

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

JOHN A. RADE : CIVIL ACTION  
 :  
 v. :  
 :  
 TRANSITION SOFTWARE CORPORATION :  
 and MYLES L. STROHL : NO. 97-5010

**MEMORANDUM AND ORDER**

HUTTON, J.

October 30, 1998

Presently before the Court are Defendants' Motion for Summary Judgment (Docket No. 10) and Plaintiff John A. Rade's Response thereto (Docket No. 12). For the foregoing reasons, the Motion is **GRANTED IN PART AND DENIED IN PART.**

**I. BACKGROUND**

Taken in the light most favorable to the nonmoving party, the facts are as follows. In August, September, and early October of 1996, Myles Strohl and others from Transition Software Corporation ("TSC") solicited Plaintiff John Rade to join the company. In August of 1996, during a shareholders meeting, Strohl told Rade that the first two modules of the company's main product, the TRANS2000 system, were virtually complete and that the company, TSC, was worth \$100 million.

On October 17, 1996, Defendant TSC entered into a contract with Rade for one year. The contract specified that Rade was to receive a salary of \$175,000 per year as TSC's President, plus a

bonus of \$175,000 if TSC achieved operating goals for 1997. If the 1997 operating goals were revised, however, Rade would receive a minimum \$75,000 bonus. The contract also contained the following provision allowing Rade to purchase equity in TSC:

As an incentive to join the Company, seven and one half percent (7.5%) of the issued shares will be transferred for a nominal cost subject to the following penalty. If the company fails to achieve minimum performance goals as agreed upon, or if employment is voluntarily terminated, or terminated for cause prior to the end of the initial period, the above mentioned shares will be resold to the Company at the original purchase price.

Pl.'s Compl. at Ex. A. Rade requested that TSC transfer this stock to him on numerous occasions during his employment, but each time Rade was given a reason why the stock could not be given at that moment. TSC states that Rade did not tender any money as payment for these shares and, accordingly, TSC never transferred them to Rade.

Rade served as President from November 1, 1996 until January 14, 1997, when TSC terminated his employment. As their basis for terminating Rade, TSC cited frequent absences and failure to produce a business plan. Plaintiff disputes these allegations. On February 3, 1997, two weeks after termination of his employment with TSC, Rade obtained employment as President and Chief Executive Officer of Computron. At Computron, Rade receives a \$250,000 base salary, a potential bonus of \$200,000, stock compensation, and other benefits.

On August 9, 1997, Rade filed the instant action, claiming that his termination at TSC was improper and that TSC never gave him the promised stock. In his complaint, Rade alleges the following causes of action: (1) violations of the Pennsylvania Wage Payment and Collection Law - Counts I and II; (2) breach of contract - Count III; (3) violation of the Securities and Exchange Act of 1934 - Count IV; (4) fraud - Count V; (5) conversion - Count VI; and (6) unjust enrichment - Count VII. Defendants now move for summary judgment.

## **II. SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could

return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

### **III. DISCUSSION**

Defendants argue that summary judgment should be granted on all six of Plaintiff's claims because he suffered no damages. Defendants also make various other arguments with respect to Plaintiff's claims. The Court will consider each claim separately.

#### **A. Breach of Contract**

Defendants first contend that this Court should grant summary judgment on the breach of contract claim because Plaintiff suffered no damages. It is fundamental that damages are an essential element of a breach of contract action. See Brader v. Allegheny Gen. Hosp., 64 F.3d 869, 878 (3d Cir. 1995). It is also

fundamental that when an employee is wrongfully terminated, he is entitled to the compensation of which he was deprived less any amount he was able to mitigate. See Bellefonte Area Sch. Dist. v. Lipner, 81 Pa. Cmwlth. 334, 339, 473 A.2d 741, 744 (1984).

Defendant argues that Rade was able to mitigate all of his damages because he found a job two weeks after TSC terminated him at a higher salary and larger bonus potential. Plaintiff admits that he was able to mitigate most of his damages. Plaintiff states, however, that he suffered the following damages: (1) wages for the three days of work which were not paid; (2) \$2,000 of unreimbursed business expenses; (3) wages for the two week period during which he was unemployed; (4) \$75,000-\$175,000 bonus due to him under the contract; and (5) shares of TSC owed under the employment agreement. Therefore, the Court grants summary judgment for the Defendants to the extent that Plaintiff seeks any other damages and addresses each of Plaintiff's claims to damages.

