

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

MICHAEL MOHL	:	OCTOBER TERM, 2003
	v.	: No. 2127
KEY SPORTZ-WEAR SALES CO., LLC,	:	
HOWARD FRANCO,	:	
RUSS WEAR UNDERGARMENTS, INC.	:	
LOUIS IACONI, JR., and	:	
DORMA MILLS, INC.	:	

ORDER

AND NOW, this 10TH Day of September 2008, upon consideration of the evidence presented at a bench trial, the respective proposed findings of fact and conclusions of law and responses of the parties, the respective briefs and memoranda, all matters of record and in accord with the Findings of Fact, Discussion and Conclusions of Law being filed contemporaneously with this Order, this court finds for plaintiff and against defendants in the amount of \$83,837.70.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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

MICHAEL MOHL : OCTOBER TERM, 2003
v. : No. 2127
KEY SPORTZ-WEAR SALES CO., LLC, :
HOWARD FRANCO, :
RUSS WEAR UNDERGARMENTS, INC. :
LOUIS IACONI, JR., and :
DORMA MILLS, INC. :

.....
**FINDING OF FACT, DISCUSSION
AND CONCLUSIONS OF LAW
SUR BENCH TRIAL**

Albert W. Sheppard, Jr., J. September 10, 2008

FINDINGS OF FACT

I. The Parties

1. Plaintiff is Michael Mohl (“Mohl”), who worked at his family’s apparel manufacturing business, Defender, Inc. (“Defender”), until Defender ceased business operations in late 2002. (N.T. 5/1/07 at 54-55).

2. Defendant Louis Iaconi (“Iaconi”) is an individual citizen of Philadelphia, Pennsylvania, who is the former general manager of Defender. Iaconi was employed by, and part

owner of, Key Sportzwear (100% owner of Key LLC) until December 31, 2005, at which point he relinquished all his shares in the business to Franco for \$1.00 (N. T. 9/5/07 at 158-9).

3. Defendant Howard Franco (“Franco”) is a citizen of New York and the sole owner of defendant Russ Wear Undergarments, Inc. (“Russ Wear”), a New York corporation. (N. T. 9/6/07 at 41-42).

4. Defendant Dorma Mills, Inc. (“Key”), is a New York corporation formed in 2001 by its original sole shareholder Franco. *Id.*

5. Defendant Key Sportz-Wear Sales, LLC (“Key Sales”), is a Pennsylvania limited liability company formed and operated for the sole purpose of handling payroll and other office expenses of Key, in Pennsylvania. (N.T. 9/7/06 at 66).

II. Defender’s Failure and Key LLC Background

6. Defender was formed by plaintiff’s grandfather. Mohl’s father, Stephen Mohl, was a majority owner of the business and plaintiff was a minority owner. Defender manufactured and distributed sportswear and active wear for men, women and children, both under its own name and by way of private label. (N. T. 5/1/07 at 55-56).

7. Mohl ran the production side of the business for Defender, and Iaconi ran its office and sales functions.

8. In 2002, Stephen Mohl announced to both Mohl and Iaconi that Defender’s bank (Fleet Bank) had called the line of credit and Defender would be ceasing operation. (N. T. 5/4/07 at 60-61). At the time Defender ceased operations, Iaconi was the general manager. (N. T. 5/1/07 at 58). Mohl admits that Iaconi has better knowledge of any dealings with the bank than he does. (N. T. *Id.* at 180). Iaconi was appointed the liquidator by the bank. He served through December 1, 2002. (N. T. 9/5/07 at 104-5). Iaconi was responsible for forwarding to Russwear

various fabric and garments. (N. T. 5/1/07 at 77). After December 2002, the bank ceded the assets to Stephen Mohl. (Exh. P-19).

9. In November 2002, there was a meeting at Defender attended by Mohl, Stephen Mohl, Franco and Iaconi. At that time, Defender owed Russ Wear \$30,000.00 for fabric Defender had purchased from Russ Wear. Mohl had not previously known Franco, although he knew of him. During that first meeting, one of the subjects of discussion was forming a new business at the Defender location to pick up some of the Defender business. (N. T. 5/1/07 at 66-68).

