

05-977-CD
DuBois Medical Supply vs John C. Rezk

DuBois Med. Sup. v. John Rezk
2005-977-CD

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DUBOIS MEDICAL SUPPLY
COMPANY, INC., PAUL K. REZK
and KAREN M. REZK,

Plaintiffs

No. 05-977-CD

vs.

JOHN C. REZK,

Defendant

Type of Pleading:

COMPLAINT IN EQUITY

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

814-371-7768

Date: 7/6/05

FILED *cc Atty*
m 112:4204
JUL 07 2005 *cc Shff*
Atty pd. 85.00
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-EQUITY

DUBOIS MEDICAL SUPPLY,	:	
COMPANY, INC.; PAUL K. REZK	:	
and KAREN M. REZK,	:	
Plaintiffs	:	
	:	No. _____, 2005, C.D.
vs.	:	
	:	
JOHN C. REZK,	:	
Defendant	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-EQUITY

DUBOIS MEDICAL SUPPLY, :
COMPANY, INC.; PAUL K. REZK :
and KAREN M. REZK, :
Plaintiffs :
vs. : No. _____, 2005, C.D.
: :
JOHN C. REZK, :
Defendant :
:

COMPLAINT IN EQUITY

AND NOW, comes the Plaintiffs, DUBOIS MEDICAL SUPPLY COMPANY, INC., and PAUL K. REZK and KAREN M. REZK, by and through their attorneys, HANAK, GUIDO AND TALADAY, and files this Complaint and in support thereof aver the following:

1. Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office located at 320 Liberty Blvd., DuBois, Clearfield County, Pennsylvania.
2. Plaintiffs, PAUL K. REZK and KAREN M. REZK, are husband and wife, reside at 405 E. Sheridan Avenue, DuBois, Clearfield County, Pennsylvania.
3. The Defendant, JOHN C. REZK, is an adult individual who has a mailing address of P. O. Box 520, Carrolltown, Cambria County, Pennsylvania.

COUNT I

DuBois Medical Supply Company, Inc., Plaintiff,
v.
John C. Rezk, Defendant.

4. Paragraphs 1 through 3 are incorporated herein by reference as though the same were set forth more fully at length.

5. Venue in this court is proper under Pa.R.C.P. 1006, 2130 and 2179(a) in that the Plaintiff's principal place of business is located in the City of DuBois, Clearfield County, Pennsylvania.

6. On or about May 1, 2002, Defendant was employed by Plaintiff to principally provide to patients respiratory services, including marketing and management of branches.

7. On or about May 1, 2002, the Defendant, JOHN C. REZK, was assigned by the Plaintiff to manage business known as Cambria Respiratory Care which the Plaintiff operates under a duly filed fictitious name.

8. Upon hiring Defendant, JOHN C. REZK, was paid a salary of One Hundred Fifty and 00/100 (\$150,000.00) Dollars per year which salary began May 1, 2002. On December 10, 2002, Defendant, JOHN C. REZK, agreed to accept a reduction in salary to relieve a cash drain on the company. The reduction was treated as deferred salary until March 16, 2004. The deferred salary amounted to Ninety-nine Thousand One Hundred Eighty-one and 45/100 (\$99,181.45) Dollars which was paid to Defendant, JOHN C. REZK, in three installments on September 14, 2004, October 12, 2004, and January 18, 2005.

9. Pursuant to his employment, Defendant, JOHN C. REZK, executed a Non-Competition Agreement with Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., dated February 26, 2003, a true and correct copy of which is attached hereto and marked Exhibit "A".

10. Since May 1, 2002, the Defendant was the primary manager and virtually in control of all aspects of the operation of the businesses operated by Cambria Respiratory Care.

11. On or about June 3, 2005, Plaintiff, DuBois Medical Supply, Inc., discharged the Defendant, John C. Rezk, as an employee of Plaintiff, DuBois Medical Supply, Inc., for reasons hereinafter set forth.

12. Plaintiff is informed and therefore believes that prior to his discharge on June 3, 2005, Defendant, John C. Rezk, diverted patients of Plaintiff, DuBois Medical Supply, Inc., to third party competitors one of which is Penn Home Medical Supply and possibly others.

13. In addition, prior to his discharge on June 3, 2005, Defendant organized a business known as RESTA Home Health in October of 2004, thereby violating the terms of his employment with Plaintiff by failing to devote full time and attention to duties of his employment with Plaintiff.

14. Prior to or upon his discharge, Defendant, JOHN C. REZK, removed from the offices of the Plaintiff patient listings from Cambria Respiratory Care which listings contained the names, addresses, telephone numbers, Social Security numbers, health insurance claim numbers and other data located at Cambria Respiratory Care and

Ellwood Respiratory Care which information is confidential. Missing patient lists are from January through April, 2005.

15. Said Agreement dated February 26, 2003, copy of which is attached hereto as Exhibit "A", provides in part that throughout the term of his employment and that for a period of one year thereafter, within a territory of 40 miles in radius of any present or future offices or location of Plaintiff, Defendant, John C. Rezk, agreed to not individually or in conjunction with any other person or as an employee, agent, representative or partner or holder of any interest in any firm, corporation or other association engage in any business which would be in competition with the Plaintiffs' business.

16. In violation of Section 4, entitled "Restrictions Against Competition" since his discharge on June 3, 2005, the Defendant, John C. Rezk, organized a business enterprise in Carrolltown, Pennsylvania, which is in direct competition with the business of the Plaintiff and is within 40 miles of a business office operated by Plaintiff.

17. Should the Defendant solicit customers of the Plaintiff or interfere in any way with the business relations of the Plaintiff with its customers, clients or distributors Plaintiff would be irreparably harmed and have no adequate remedy at law.

18. Plaintiff believes and therefore avers that the Defendant has and intends in the future to solicit its customers and interfere with its customers, suppliers and distributors and irreparably and immeasurably harm Plaintiff. In fact, Defendant stated that he would

do everything in his power to solicit Plaintiff's customers and in addition attempt to cause Plaintiff's contract with the Veterans Administration to be terminated or ruined.

19. It has taken substantial assets of the company to accumulate the patients customer list and the Plaintiff's business cannot survive if these proprietary assets are taken by Defendant.

20. Should the Court grant injunctive relief to Plaintiff, Defendant will incur little, if any, injury for which injury he has adequate remedies at law. The balance of equities therefore favor Plaintiff.

21. In addition to injunctive relief, hearing requested, the Plaintiff further requests that your Honorable Court enter judgment in the amount of the attorney's fees and costs expended by the Plaintiff in prosecuting this action pursuant to Subsection (b) of Article V, entitled "Remedies of Said Agreement" dated February 26, 2003.

22. Plaintiff also seeks an Order pursuant to Pa.R.C.P. 115.31 preliminary and permanently enjoining Defendant from violating the covenants of said Agreement dated February 26, 2003, and preliminarily order requiring the Defendant to return to the Plaintiff all documents removed by the Defendant from Plaintiff's offices, including all copies thereof.

23. Business records and customer lists of the Plaintiff are invaluable assets to the Plaintiff. This information is proprietary and if Defendant is allowed to utilize such information at a new place of

business or employer, it will cause irreparable harm to Plaintiff's business.

24. Should the Defendant solicit customers of the Plaintiff which Plaintiff believes that Defendant is currently undertaking, the Plaintiff is and will be irreparably harmed for which the Plaintiff has no adequate at law.

25. Plaintiff believes and therefore avers that Defendant intends to solicit its customers/patients and to interfere with the business relations of the Plaintiff with its customers/patients, irreparably and immeasurably harm Plaintiff.

26. If required by the Court, Plaintiff will deposit money or bond with the Court in whatever amount the Court may determine is just for security. It is believed that the only irreparable harm that be caused is to the Plaintiff since the Defendant is soliciting its clients. Thus the amount of any security bond should be merely nominal.

27. Should the Court not grant injunctive relief, the Plaintiff believes and therefore avers that it will incur great and irreparable harm and damage from the permanent loss or misappropriation of its customer list and the solicitation of its customer for which Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests that this Court enter an Order:

(a) Permanently enjoining Defendant from soliciting any customer or patient of the Plaintiff;

- (b) Order Defendant to return to Plaintiff all business records, customer lists and any additional property that Defendant may have copied or taken with him;
- (c) Enjoin Defendant from competing with Plaintiff in the business of the Plaintiff for a period of one year in the protected territory as provided for by said agreement dated February 26, 2003;
- (d) Award Plaintiff's costs incurred as a result of Defendant's wrongful act;
- (e) Awarding Plaintiff reasonable attorney's fees for prosecuting this action;
- (f) Providing such other relief as the Court deems just and proper.

COUNT II

DuBois Medical Supply Company, Inc., Plaintiff,
v.
John C. Rezk, Defendant.

Unjust Enrichment

- 28. Paragraphs 1 through 27 are incorporated herein by reference as though the same were set forth more fully at length.
- 29. As a result of Defendant competing with Plaintiff in violation of said Agreement dated February 26, 2003, such actions will confer upon Defendant benefits which are unjust to the detriment of Plaintiff.
- 30. Defendant's actions constitute an unjust retention of a benefit to the loss of the Plaintiff and Defendant's retention solicitation of Plaintiff's patients will cause Plaintiff to suffer serious financial

injury and inequities as a result that have or probably will in the future result in substantial damages.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount Defendant has received as a result of Defendant's wrongful acts as set forth in the Count I of this Complaint.

