

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN JOSEPH EDWARDS,
Plaintiff,

v.

A. WESLEY WYATT,
Defendant.

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| **CIVIL ACTION NO. 01-1333** |
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MEMORANDUM AND ORDER

TUCKER, J.

January 8, 2007

Presently before this Court is Plaintiff's Motion to Amend the Court's Findings and Judgment (Doc. 112), Defendant Wyatt's Motion for Reconsideration and Opposition to Plaintiff's Motion (Doc. 113), and Plaintiff's Opposition (Doc. 114). For the reasons set forth below, upon consideration of Plaintiff's Motion and Defendant's Motion and Response, this Court will grant in part and deny in part Plaintiff's Motion and deny Defendant's Motion.

BACKGROUND

This cause of action arises out of a breach of contract based on an April 30, 1998, oral contract which provided that neither party would, without the participation of the other party, enter a settlement agreement with Richard G. Phillips, CEO of Pilot, to settle Plaintiff Edwards's bankruptcy estate.

On December 29, 1999, Edwards filed a complaint against Wyatt, asserting claims of breach of contract, promissory estoppel, and fraudulent misrepresentation in the District Court for the District of Columbia. On January 18, 2001, the D.C. District Court, finding no personal jurisdiction over the Defendant, ordered that the case be transferred to the Eastern District of Pennsylvania. In

May 2002, the parties appeared for a bench trial before Judge James M. Kelly. Judge Kelly found in favor of Defendant Wyatt. Edwards v. Wyatt, No. 01-1331, 2002 U.S. Dist. LEXIS 15026, at *14 (E.D. Pa. Aug. 5, 2002). Plaintiff appealed and the Third Circuit reversed and remanded Judge Kelly's ruling. Edwards v. Wyatt, 335 F.3d 261 (3d Cir. 2003). A second trial took place in February 2004, ending in a second verdict for Defendant Wyatt. Edwards v. Wyatt, No. 01-1331, 2004 U.S. Dist. LEXIS 13269, at *39 (E.D. Pa. July 14, 2004). Plaintiff again appealed and the Court of Appeals remanded the case for a second time. Edwards v. Wyatt, No. 04-3325, 2005 U.S. App. LEXIS 10688 (3d Cir. June 3, 2005).

A bench trial was held before this Court on September 18 and 19, 2006. On October 13, 2006, judgment was entered in favor of Plaintiff and against Defendant in the amount of \$4,290,000. The parties timely filed their respective motions, within the prescribed ten (10) days after entry of judgment. Fed. R. Civ. P. 52(b).

Assailing this Court's findings on the issues of damages, promissory estoppel, and waiver, Plaintiff requests that the Court make three amendments to its October 13, 2006, Memorandum and Order. Defendant seeks oral argument and requests reconsideration of this Court's rulings on the issues of damages and illegality. The Court will review each of the parties' requests in turn.

LEGAL STANDARD

Rule 52(b) of the Federal Rules of Civil Procedure, in pertinent part, provides that "on a party's motion filed no later than [ten]10 days after entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. "Factual determinations are correctable under Rule 52(b) if the district judge who heard the evidence believes that they are necessary, and capable of being made without the grant of a new trial." U.S. v. Gypsum

Co. v. Schiavo Brothers, Inc., 668 F.2d 172, 180 (3d Cir. 1981), cert. denied, 456 U.S. 961 (1982).

To prevail on a motion to amend or alter a judgment, or for a new trial, the movant must show that the motion is necessary to correct manifest errors of law or fact. See Blackiston v. Johnson, No. 91-5111, 1995 U.S. Dist. LEXIS 13823, at *2 (E.D. Pa. Sept. 21, 1995), aff'd mem., 91 F.3d 122 (3d Cir.), cert. denied, 519 U.S. 953 (1996). “The primary purpose of Rule 52(b) is to enable the appellate court to obtain a correct understanding of the factual issues determined by the trial court as a basis for the conclusions of law and judgment entered thereon.” 9A Charles Wright & Arthur Miller, Federal Practice & Procedure § 2582 (2006).