10. Subsequently, there were further discussions between Mohl and Iaconi, and between Iaconi and Franco, and Mohl learned from Iaconi that Franco agreed to start a new company with the three of them. (N. T. 5/1/07 at 69).

III. The Disputed Oral Partnership Agreement.

11. Mohl believed that the initial business plan was to start a new company, taking the best of Defender's assets including open orders, finished goods, patterns, machinery and raw materials so that the new company could immediately begin operations. (N. T. 5/1/07 at 70; N. T. 9/15/07 at 9-15). He testified that telephone discussions after the initial Philadelphia meeting were followed by a meeting in mid to late November at Russ Wear in New York among Franco, Iaconi and Mohl. Mohl contends that at this meeting, the three reached a firm oral agreement to form a new company with Franco being a 60% owner and Iaconi and Mohl each being 20% owners. The new company was not to include Stephen Mohl and was not to be located at Defender's South Philadelphia location in order to avoid possible successor liability issues. It was agreed that the new company, as a separate entity, was to be formed at a later time, and the new business was to operate a joint venture or partnership until it was actually formed. The new

company - - Key Sportz Wear - - was to be formed later in order to let everything from Defender “settle down”.

12. Mohl testified that the terms of the oral agreement were clear - - ownership percentages were agreed upon at: 60% Franco, 20% Iaconi, and 20% Mohl. Salaries were to be equal, but profits were to be divided along ownership lines. Franco was to be the financial man, lending money to Key as needed, either personally or via Russ Wear. Iaconi was to be in charge of sales. Mohl was to be in charge of production, utilizing outside sewing contractors as necessary. Further, Mohl was to cause Defender to transfer to Key the remaining Defender assets useful to Key, to include both raw goods and finished apparel, and such equipment, patterns, and the like as needed.

13. Franco and Iaconi testified to a very different set of facts. They maintained that Franco agreed with Iaconi to set up a new sportswear business, at the end of the year 2003, with Franco 60% owner and Iaconi 40%. (N. T. 9/5/07 AT 155-6; 9/6/07 at 47, 119). Franco used an existing but inactive company, Dorma, as a vehicle to do Key Sportzwear business in New York, starting as of January 1, 2003. (N. T. 9/6/07 at 41).

They contended that the agreement was documented in tax returns for 2003 filed with the IRS in April 2004, reflecting that 40% of Dorma, the vehicle chosen to operate the business, was transferred to Iaconi as of January 1, 2004. (Exh. D-3; N. T. 9/5/07 at 155-6; 9/6/07 at 47-8). It was also reflected in subsequent tax returns. (Exhs D-4, 5). They further made clear that, in their view, Mohl was not, and was never intended to be, a shareholder of Dorma or Key. (N. T. 9/6/07 at 52). They believed that Mohl could not be an owner because of the possibility of successor liability lawsuits that would arise as a result of Mohl’s having been an owner of Defender. (N. T.

9/6/07 at 52-3). They say Mohl was informed he could not be an owner in December 2002. (Id. at 53).

14. Initially, it was agreed that all three men would work at no pay and Iaconi and Mohl would collect unemployment insurance benefits from their former employment at Defender. (N. T. 5/1/07 at 75). Salaries for each of the owners were to be fixed at \$80,000.00 per year when Key could afford it. (N. T. 5/1/07 at 117).

Under the original agreement Mohl was to be reimbursed for his out-of-pocket expenses while working for Key. Those expenses were paid except for expenses incurred during the month of June 2003. Payments were made by Russ Wear. Mohl's final request for reimbursement in the amount of \$837.70. (Exh P-32, last page) was never paid. (N. T. 5/1/07 AT 78, 84-85).

15. The testimony demonstrates a complete disagreement with respect to goods transferred from Defender to Key. Mohl said that Iaconi selected the Defender fabric appropriate for the sales orders transferred to Key. (N. T. 5/1/07 at 86). Exhibits "P-1" and "P-2" show some of the volume of fabric transferred from Defender's inventory to New York for immediate usage. (N. T. 5/1/07 at 88-92). These goods were never paid for.