COUNT III

**DuBois Medical Supply Company, Inc., Paul K.
Rezk and Karen M. Rezk, Plaintiffs,**

v.
John C. Rezk, Defendant.

31. Paragraphs 1 through 30 are incorporated herein by reference as though the same were set forth more fully at length.

32. Plaintiffs, Paul K. Rezk and Karen M. Rezk, are the owners of all of the outstanding common stock of Plaintiff, DuBois Medical Supply Company, Inc.

33. In April or May of 2005, Plaintiffs negotiated the sale the business assets of Plaintiff, DuBois Medical Supply Company, Inc., with Apria Health Care, Inc.

34. A principal asset of the sale was the patient list of the Plaintiff, DuBois Medical Supply, Inc.

35. During the due diligence examination of the DuBois Medical Supply Company, Inc., performed by the potential buyer, Apria Health Care, Inc., Defendant, John C. Rezk, threatened the representatives of Apria that Defendant, John C. Rezk, would lure away or divert the patients of DuBois Medical Supply, Inc., located in the Cambria County area in the event the sale was concluded.

36. In addition, Defendant, John C. Rezk, threatened the representative of Apria if the sale was concluded he would take steps to terminate or ruin the contract which DuBois Medical Supply, Inc., has with the Veterans Administration which is a valuable asset of the Plaintiff, DuBois Medical Supply, Inc.

37. In addition, Defendant claimed to representatives of Apria that he was the owner of a substantial interest in the Plaintiff, DuBois Medical Supply, Inc., and its business assets.

38. As a result of the threats by Defendant, John C. Rezk, made to the representative of Apria Health Care, that company demanded substantial change in the terms and conditions of said sale, which were unacceptable to Plaintiff, and a result the sale of the business assets of DuBois Medical Supply, Inc. to Apria Health Care was terminated.

39. Said statements and threats which were made to representatives of Apria, by Defendant, John C. Rezk, with the intent and for the purpose of injuring the Plaintiffs and to cause Apria Health Care to suspect and believe that the Plaintiff's interest in the business assets of the DuBois Medical Supply, Inc., was defective and was of diminished value which hindered and prevented Plaintiff from selling or disposing of the assets of DuBois Medical Supply, Inc., in accordance with the proposed sale to Apria Health Care. In the alternative, Defendant's statements and threats were negligent acts committed by the Defendant.

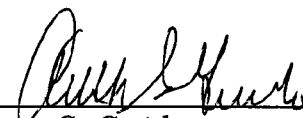
40. As a result of the statements and threats made by Defendant, John C. Rezk, to the representatives of Apria, the representatives of Apria reasonably understood that the quality of the property and the extent of Plaintiff's interest therein were doubtful and thereby demanded substantial changes in the terms and conditions of said sale which resulted in the potential sale being terminated.

41. As a direct and proximate result of the Defendant's conduct, Plaintiffs were deprived of the opportunity to sell the business assets of DuBois Medical Supply, Inc., Apria, and which effectively deprived the Plaintiffs of an opportunity to sell said assets to Apria.

42. Defendant, John C. Rezk, made said threats to Apria for the purpose of extorting a portion of the sale price of said assets to Apria or in the alternative to cause the termination of said sale.

43. The termination of said sale of the business assets of DuBois Medical Supply, Inc., to Apria resulted in significant financial harm to the Plaintiffs of at least One Million and 00/100 (\$1,000,000.00) Dollars.

WHEREFORE, Plaintiffs demand judgment against the Defendant in an amount not in excess of One Million and 00/100 (\$1,000,000.00) Dollars, together with costs.



Anthony S. Guido
Attorney for Plaintiffs

VERIFICATION

I, PAUL K. REZK, President of PHARMACY (4), INC., d/b/a REZK RESPIRATORY, do hereby state that I am the authorized agent for purposes of filing this Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 7/6/05

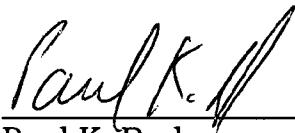


Paul K. Rezk, President

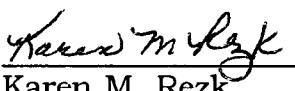
VERIFICATION

We, PAUL K. REZK and KAREN M. REZK, verify that the statements in the foregoing Complaint are true and correct to the best of our knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



Paul K. Rezk



Karen M. Rezk

DUBOIS MEDICAL SUPPLY COMPANY, INC., PAUL K. REZK and KAREN M. REZK, : IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

Plaintiff, : No. 05-977-CD

vs. :
:

JOHN C. REZK, : ENTRY OF APPEARANCE

Defendant. : COUNSEL OF RECORD FOR PARTY:
:
: JAMES A. NADDEO, ESQUIRE
: I.D. No.: 06820
: 211 EAST LOCUST STREET
: POST OFFICE BOX 552
: CLEARFIELD, PENNSYLVANIA 16830
: (814) 765-1601

FILED NO
035381 cc
AUG 09 2005 @

William A. Shaw
Prothonotary, Clerk of Courts

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., PAUL K. : CLEARFIELD COUNTY, PENNSYLVANIA
REZK and KAREN M. REZK, : CIVIL ACTION - LAW
:
Plaintiff, : No. 05-977-CD
:
vs. :
:
JOHN C. REZK, :
:
Defendant. :
:

ENTRY OF APPEARANCE

Enter our appearance for Defendant, John C. Rezk only
in the above-captioned case. Papers may be served at the
address stated below.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of
Civil Procedure, as amended, a Jury Trial is demanded on all
issues raised by the pleadings in the above-captioned action.

We certify that this entry of Appearance and Demand
for Jury Trial shall be served forthwith by ordinary mail upon
all parties.

James A. Naddeo, Esquire
211 East Locust Street
Post Office Box 552
Clearfield, Pennsylvania 16830

By


James A. Naddeo, Esquire
Attorneys for Defendant,
John C. Rezk

DATED: August 3, 2005
cc: Ronald P. Carnevali, Jr., Esquire
Anthony S. Guido, Esquire
Mr. John R. Rezk



FILED

AUG 09 2005

WILLIAM A. SCOTT
Prothonotary, State of Courts

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., PAUL K. : CLEARFIELD COUNTY, PENNSYLVANIA
REZK and KAREN M. REZK, : CIVIL ACTION - LAW
:
Plaintiff, : No. 05-977-CD
:
vs. :
:
JOHN C. REZK, : ENTRY OF APPEARANCE
:
Defendant. : COUNSEL OF RECORD FOR PARTY:
:
: RONALD P. CARNEVALI, JR., ESQUIRE
: I.D. No.: 47733
: SPENCE, CUSTER, SAYLOR, WOLFE &
: ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: PCST OFFICE BOX 280
: JCHNSTOWN, PENNSYLVANIA 15907
: (814) 536-0735

FILED NO CC
0135361
AUG 09 2005
②

William A. Shay
Prothonotary Clerk of Courts

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., PAUL K. : CLEARFIELD COUNTY, PENNSYLVANIA
REZK and KAREN M. REZK, : CIVIL ACTION - LAW
:
Plaintiff, : No. 05-977-CD
:
vs. :
:
JOHN C. REZK, :
:
Defendant. :
:

ENTRY OF APPEARANCE

Enter our appearance for Defendant, John C. Rezk only
in the above-captioned case. Papers may be served at the
address stated below.

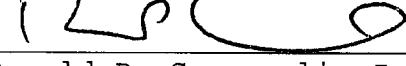
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Pursuant to Rule 1007.1 of the Pennsylvania Rules of
Civil Procedure, as amended, a Jury Trial is demanded on all
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We certify that this entry of Appearance and Demand
for Jury Trial shall be served forthwith by ordinary mail upon
all parties.

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC
AmeriServ Financial Building
Post Office Box 280
Johnstown, Pennsylvania 15907

By



Ronald P. Carnevali, Jr., Esquire
Attorneys for Defendant,
John C. Rezk

DATED: August 3, 2005

cc: James A. Naddeo, Esquire
Anthony S. Guido, Esquire
Mr. John C. Rezk

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
No. 05-977-CD

DUBOIS MEDICAL SUPPLY,
COMPANY, INC. PAUL K.
REZK and KAREN M. REZK,

Plaintiffs,

vs.

JOHN C. REZK,

Defendant,

ENTRY OF APPEARANCE

AUG 09 2005

W. Hart A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICES
SPENCE, CUSTER, SAYLOR, WOLFE
& ROSE, L.L.C.
P.O. BOX 880
JOHNSTOWN, PENNSYLVANIA 15907

(A)

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., PAUL K. : CLEARFIELD COUNTY, PENNSYLVANIA
REZK and KAREN M. REZK, : CIVIL ACTION - LAW

Plaintiff, : No. 05-977-CD

vs. :

JOHN C. REZK, : PRELIMINARY OBJECTIONS

Defendant. : **COUNSEL OF RECORD FOR PARTY:**

James A. Naddeo, Esquire
I.D. No.: 06820
211 East Locust Street
Post Office Box 552
Clearfield, Pennsylvania 16830
(814) 765-1601

Ronald P. Carnevali, Jr., Esquire
I.D. No.: 47733
Spence, Custer, Saylor, Wolfe &
Rose, LLC
Ameriserv Financial Building
Post Office Box 280
Johnstown, Pennsylvania 15907
(814) 536-0735

FILED NO. 6K
0135484
AUG 09 2005
cc

V. Tam A. Shaw
Prothonotary/Clerk of Courts

DUBOIS MEDICAL SUPPLY	:	IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., PAUL K.	:	CLEARFIELD COUNTY, PENNSYLVANIA
REZK and KAREN M. REZK,	:	CIVIL ACTION - LAW
	:	
Plaintiff,	:	No. 05-977-CD
	:	
vs.	:	
	:	
JOHN C. REZK,	:	
	:	
Defendant.	:	

PRELIMINARY OBJECTIONS

NOW COMES, the Defendant, John C. Rezk, by and through his attorneys, James A. Naddeo and Spence, Custer, Saylor, Wolfe & Rose, LLC and files these Preliminary Objections to the Plaintiff, Dubois Medical Supply Company, Inc., Paul K. Rezk and Karen M. Rezk's Complaint as follows:

1. This matter arises from an alleged breach of a non-competition agreement between the Plaintiff, Dubois Medical Supply Company, Inc., (hereinafter referred to as "Plaintiff"), and the Defendant, John C. Rezk, (hereinafter referred to as the "Defendant").

