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NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, August 3, 2012 at 8:30 a.m.

McDANNELL—Orphan's Court Action Number OC-75-2012. The First and Final Account of Francis Robert McDannell and Jo Ann Smith, Co-Executors of the Estate of Robert D. McDannell, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

McCLEAF—Orphan's Court Action Number OC-51-2012. The First and Final Account of Executor of the Estate of Jennie Marie McCleaf, deceased, late of Straban Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

7/20 & 27

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION
NO. 2012-S-738

In Re: Enaam Mina Istarabadi

NOTICE OF HEARING ON
PETITION FOR CHANGE OF NAME

NOTICE IS HEREBY GIVEN that Enaam Mina Istarabadi has filed a Petition for Change of Name requesting the Court to change her name from Enaam Mina Istarabadi to Aubree Noomi Saffar.

The Court has fixed September 7, 2012 at 8:30 a.m. in Courtroom No. 4, Adams County Courthouse, 111 Baltimore Street, Gettysburg, PA 17325, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

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HELD VS. ENVIRONMENTALLY SAFE PRODUCTS

1. While it is true that a contract can be subsequently modified, the same requires the assent of both parties and supporting consideration.

2. Waiver under Pennsylvania law is the act of intentionally abandoning some known right, claim, or privilege. To constitute a waiver of a legal right, there must be a clear, unequivocal, and decisive act of the party with knowledge of such right and an evident purpose to surrender it.

3. In the absence of an express agreement, a waiver will not be presumed or implied contrary to the intention of the party whose rights would be injuriously affected thereby, unless by his conduct the opposite party has been misled, to his prejudice, into the honest belief that such waiver was intended or consented to.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 09-S-199, PETER T. HELD VS. ENVIRONMENTALLY SAFE PRODUCTS, INC. a/k/a ESP, INC.

Paul W. Minnich, Esq., for Plaintiff

John J. Mooney III, Esq., for Defendant

George, J., January 26, 2012

OPINION

Before the Court are the Post Sentence Motions of Defendant, Environmentally Safe Products, Inc. a/k/a ESP, Inc. (“ESP”), challenging a non-jury trial verdict entered in favor of Plaintiff, Peter T. Held (“Held”), in the amount of \$44,682.50, plus costs.¹ Following trial, the Court found ESP responsible for wages and benefits due Held as a result of his employment relationship with ESP. In the Motions, ESP claims the parties’ relationship was primarily gratuitous and unenforceable under either a breach of contract theory or a violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. (“Wage Law”). ESP further claims the trial court erred in failing to find that even if a contract existed between the parties, it was violated when Held voluntarily left employment. Apparently in the alternative, ESP additionally claims the Court erred in entering judgment under the Wage Law, as any obligation to pay wages ended when Held was terminated by ESP.² As the factual

¹ The Court also entered declaratory judgment in favor of Held requiring ESP to carry supplemental health insurance on him until his death.

² ESP also challenges the entry of any judgment based upon a theory of promissory estoppel, alleging an insufficiency of evidence in support of such theory. As judgment was not entered under this theory, no further discussion of that challenge is necessary.

history is relevant to determination of the issues raised by ESP, the factual findings of the Court will be briefly summarized.

ESP manufactures environmentally safe reflective insulation for use in the construction market. In February 1993, Held was employed as a salesman by ESP. During his employ, Held developed and maintained some of the company's most longstanding and loyal customers. He was designated "salesperson" of the year in 2000 and 2001. Additionally, knowledge gained from his interaction with product users aided in the development of variations of the standard product.

On June 21, 2001, Held met with Cory Groft ("Groft") who, at the time, was the CEO for ESP. The purpose of the meeting was to discuss Held's continued relationship with ESP. The meeting produced a document signed by both parties which stated Held would receive a \$60,000 annual salary, plus additional commission. The document also referenced a "semi-retirement" provision for ages 62 ½ to 65 ½ at a salary of \$25,000 per year, plus supplemental health insurance, if Held continued to work part time or, in the alternative, a salary of \$18,500, plus supplemental health insurance if Held did not work. Finally, the document provided that from ages 65 ½ to 70 ½, Held would receive a "full retirement annual salary" of \$15,000, plus supplemental insurance which would be carried until his death. Held was 60 years of age at the time of this discussion.