Mohl further contends that he created specification and detail sheets for the benefit of Key and necessary for Key's line of apparel. (Exh. P-27; N. T. 5/1/07 at 102). He believes that over 70 patterns were transferred to Key, at a value of \$350.00 to \$500.00 per pattern. (N. T. 5/1/07 at 105). Franco and Iaconi, said that Mohl had no possessory interest in any asset that allegedly went from Defender to Key. (N. T. 9/5/07 at 111, 115-16). Key got nothing from Defender that belonged to Mohl, and there was no agreement whereby Mohl conveyed any asset of Defender's to Key or Russwear in return for money or shares. (N. T. 9/6/07 at 56-57).

IV. Mohl Worked at Key for Seven Months.

16. Irrespective of whatever the relationship truly was, Mohl worked for seven months, from mid to late November 2002 until the first of July 2003. He drew no salary through the close of May 2003, but was paid \$500.00 per week in June 2003 for a period of four weeks. He testified that he worked diligently and traveled extensively, and with every issue relating to production. (N. T. 5/1/07 at 99-102). Mohl says he only learned from Iaconi that he (Mohl) was not an owner of Key in July 2003. Mohl says he called Franco and Franco confirmed that Mohl was not an owner of Key. Mohl then resigned. During this seven month period Mohl expended his savings and covered his living expenses with a home equity loan. (N. T. 5/1/07 at 124).

V. Mohl's Disputed Departure Conduct.

17. The positions of the litigants **again** are dramatically opposed. Mohl maintains that he went to the offices of Key in Philadelphia and retrieved his personal effects, including computers he personally owned. Although his computers contained software owned by Key, Key never requested only the software back, instead Key demanded return of the actual computers. Mohl refused. (N. T. 5/1/07 at 125-26). Mohl stated further that since he was on vacation when he resigned, he left Key hard copies of all of the important Key documents with Franco and Iaconi, and Key suffered no loss as a result of the taking of the data contained on Mohl's personal computers. (N. T. 5/1/07 at 125-27).

18. Franco and Iaconi contend that Mohl quit working for the Key business without informing Franco or Iaconi beforehand. Instead, Mohl went into Key at night and removed everything in the premises he believed had value. (N. T. 5/1/07 at 125-6). Mohl refused to return the Key computers or the information contained in them and other machines, including the label

printer and production information. The lack of this information slowed Key production down for several weeks. (N. T. 9/5/07 at 174-76).

VI. Mohl Goes to Work for Ultimate Apparel

19. After Mohl resigned from Key, he secured employment at Ultimate Apparel (“Ultimate”), and his initial job was to examine the high direct labor costs that Ultimate believed it was experiencing. Later he was production manager. (N. T. 5/1/07 at 140). Ultimate was a sewing contractor for Key. At Ultimate, the owner McGrath made all decisions with respect to the order in which the customer’s goods were to be completed. (N. T. 5/1/07 at 143; Exh P-37). Mohl denies that he had any involvement in holding up or delaying shipments from Ultimate to Key. (N. T. 5/1/07 at 213).

VII. Mohl’s Damages Claim

20. Mohl claims that \$25,126.00 in finished goods were transferred to Key (through Russ Wear) which goods were never paid for. (N. T. 5/1/07 at 130; Exh P-62).

21. Mohl contends that the fair value of the assets given to Key for his contribution to the joint venture amounted to \$60,903.47. Iaconi in response to the court’s question estimated the value in the \$50,000.00 or \$60,000.00 range. (N. T. 9/5/07 at 281).

22. Mohl worked for Key from November 2002 through June 2003. He received no wages, except for \$500.00 per week, for four weeks. (N. T. 9/5/07 at 139-41). Mohl had been paid \$80,000.00 annually at Defender. (N. T. 9/5/07 at 247-50).

23. Mohl had an agreement to be reimbursed business expenses. Mohl asked for reimbursement of \$837.70 which was not paid.

VIII. Key's Counterclaim

24. Key counterclaims against Mohl for intentional interference with contract based upon Mohl's conduct when employed by Ultimate. Specifically, Key claims Mohl delayed orders and business was lost.