2. The Complaint alleges, among other things, that the Defendant breached a Non-Competition Agreement by soliciting the Plaintiffs' customers and interfering with and/or depriving the Plaintiff of certain business relations.

3. The Complaint seeks as relief both temporary and permanent injunctions, costs and attorney's fees.

4. Count I, Paragraph 9 of Plaintiffs' Complaint alleges, in pertinent part, that:

Pursuant to his employment, Defendant, John C. Rezk, executed a Non-Competition Agreement with Plaintiff, Dubois Medical Supply Company, Inc., dated February 26, 2003, a true and correct copy of which is attached hereto and marked Exhibit "A".

5. The agreement purportedly attached at Exhibit "A" is referenced throughout the body of the Complaint.

6. The Pennsylvania Rules of Civil Procedure, Rule 1019 (i) provides that when any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof to the pleading.

7. Contrary to law and rules of Court, the Complaint fails to attach the writing as Exhibit "A" as alleged.

WHEREFORE, the Defendant, John C. Rezk, respectfully requests this Honorable Court strike Plaintiffs' claims for its failure to follow the Pennsylvania Rules of Civil Procedure or, in the alternative, require that the Plaintiff file an amended pleading and meet the requirements of the Pennsylvania Rules of Civil Procedure including the attachment of any and all necessary documents.

Respectfully submitted,

By James A. Naddeo
James A. Naddeo
Attorneys for Defendant,
John C. Rezk

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By R. P. Carnevali, Jr.
Ronald P. Carnevali, Jr.
Attorneys for Defendant,
John C. Rezk

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 9th day of August, 2005, a true and correct copy of the Defendant, John C. Rezk's Preliminary Objections was forwarded via first-class mail, postage pre-paid, to the following persons:

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
Post Office Box 487
Dubois, Pennsylvania 15801

Respectfully submitted,

By James A. Naddeo
James A. Naddeo
Attorneys for Defendant,
John C. Rezk

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By R.P.C.
Ronald P. Carnevali, Jr.
Attorneys for Defendant,
John C. Rezk

(A)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DUBOIS MEDICAL SUPPLY
COMPANY, INC., PAUL K.
REZK and KAREN M. REZK,
Plaintiff,

*

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*

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v.

* No. 05-977-CD

*

JOHN C. REZK,
Defendant.

*

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* Type of Pleading:

*

* **Praecept**

*

*

* Filed on behalf of:

*

* Defendant

*

*

* Counsel of Record for

*

* this party:

*

* JAMES A. NADDEO, ESQUIRE

*

*

* Supreme Court ID#: 06820

*

* 207 East Market Street

*

* P. O. Box 552

*

* Clearfield, PA 16830

*

* (814) 765-1601

FILED NO CC
0135454
AUG 09 2005 CWP

James A. Nadeo
Pittsburgh, Clearfield County

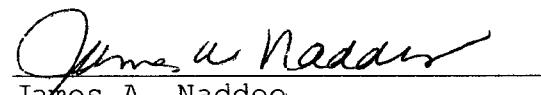
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DUBOIS MEDICAL SUPPLY *
COMPANY, INC., PAUL K. *
REZK and KAREN M. REZK, *
Plaintiff, *
*
v. * No. 05-977-CD
*
JOHN C. REZK, *
Defendant. *

PRAECLPE

TO THE COURT ADMINISTRATOR:

Please schedule argument upon the Preliminary
Objections filed by the Defendant, John C. Rezk, in the above-
captioned case.



James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

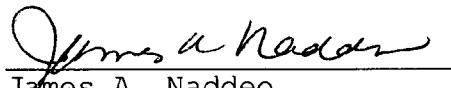
DUBOIS MEDICAL SUPPLY *
COMPANY, INC., PAUL K. *
REZK and KAREN M. REZK, *
Plaintiff, *
*
v. * No. 05-977-CD
*
JOHN C. REZK, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Praecipe to Schedule Argument filed in the above-captioned case was served on the following and in the following manner on the 9th day of August, 2005:

First-Class Mail, Postage Prepaid

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 437
DuBois, PA 15801



James A. Naddeo
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DUBOIS MEDICAL SUPPLY
COMPANY, INC., PAUL K. REZK
and KAREN M. REZK,
Plaintiffs

vs.

JOHN C. REZK,
Defendant

No. 05-977-CD

Type of Pleading:

**AMENDED COMPLAINT
IN EQUITY**

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

814-371-7768

Date: 8/17/05

FILED *rec*
m11:06 AM
AUG 18 2005
jm

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-EQUITY

DUBOIS MEDICAL SUPPLY,	:
COMPANY, INC.; PAUL K. REZK	:
and KAREN M. REZK,	:
Plaintiffs	:
	: No. 05-977, C.D.
vs.	:
	:
JOHN C. REZK,	:
Defendant	:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830

(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-EQUITY

DUBOIS MEDICAL SUPPLY, :
COMPANY, INC.; PAUL K. REZK :
and KAREN M. REZK, :
Plaintiffs :
vs. : No. 05-977, C.D.
JOHN C. REZK, :
Defendant :

AMENDED
COMPLAINT IN EQUITY

AND NOW, comes the Plaintiffs, DUBOIS MEDICAL SUPPLY COMPANY, INC., and PAUL K. REZK and KAREN M. REZK, by and through their attorneys, HANAK, GUIDO AND TALADAY, and files this Amended Complaint and in support thereof aver the following:

1. Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office located at 320 Liberty Blvd., DuBois, Clearfield County, Pennsylvania.
2. Plaintiffs, PAUL K. REZK and KAREN M. REZK, are husband and wife, reside at 405 E. Sheridan Avenue, DuBois, Clearfield County, Pennsylvania.
3. The Defendant, JOHN C. REZK, is an adult individual who has a mailing address of P. O. Box 520, Carrolltown, Cambria County, Pennsylvania.

COUNT I

DuBois Medical Supply Company, Inc., Plaintiff,
v.
John C. Rezk, Defendant.

4. Paragraphs 1 through 3 are incorporated herein by reference as though the same were set forth more fully at length.
5. Venue in this court is proper under Pa.R.C.P. 1006, 2130 and 2179(a) in that the Plaintiff's principal place of business is located in the City of DuBois, Clearfield County, Pennsylvania.
6. On or about May 1, 2002, Defendant was employed by Plaintiff to principally provide to patients respiratory services, including marketing and management of branches.
7. On or about May 1, 2002, the Defendant, JOHN C. REZK, was assigned by the Plaintiff to manage business known as Cambria Respiratory Care which the Plaintiff operates under a duly filed fictitious name.
8. Upon hiring Defendant, JOHN C. REZK, was paid a salary of One Hundred Fifty and 00/100 (\$150,000.00) Dollars per year which salary began May 1, 2002. On December 10, 2002, Defendant, JOHN C. REZK, agreed to accept a reduction in salary to relieve a cash drain on the company. The reduction was treated as deferred salary until March 16, 2004. The deferred salary amounted to Ninety-nine Thousand One Hundred Eighty-one and 45/100 (\$99,181.45) Dollars which was paid to Defendant, JOHN C. REZK, in three installments on September 14, 2004, October 12, 2004, and January 18, 2005.

9. Pursuant to his employment, Defendant, JOHN C. REZK, executed a Non-Competition Agreement with Plaintiff, DUBOIS MEDICAL SUPPLY COMPANY, INC., dated February 26, 2003, a true and correct copy of which is attached hereto and marked Exhibit "A".

10. Since May 1, 2002, the Defendant was the primary manager and virtually in control of all aspects of the operation of the businesses operated by Cambria Respiratory Care.

11. On or about June 3, 2005, Plaintiff, DuBois Medical Supply, Inc., discharged the Defendant, John C. Rezk, as an employee of Plaintiff, DuBois Medical Supply, Inc., for reasons hereinafter set forth.

12. Plaintiff is informed and therefore believes that prior to his discharge on June 3, 2005, Defendant, John C. Rezk, diverted patients of Plaintiff, DuBois Medical Supply, Inc., to third party competitors one of which is Penn Home Medical Supply and possibly others.

13. In addition, prior to his discharge on June 3, 2005, Defendant organized a business known as RESTA Home Health in October of 2004, thereby violating the terms of his employment with Plaintiff by failing to devote full time and attention to duties of his employment with Plaintiff.

