STATE OF MICHIGAN
BERRIEN COUNTY TRIAL COURT
811 Port Street, St. Joseph, MI 49085 Telephone: 269.983.7111 Ext. 8764

JAMES P. GIERCZYK,
Plaintiff,

File No. 10-0125-CK-D
Hon. John E. Dewane

V

PAUL D. OSELKA,
Defendant.

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OPINION AND JUDGMENT

OPINION

Introduction.

This case ultimately involves the resolution of a question of fact: on July 4, 2008, did the Plaintiff assign his interest in the Membership Interest Purchase Agreement (MIPA)[1]to David Ghezzi for consideration? The answer to this question turns, in part, on whether the Plaintiff signed the Assignment[2] dated July 4, 2008. The Plaintiff testified that he did not sign the Assignment while Mr. Ghezzi testified that he watched the Plaintiff sign two originals of the Assignment. The Defendant's handwriting expert testified that the Plaintiff's signature is on the Assignment. The preponderance of the credible evidence compels a finding that the Plaintiff signed the Assignment. A preponderance of the credible evidence also compels a finding that consideration supported the Assignment. Therefore, I conclude that the Plaintiff is not entitled to recover the $109,032.20 unpaid balance due on the MIPA. Accordingly, I grant judgment in favor of the Defendant and against the Plaintiff.

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[1] Ex A-1.
[2] Ex B-3.

The Defendant's testimony was forthright, measured and reasoned. He did not exude the hostility shared by the other lay witnesses, and his demeanor was the most convincing of the lay witnesses. I find his testimony credible. The Defendant testified that when the Defendant and Mr. Ghezzi signed the Assignment in the Plaintiff's real estate office in New Buffalo on July 4, 2008, a signature purporting to be the Plaintiff's was already on the Assignment. The Defendant did not see the Plaintiff sign the Assignment and had no personal knowledge of the consideration for the Assignment. However, the Defendant's testimony that the Plaintiff called him before July 4, 2008, and told him that the Plaintiff had reached an agreement with Mr. Ghezzi to assign the MIPA to Mr. Ghezzi and that Mr. Ghezzi would be bringing him an agreement was not rebutted. Likewise, the Defendant's testimony that he paid Mr. Ghezzi $5,000.00 on the MIPA after the Assignment was not rebutted.

Despite the Plaintiff's unfounded attacks on qualifications and credibility of the Defendant's handwriting expert, Erich J. Speckin, I find that Mr. Speckin was qualified and credible. Mr. Speckin had two years of training between 1993 and 1995 in a residency program on the examination of questioned documents during which he performed 800 handwriting examinations under the supervision of his father, the former head of the Michigan State Police Questioned Document Unit. He has had over 15 years of experience since, performing over 1,500 examinations. Mr. Speckin followed the procedures outlined in the Standard Guide for Examination of Handwritten Items[3] adopted by the American Society for Testing and Materials (ASTM). Mr. Speckin was a member of the committee which developed the precursor to the Standard Guide. Mr. Speckin explained the recognized scientific principles forming the basis for handwriting analysis as being the repeatability of individual characteristics. After examining the specimens visually and with the aid of a microscope, Mr. Speckin demonstrated the significant repeatable habits in known samples of the Defendant's signature predating this litigation. Mr. Speckin then demonstrated how these repeatable habit appeared in the purported signature of the Plaintiff on the Assignment, leading him to conclude that the purported signature was indeed that of the Plaintiff. Mr. Speckin's testimony rationally explained the basis of and the reasons for his conclusion that the Plaintiff signed the Assignment. I believe Mr. Speckin's opinion that the Plaintiff signed the Assignment. This opinion was not rebutted by contrary opinion testimony. Based on this opinion testimony and the factual testimony of Mr. Ghezzi, which I also believe, I find that the Plaintiff signed the Assignment. I believe Mr. Ghezzi's testimony because it was more consistent with other facts I found and because he was forthcoming and spontaneous in his demeanor.

A logical and necessary corollary to my finding that the Plaintiff signed the Assignment is a finding that I do not believe the Plaintiff's testimony to the

[3] Ex B-32.

contrary. This finding leads me to conclude[4] that the Plaintiff's testimony denying consideration for an assignment is not worthy of belief either, and I accept Mr. Ghezzi's testimony on this issue. The stated monetary consideration of $10.00 was modified to a lunch which Mr. Ghezzi provided and the Plaintiff accepted. In addition, the other valuable consideration recited in the Assignment was provided by Mr. Ghezzi's acceptance of the Assignment in lieu of payment of a $100,000.00 debt owed to him by the Plaintiff as a result of the Sand Creek project. Accordingly, I find that consideration supported the Assignment.

<u>Findings of Fact.</u>

1. On December 12, 2007, the Plaintiff and the Defendant entered into a Membership Interest Purchase Agreement (MIPA) [Ex A-1].

2. As of July 4, 2008, the Defendant owed the Plaintiff $109,032.20 on the MIPA.

3. Effective July 4, 2008, the Plaintiff signed the Assignment assigning his interest In the MIPA to David Ghezzi. [Ex B-3].

4. In exchange for the Assignment, David Ghezzi took the Plaintiff to lunch which the Plaintiff accepted in lieu of the $10.00 monetary consideration stated in the Assignment.

5. As other valuable consideration recited in the Assignment, David Ghezzi forgave a $100,000.00 debt owed to him by the Plaintiff as a result of the Sand Creek project.

<u>Conclusions of Law.</u>

1. Effective July 4, 2008, the Plaintiff assigned his interest in the MIPA to David Ghezzi by signing the Assignment.

2. Adequate consideration supported the Assignment.

3. The Assignment is binding on the Plaintiff.

4. After July 4, 2008, the Plaintiff had no further interest in the MIPA.

5. The Plaintiff is not entitled to recover anything from the Defendant on the MIPA.

6. The Defendant is entitled to judgment in his favor.

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[4] I do not blindly apply "falsus in uno, falsus in ombibus" but rather "separate the wheat from the chaff". See, *People v Mason*, 22 Mich App 595, fn 16; 178 NW2d 181 (1970). In this case I am unable to separate the plaintiff's denial of consideration from his denial of his signature on the Assignment.

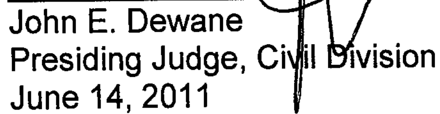
JUDGMENT

I order judgment in favor of the Defendant and against the Plaintiff.

As the prevailing party, the Defendant may tax his taxable costs under MCR 2.625.

Pursuant to MCR 2.518(B), each party shall retrieve the exhibits submitted by that party. If a party fails to retrieve the exhibits submitted by that party within 56 days of the entry of this Judgment, the recorder may properly dispose of the exhibits without notice to the parties.

This Judgment disposes of the last pending claim and closes this case.



John E. Dewane
Presiding Judge, Civil Division
June 14, 2011