

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDICIAL / JUDGE IN CIVIL CASE

CASE NO. 2008 CP-23-02321

Garry Hoyt

CollaborativeMed, LLC and

PLAINTIFF(S)

Richard L. Grounsell

DEFENDANT(S)

Submitted by: O. W. Bannister	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a) SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

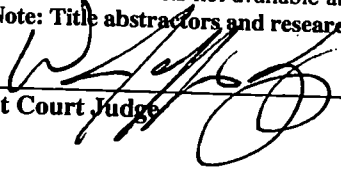
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



2156
 Judge Code

7/17/2014
 Date

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2014 JUL 29 PM 9:28

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Garry Hoyt,

C.A. No. 2008-CP-23-02321

Plaintiff,

vs.

FINAL ORDER

CollaborativeMed, LLC, and
Richard L. Grounsell,

Defendants.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSHER
2014 JUL 29 AM 9 28

PROCEDURAL HISTORY

Garry Hoyt (hereinafter "Hoyt") instituted this suit on March 26, 2008 and subsequently amended to allege in pertinent part: 1) breach of fiduciary duty against Richard Grounsell (hereinafter "Grounsell"); 2) for the establishment of a constructive trust for shares of stock; 3) fraud; and 4) violation of Unfair Trade Practices Act. To the complaint Grounsell and Collaborative Med, LLC (hereinafter "Collaborative Med") entered a general denial and waiver among other defenses not pertinent here.

The matter came before me for trial on September 30 and 31, 2013. At the close of the evidence the court dismissed Hoyt's claim for Unfair Trade Practices Act violations.

FACTS

Hoyt and Grounsell were associates and acquaintances in the medical supply field. Collaborative Med is a limited liability company formed by Grounsell.

Prior to 2005, a group of doctors in Atlanta, Georgia developed an insulin delivery device which was ultimately named "Glucommander". While the doctors used the Glucommander to a limited degree, it was not approved by the Federal Drug Administration (FDA) and therefore not commercially marketable.

At a meeting with one or more of the doctors in 2005, Grounsell recognized the commercial potential of the Glucommander and began efforts to develop and market it. He contacted Hoyt with the idea that Hoyt would be in charge of marketing the Glucommander throughout the United States. Hoyt agreed.

Hoyt, Grounsell, and one doctor were to be one-third owners of a yet-to-be formed corporation that would market the Glucommander. Later the number was extended to include other shareholders. Additional shares were to be sold to raise capital.

Collaborative Med obtained the intellectual property rights of the Glucommander from the doctors by an assignment in 2005. (Defendant's Exhibit 7)

Prior to the formation of the corporation which was to market the Glucommander, Hoyt incurred expenses for travel and other costs in reaching out to hospitals and other potential customers. Through Collaborative Med Grounsell invested personal funds in seeking FDA approval and developing the necessary framework for marketing the Glucommander.

Grounsell exhausted his personal funds to gain FDA approval and to establish an organization to market the Glucommander. To raise funds Grounsell prevailed upon his family members to invest funds in Collaborative Med in exchange for the promise that they would receive a percentage of the stock granted to Collaborative Med in exchange for the right to market the Glucommander once FDA approval was obtained.

With the prospect of soon gaining FDA approval for the marketing of Glucommander, Grounsell moved forward to organize a corporation to be named Glucotec, Inc.

On March 24, 2006 an organizational meeting was held for subscribers to the capital stock of Glucotec, Inc. Grounsell and Hoyt were among the eight persons present. The incorporators unanimously adopted the Articles of Incorporation of Glucotec. (Plaintiff's Exhibit 8).

Also on March 24, 2006 Grounsell entered into what was styled as a Stock Subscription Agreement wherein Collaborative Med purchased 18,129,066 shares of Glucotec stock. This stock subscription was in exchange for Collaborative Med's right to sell the Glucommander under the FDA approval it was seeking.

On March 24, 2006, Hoyt signed a Stock Subscription Agreement for his 250,000 shares of founder's stock.

Glucotec, Inc. was formally incorporated March 28, 2006 as reflected in Plaintiff's Exhibit 1.

Among the By-Laws of Glucotec, Inc., was a provision requiring notice of meetings of the shareholders as to the place, date, hour and purpose of the meeting and for such notice to be sent to the shareholders at their address as it appears on the books of the Corporation not less than ten days and no more than fifty days before the date of such meeting.

On March 28, 2006 a Shareholder's Agreement was entered into by Hoyt, Grounsell and others which allocated what were known as founder's shares of stock. These founder's shares were given to the original contributors to the foundation of the corporation and at a very nominal sum. The founder's shares were restricted in terms of sale. Both Hoyt and Grounsell received the same number of shares and both signed the Agreement. The Shareholder's Agreement does not contain any mention of the stock subscription of Collaborative Med.

On May 11, 2006, six of the eight original stock subscribers for Glucotec met for what was styled as a "Glucotec Founders Group Stockholder's Meeting." Hoyt was not present. No notice was mailed to him and he maintained he had no notice of the meeting. Some Glucotec business was transacted at that meeting. According to several witnesses oral notice was given to Hoyt of the meeting.