14. Prior to or upon his discharge, Defendant, JOHN C. REZK, removed from the offices of the Plaintiff patient listings from Cambria Respiratory Care which listings contained the names, addresses, telephone numbers, Social Security numbers, health insurance claim numbers and other data located at Cambria Respiratory Care and

Ellwood Respiratory Care which information is confidential. Missing patient lists are from January through April, 2005.

15. Said Agreement dated February 26, 2003, copy of which is attached hereto as Exhibit "A", provides in part that throughout the term of his employment and that for a period of one year thereafter, within a territory of 40 miles in radius of any present or future offices or location of Plaintiff, Defendant, John C. Rezk, agreed to not individually or in conjunction with any other person or as an employee, agent, representative or partner or holder of any interest in any firm, corporation or other association engage in any business which would be in competition with the Plaintiffs' business.

16. In violation of Section 4, entitled "Restrictions Against Competition" since his discharge on June 3, 2005, the Defendant, John C. Rezk, organized a business enterprise in Carrolltown, Pennsylvania, which is in direct competition with the business of the Plaintiff and is within 40 miles of a business office operated by Plaintiff.

17. Should the Defendant solicit customers of the Plaintiff or interfere in any way with the business relations of the Plaintiff with its customers, clients or distributors Plaintiff would be irreparably harmed and have no adequate remedy at law.

18. Plaintiff believes and therefore avers that the Defendant has and intends in the future to solicit its customers and interfere with its customers, suppliers and distributors and irreparably and immeasurably harm Plaintiff. In fact, Defendant stated that he would

do everything in his power to solicit Plaintiff's customers and in addition attempt to cause Plaintiff's contract with the Veterans Administration to be terminated or ruined.

19. It has taken substantial assets of the company to accumulate the patients customer list and the Plaintiff's business cannot survive if these proprietary assets are taken by Defendant.

20. Should the Court grant injunctive relief to Plaintiff, Defendant will incur little, if any, injury for which injury he has adequate remedies at law. The balance of equities therefore favor Plaintiff.

21. In addition to injunctive relief, hearing requested, the Plaintiff further requests that your Honorable Court enter judgment in the amount of the attorney's fees and costs expended by the Plaintiff in prosecuting this action pursuant to Subsection (b) of Article V, entitled "Remedies of Said Agreement" dated February 26, 2003.

22. Plaintiff also seeks an Order pursuant to Pa.R.C.P. 115.31 preliminary and permanently enjoining Defendant from violating the covenants of said Agreement dated February 26, 2003, and preliminarily order requiring the Defendant to return to the Plaintiff all documents removed by the Defendant from Plaintiff's offices, including all copies thereof.

23. Business records and customer lists of the Plaintiff are invaluable assets to the Plaintiff. This information is proprietary and if Defendant is allowed to utilize such information at a new place of

business or employer, it will cause irreparable harm to Plaintiff's business.

24. Should the Defendant solicit customers of the Plaintiff which Plaintiff believes that Defendant is currently undertaking, the Plaintiff is and will be irreparably harmed for which the Plaintiff has no adequate at law.

25. Plaintiff believes and therefore avers that Defendant intends to solicit its customers/patients and to interfere with the business relations of the Plaintiff with its customers/patients, irreparably and immeasurably harm Plaintiff.

26. If required by the Court, Plaintiff will deposit money or bond with the Court in whatever amount the Court may determine is just for security. It is believed that the only irreparable harm that be caused is to the Plaintiff since the Defendant is soliciting its clients. Thus the amount of any security bond should be merely nominal.

27. Should the Court not grant injunctive relief, the Plaintiff believes and therefore avers that it will incur great and irreparable harm and damage from the permanent loss or misappropriation of its customer list and the solicitation of its customer for which Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff requests that this Court enter an Order:

(a) Permanently enjoining Defendant from soliciting any customer or patient of the Plaintiff;

- (b) Order Defendant to return to Plaintiff all business records, customer lists and any additional property that Defendant may have copied or taken with him;
- (c) Enjoin Defendant from competing with Plaintiff in the business of the Plaintiff for a period of one year in the protected territory as provided for by said agreement dated February 26, 2003;
- (d) Award Plaintiff's costs incurred as a result of Defendant's wrongful act;
- (e) Awarding Plaintiff reasonable attorney's fees for prosecuting this action;
- (f) Providing such other relief as the Court deems just and proper.

COUNT II

DuBois Medical Supply Company, Inc., Plaintiff,
v.
John C. Rezk, Defendant.

Unjust Enrichment

- 28. Paragraphs 1 through 27 are incorporated herein by reference as though the same were set forth more fully at length.
- 29. As a result of Defendant competing with Plaintiff in violation of said Agreement dated February 26, 2003, such actions will confer upon Defendant benefits which are unjust to the detriment of Plaintiff.
- 30. Defendant's actions constitute an unjust retention of a benefit to the loss of the Plaintiff and Defendant's retention solicitation of Plaintiff's patients will cause Plaintiff to suffer serious financial

injury and inequities as a result that have or probably will in the future result in substantial damages.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount Defendant has received as a result of Defendant's wrongful acts as set forth in the Count I of this Complaint.

COUNT III

**DuBois Medical Supply Company, Inc., Paul K.
Rezk and Karen M. Rezk, Plaintiffs,**

v.
John C. Rezk, Defendant.

31. Paragraphs 1 through 30 are incorporated herein by reference as though the same were set forth more fully at length.

32. Plaintiffs, Paul K. Rezk and Karen M. Rezk, are the owners of all of the outstanding common stock of Plaintiff, DuBois Medical Supply Company, Inc.

33. In April or May of 2005, Plaintiffs negotiated the sale the business assets of Plaintiff, DuBois Medical Supply Company, Inc., with Apria Health Care, Inc.

34. A principal asset of the sale was the patient list of the Plaintiff, DuBois Medical Supply, Inc.

35. During the due diligence examination of the DuBois Medical Supply Company, Inc., performed by the potential buyer, Apria Health Care, Inc., Defendant, John C. Rezk, threatened the representatives of Apria that Defendant, John C. Rezk, would lure away or divert the patients of DuBois Medical Supply, Inc., located in the Cambria County area in the event the sale was concluded.

36. In addition, Defendant, John C. Rezk, threatened the representative of Apria if the sale was concluded he would take steps to terminate or ruin the contract which DuBois Medical Supply, Inc., has with the Veterans Administration which is a valuable asset of the Plaintiff, DuBois Medical Supply, Inc.

37. In addition, Defendant claimed to representatives of Apria that he was the owner of a substantial interest in the Plaintiff, DuBois Medical Supply, Inc., and its business assets.

38. As a result of the threats by Defendant, John C. Rezk, made to the representative of Apria Health Care, that company demanded substantial change in the terms and conditions of said sale, which were unacceptable to Plaintiff, and a result the sale of the business assets of DuBois Medical Supply, Inc. to Apria Health Care was terminated.

39. Said statements and threats which were made to representatives of Apria, by Defendant, John C. Rezk, with the intent and for the purpose of injuring the Plaintiffs and to cause Apria Health Care to suspect and believe that the Plaintiff's interest in the business assets of the DuBois Medical Supply, Inc., was defective and was of diminished value which hindered and prevented Plaintiff from selling or disposing of the assets of DuBois Medical Supply, Inc., in accordance with the proposed sale to Apria Health Care. In the alternative, Defendant's statements and threats were negligent acts committed by the Defendant.

.40. As a result of the statements and threats made by Defendant, John C. Rezk, to the representatives of Apria, the representatives of Apria reasonably understood that the quality of the property and the extent of Plaintiff's interest therein were doubtful and thereby demanded substantial changes in the terms and conditions of said sale which resulted in the potential sale being terminated.

41. As a direct and proximate result of the Defendant's conduct, Plaintiffs were deprived of the opportunity to sell the business assets of DuBois Medical Supply, Inc., Apria, and which effectively deprived the Plaintiffs of an opportunity to sell said assets to Apria.

42. Defendant, John C. Rezk, made said threats to Apria for the purpose of extorting a portion of the sale price of said assets to Apria or in the alternative to cause the termination of said sale.

43. The termination of said sale of the business assets of DuBois Medical Supply, Inc., to Apria resulted in significant financial harm to the Plaintiffs of at least One Million and 00/100 (\$1,000,000.00) Dollars.

WHEREFORE, Plaintiffs demand judgment against the Defendant in an amount not in excess of One Million and 00/100 (\$1,000,000.00) Dollars, together with costs.



Anthony S. Guido
Attorney for Plaintiffs

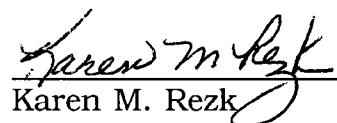
VERIFICATION

We, PAUL K. REZK and KAREN M. REZK, verify that the statements in the foregoing Complaint are true and correct to the best of our knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



Paul K. Rezk



Karen M. Rezk

VERIFICATION

I, PAUL K. REZK, President of DuBOIS MEDICAL SUPPLY COMPANY, INC., do hereby state that I am the authorized agent for purposes of filing this Complaint. The statements therein are correct to the best of my personal knowledge, information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 8-17-2005

Paul K. Rezk
Paul K. Rezk, President

CERTIFICATE OF SERVICE

I do hereby certify that on the 17th day of August, 2005, I served a copy of the within Amended Complaint in Equity by first class mail, postage prepaid, to:

James A. Naddeo, Esq.
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose, LLC
P. O. Box 280
Johnstown, PA 15907-0280

Dennis J. Stofko, Esq.
969 Eisenhower Blvd., Suite E
P. O. Box 5500
Johnstown, PA 15904



Anthony S. Guido

AGREEMENT

THIS AGREEMENT, made this 28 day of FEBRUARY, 2003, by and between DUBOIS MEDICAL SUPPLY, INC., a business corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with an office and place of business at 405 East Sheridan Avenue, DuBois, Pennsylvania, party of the first part, hereinafter referred to as the "COMPANY"

-AND-

John REZK of CARROLLTOWN PA, CAMBRIA COUNTY Pennsylvania, party of the second part, hereinafter referred to as "EMPLOYEE".