25. Key also counterclaims that Mohl wrongfully took computers. Mohl maintained that he took only his personal computers.

DISCUSSION

Mohl seeks damages for an alleged breach of an oral partnership agreement. Based on all the evidence presented, this court concludes that Mohl has failed to carry his burden. The court finds that there was no partnership agreement.

The court accepts the testimony of Mohl with respect to finished goods transferred through Russ Wear to Key. These goods had a value of \$25,126.00. However, Russ Wear was owed \$30,000.00 by Defender. This court believes that Mohl should be responsible for this debt and therefore, will **not** find the defendants liable for the \$25,126.00.

The court accepts the fact that other assets were transferred to Key by Mohl. There is a dispute as to the value of these assets. Mohl claims \$60,913.47. Iaconi acknowledged the value of \$50,000.00 or \$60,000.00. The court accepts the value estimated by Iaconi and finds that the defendants are liable to Mohl in the amount of \$50,000.00.

Since the court has determined that there was no partnership agreement, it is necessary to decide to what extent, if at all, Mohl should be compensated for the seven months he worked but was not paid. Mohl received \$80,000.00 annually while at Defender and claims seven months pay (\$46,666.00) based on this \$80,000.00 value. Iaconi advised that the value of \$60,000.00 was more realistic. This court will apply this latter value. By focusing on seven months for the

pay period - - $\$60,000.00 \times 7/12 = \$35,000.00$ less $\$2,000.00$ paid, - - the net value is $\$33,000.00$.¹

Finally the court agrees that Mohl should be compensated for the $\$837.70$ business expenses which were never reimbursed to him.

In summary, the court finds that defendants must compensate Mohl, as follows:

1.	\$ 50,000.00	Assets and Goods Transferred
2.	\$ 33,000.00	Earnings for seven months
3.	\$ <u>837.70</u>	Reimburse for business expenses
Total	\$ 83,837.70	

This court has not applied the Wage Payment and Collection Law. There was no clear agreement to pay wages. Further, there was an alleged agreement by Mohl to work without salary until the new entity got on a firm financial footing. However, it is clear to the court that such a promise by Mohl would be premised on his belief (later found by this court unproven) that he was a partner. Under these circumstances it is submitted that the Statute does not apply here.

With respect to the counterclaim, this court finds that Key failed to prove that Mohl caused delay and disruption during Mohl's tenure at Ultimate. The counterclaim is denied and dismissed. Further, the court found credible Mohl's testimony that he retrieved from the company only his own personal computers.

¹ Iaconi and Franco insisted that Mohl, as well as themselves agreed to work for no salary until the company got on its feet and was profitable. This court believes that Mohl would have agreed to this only if he believed he was a part owner (i.e., partner) of the business. In that the court finds that Mohl has not met his burden of proof in demonstrating that he was a partner, he should be afforded a reasonable compensation.

CONCLUSIONS OF LAW

1. Mohl failed to prove that he is or was a shareholder of Key.
2. Mohl failed to prove that he was a partner in Key pursuant to an oral partnership agreement.
3. Although Mohl failed to prove to this court’s satisfaction that there existed a partnership agreement, Mohl should prevail on his claim for promissory estoppel to recover for finished goods and other assets transferred to defendants.
4. Similarly, Mohl should be compensated for the seven months he worked without pay and for the reimbursement of business expenses, since any promise to forego wages would have been a result of Mohl’s believing he had an oral partnership agreement.
5. The defendants, jointly and severally, are liable to Mohl in the amount of \$83,837.70 comprised of the listed amounts and for the corresponding reasons:

1.	Assets and Goods Transferred	\$ 50,000.00
2.	Seven Months – Earnings	\$ 33,000.00
3.	Reimbursement of Expenses	<u>\$ 837.70</u>
	TOTAL	\$ 83,837.70

6. Defendant Key LLC failed to prove its counterclaim that Mohl tortuously interfered with Key’s relationship with Academy by delaying and disrupting production of Key’s orders at Ultimate. Further, Key failed to prove that Mohl improperly took assets belonging to Key when he left the company.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.