**1. Three Days of Wages and \$2,000 in Business Expenses**

In response to Defendants' argument that Plaintiff suffered no damages, Plaintiff responds that failure to pay three days of wages and \$2,000 in business expenses would be recoverable under the breach of contract claim even if Plaintiff mitigated all other damages. While the Court agrees with this argument, the Plaintiff submitted absolutely no evidence to this Court demonstrating that Defendants owed these wages or expenses. Rather, Plaintiff simply

states: "However, Mr. Rade clearly disputes this contention in his Complaint alleging that Defendants not only failed to pay his salary for days worked on November 1, 1996, January 13, 1997 and January 14, 1997, but Defendants have also failed to reimburse his business expenses in the amount of \$2000." See Pl.'s Resp. to Defs.' Mot. for Summ. Judg. at 13. Plaintiff offers no deposition testimony, affidavits, or other properly considered evidence of this claim. Therefore, this Court grants summary judgment for the Defendants on Plaintiff's WPCL claim in so far as Plaintiff seeks wages for those three days and the \$2,000 in unreimbursed business expenses. See Trap Rock Indus., 982 F.2d at 890 (noting that, at summary judgment stage, plaintiff may not rest upon mere allegations in complaint).

## **2. Bonus of \$75,000**

Plaintiff also asserts that he is entitled to a bonus of \$175,000, or in the alternative at least \$75,000, pursuant to the employment agreement. In order to receive a bonus at TSC, Plaintiff had to either meet operating goals to receive \$175,000 or TSC had to modify the operating goals in order for Plaintiff to receive \$75,000. Plaintiff has submitted absolutely no evidence that the 1997 operating goals were either met or modified. See Celotex Corp., 477 U.S. at 324 (noting that once the movant adequately supports its summary judgment motion, the burden shifts to the nonmoving party to go beyond the mere pleadings and present

evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial).

Plaintiff also argues that the Defendants intended the \$75,000 bonus to be a minimum bonus regardless of whether the performance goals were met or modified. This Court disagrees. Plaintiff's argument contradicts the plain language of the employment contract between the parties. See DiJoseph v. Metropolitan Life Ins. Co., No. CIV.A.94-3445, 1995 WL 89020, at \*4 (E.D. Pa. Mar. 1, 1995) (holding that bonuses were not due based on the plain language of the contract). Therefore, the Court grants summary judgment for the Defendants on Count III to the extent that Plaintiff seeks any bonus as damages.

### **3. Wages for Two Weeks of Unemployment**

Plaintiff contends that summary judgment is also not warranted because he is entitled to the two weeks worth of wages as damages. Plaintiff thus submits that there is sufficient evidence that TSC was in breach while he was unemployed. This Court agrees. Plaintiff mitigated his damages by finding the job at Computron, but it took him two weeks to find the Computron job. Therefore, if Plaintiff proves breach of contract, he would be entitled to the two weeks of wages as damages.

#### **4. Shares of TSC**

Plaintiff finally argues that he suffered damages with respect to the shares that Plaintiff never received under the employment agreement. TSC contends that the shares have no actual value because Plaintiff would have had to sell them back at the conclusion of his employment. This Court disagrees. The employment agreement provided that the share were to be resold to TSC if Rade was terminated for cause, voluntarily quit, or performance goals were not met. Rade did not voluntarily quit and Rade was terminated before the performance goals could have been met. Further, there is a genuine issue of material fact remaining concerning whether TSC had cause to terminate Rade. Therefore, the Court must disagree with Defendants' argument that Rade would have had to resell his shares to TSC.

TSC also argues that any shares held by Rade would be worthless. Again, this Court must disagree. In its motion, Defendants concede that the shares are worth at least \$2,000 a share because TSC entered into a merger agreement with another company under which each shareholder would receive a promissory note in that amount for each share owned. See Defs.' Mem. of Law in Support of Mot. for Summ. Judg. at 11 n.8. Defendants cannot possibly then argue that these shares are worthless. Therefore, with respect to a breach of contract action against TSC for failure

to transfer shares, the Court finds that Plaintiff suffered damages and survives summary judgment to this extent.