1. Identification of Parties. Whenever in this Agreement the terms "you" or "your" are used, reference is being made to you, the Employee. Whenever the term "Company" is used, reference is being made to DuBois Medical Supply, Inc., and all of its successors and assigns.

2. Consideration for Agreement. In consideration of your ^{PRESIDENT OF} employment as a CAMBRIA RESPIRATORY CARE and the agreed-upon compensation, the sufficiency of which you hereby acknowledge, you agree to all of the terms and conditions contained in this Agreement.

As additional consideration for this Agreement, Employee acknowledges being a new hired employee or if a present employee, a compensation increase.

3. Agreement Not to Disclose Confidential Information.

(a) You acknowledge that the following items (collectively referred to as "confidential information") used in the Company's business are secret, confidential, unique, and valuable, were developed by the Company at great cost and over a long period of time, and that disclosure or use of the Company's confidential information to or by anyone other than the Company's officers, agents, or authorized employees will cause company irreparable injury. The Company's confidential information includes:

- (i) Client lists, prospect call lists, and other customer data;
- (ii) Price lists, vendor lists, computer printouts, account receivable reports, revenue reports and similar financial information;
- (iii) Proposals, contracts, leases, rental agreements, and marketing information;
- (iv) Employee lists; and
- (v) Such other Company information designated as confidential, proprietary, and/or trade secret to which you gain access during your employment.

(b) Except as required in the performance of your duties as an Employee of the Company, you agree not to disclose to anyone the Company's confidential information, whether such information is developed before or after the date of this Agreement.

(c) The restrictions against disclosure contained in this Agreement apply during and after your employment with the Company.

(d) The restrictions against disclosure contained in this Agreement also apply to confidential information developed by you while employed by the Company.

(e) Upon termination of your employment for any reason, you will promptly deliver to the Company all tangible objects containing confidential information, including all copies thereof, whether prepared by you or others, that you possess or have under your control.

4. Restrictions Against Competition.

(a) You agree that throughout the term of your employment with the Company and for a period of 1 years thereafter, within a territory of 40 miles in radius, of any present or future offices or locations of the Company, you will not, individually or in conjunction with any other person, or as an employee, agent, representative, partner, or holder of any interest in any other person, firm, corporation, or other association:

(i) Solicit, entice, induce any person, firm, or corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a client or customer of any other person, firm, or corporation, or other association;

(ii) Authorize or direct any person, firm, or corporation to solicit, entice or induce any person, firm or

corporation, who or which at any time during your employment with the Company was a customer of the Company, to become a customer of any other person, firm or corporation, or other association;

(iii) Solicit, entice, or induce any person who presently is or at any time during your employment with the Company will be, an employee of the Company, to become employed by any other person, firm, corporation, or other association, and you shall not approach any such employee for such purpose or authorize or direct the taking of such actions by any other person;

(iv) Directly or indirectly solicit, participate in, or accept business similar to any aspect of the Company's business from any person, firm, or other association, who or which was a customer or prospect of the Company during your employment with the Company and with whom you had business contact while employed by the Company, "Business Contact" for these purposes shall include your telephonic, written and/or face to face business communication with representatives of the customer or prospect.

Nothing in the foregoing shall prohibit you, after termination of your employment with the Company from engaging in any business that is not in competition with the Company. At no time during or after your employment by the Company shall you be prohibited from investing in the securities of any corporation having securities listed on a national security exchange, provided that such investment does not exceed five percent of any class of securities of any corporation engaged in business in competition with the Company, and provided

that such ownership represents a passive investment and that neither you nor any group of persons including you, in any way, either directly or indirectly, manages or exercises control over any such corporation, guarantees any of its financial obligations, or otherwise takes part in its business, except in the exercise of your rights as a shareholder.

5. Remedies.

(a) You acknowledge that the restrictions contained in this Agreement are reasonable and necessary in view of the nature of the Company's businesses and in order to protect the legitimate business interests of the Company. You further acknowledge that your violation of the restrictions, or any of them, would result in irreparable injury to the Company. Therefore, you agree that, in the event of a breach or threatened breach by you of the provisions of Paragraphs 3 or 4 of this Agreement, the Company shall be entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief restraining you from any violation of Paragraphs 3 or 4 of this Agreement.

(b) You further agree that if the Company institutes legal action to enforce any provision of this Agreement, you will pay the Company's attorney's fees and litigation costs incurred in enforcing the Agreement.

(c) Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company for a breach or threatened breach of this Agreement.

(d) The parties acknowledge their intention that the Company shall have the broadest possible protection of the value of the Company's business, consistent with public policy. Should a court determine that the durational or geographical restrictions on post-employment competition are broader than public policy allows, the parties agree to accept whatever the court (duration or geographic scope) finds to be permissible under public policy.

6. Survival. The provisions of Paragraphs 3, 4, and 5 shall survive the termination of your employment, regardless of the reason for termination.

7. Miscellaneous.

(a) This Agreement cancels and supersedes any and all prior agreements and understandings between or among you and the Company with respect to your employment with the Company. This Agreement may not be modified in any respect except in a writing signed by the parties hereto.

(b) All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, except that your duties and responsibilities hereunder are of a personal nature and shall not be assignable or delegatable, in whole or in part, by you.

8. Severability. In the event that any provision(s) of this Agreement are deemed invalid, unreasonable or unenforceable by any court of competent jurisdiction, such provision(s) shall be stricken

from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement or the modified provision as provided above shall continue in full force and effect and be binding upon the parties.

9. Controlling Law. The validity, interpretation, construction, performance, and enforcement of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth above the day and year first above written.

WITNESSES:

Jennifer R. R.

EMPLOYEE:

Eric Angle (SEAL)

Attest:

Jaren M. Rek
Secretary

DUBOIS MEDICAL SUPPLY
INC., by:

Paul K. SJ
President

05-977-CJ

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
CIVIL DIVISION

FILED @

11:28 AM Copy
AUG 24 2005 to
CIA

William A. Shaw
Prothonotary/Clerk of Courts

JOHN C. REZK,

Plaintiff,

vs.

No. 2005 - 2441

DUBOIS MEDICAL SUPPLY, INC.,

Defendant.

OPINION AND ORDER

**BEFORE THE HONORABLE JAMES R. DIFRANCESCO, JUDGE OF
THE FORTY-SEVENTH JUDICIAL DISTRICT OF PENNSYLVANIA**

APPEARANCES:

PLAINTIFF:

Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose
Ameriserv Financial Building
Post Office Box 280
Johnstown, PA 15907

FILED FOR RECORD
05 AUG 23 PM 12:10
PROTHONOTARY
CAMBRIA COUNTY, PA.

DEFENDANTS:

Anthony S. Guido, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

OPINION AND ORDER

This case is before the Court on Plaintiff's Motion to Coordinate Actions And/Or To Stay regarding actions filed in both Cambria and Clearfield counties. Arguments of counsel were heard on August 15, 2005. The Court has subsequently taken the matter under advisement.

FINDINGS OF FACT

The Plaintiff, John C. Rezk ("Plaintiff") was required by the President of DuBois Medical Supply, Inc. ("Defendant") to execute an Agreement with respect to his employment

with the Defendant. The said Agreement was executed on or about February 2003. The Plaintiff alleged that the Agreement contained a clause providing for a restriction against competition should the Plaintiff's relationship with the Defendant be terminated. The Plaintiff also contends that the Agreement contained a clause providing for a compensation increase upon execution of the Agreement.

A dispute arose between the parties when the Plaintiff contended that the Defendant failed to provide him with a compensation increase at the time of the execution of the Agreement or at any time thereafter. On or about June 5, 2005, the Plaintiff's employment with the Defendant was terminated.

The Defendant subsequently asserted that it would enforce the non-competition portions of the Agreement against the Plaintiff. In response, the Plaintiff filed a Complaint for Declaratory Judgment with the Cambria County Court of Common Pleas asking that the Agreement and its restriction against competition be declared void and unenforceable.

On or about July 7, 2005, the Defendant, as well as its President, Paul K. Rezk and his wife Karen M. Rezk filed a Complaint in Equity in the Clearfield County Court of Common Pleas docketed at 05-977-CD against the Plaintiff. The three count complaint asked in part that the Plaintiff be enjoined from soliciting any customer or patient of the Defendant, enforcement of the non-competition clause, a count of unjust enrichment, and that the Plaintiff allegedly disrupted a sale of the Defendant company which resulted in a potential lose of one million dollars (\$1,000,000.00) for the Defendants.

As a result of these concurrent actions in Cambria and Clearfield counties, the Plaintiff has a filed a Motion to Coordinate Actions And/Or To Stay with this Honorable Court asking that action in Clearfield County be transferred to Cambria County or conversely that the action

in Clearfield County be stayed until the instant action is resolved and this Court has made a determination with respect to the enforceability of the non-competition provisions of the Agreement in dispute.

