does not affect the enforcement of the subsequent Dissolution Agreement. Parties who have undertaken contractual obligations may enter into a new agreement creating obligations separate from the old ones and at variance with them, and such new agreement will be binding.<sup>8</sup> Sebia and Costello voluntarily agreed to the terms within the Dissolution Agreement and such terms are binding and will be enforced. As such, Sebia's motion for summary judgment to count XVIII is granted and A&S Associates is dissolved and the terms of the Dissolution Agreement shall be enforced.<sup>9</sup>

Additionally, Sebia also seeks summary judgment to Count XIV of the second amended complaint alleging breach of contract arising from the Costello's breach of the judgment notes. Pursuant to the terms of the Dissolution Agreement, Costello was required to provide two judgment notes. The first judgment note obligated Costello to pay two hundred thousand dollars (\$200,000) to plaintiffs if Costello failed to make any installment payment due on the business loan/mortgage for the real estate located at Route 443 in Schuylkill County, Pa. The Second Judgment Note obligated Costello to pay sixty seven thousand dollars (\$67,000) to plaintiffs if Costello failed to make any installment payment due on the business loan/mortgage for the real property located at 105-107 Carbon Street in Carbon County. Costello has failed to make the required mortgage payments as required by the Judgment Notes and mortgage foreclosure proceedings have been initiated.<sup>10</sup> Since the court has already determined that the Dissolution Agreement is a valid and enforceable contract, the court finds Costello's failure to make the

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<sup>8</sup> Myers v. Ohio-Penn Gas & Oil Co., 294 Pa. 212, 144 A. 93 (1928).

<sup>9</sup> The court does not find persuasive Costello's interpretation of paragraph 8 of the Dissolution Agreement to void the agreement. Paragraph 8 is limited to documents signed by Sebia and his wife relative to financing arrangements with Penn Business Credit, LLC and not the Dissolution Agreement itself.

<sup>10</sup> According to Sebia's motion for summary judgment, the Carbon street property was scheduled for sheriff sale on October 8, 2010.

required note payments constitutes a breach of contract and therefore summary judgment is entered in favor of Sebia and against Costello in the amount of \$267,000.00 plus interest.

### **CONCLUSION**

For the foregoing reasons, plaintiff's partial motion for summary judgment is granted. Count I of the counterclaim (breach of fiduciary duty) is dismissed. Count XVIII (dissolution) is granted and A&S Associates is dissolved pursuant to the Dissolution Agreement. Count XIV (breach of contract) is granted and judgment is entered against Costello and in favor of Sebia in the amount of \$267,000.00 plus interest.

**BY THE COURT,**

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**ARNOLD L. NEW**