DISCUSSION

A. Damages

In its Conclusion of Law No. 13, this Court found that “[t]he presumptively fair and reasonable distribution of [the economic benefit that Wyatt received as a result of his breach of the Handshake Agreement] is pro rata, according to Wyatt and Edwards’s respective ownership shares (Wyatt 45%; Edwards 33 1/3%) in Pilot prior to the breach.” Accordingly, this Court awarded Edwards \$4,290,000 in compensatory damages explaining that “[t]his amount reflects Edwards’s pro rata share of the total benefits Wyatt enjoyed and Edwards lost as a result of Wyatt’s breach of the Handshake Agreement.” Mem. Order Conclusions of Law No. 15.

Contending that a proper pro rata distribution should compare Edwards and Wyatt’s respective shares of Pilot to determine the formula on which they should share these benefits, Plaintiff asserts that 33 1/3% is not the proper pro rata distribution of the benefits Edwards should receive. Under this Court’s analysis, Plaintiff complains, Wyatt would be allowed to retain 66 2/3% of the benefits enjoyed by breaching the Handshake Agreement, which is significantly higher than

Wyatt's 45% ownership share in Pilot and, Plaintiff maintains, would result in an undeserved windfall for the party who breached the contract.

Defendant counters that Edwards is wholly unentitled to damages. Defendant blasts this Court's award of damages averring that it represents clear error of law and results in manifest injustice since, according to Defendant, the Court awarded 1) an arguably equitable remedy in an action at law; and 2) damages to a party who wholly failed to meet his burden of proof.

First, this Court rejects Defendant's contention that Edwards was awarded an equitable remedy. At no time, did this Court relate that it is mandating a remedy in equity. Rather in stating that the "presumptively fair and reasonable" distribution of the benefits Wyatt received as a result of breaching the Handshake Agreement, this Court adhered to the Commonwealth's approach to assessment of damages,¹ which states

the general rule in [the] Commonwealth . . . [is] that [while] the plaintiff bears the burden of proof as to damages . . . [the fact-finder] may use a measure of speculation in speculating damages. The fact-finder may make a just and reasonable estimate of damage based on relevant data, and in such circumstances may act on probable, inferential, as well as direct and positive proof.

Judge Technical Services, Inc. v. Clancy, 813 A.2d 879, 885 (2002) (quoting Penn. Elec. Supply Co., Inc., 528 A.2d 643, 644 (1987)). Thus, while this Court may not determine damages based on mere speculation and guess, it may reasonably conclude the amount of damages suffered by Edwards through Wyatt's breach of the Handshake Agreement should be assessed on a just and reasonable estimate which in this case is pro rata. Wyatt does not suggest an alternative to pro-rata

¹ This matter comes before this Court on the basis of diversity jurisdiction, thus, as stated in this Court's findings of fact and conclusions of law, this Court must apply Pennsylvania's contract law. See Edwards v. Wyatt, No. 01-1333, 2006 U.S. Dist. LEXIS 74580 *21 (E.D. Pa. Oct. 10, 2006) (citing Edwards v. Wyatt, 335 F.3d 261, 272 n.6 (3d Cir. 2003)).

distribution of the benefits he procured as a result of breaching the Handshake Agreement, contending instead that Edwards failed to meet his burden on the issue of damages and therefore, is not entitled to damages at all. Since Defendant's argument does not comport with the Restatement this Court cannot agree.² The Restatement directs:

[d]oubts are generally resolved against the party in breach. A party who has, by his breach, forced the injured party to seek compensation in damages should not be allowed to profit from his breach where it is established that a significant loss has occurred. A court may take into account all the circumstances of the breach, including willfulness, in deciding whether to require a lesser degree of certainty, giving greater discretion to the trier of the facts. Damages need not be calculable with mathematical accuracy and are often at best approximate.

Restatement (Second) of Contracts § 352 (1981).