DISCUSSION

Regarding the coordination of actions in different counties, Pennsylvania Rule of Civil Procedure 213.1 provides:

Rule 213.1. Coordination of Actions in Different Counties

(a) In actions pending in different counties which involve a common question of law or fact or which arise from the same transaction or occurrence, any party, with notice to all other parties, may file a motion requesting the court in which a complaint was first filed to order coordination of the actions. Any party may file an answer to the motion and the court may hold a hearing.

(b) The court in which the complaint was first filed may stay the proceedings in any action, which is the subject of the motion.

(c) In determining whether to order coordination and which location is appropriate for the coordinated proceedings, the court shall consider, among other matters:

(1) whether the common question of fact or law is predominating and significant to the litigation;

(2) the convenience of the parties, witnesses and counsel;

(3) whether coordination will result in unreasonable delay or expense to a party or otherwise prejudice a party in an action which would be subject to coordination;

(4) the efficient utilization of judicial facilities and personnel and the just and efficient conduct of the actions;

(5) the disadvantages of duplicative and inconsistent rulings, orders or judgments;

(6) the likelihood of settlement of the actions without further litigation should coordination be denied.

(d) If the court orders that actions shall be coordinated, it may

(1) stay any or all of the proceedings in any action subject to the order, or

(2) transfer any or all further proceedings in the actions to the court or courts in which any of the actions is pending, or
(3) make any other appropriate order.

(e) In the order of coordination, the court shall include the manner of giving notice of the order to all parties in all actions subject thereto and direct that specified parties pay the costs, if any, of coordination. The court shall also order that a certified copy of the order of coordination be sent to the courts in which the actions subject to the order are pending, whereupon those courts shall take such action as may be appropriate to carry out the coordination order.

(f) The final order disposing of a coordinated action or proceeding shall be certified and sent to the court in which the action was originally commenced to be filed of record.

The Explanatory Comment for this relatively recently enacted Rule of Civil Procedure provides in part:

A problem sought to be relieved by this rule is the instance where actions proceed simultaneously in more than one county and no court will defer to another and no party is willing to litigate the claim in a county other than the one of his choosing. This situation leads to duplication of effort by the courts and the parties and may result in inconsistent rulings and orders.

The Comment further provides:

In providing a framework rather than detailed procedures, the rule applies to both complex and simpler litigation, which crosses county lines. One court will be able to take charge of multiple class actions commenced in several counties. One court will be able to oversee litigation arising from two petitions to open a judgment, one petition filed in the county in which the judgment was entered and the other in the county to which it was transferred.

In the present matter, the Plaintiff has asked that this Court either transfer the Clearfield County action to Cambria County pursuant Pa. R. Civ. P. 213.1(d)(2) or stay the Clearfield County action per Pa. R. Civ. P. 213.1(d)(1) until the instant action is resolved and this Court has made a determination with respect to the enforceability of the non-competition provisions of the Agreement in question.

they should be decided appropriately in Clearfield County upon resolution of the issue of the validity of the non-competition clause.

ACCORDINGLY THE FOLLOWING ORDER IS ENTERED:

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN C. REZK,

Plaintiff,

vs.

DUBOIS MEDICAL SUPPLY, INC.,

Defendant.

No. 2005 - 2441

OPINION AND ORDER

BEFORE THE HONORABLE JAMES R. DIFRANCESCO, JUDGE OF
THE FORTY-SEVENTH JUDICIAL DISTRICT OF PENNSYLVANIA

APPEARANCES:

PLAINTIFF:

Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose, LLC
Ameriserv Financial Building
Post Office Box 280
Johnstown, PA 15907

DEFENDANTS:

Anthony S. Guido, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

ORDER

AND NOW, this 23rd day of August 2005, it is hereby ORDERED AND DECREED that pursuant to Pennsylvania Rule of Civil Procedure 213.1(d)(1)-(3), that the Prothonotary of Cambria County is directed to notify the Clearfield County Court of Common Pleas that the action filed at 05-977-CD is STAYED until the issue raised in both the action filed in Cambria County and in Clearfield County regarding the non-competition clause is resolved by the Cambria County Court of Common Pleas.

EXTRACT FROM THE RECORD

CERTIFIED THIS 3rd DAY OF
August A.D. 2005
Patry Berkelille
PROTHONOTARY

BY THE COURT

DiFrancesco
James R. DiFrancesco, Judge

CR

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DUBOIS MEDICAL SUPPLY
COMPANY, INC., PAUL K. REZK
and KAREN M. REZK,
Plaintiffs

vs. No. 05-977-CD

JOHN C. REZK,
Defendant

Type of Pleading:

**MOTION TO STRIKE
REQUEST FOR JURY TRIAL**

Filed on Behalf of:

PLAINTIFFS

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

814-371-7768

Date: 8/23/05

FILED ^{cc}
M 10:28 AM Aug 25 2005
AUG 25 2005

William A. Shaw
Prothonotary/Clerk of Courts
WAS

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-EQUITY

DUBOIS MEDICAL SUPPLY,	:	
COMPANY, INC.; PAUL K. REZK	:	
and KAREN M. REZK,	:	
Plaintiffs	:	
	:	No. 05-977, C.D.
vs.	:	
JOHN C. REZK,	:	
Defendant	:	

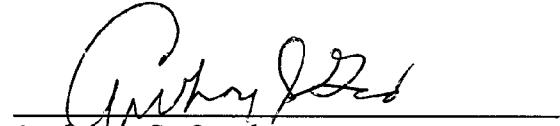
MOTION TO STRIKE
REQUEST FOR JURY TRIAL

AND NOW, comes the Plaintiffs, DUBOIS MEDICAL SUPPLY COMPANY, INC., and PAUL K. REZK and KAREN M. REZK, by and through their attorneys, HANAK, GUIDO AND TALADAY, and files this Motion to Strike Request for Jury Trial by Defendant and in support thereof aver the following:

1. The above entitled action is an action in equity.
2. The parties to an equity action have no right to a trial by jury on issues of fact.
3. Pursuant to Pennsylvania Rule of Civil Procedure 1513, the Court in its discretion may submit the factual issues in an equitable action to a trial by jury on its own motion or on the petition of either party. However, the verdict of the jury shall be in the form of answers to specific questions and shall not be binding upon the Court.
4. In addition, Rule 1513 provides that demand for a jury trial in an equitable action is procedurally incorrect.

WHEREFORE, Plaintiffs respectfully request that your Honorable Court enter an Order striking the Defendant's demand for jury trial in this action.

Respectfully submitted,



Anthony S. Guido
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-EQUITY

DUBOIS MEDICAL SUPPLY,	:
COMPANY, INC.; PAUL K. REZK	:
and KAREN M. REZK,	:
Plaintiffs	:
	: No. 05-977, C.D.
vs.	:
	:
JOHN C. REZK,	:
Defendant	:

ORDER OF COURT

AND NOW, this _____ day of _____, 2005, upon
consideration of the foregoing Motion the Defendant's Request for a
Jury Trial in the above entitled action, being an equitable action, is
hereby stricken.

BY THE COURT:

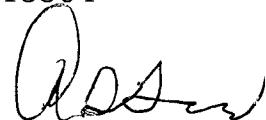
CERTIFICATE OF SERVICE

I do hereby certify that on the 23rd day of August, 2005, I served a copy of the within Amended Complaint in Equity by first class mail, postage prepaid, to:

James A. Naddeo, Esq.
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose, LLC
P. O. Box 280
Johnstown, PA 15907-0280

Dennis J. Stofko, Esq.
969 Eisenhower Blvd., Suite E
P. O. Box 5500
Johnstown, PA 15904



Anthony S. Guido

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DUBOIS MEDICAL SUPPLY
COMPANY, INC., PAUL K. REZK
and KAREN M. REZK

vs. : No. 05-977-CD

JOHN C. REZK

RULE

NOW, this 25 day of August, 2005, upon consideration of the attached Motion to Strike Request for Jury Trial, a Rule is hereby issued upon the parties to Show Cause why the Motion should not be granted. Rule Returnable the 15th day of September, 2005, for filing written response.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

ATTORNEY FLEMING SHALL CAUSE A CERTIFIED COPY OF SAID MOTION, AS WELL AS THIS ORDER ON BOTH THE DEFENDANTS AND THEIR ATTORNEY, ROSADELE T. KAUFFMAN, ESQUIRE.

COURT ADMINISTRATOR
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 or 1301

FILED

AUG 26 2005
013150/1
William A. Shaw
Prothonotary/Clerk of Courts
4 cent 4 m
Judie Zimmerman

BY THE COURT:
Judie Zimmerman
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DUBOIS MEDICAL SUPPLY
COMPANY, INC., PAUL K. REZK
and KAREN M. REZK,
Plaintiffs

vs.

JOHN C. REZK,
Defendant

Type of Case: Civil Action

No. 05-977-CD

Type of Pleading:

AFFIDAVIT OF SERVICE

Filed on Behalf of:

PLAINTIFF

Counsel of Record for
This Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

Date: September 2, 2005

FILED

SEP 06 2005
m/8:30 AM
William A. Shaw
Prothonotary/Clerk of Courts
No. C/C

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION-EQUITY

DUBOIS MEDICAL SUPPLY,
COMPANY, INC.; PAUL K. REZK
and KAREN M. REZK,
Plaintiffs

vs.