On June 28, 2001, Jesse Thomaz ("Thomaz"), Secretary to the ESP Board of Directors, mailed a letter to Held reiterating the "agreement" entered with Groft. The letter, however, unilaterally increased the work hours for the "semi-retirement plan" from 40-60 hours per month to 80 hours per month. The correspondence also unilaterally eliminated a term relating to an additional commission applicable when Held reached \$2,000,000 in sales. Finally, this correspondence directed the wording "semi-retirement" in the June 21, 2001 document be changed to "part time."

Held remained employed as a salesperson for ESP through March 2002, when a dispute arose between the parties. Held claims ESP requested a change in his job duties from sales to one of technical assistance. Held further claims he was not qualified to serve in a position of technical assistance and refused the transfer. Thereafter, he was terminated without explanation. ESP claims Held was neither terminated nor quit, but rather it was a mutual separation based

upon Held's refusal to accept the transfer. In documents filed by ESP in response to Held's claim for unemployment insurance, ESP conceded Held was not qualified to fill the position he was offered.

In light of ESP's concession, Held received unemployment compensation for 26 weeks, effective March 17, 2002, for the benefit year ending March 15, 2003. On March 21, 2003, Scott Miller ("Miller"), President of the Board of Directors of ESP, wrote a letter addressed to Held indicating, in relevant part, that Held's salary until age 65 would be \$11,500; at age 65, his salary would increase to \$15,000 per year, and Held's insurance would only be carried until the age of 72, subject to a \$500 month cap. There is no indication in the record that Held ever received or accepted the terms of the correspondence.

Although trial evidence was incomplete as to the actual payment history from ESP to Held during the relevant time period, it is clear that Held accepted monthly payments less than the amount originally contemplated by the June 21, 2001 agreement. ESP argues that the March 21, 2003 letter, as corroborated by Held's acceptance of reduced payments, is indicative of a lack of any meeting of minds between the parties in June 2001 which contractually obligated ESP. This Court interpreted the evidence otherwise. Rather than establishing a lack of prior agreement between the parties, the March 21, 2003 letter evidences a unilateral attempt on the part of ESP to avoid a known legal obligation. It is reasonable to conclude that had ESP not recognized a legal obligation to continue making payments to Held, there would be no reason for ESP to continue any payments or to reduce the benefit plan in writing. ESP's claim of gratuity is not persuasive. Rather, ESP attempted a unilateral modification of the contract previously entered between the parties. While it is true that a contract can be subsequently modified, the same requires the assent of both parties and supporting consideration. *Trombetta v. Raymond James Financial Services, Inc.*, 907 A.2d 550, 558 (Pa. Super. 2006). Evidence at trial of mutual consent to any modification was noticeably lacking.

Similarly, ESP cannot credibly argue the reduced payment resulted in a waiver of Held's right to insist on ESP fully satisfying the employment benefit granted by the June 21, 2001 agreement. Waiver under Pennsylvania law is "the act of intentionally abandoning some

known right, claim, or privilege.” See *Bell’s Estate*, 10 A.2d 835, 836 (Pa. Super. 1940) (citations and internal quotations omitted). To constitute a waiver of a legal right, there must be “a clear, unequivocal, and decisive act of the party with knowledge of such right and an evident purpose to surrender it.” *Wohlgemuth v. Armacost*, 336 A.2d 455, 458 (Pa. Cmwlth. 1975) (citation and internal quotations omitted). “[I]n the absence of an express agreement, a waiver will not be presumed or implied contrary to the intention of the party whose rights would be injuriously affected thereby, unless by his conduct the opposite party has been misled, to his prejudice, into the honest belief that such waiver was intended or consented to.” *Atlantic Ref. Co. v. Wyoming Nat. Bank of Wilkes-Barre*, 51 A.2d 719, 725 (Pa. 1947) (citation omitted). As previously mentioned, there is a paucity of evidence that Held even received the March 21, 2003 correspondence, let alone consciously assented to its terms.