On May 18, 2006, a Stockholders Meeting Minutes (Plaintiff's Exhibit 6) reflected that six of the eight incorporators were present to include Grounsell but not Hoyt. According to the minutes of this meeting the Shareholders voted to exchange the 18,129,066 shares of Glucotec stock in exchange for Collaborative Med's right to the development of the Glucommander. Grounsell had another shareholder vote his stock in favor of the exchange. Grounsell's two sons also vote their stock in favor of the agreement as well.

On May 18, 2006 Hoyt signed a Non-Disclosure, Non-Compete Agreement.

By check dated May 18, 2006, Hoyt paid \$250 for his 250,000 shares of Glucotec stock which were subsequently issued to him. Hoyt was also issued additional shares for his expenses. Hoyt sold all of his Glucotec stock at a profit and currently owns no stock.

Hoyt was employed by Glucotec for a short period of time and then fired.

CONCLUSIONS OF LAW

1. **Stockholder Oppression.**

Hoyt's first cause of action for stockholder oppression is governed by §33-8-310, S.C. Code. That section governs the conduct of corporate officers.

Although the parties dispute whether Hoyt had actual notice of the May 11 stockholders meeting, they do not dispute that notice was not given in strict compliance with Glucotec By-Laws. Grounsell does not dispute that he had an interest in Collaborative Med's receiving Glucotec's stock in exchange for the intellectual property rights of Collaborative Med. The burden is therefore on Grounsell to prove that the transaction was fair to the corporation. §33-8-310(c).

Without the legal right to market the Glucommander, Glucotec was not a viable corporation. The sole business of Glucotec was to sell Glucommanders for medical uses and without legal authority to sell the Glucommanders the business would fail. Collaborative Med

was under no obligation to permit the marketing and sale of Glucommanders by Glucotec. In essence, Collaborative Med could name its price for the right to market the Glucommander. Under these circumstances, Grounsell met his burden of benefit to the corporation and the transaction enabled Glucotec to begin business.

Hoyt was subsequently employed by Glucotec and signed a Non-Disclosure Non-Competition Agreement on May 18, 2006. He also accepted additional stock in the company.

For a short period of time Hoyt marketed the Glucommander through Glucotec and by doing so he accepted the assignment of the right to market the Glucommander as assigned by Collaborative Med. By accepting the benefits of the assignment of the rights to market the Glucommander Hoyt approved the transaction which benefited Glucotec for whom he worked.

2. Constructive Trust.

Hoyt claims a constructive trust should be imposed on twenty-five (25%) percent of the 18,129,066 shares of Glucotec stock transferred to Collaborative Med in exchange for the rights to the Glucommander. As quoted in Carolina Park Assoc., LLC v. Marino, 400 S.C. 1, 732 S.E.2d 876 (2012), “a constructive trust would arise whenever the circumstances under which property was acquired makes it inequitable that it should be retained by the one holding legal title.” [p. 6 quoting Lollis v. Lollis, 291 S.C. 524, 354 s.e.2D 559 (1987)]

Hoyt has failed to establish a claim for a constructive trust for the following reasons. Grounsell and his family members contributed funds to Collaborative Med in exchange for twenty percent (20%) of the stock Collaborative Med was to receive for assigning the intellectual property rights of the Glucommander. Eighty percent (80%) of the 18,129,066 shares had been distributed to family members other than Grounsell. None of these parties are named defendants and therefore beyond this Court’s jurisdiction.

Grounsell testified as to his financing Collaborative Med's attempts to get FDA approval and to develop the Glucommander in amounts of several hundreds of thousands of dollars. Without question, Grounsell is entitled to recover these funds that he spent toward the venture.

In essence, Hoyt requested that he be given 4,532,266 shares of Glucotec stock based on an oral promise that he would receive a fourth of the company stock. Hoyt tenders no payment of the said stock and has previously accepted shares of stock in exchange for the sweat equity he initially put into marketing the Glucommander.

Under these circumstances the Court does not find it inequitable that Grounsell retain the shares of stock allocated to him in exchange for the intellectual property rights of the Glucommander.

3. Fraud.

Hoyt's cause of action for fraud must fail.


The nine elements of fraud, which are not repeated here, must be proved by clear, cogent and convincing evidence. Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 367 (Ct. App. 1993). Failure to prove any one element is fatal to a cause of action for fraud. Brown v. Stewart, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001).

The first element of fraud is the representation. Hoyt relies on the representation that he would own twenty-five percent (25%) of a stock in a corporation that would market the Glucommander. To support a cause of action for fraud the representation must relate to a present or preexisting fact rather than a statement of a future event or an unfulfilled promise. Emerson v. Powell, 383 S.C. 293, 321 S.E.2d 629 (Ct. App. 1984).

Any representation to Hoyt concerning his share of a corporation not yet in existence or with a marketable product to sell is a future event.

Finally, Hoyt has the burden of proving damages in a set amount. No evidence was presented as to monetary damages allegedly suffered by Hoyt. While he may have a cause of action in contract, he does not have a cause of action for fraud.

AND IT IS SO ORDERED!



W. Jeffrey Young
Circuit Court Judge

July 12, 2014