JOHN C. REZK,
Defendant

No. 05-977-C.D.

AFFIDAVIT OF SERVICE

I hereby certify that on September 2, 2005, I served by
First Class, U.S. Mail, a Court certified copy of Rule to Show Cause
upon the following:

James A. Naddeo, Esq.
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

Court Administrator
Suite 228
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

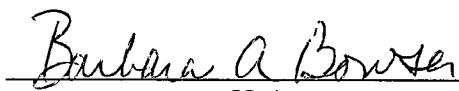
Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose, LLC
P. O. Box 280
Johnstown, PA 15907-0280



Anthony S. Guido, Esq.

Attorney for Plaintiffs

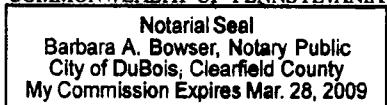
Sworn to and subscribed before
me this 2nd day of September, 2005.



Barbara A. Bowser

Notary

COMMONWEALTH OF PENNSYLVANIA



Member, Pennsylvania Association of Notaries

DUBOIS MEDICAL SUPPLY : IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., PAUL K. : CLEARFIELD COUNTY, PENNSYLVANIA
REZK and KAREN M. REZK, : CIVIL ACTION - LAW

:
Plaintiff, : No. 05-977-CD

:
vs. : **RESPONSE TO MOTION TO STRIKE**
: **REQUEST FOR JURY TRIAL**

JOHN C. REZK, :
: COUNSEL OF RECORD FOR PARTY:

:
: RONALD P. CARNEVALI, JR., ESQUIRE
: I.D. No.: 47733
: SPENCE, CUSTER, SAYLOR, WOLFE &
: ROSE, LLC
: AMERISERV FINANCIAL BUILDING
: POST OFFICE BOX 280
: JOHNSTOWN, PENNSYLVANIA 15907
: (814) 536-0735

:
: JAMES A. NADDEO, ESQUIRE
: I.D. No.: 06820
: 211 EAST LOCUST STREET
: POST OFFICE BOX 552
: CLEARFIELD, PENNSYLVANIA 16830
: (814) 765-1601

FILED 3cc
01328301 Atty Naddeo
SEP 14 2005
WM
William A. Shaw
Prothonotary/Clerk of Courts

DUBOIS MEDICAL SUPPLY	:	IN THE COURT OF COMMON PLEAS OF
COMPANY, INC., PAUL K.	:	CLEARFIELD COUNTY, PENNSYLVANIA
REZK and KAREN M. REZK,	:	CIVIL ACTION - LAW
	:	
Plaintiff,	:	No. 05-977-CD
	:	
vs.	:	
	:	
JOHN C. REZK,	:	
	:	
Defendant.	:	

RESPONSE TO MOTION TO STRIKE REQUEST FOR JURY TRIAL

NOW COMES, the Defendant, John C. Rezk, by and through his attorneys, Spence, Custer, Saylor, Wolfe & Rose, LLC and James A. Naddeo, and files this Response to Motion to Strike Request for Jury Trial as follows:

1. Admitted in part, denied in part. It is admitted that the Complaint filed by the Plaintiffs, Dubois Medical Supply, Inc., Paul K. Rezk and Karen M. Rezk, (hereinafter referred to as "Plaintiffs"), purports to be an action in equity. By way of further answer, a review of the Complaint clearly indicates that along with equitable claims, Plaintiffs make claims based on unjust enrichment and seek money damages

apparently based on a claim of intentional and/or negligent interference with contractual relations.

2. Admitted in part, denied in part. It is admitted that generally, parties to an equity action have no right to a trial by jury. However, as set forth in Paragraph 1 above, Plaintiffs' Complaint clearly sets forth a claim for money damages such that a jury trial is warranted.

3. Denied. Plaintiffs' reliance on the Pennsylvania Rules of Civil Procedure, Rule 1513 is obviously misplaced. The Pennsylvania Rules of Civil Procedure, Rule 1513 was rescinded December 16, 2003 effective July 1, 2004. Further, as set forth above, Plaintiffs' alleged equity action contains claims for money damages such that a jury trial is warranted.

4. Denied. As previously set forth above, the Pennsylvania Rules of Civil Procedure, Rule 1513 has been rescinded. Further, Plaintiffs' alleged equity action contains claims for money damages such that a jury trial is warranted.

**ADDITIONAL RESPONSES TO PLAINTIFFS'
MOTION TO STRIKE REQUEST FOR JURY TRIAL**

5. On June 7, 2005, one (1) month prior to the filing of the instant action, Defendant, Rezk, filed a Complaint against Plaintiff, Dubois Medical Supply, Inc. in the Court of Common Pleas of Cambria County, Pennsylvania seeking a judicial determination as to the enforceability of the non-competition clause at issue in the instant action.

6. On August 23, 2005, the Cambria County Court, pursuant to the Opinion and Order of the Honorable James R. DiFrancesco Stayed the instant action until further Order of Court. A copy of the August 23, 2005 Opinion and Order of the Court of Common Pleas of Cambria County is attached hereto as Exhibit "A".

7. The Cambria County Court concluded that the Complaint filed by John C. Rezk against Dubois Medical Supply, Inc. in Cambria County, contained a commonality of issues and was filed prior to the instant action by the Plaintiffs in the Court of Common Pleas of Clearfield County, Pennsylvania.

8. The effective result of Cambria County Court's Opinion and Order is to prevent further proceedings in this action until resolution of the common issues by the Cambria County Court.

WHEREFORE, the Defendant, John C. Rezk, respectfully requests this Honorable Court deny the Plaintiffs, Dubois Medical Supply Company, Inc., Paul K. Rezk and Karen M. Rezk's Motion to Strike Request for Jury Trial and/or in the alternative, determine that a ruling on said Motion to Strike Request for Jury Trial be withheld until such time as the action in the Court of Common Pleas of Cambria County, Pennsylvania is resolved.

Respectfully submitted,

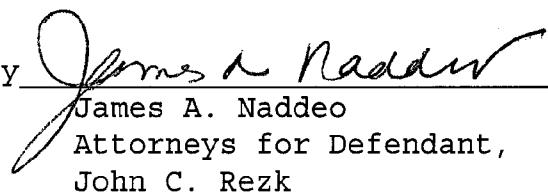
SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By



Ronald P. Carnevali, Jr.
Attorneys for Defendant,
John C. Rezk

By



James A. Naddeo
Attorneys for Defendant,
John C. Rezk

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOHN C. REZK,

Plaintiff,

vs.

DUBOIS MEDICAL SUPPLY, INC.,

Defendant.

No. 2005 - 2441

OPINION AND ORDER

BEFORE THE HONORABLE JAMES R. DIFRANCESCO, JUDGE OF
THE FORTY-SEVENTH JUDICIAL DISTRICT OF PENNSYLVANIA

APPEARANCES:

PLAINTIFF:

✓ Ronald P. Carnevali, Jr., Esq.
Spence, Custer, Saylor, Wolfe & Rose, L.P.
Ameriserv Financial Building
Post Office Box 280
Johnstown, PA 15907

FILED FOR RECORD
05 AUG 23 PM12 10
FORTY-SEVENTH JUDICIAL DISTRICT
CAMBRIA COUNTY, PA.

DEFENDANTS:

Anthony S. Guido, Esq.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

OPINION AND ORDER

This case is before the Court on Plaintiff's Motion to Coordinate Actions And/Or To Stay regarding actions filed in both Cambria and Clearfield counties. Arguments of counsel were heard on August 15, 2005. The Court has subsequently taken the matter under advisement.

FINDINGS OF FACT

The Plaintiff, John C. Rezk ("Plaintiff") was required by the President of DuBois Medical Supply, Inc. ("Defendant") to execute an Agreement with respect to his employment

EXHIBIT "A"

with the Defendant. The said Agreement was executed on or about February 2003. The Plaintiff alleged that the Agreement contained a clause providing for a restriction against competition should the Plaintiff's relationship with the Defendant be terminated. The Plaintiff also contends that the Agreement contained a clause providing for a compensation increase upon execution of the Agreement.

A dispute arose between the parties when the Plaintiff contended that the Defendant failed to provide him with a compensation increase at the time of the execution of the Agreement or at any time thereafter. On or about June 5, 2005, the Plaintiff's employment with the Defendant was terminated.

The Defendant subsequently asserted that it would enforce the non-competition portions of the Agreement against the Plaintiff. In response, the Plaintiff filed a Complaint for Declaratory Judgment with the Cambria County Court of Common Pleas asking that the Agreement and its restriction against competition be declared void and unenforceable.

On or about July 7, 2005, the Defendant, as well as its President, Paul K. Rezk and his wife Karen M. Rezk filed a Complaint in Equity in the Clearfield County Court of Common Pleas docketed at 05-977-CD against the Plaintiff. The three count complaint asked in part that the Plaintiff be enjoined from soliciting any customer or patient of the Defendant, enforcement of the non-competition clause, a count of unjust enrichment, and that the Plaintiff allegedly disrupted a sale of the Defendant company which resulted in a potential loss of one million dollars (\$1,000,000.00) for the Defendants.

As a result of these concurrent actions in Cambria and Clearfield counties, the Plaintiff has filed a Motion to Coordinate Actions And/Or To Stay with this Honorable Court asking that action in Clearfield County be transferred to Cambria County or conversely that the action

in Clearfield County be stayed until the instant action is resolved and this Court has made a determination with respect to the enforceability of the non-competition provisions of the Agreement in dispute.