**B. Pennsylvania Wage Payment and Collection Law**

Defendants also argue that Plaintiff suffered no damages with respect to his Pennsylvania Wage Payment Collection Law claim because there is no evidence of TSC's failure to pay Plaintiff wages, business expenses, bonuses, or shares of TSC. Pennsylvania's Wage Payment and Collection Law ("WPCL") provides:

Whenever an employer separates an employee from the payroll, or whenever an employee quits or resigns his employment, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer on which such wages would otherwise be due and payable.

43 Pa. Stat. Ann. § 260.5(a) (West 1995). Under the statute, "wages" include all earnings of an employee, fringe benefits, or wage supplements. See id. § 260.2. "Fringe benefits or wage supplements" include all monetary employer payments to provide benefits under any employee benefit plan, "as well as separation, vacation, holiday, or guaranteed pay; reimbursement for expenses . . . and any other amount to be paid pursuant to an agreement" to the employee. Id. The WPCL, however, does not create a statutory right to wages; rather, it provides a statutory remedy when the employer breaches a contractual right to earned wages. See Weldon v. Kraft, Inc., 896 F.2d 793, 801 (3d Cir. 1990).

Defendants argue that Plaintiff is not entitled to any damages under the WPCL because Defendants paid Plaintiff in full for his services. Similar to his response to the breach of contract claim, Plaintiff responds that he suffered the following damages: (1) wages for the three days of work which were not paid; (2) \$2,000 of unreimbursed business expenses; (3) \$75,000-\$175,000 bonus due to him under the contract; and (4) shares of TSC owed under the employment agreement. Therefore, the Court grants summary judgment for the Defendants to the extent that Plaintiff seeks any other damages and addresses each of Plaintiff's claims to damages.

**1. Three Days of Wages and \$2,000 in Business Expenses**

First, Defendants argue that there is no evidence on the record to support Plaintiff's claim that TSC did not pay him wages for three days or reimburse his business expenses. As outlined above, this Court agrees with Defendants' argument that there is no evidence on the record to show that TSC did not pay him wages for three days or that TSC did not reimburse him for \$2,000 in business expenses. Thus, the Court grants summary judgment on Counts I and II to the extent that Plaintiff seeks unpaid wages and expenses.

**2. Bonus of \$75,000**

Second, Defendants argue that Plaintiff is not entitled to a bonus under the WPCL. Under the WPCL, Plaintiff argues that he is entitled to the \$175,000 bonus, or in the alternative at least a

\$75,000 bonus, provided for in the employment agreement because he earned the bonus. Plaintiff therefore argues that this bonus became due, and thus recoverable under the WPCL, because Plaintiff did not have to provide any further services in order to receive this bonus. This Court does not agree.

In order to be earned under the WPCL, "the right to a wage or bonus must have vested under the terms of employment." Redick v. Kraft, Inc., 745 F. Supp. 296, 303 (E.D. Pa. 1990). The employment agreement between the parties that controls in determining whether wages are "earned" and "due." See Weldon, 896 F.2d at 801.

In this case, under the employment agreement, Rade's \$175,000 bonus would vest if the 1997 operating goals were met. Unfortunately for Rade, and as discussed above, Rade offered no evidence that these goals, in whole or in part, were met. Nevertheless, Rade also argues that he is entitled to the \$75,000 minimum bonus. This bonus, however, was due only if the 1997 operating goals were modified. Once again, Rade offered no evidence showing that the 1997 operating goals were modified. Finally, Rade argues that \$75,000 of the bonus was guaranteed even if the operating goals were not met or modified. As discussed above, this argument directly contradicts the plain language of the employment agreement. See id. (finding that the employment agreement between the parties controls whether wages are "earned" and "due"); see also DiJoseph, 1995 WL 89020, at \*4 (holding that

bonuses were not due based on the plain language of the contract).