Despite ESP’s argument to the contrary, trial evidence failed to persuasively support a finding of either a lack of agreement between the parties or a subsequent voluntary modification of that agreement. To the contrary, the evidence is unequivocal that on June 21, 2001, Held and ESP met to discuss his continued future with ESP. In recognition of Held’s prior valuable contribution to the growth of ESP, and recognizing the value of a continued future association between the parties, an employment package was entered that included guaranteed pay and retirement/separation benefits. The agreement was entered between parties who considered salary and retirement to be interchangeable principles. As time passed, and perhaps due to advice from professionals concerning the ramifications of retirement plans as compared to payment of salary, ESP unilaterally attempted to define their relationship with Held as one of continued employment and payment of salary rather than one of payment pursuant to a retirement or separation package. Regardless of ESP’s definition, the uncontroverted evidence is that on June 21, 2001, ESP bestowed to Held a fringe benefit which he relied upon in his continued employment. ESP’s current refusal to make payment of that benefit is more than sufficient to establish a cause of action under the Wage Law as the law unequivocally provides that an employer may not unilaterally terminate the payment of promised fringe benefits, such as separation or retirement pay.

43 P.S. § 260.3(b). ESP's current claim of financial hardship is not a legal basis to avoid that obligation.³

For the foregoing reasons, ESP's Post Sentence Motions are denied.

ORDER

AND NOW, this 26th day of January 2012, the Defendant's Post Sentence Motions are denied. The Adams County Prothonotary's Office is directed to enter judgment in favor of the Plaintiff, Peter T. Held, in the amount of \$44,682.50 plus costs.

³ Throughout the trial, ESP attempted to imply that some sort of breach on Held's part resulted in his termination and, therefore, loss of entitlement to his wage benefits. This argument is factually rejected as a legal figment created by ESP in response to pending litigation. All evidence indicates ESP's motive to terminate the wage benefit is due solely to the downturn in the economy. See Plaintiff's Exhibits 4 and 5.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF JERRY W. JUSTICE, DEC'D**

Late of Highland Township, Adams County, Pennsylvania

Personal Representative: Jeanette D. Showers, 585 Knoxlyn-Orrtanna Road, Gettysburg, PA 17325

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

ESTATE OF CHELSEA MARIE McFALLS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Valerie J. McFalls, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF STEVEN J. PRILLAMAN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Donald W. Kiessling, c/o Paul G. Lutz, Esq., 110 South Northern Way, York, PA 17402-3737

Attorney: Paul G. Lutz, Esq., 110 South Northern Way, York, PA 17402-3737

ESTATE OF JOHN A. RAFFENSPERGER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: David C. Houck, 175 South Main Street, Arendtsville, PA 17303; Wesley E. Staub, 116 Accomac Road, York, PA 17406

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF JOHN LOUIS ENGELMANN a/k/a JOHN L. ENGELMANN, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Counsel Trust Company, 224 St. Charles Way, Suite 100, York, PA 17402

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF PAUL H. SIPLING a/k/a PAUL H. SIPLING JR., DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executrix: Paula L. King, c/o Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF RUTH J. SMITH, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Michael J. Smith, 156 Barnhart Road, Westminster, MD 21158

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF DAVID W. YEALY, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Michele M. Pannell, c/o D. J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: D. J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF MARY ELIZABETH FRAZER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Philip A. Frazer, 110 North Hickory Lane, New Oxford, PA 17350

Attorney: David K. James III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JAMES J. HYDOCK JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Jeffery A. Hydock, 227 Ewell Avenue, Gettysburg, PA 17325

Attorney: David K. James III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCIS W. KNOUSE, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Administratrix: Kim Harman, 2371 Coon Road, Aspers, PA 17304

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LOUIS SANFORD RICE II, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Julia Ann Rice, 1133 August Drive, Annapolis, MD 21403

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF CONWAY T. SMITH a/k/a CONWAY THOMAS SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Rose A. Smith, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF RICHARD R. SNYDER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Krista W. Snyder, c/o Robert G. Frey, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013

Attorney: Robert G. Frey, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013

ESTATE OF NELLIE G. STAMBAUGH, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executor: William F. Stambaugh, 16 Sunset Avenue, New Oxford, PA 17350

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