DISCUSSION

Regarding the coordination of actions in different counties, Pennsylvania Rule of Civil Procedure 213.1 provides:

Rule 213.1. Coordination of Actions in Different Counties

(a) In actions pending in different counties which involve a common question of law or fact or which arise from the same transaction or occurrence, any party, with notice to all other parties, may file a motion requesting the court in which a complaint was first filed to order coordination of the actions. Any party may file an answer to the motion and the court may hold a hearing.

(b) The court in which the complaint was first filed may stay the proceedings in any action, which is the subject of the motion.

(c) In determining whether to order coordination and which location is appropriate for the coordinated proceedings, the court shall consider, among other matters:

(1) whether the common question of fact or law is predominating and significant to the litigation;

(2) the convenience of the parties, witnesses and counsel;

(3) whether coordination will result in unreasonable delay or expense to a party or otherwise prejudice a party in an action which would be subject to coordination;

(4) the efficient utilization of judicial facilities and personnel and the just and efficient conduct of the actions;

(5) the disadvantages of duplicative and inconsistent rulings, orders or judgments;

(6) the likelihood of settlement of the actions without further litigation should coordination be denied.

(d) If the court orders that actions shall be coordinated, it may

(1) stay any or all of the proceedings in any action subject to the order, or

- (2) transfer any or all further proceedings in the actions to the court or courts in which any of the actions is pending, or
- (3) make any other appropriate order.

(e) In the order of coordination, the court shall include the manner of giving notice of the order to all parties in all actions subject thereto and direct that specified parties pay the costs, if any, of coordination. The court shall also order that a certified copy of the order of coordination be sent to the courts in which the actions subject to the order are pending, whereupon those courts shall take such action as may be appropriate to carry out the coordination order.

(f) The final order disposing of a coordinated action or proceeding shall be certified and sent to the court in which the action was originally commenced to be filed of record.

The Explanatory Comment for this relatively recently enacted Rule of Civil Procedure provides in part:

A problem sought to be relieved by this rule is the instance where actions proceed simultaneously in more than one county and no court will defer to another and no party is willing to litigate the claim in a county other than the one of his choosing. This situation leads to duplication of effort by the courts and the parties and may result in inconsistent rulings and orders.

The Comment further provides:

In providing a framework rather than detailed procedures, the rule applies to both complex and simpler litigation, which crosses county lines. One court will be able to take charge of multiple class actions commenced in several counties. One court will be able to oversee litigation arising from two petitions to open a judgment, one petition filed in the county in which the judgment was entered and the other in the county to which it was transferred.

In the present matter, the Plaintiff has asked that this Court either transfer the Clearfield County action to Cambria County pursuant Pa. R. Civ. P. 213.1(d)(2) or stay the Clearfield County action per Pa. R. Civ. P. 213.1(d)(1) until the instant action is resolved and this Court has made a determination with respect to the enforceability of the non-competition provisions of the Agreement in question.

In making such a determination, the Superior Court has directed Trial Courts to consider the totality of the circumstances and examine in particular factors enumerated in Pa. R. Civ. P. 213.1; if the Trial Court then decides that coordination is appropriate, it may do so in any Court in which one or more of the actions is pending, and choice of venue, like decision to coordinate, is left to the sound discretion of the Trial Court. See Wohlsen/Crow v. Pettinato Associated Contractors & Engineers, Inc., 666 A.2d 701, 446 Pa. Super. 215 (1995).

As such, this Court has reviewed the actions filed in both counties, and finds that there is a commonality of parties and with the legal issue of the non-competition clause of the Agreement. In fact, the Court finds that essentially both actions per the non-competition clause arise from the same transaction or occurrence. In reviewing the separate complaints, the Court notes that the facts per this issue as so alleged by both parties are nearly identical. However, the Court does note that the issue raised in Clearfield County regarding the sale of the Defendant's business has not been raised in Cambria County. The Court believes that the validity or void-ability of the Agreement is the key underlying issue in both suits and must be addressed before pursuing the other action.

Therefore, with this Court's finding of the commonality of the issue of the non-competition clause of the Agreement in actions filed in both Clearfield and Cambria County, and with the action in Cambria County having been filed first, the Court respectfully finds that this issue should be decided first, and in Cambria County with the other issues in Clearfield County stayed until resolution of this issue. With the spirit of Pa. R. Civ. P. 213.1 in mind, it is this Court's goal to avoid inconsistent rulings on the same issue—that being a determination of the validity of the non-competition clause. As for the other issues filed in Clearfield County,

they should be decided appropriately in Clearfield County upon resolution of the issue of the validity of the non-competition clause.

ACCORDINGLY THE FOLLOWING ORDER IS ENTERED:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 14th day of September, 2005, a true and correct copy of the Defendant, John C. Rezk's Response to Plaintiffs' Motion to Strike Request for Jury Trial was forwarded via first-class mail, postage pre-paid, to the following persons:

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
Post Office Box 487
Dubois, Pennsylvania 15801

Respectfully submitted,

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE, LLC

By R.P.C.

Ronald P. Carnevali, Jr.
Attorneys for Defendant,
John C. Rezk

By James A. Naddeo

James A. Naddeo
Attorneys for Defendant,
John C. Rezk

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100619
NO: 05-977-CD
SERVICE # 1 OF 1
COMPLAINT IN EQUITY

PLAINTIFF: DUBOIS MEDICAL SUPPLY COMPANY,
vs.
DEFENDANT: JOHN C. REZK

SHERIFF RETURN

NOW, July 14, 2005, SHERIFF OF CAMBRIA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN EQUITY ON JOHN C. REZK.

NOW, July 26, 2005 AT 1:18 PM SERVED THE WITHIN COMPLAINT IN EQUITY ON JOHN C. REZK, DEFENDANT. THE RETURN OF CAMBRIA COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
019-44-34
OCT 13 2005
[Handwritten signature]

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100619
NO: 05-977-CD
SERVICES 1
COMPLAINT IN EQUITY

PLAINTIFF: DUBOIS MEDICAL SUPPLY COMPANY,
VS.
DEFENDANT: JOHN C. REZK

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HANAK	14231	10.00
SHERIFF HAWKINS	HANAK	14231	30.00
CAMBRIA CO.	HANAK	14232	31.13

Sworn to Before Me This

So Answers,

____ Day of _____ 2005


Chester A. Hawkins
Sheriff

CASE # PLAINTIFF DEFENDANT
90205-05 DUBOIS MEDICAL SUPPLY 05-977 REZK, JOHN
DATE 7/26/05

AT 13:18 HRS. SERVED THE COMPLAINT IN EQUITY UPON REZK MEDICAL BY HANDING A TRUE AND ATTESTED COPY THEREOF TO JOHN REZK, OWNER, AT 115 S. MAIN ST. CARROLLTOWN, PA. AND MAKING CONTENTS THEREOF KNOWN TO HIM. MY COSTS PAID BY ATTORNEY FOR PLAINTIFF.

SHERIFF COSTS 28.13
PRO 3.00
TOTAL COSTS 31.13

SO ANSWERS,

Bob Kolar
BOB KOLAR, SHERIFF

SWORN AND SUBSCRIBED TO BEFORE ME THIS 1RST DAY OF AUG. 05.

PROTHONOTARY *Kathy Bekebile*.

DATE 7/26/05 CASE # PLAINTIFF
00202-05 DUBOIS MEDICAL SUPPLY 05-273 DEFENDANT
RESK, JOHN

AT 13:18 HRS. SERVED THE COMPLAINT IN EQUITY UPON RESK
MEDICAL BY HANDING A TRUE AND ATTESTED COPY THEREOF TO
JOHN RESK, OWNER, AT 115 S. MAIN ST. CARROLLTON, PA.
AND HAVING CONTENTS THEREOF KNOWN TO HIM. HIS COSTS PAID BY
ATTORNEY FOR PLAINTIFF.

SHERRIFF COSTS	28.73
PRO	3.00
TOTAL COSTS	31.73
20 ANSWERS	

BOB KOLAR, SHERRIFF

SIGNED AND SUBSCRIBED TO BEFORE ME THIS FIRST DAY OF AUG. 05.

PROTHONOTARY

FILED

OCT 13 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

DuBOIS MEDICAL SUPPLY
COMPANY, INC., PAUL K. REZK
and KAREN M. REZK,
Plaintiff

-vs-

JOHN C. REZK,

Defendant

No. 05-977-CD

Type of Case: Civil Action

Type of Pleading: Praeclipe
for Discontinuance

Filed on Behalf of: Plaintiff

Counsel of Record for This
Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877
Hanak, Guido and Taladay
P.O. Box 487
DuBois, PA 15801
(814) 371-7768

FILED
m/ 11.15 cm 1 Cert of disc
JUL 21 2006 issued to Atty
Guido
Copy to CJA

11.1

FILED

JUL 21 2006

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DuBois Medical Supply Company, Inc.

Paul Rezk

Karen M. Rezk

Vs.

John C. Rezk

No. 2005-00977-CD

©COPY

CERTIFICATE OF DISCONTINUATION

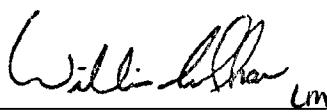
Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 21, 2006, marked:

Settled, discontinued and ended

Record costs in the sum of \$85.00 have been paid in full by Anthony S. Guido Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 21st day of July A.D. 2006.



William A. Shaw, Prothonotary