This Court must therefore conclude that no bonus vested and could not be considered earned as defined under the WPCL. See Gardner v. Beasley FM Acquisition Corp., No. CIV.A.97-2900, 1997 WL 325794, at \*4 (E.D. Pa. June 6, 1997) (holding that the WPCL allows an employee to state a claim for wages earned before termination, not after, and any argument that post-termination wages became due under an anticipatory breach argument is not supported by the WPCL); Hirsch v. Bennett, No. CIV.A.90-1076, 1991 WL 75200, at \*3 (E.D. Pa. May 1, 1991) (granting summary judgment for defendant because WPCL does not permit a cause of action for unearned wages and commissions); Sendi v. NCR Comten, Inc., 619 F. Supp. 1577, 1580 (E.D. Pa. 1995) (granting summary judgment for defendant because WPCL did not give the plaintiff a "right to receive commissions on sales made after his termination"), aff'd, 800 F.2d 1138 (3d Cir. 1986) (unpublished table decision). Thus, the Court grants summary judgment on Counts I and II to the extent that Plaintiff seeks the any bonus.

### **3. Shares of TSC**

Third and finally, Defendants argue that any shares of TSC are not recoverable under WPCL because any shares: (1) would have to be transferred back to TSC upon termination and (2) are worthless. These arguments were already discussed above. The Court disagreed with the argument that, under the employment agreement, Rade could

not keep the shares. Moreover, the Court found that TSC's stock clearly had value. Thus, the Court denies summary judgment on this ground. See, e.g., Regier v. Rhone-Poulenc Rorer, Inc., No. CIV.A.93-4821, 1995 WL 395948, at \*7 (E.D. Pa. June 30, 1995 (concluding that stock options are a type of obligation covered by the WPCL), aff'd, 92 F.3d 1172 (3d Cir. 1996) (unpublished table decision).

### **C. Fraud**

With respect to Plaintiff's fraud claim, Defendants argue that Plaintiff suffered no damages over and above breach of contract damages. Damages are an essential element of common law fraud. See Tunis Bros. Co. v. Ford Motor Co., 952 F.2d 715, 731 (3d Cir. 1992). Moreover, under Pennsylvania law, the measure of damages is "actual loss." See Killian v. McCulloch, 850 F. Supp. 1239, 1252 (E.D. Pa. 1994). "The victim is entitled to all pecuniary losses which result as a consequence of his reliance on the truth of the representation." Delahanty v. First Pa. Bank, N.A., 318 Pa. Super. 90, 117, 464 A.2d 1243, 1257 (1983).

This Court is guided by Lokay v. Lehigh Valley Coop. Farmers, Inc., 342 Pa. Super. 89, 492 A.2d 405 (1985), concerning fraud damages in an employment context. In Lokay, the defendant corporation hired the plaintiff after it persuaded the plaintiff to leave his employment with another corporation. See id. at 408. Two years later, however, the defendant terminated the plaintiff's

employment. See id. The plaintiff brought a breach of contract and fraud claim. See id. After a verdict for the plaintiff on both claims, the defendant argued on appeal that the fraud damages that the plaintiff recovered should be disallowed because he was made whole by the breach of contract damages. See id. at 410.

The Pennsylvania Superior Court disagreed and stated:

At first, recovery of these losses appears to be recovery of a lost expectation, in violation of the rule that a fraud plaintiff is limited to damages for "actual loss." However, in an employment context lost future income is in fact what the plaintiff loses when he is induced to leave an otherwise on-going position; this is not the archetypal fraud fact-pattern in which a plaintiff was tricked into buying something for more than it was worth, or selling for less than that. Appellee's loss of his salary and benefits from Topco was the injury caused by appellant's fraudulent misrepresentation; his decrease in income following his dismissal from appellant was the damage from appellant's breach of contract.

Id. at 410-11 (citations omitted). The Lokay case, therefore, clearly states that it is possible for a plaintiff to recover damages for both breach of contract and fraud because there are two distinct injuries: (1) being fraudulently induced to quit his or her former job and (2) being fired from his or her current job in breach of contract. See id.

In this case, despite the apparent ability of the Plaintiff to recover for both claims under Pennsylvania law, the Court is unable to decide this matter on the record before it. There is simply a lack of affidavits, depositions, and other properly considered

evidence before the Court. Indeed, neither party addresses whether there is any evidence that Plaintiff lost salary and/or benefits as a result of TSC's alleged misrepresentations in the manner described by Lokay. See id. (finding that plaintiff may recover damages of loss salary and benefits from former job that defendants fraudulently induced him to quit).

