

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Garry Hoyt,

Plaintiff,

-vs-

CollaborativeMed, LLC, and
Richard L. Grounsell,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

RECEIVED ORDER

JUN 10 2019

SC Court of Appeals

Civil Action Number 2008-CP-23-02321

This matter comes before the Court pursuant to the remand of the case from the Court of Appeals. The matter was originally tried in the Greenville County Court of Common Pleas beginning on September 30, 2013. Upon issuance of the Trial Court's Order, the same was appealed to the South Carolina Court of Appeals. The Court of Appeals remanded the case to the Circuit Court for a determination on a limited question. Therefore, this Court convened a review and a hearing to make a determination on the limited question of "Whether Grounsell's failure to give notice to Hoyt in compliance with the requirements of GlucoTec's bylaws constituted a breach of fiduciary duty, and if so, whether Hoyt suffered damages as a proximate result."¹

Upon remand, the Court received documents, materials, and a complete transcript of the record from the parties. Thereafter, the Court convened a hearing on December 17, 2018, for the purpose of argument and review. The parties were given wide latitude in argument and/or introduction of evidence. Ultimately, the parties relied upon the evidentiary record at the original

¹ This matter was originally tried non-jury by Judge W. Jeffrey Young. At the time of remand, Judge Young had retired and was no longer presiding as a Circuit Judge. Therefore, the Chief Administrative Judge assigned the case to Judge Robin B. Stilwell to dispose of the matter in accordance with the Court of Appeals' instructions.

trial and simply and made arguments regarding the salient issue. Present at the hearing were the Plaintiff, represented by his attorney, Mario Pacella, and the Defendant, Richard L. Grounsell, appearing *pro se*.

FINDINGS

This Court has had the opportunity to review the complete record, read the transcript of the trial, and to consider the arguments of counsel. After careful and deliberate consideration, the Court finds as follows:

- 1) Grounsell did breach his fiduciary duty to Hoyt by failing to notify him of the stockholders meeting in accordance with the established Bylaws. The Plaintiff successfully proved by a preponderance of the evidence that Grounsell had a fiduciary duty and that Grounsell breached that duty by failing to give Hoyt notice of the meeting in accordance with the Bylaws; and
- 2) To establish a claim for a Breach of Fiduciary Duty, the Plaintiff must prove 1) the existence of a fiduciary duty, 2) a breach of that duty owed to the Plaintiff by the Defendant, and 3) damages proximately resulting from the wrongful conduct of the Defendant. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). As previously discussed, the Plaintiff met his burden of proof with respect to the first two requirements. However, the Plaintiff failed to meet his burden of proof with respect to damages. Therefore, the Cause of Action for Breach of Fiduciary Duty fails. Judge Young, in his Order of April 29, 2015, found in salient part:

The Court finds [Defendants'] efforts and funds were devoted toward a common goal of marketing the Glucometer successfully. In reality Hoyt benefitted from these efforts and the monetary advances of other people. Rather than violating any fiduciary duty owed to Hoyt, the Court finds the actions of Grounsell actually

benefitted Hoyt and ultimately delivered to him a windfall for which he invested no money and very little time.

The undersigned does not assume as his prerogative the authority to supersede or contradict the findings of fact of the original Trial Judge. Furthermore, the remand and mandate from the Court of Appeals does not confer upon the undersigned the authority to question, contradict, or make anew findings of fact that have been determined by the original Trial Court. Therefore, the factual findings of the original Trial Court are the law of this case. Clearly, the original Court determined that there were no damages suffered as a consequence of Grounsell's conduct. There is substantial and significant evidence in the record to support this finding. The undersigned will not presume to obviate the same.

Therefore, this Court finds that the Plaintiff has failed to meet his burden of proof with respect to his Cause of Action for Breach of Fiduciary Duty.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

March 5, 2019
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Garry Hoyt vs. Collaborativemed Llc , defendant, et al

Case Number: 2008CP2302321

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158