Defendant complains that the court may not look to Defendant's gain as a proper measure of damage to Plaintiff, citing Logan v. Mirror Printing Company of Altoona, 600 A.2d 225, 226 (Pa Super. 1991) and William B. Tanner Co., Inc., v. WIOO, Inc., 528 F.2d 262 (3d Cir. 1975). Defendant, however, does not properly represent the holding of these cases. In Logan, plaintiff, a candidate for political office, sought recovery from a newspaper which failed to print an advertisement in accordance with the parties' contract. Finding "the test of whether damages are remote or speculative has nothing to do with the difficulty in calculating the amount, but deals with the more basic question of whether there are identifiable damages," the court held that the damages plaintiff sought were speculative since the issue concerned the fact of damages rather than the amount. Logan, 600 A.2d at 227. Similarly, in William B. Tanner, the court held that plaintiff had not proved with reasonable certainty its contention of lost profits since it could identify neither

² "Pennsylvania courts frequently follow the Restatement of Contracts." Edwards v. Wyatt, 335 F.3d at 272 n.8.

potential customers nor price as basis for calculating damages. 528 F. 2d at 272.

In the instant matter, Edwards satisfied his burden of establishing a value for the benefits Wyatt received as a result of his breach of the Handshake Agreement. The amount of damages, while not exact, may be ascertained through the formula offered by Plaintiff.

After careful review of Plaintiff's post-trial submissions and the instant motion it appears that this Court's erred with respect to its calculation of damages. The Court intended to apportion damages according to the ratio of interest between the parties determined by totaling their respective interest in Pilot (Edwards's interest equaling 33 1/3% and Wyatt's interest equaling 45%, totaling 78 1/3%) then dividing the total by each of their respective shares. The result of such a calculation reveals that Edwards would have 42.5% of the shared interest, while Wyatt would have 57.5% of their shared interest. The correct application of pro rata sharing of 42.5% to amount the \$12,500,000 worth of benefits obtained by Wyatt as a result of breaching the Handshake Agreement would require that \$5,482,500 worth of those benefits be shared with Edwards as compensatory damages. Thus this Court's Conclusion of Law 15, shall be amended as such.

B. Promissory Estoppel

This Court found that there was an enforceable contract and enforceable consideration and therefore declined to address Plaintiff's promissory estoppel claim. In its instant Motion Plaintiff requests that the Court now make a promissory estoppel finding. Plaintiff urges that, to the extent Wyatt elects to appeal to the United States Court of Appeals for the Third Circuit, a promissory estoppel ruling would serve to facilitate an additional ground for affirming this Court's judgment. Defendant contends that Plaintiff has failed to establish legally sufficient bases for altering or amending a judgment. This Court agrees. Plaintiff has not proffered an argument that a manifest

error of law or fact would be corrected by such an alteration, thus the Court declines to alter its ruling on this issue.

D. Defendant's Motion

Defendant makes its Motion for Reconsideration pursuant to Local Civil Rule 7.1(g) based on the contentions that 1) the Court did not consider Wyatt's allegation that the secret Handshake Agreement was illegal and void as a matter of law, and 2) the Court granted a damages award to the Plaintiff even though he did not establish his entitlement to damages. Having already addressed Defendant's second contention, *supra*, this Court will limit the remainder of its analysis to Defendant's request for reconsideration of its illegality allegation. Plaintiff contends that Defendant raised the illegality defense for the first time during closing arguments and it was therefore waived. Plaintiff requests that this Court's Findings of Fact and Conclusion of Law be amended to add a Conclusion of Law which states that the illegality defense was waived.

Defendant baldly asserts that a defense of illegality can never be waived. Defendant cites two cases which do not support its contention but rather respectively stand for the propositions that the Court may raise the issue of illegality sua sponte and that the affirmative defense of illegality may be plead subsequent to filing the answer. See Nyphus v. Travel Mgmt. Corp., 366 F.2d 440 (2d Cir. 1972); Dev. Finance Corp. v. Alpha Housing & Health Care, Inc., 54 F.3d 156 (3d Cir. 1995). As Plaintiff points out neither of these cases sanctions the proposition that a party can deliberately fail to mention its illegality defense through two prior trials and appeals, at pretrial proceedings prior to a third trial, or during the course of trial then raise the issue during its closing argument and have court consider the issue as one properly before the Court. Despite Defendant's attempt to employ a trump card at this stage of litigation ,this Court will address the Defendant's contention of illegality

for purposes of clarity.