Moreover, this Court notes that, to the extent that Plaintiff argues that he suffered damages by staying at TSC and not pursuing other employment options, there is no evidence that Plaintiff turned employment offers, contacted employment search firms, or even sought another employment opportunity. See Surovcik v. D & K Optical, Inc., 702 F. Supp. 1171, 1177 (M.D. Pa. 1988) (granting summary judgment in similar fraud case because "Plaintiff does not allege he turned down job offers, only that he did not seek employment"). Plaintiff cannot recover for mere loss of expectations of other employment opportunities, but rather must show this Court actual or pecuniary loss. See id. (noting that mere delay in employment search due to fraudulent promises of defendant employer did not constitute pecuniary loss).

In sum, the record is not sufficient for this Court to rule on this matter. The Court notes, however, that a plaintiff must prove all of the elements of fraud by clear and convincing evidence. See Trans Penn Wax Corp. v. McCandless, 50 F.3d 217, 232 (3d Cir. 1995) ("Pennsylvania law requires the plaintiff alleging fraud to prove

the . . . elements by clear and convincing evidence." ). Therefore, the Court will reserve judgment and rely on Rule 50 of the Federal Rules of Civil Procedure to determine whether Plaintiff proved, not just pecuniary loss, but all elements of fraud by clear and convincing evidence.

#### **D. Securities and Exchange Act of 1934**

Defendants next argue that summary judgment is proper because Plaintiff has not alleged a fraud cognizable under the Securities and Exchange Act of 1934. Rather, Defendants argue that Plaintiff has merely stated a claim for breach of contract. More specifically, Defendants contend that failure to deliver stock as purportedly promised under the terms of an employment contract is not actionable under the Act.

The Third Circuit articulated the following analytical framework applicable to § 10(b) actions:

[T]he existence of three key elements is necessary if a cause of action is to obtain. First, there must be misrepresentation or fraud; second, a purchase or sale of a security must occur; and third, such misrepresentation or fraud must have been rendered "in connection with" the purchase or sale of a security.

Ketchum v. Green, 557 F.2d 1022, 1025 (3d Cir. 1977). "To prevent plaintiffs from using the Securities Act to transform breach-of-contract claims into federal securities actions, this circuit has construed the 'in connection with' requirement as mandating 'a causal connection between the alleged fraud and the purchase or

sale of stock.'" Tafari v. Air Prods. & Chems., Inc., No. CIV.A.97-3413, 1997 WL 643598, at \*3 (E.D. Pa. Oct. 8, 1997).

Moreover, in order to maintain any § 10b action, the plaintiff must establish scienter. See Rudinger v. Insurance Data Processing, Inc., 778 F. Supp. 1334, 1337 (E.D. Pa. 1991). Negligent conduct alone, whether gross, grave, or inexcusable, does not suffice. See id. In this circuit, scienter includes recklessness. See id.

In this case, once again, the record is insufficient to rule on this matter. The Court does not have the proper affidavits, depositions, and other properly considered evidence to allow it to determine if Plaintiff evidence meets these three Ketchum requirements to prove a § 10b action. While this Court seriously questions whether Plaintiff possesses sufficient evidence to show scienter and damages, the Court simply cannot illicit the necessary information from the record before it. Therefore, as with Plaintiff's fraud claim, the Court will also reserve judgment on this claim until after trial and determine whether Plaintiff offered sufficient evidence of each of the elements of a § 10b action using Rule 50.

#### **E. Conversion**

Defendants argue that summary judgment is warranted on Plaintiff's conversion claim because this claim really stems from the alleged breach of contract. Defendants cite Aramony v. United

Way of Am., 949 F. Supp. 1080, 1086 (S.D.N.Y. 1996), for this proposition. This Court agrees with the Defendants.

The Defendants cite Aramony for the proposition that a conversion claim is not proper where the plaintiff only seeks breach of contract damages. The court in Aramony granted the defendants' motion to dismiss the conversion claim because "Plaintiff's instant conversion action arises out of defendants' alleged 'refusal to pay amounts due under the agreement at issue' and thus seeks damages only for the breach of contract (or several contracts)." See id.; see also Neyser, Tiseo & Hindo, Ltd. v. Russell, No. CIV.A.92-2983, 1993 WL 53579, at \*4 (E.D. Pa. Mar. 3, 1993) (granting motion to dismiss plaintiffs' conversion claim because their claim simply requests funds that they were entitled to under a stock purchase agreement). Here too, Plaintiff's only requested damages in his conversion claim is the receipt of TSC shares owed to him under the employment agreement. See Pl.'s Compl. at ¶ 44 ("WHEREFORE, plaintiff John A. Rade demands judgment in his favor against defendants Transition Software Corporation and Myles L. Strohl and demands that an order be entered directing that defendants specifically perform their obligations to issue, transfer and assign to Mr. Rade 7.5% of the shares of Transition Software."). Therefore, this claim involves a simple breach of contract and does not allege any other damages for the improper conversion of shares due under the contract. Thus, the Court

grants summary judgment on this claim and does not address Defendants' other arguments on this matter.<sup>1</sup>

