

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

JOHN J. MENTUS,  
*Plaintiff,*

v.

Civil Action No. 15-P-63  
Presiding Judge: Russell M. Clawges, Jr.  
Resolution Judge: H. Charles Carl, III

FRANK WASHENITZ, et al.,  
*Defendants.*

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ORDER BY RESOLUTION JUDGE ACTING AS ARBITRATOR

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This matter came before the Court upon an *Order Following Status Conference* entered by Presiding Judge Clawges on August 9, 2016; upon an *Order Regarding Dispute Resolution* entered by Resolution Judge Carl on November 16, 2016; upon *Seller's Submission of Proposed Findings of Fact Relating to the Stock Redemption Agreement Between John J. Mentus and Frank Washenitz* received from John R. Angotti, counsel for Plaintiff, on October 28, 2016; and upon *Respondents' Resolution Statement* filed by Andrew G. Fusco, counsel for Defendants, on October 28, 2016.

The Court has carefully considered the Proposed Findings, the Resolution Statement, and pertinent legal authority. In support of its decision, the Court makes the following findings of fact and conclusions of law:

1. At the status conference held on August 8, 2016, "counsel for the parties explained that only a Featherlite trailer and laptop stood between the effective resolution of the case. Parties explained that an agreement had been made, but not effectively executed." (Ord. Aug. 9, 2016.) The Presiding Judge ordered the parties to either set mediation with the Resolution Judge within thirty days, or file and set for hearing a motion to enforce settlement. (*Id.*)

2. On September 15, 2016, this Court conducted a telephone conference with counsel and ordered, upon agreement of the parties, that because of this Court's long involvement and familiarity with the matters, the remaining issues in this matter would be submitted to this Court for resolution by arbitration. By agreement, it was ordered that the parties would submit a memorandum containing their respective positions and requested relief on or before October 28, 2016. (Ord. Nov. 16, 2016.) The Court further ordered that it would consider the memoranda and render a final and binding decision. (*Id.*)

3. WHEREFORE, upon due consideration of all of the above, this Court does hereby ADJUDGE and ORDER that on or before **January 13, 2017**, Mr. Mentus or his agent shall deliver the laptop with the original hard drive to the law office of John R. Angotti, and upon receipt of the laptop by Mr. Angotti, Mr. Washenitz or his agent shall immediately, not to exceed ten days, deliver the Featherlite Trailer, title, and any contents located therein to Mr. Mentus by delivering the trailer, title, and contents to a location mutually agreed upon by the parties. It is further ORDERED that should the parties not agree as to the location, Mr. Washenitz or his agent shall deliver the trailer, title, and contents to the R&W Cable Co., Inc. ("R&W") Shop in Fairmont, West Virginia, where Mr. Mentus shall then pick-up the trailer, title and contents. Once the trailer, title and contents are delivered to the Shop, attorney Andrew G. Fusco or his agent shall contact Mr. Angotti, and Mr. Mentus or his designated agent shall then be given ten days therefrom to retrieve the trailer, title, and contents from the Shop lot. For each day after the ten day pick-up period the trailer, title, and contents remains on the Shop property, Mr. Mentus shall pay Mr. Washenitz a storage fee of \$100.00 per day.

4. It is further ORDERED that any information on the laptop that is not the property of R&W shall be held in confidence, but with the following exceptions:

- a. Anything already in the possession of Mr. Washenitz or R&W;
- b. Anything already in the public domain;
- c. Anything rightfully received by Mr. Washenitz or R&W from any third party; and
- d. Anything necessary for use in any further proceedings between the parties.

5. It is further ORDERED that Mr. Washenitz and R&W may choose to have the laptop's hard drive examined by an independent forensic specialist and anything located that is not the property of R&W shall be held in confidence per the terms set forth in paragraph 4, *supra*. It is ORDERED that any personal and/or proprietary information obtained from the laptop or hard drive regarding Mr. Mentus shall not be disclosed to any third party without prior written consent from Mr. Mentus.

6. It is further ORDERED that personal information located on the laptop or hard drive pertaining to Tessa Darlington and/or Michelle Kirk shall not be disclosed to any third party without prior written consent from Ms. Darlington or Ms. Kirk.

7. It is further ORDERED that any information owned by R&W still in the possession of Mr. Mentus shall be returned immediately to Mr. Washenitz and R&W, or if non-returnable for any legitimate reason, such as knowledge possessed but not physically or digitally recorded, and such information shall be held in confidence by Mr. Mentus per the terms set forth in paragraph 4, *supra*.


8. Mr. Washenitz and R&W have asserted that Mr. Mentus may have deleted or erased company property from the laptop hard drive while it was in his possession, which Mr. Mentus denies. As no evidence was presented to the contrary because the laptop was not available for examination, this Court ORDERS that should it be determined by forensic audit of the laptop that this did in fact occur, there is reserved unto Mr. Washenitz all legal remedies for

any damages arising therefrom; but with the exception that he would not be permitted to withdraw from nor seek nullification or voiding of the negotiated settlement and release.

9. It is further ORDERED that this Court's decision, memorialized herein and subject to the review and acceptance of the Presiding Judge, is a FULL AND FINAL resolution of all remaining claims and issues in the above-captioned case. It is further ORDERED that no other matters not referenced herein, including those raised in the parties' pleadings now before this Court, shall be considered in the resolution of this case. In submitting to ARBITRATION, the parties have WAIVED any right to appeal or reconsideration beyond any objection to the form or conduct of the arbitrator, which would be submitted to the Presiding Judge alone. The Presiding Judge shall, after holding this Order for ten business days, enter an Order either confirming this decision and removing the case from the active docket or rejecting this decision and setting the case for a scheduling conference.

❖ The Circuit Clerk shall send a copy of this Order to all counsel of record; the Presiding Judge Russell M. Clawges, Jr., Monongalia County Courthouse, 243 High Street, Morgantown, WV 26505; the Resolution Judge H. Charles Carl, III, P.O. Box 856, Romney, WV 26757; the Business Court Division Central Office, Berkeley County Judicial Center, Suite 2100, 380 West South Street, Martinsburg, WV 25401; and any *pro se* parties.

Entered this 21st day of December, 2016.

  
H. Charles Carl, III, Presiding Judge  
Business Court Division