Defendant asserts that performance under the Handshake Agreement would have been illegal because, in contravention of 18 U.S.C. § 152(6) and (7)³ respectively, Edwards would have engaged in several illegal acts including: 1) attempting to obtain money or property for acting or forbearing to act in a case under Title 11; 2) concealing his property in contemplation of a case under Title 11 with the intent to defeat the provisions of Title 11; and 3) offering and giving money or property related thereto for acting or forbearing to act under Title 11.⁴

“The general rule is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts.” Twin City Pipe Line Co. v. Harding Glass Co., 283 U.S. 353, 357 (1931). Courts maintain the

³18 U.S.C § 152 provides in pertinent part:

A person who:

...

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

...

shall be fined under this title, imprisoned not more than 5 years or both.

⁴ Notably, Plaintiff claims that these arguments were previously proffered by Edwards as debtor in the aforementioned bankruptcy proceedings in objection to the Wyatt-Phillips joint bid and rejected by the Bankruptcy court. However, as Plaintiff is aware, his brief to the Bankruptcy Court objected to the Wyatt-Phillips bid on 18 U.S.C. § 363(n) grounds rather than the § 152 grounds currently before this Court. Therefore the bankruptcy proceeding court is irrelevant in this regard.

responsibility to invalidate contracts that are repugnant to public policy. Restatement (Second) of Contracts § 178. However, the impropriety of a transaction should be convincingly established in order to justify the exercise of the power. 5 Williston on Contracts § 12:3 (4th ed. 2006).

As the Second Circuit instructs, the elements for bankruptcy fraud pursuant to § 152 require (1) that bankrupt had been adjudicated bankrupt; (2) that bankrupt owned cash receipts; (3) that defendant had concealed or aided and abetted concealment of cash receipts from bankruptcy trustees; and (4) that he had done so knowing of appointment of trustee and with intent to defraud his creditors. United States v. Guiliano, 644 F.2d 85, 87 (2d Cir. 1981).

In the instant matter, there is no factual support for the second and third elements of bankruptcy fraud. The record does not clearly establish that Edwards either concealed or had the intent to conceal his bankruptcy assets.⁵ Accordingly, this Court concludes that there is no basis for invalidating the Handshake Agreement. Furthermore this Court will decline Defendant's request for oral argument.

CONCLUSION

In accordance with the foregoing, this Court will grant in part and deny in part Plaintiff's Motion to Amend the Court's Findings and Judgment and deny Defendant Wyatt's Motion for Reconsideration and Opposition to Plaintiff's Motion. An appropriate order follows.

⁵ Rather than offering facts to support its contention, Defendant laments opposing counsel's conduct in adhering to the secrecy of the Handshake Agreement, a secrecy to which both parties had agreed and maintained.

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ORDER

AND NOW, this ____ day of January 2007, Plaintiff's Motion to Amend the Court's Findings and Judgment (Doc. 112), Defendant Wyatt's Motion for Reconsideration and Opposition to Plaintiff's Motion (Doc. 113), and Plaintiff's Opposition (Doc. 114), **IT IS HEREBY ORDERED** and **DECREED** that Plaintiff's Motion is **GRANTED** in part and **DENIED** in part and Defendant's Motion is **DENIED**.

IT IS FURTHER ORDERED that this Court's Memorandum and Order entered October 13, 2006 (Doc. 111) is **MODIFIED** such that Conclusion of Law 15 shall read:

"Under the foregoing damages analysis, Edwards is entitled to \$5,482,500 in compensatory damages. This amount reflects Edwards's pro rata share (42.5%) to the total benefits of \$12,500,000 Wyatt enjoyed and Edwards lost as a result of Wyatt's breach of the Handshake Agreement."

IT IS FURTHER ORDERED that Defendant's Motion for Leave to file a Reply to Plaintiff's Opposition to Defendant's Motion (Doc. 115) is **DENIED**.

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.