**F. Unjust Enrichment**

Lastly, Defendants argue that Plaintiff cannot assert a right to recover damages under a theory of unjust enrichment because the relationship between the parties is based on an express, written contractual relationship. "The Supreme Court of Pennsylvania has concluded that the quasi-contractual doctrine of unjust enrichment [is] inapplicable when the relationship between the parties is founded on a written agreement or express contract." Schott v. Westinghouse Electric Corp., 436 Pa. 279, 290, 259 A.2d 443, 448 (1969). The Pennsylvania Superior Court followed this holding in Gee v. Eberle, 279 Pa. Super. 101, 119, 420 A.2d 1050, 1060 (1980). In Gee, the Court found that "the essence of the doctrine of unjust enrichment is that there is no direct relationship between the parties." Id. If there is a relationship in the form of a promise to the plaintiff, he or she "has a right to recover on the promise . . . . The existence of that right, however, precludes a claim of unjust enrichment." Benefit Trust Life Ins. Co. v. Union Nat'l Bank of Pittsburgh, 776 F.2d 1174, 1177 (3d Cir. 1985).

Here, the damages that Plaintiff alleges in his unjust enrichment claim are the same that he alleges in his breach of

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<sup>1</sup> Defendants also argue that summary judgment should be granted on the conversion claim because the Plaintiff suffered no damages and/or had no immediate right of possession of the TSC shares.

contract claim against the Defendants. Because a contractual relationship exists between Plaintiff and Defendants, Plaintiff cannot recover damages against Defendants under a theory of unjust enrichment. The Court therefore grants summary judgment for the Defendants on Plaintiff's unjust enrichment claim and does not address Defendants' other arguments with respect to this claim.<sup>2</sup>

An appropriate Order follows.

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<sup>2</sup> Defendants also argue that summary judgment should be granted on the unjust enrichment claim because the Defendants received no unjust benefit from the Plaintiff.

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

JOHN A. RADE : CIVIL ACTION  
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 v. :  
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 TRANSITION SOFTWARE CORPORATION :  
 and MYLES L. STROHL : NO. 97-5010

O R D E R

AND NOW, this 30th day of October, 1998, upon consideration of Defendants' Motions for Summary Judgment, IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART AND DENIED IN PART.**

IT IS FURTHER ORDERED that:

(1) Defendants' Motion for Summary Judgment on Plaintiff's Wage Payment and Collection Law claim (Counts I and II) is **GRANTED** to the extent Plaintiff seeks damages for the three days of unpaid wages, \$2,000 in unreimbursed business expenses, any bonus, or any other damages and **DENIED** to the extent Plaintiff seeks damages for the shares of TSC that Plaintiff alleges were due during his employment with TSC;

(2) Defendants' Motion for Summary Judgment on Plaintiff's Breach of Contract claim (Count III) is **GRANTED** to the extent Plaintiff seeks damages for the three days of unpaid wages, \$2,000 in unreimbursed business expenses, any bonus, or any other damages and **DENIED** to the extent that Plaintiff seeks damages for the two

weeks during which Plaintiff was unemployed and the shares of TSC that Plaintiff alleges were due during his employment with TSC;

(3) Defendants' Motion for Summary Judgment is **DENIED** as to Plaintiff's Fraud claim (Count III);

(4) Defendants' Motion for Summary Judgment is **DENIED** as to Plaintiff's Securities and Exchange Act of 1934 claim (Count IV);

(5) Defendants' Motion for Summary Judgment is **GRANTED** as to Plaintiff's Conversion claim (Count V); and

(6) Defendants' Motion for Summary Judgment is **GRANTED** as to Plaintiff's Unjust Enrichment claim (Count VI).

BY THE COURT:

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HERBERT J. HUTTON, J.