

not entrap him. He first spoke of the matter openly to Darcy, a prisoner, who had no connection with the police. He also talked to Corbett about it and concluded on his own the only way out was to kill Crites. All the police did was provide an undercover trooper to pose as a hit man.

West's final argument is that playing a tape recording of a conversation between Corbett and the undercover trooper acting as a hit man was error because no prima facie case of conspiracy had been shown. However, the Commonwealth had introduced a fair preponderance of evidence through Corbett and Darcy that a conspiracy existed, so Corbett's out-of-court statements were properly admitted against her co-conspirator West. *Hirsch*, 225 Pa. Super. 494, 311 A.2d 679 (1973); *Commonwealth v. Tiberi*, 239 Pa. Super. 152, 361 A.2d 318 (1976).

The post-trial motions will be denied.

ORDER OF COURT

April 21, 1982, the post-trial motions of George Peter West, Jr., the defendant, are denied.

It is ordered that a presentence investigation report be prepared by the Franklin County Probation Department and sentence is deferred until May 26, 1982, at 9:00 o'clock a.m. in Court Room No. 1, Court House, Chambersburg, PA. The Sheriff of Franklin County is directed to transport the said defendant from his place of confinement to the court for sentencing and then return him to such place of confinement and if any necessity exists, the defendant may be held temporarily in the Franklin County Prison to facilitate the sentencing proceedings.

MELLOTT V. MELLOTT, C.P., Franklin County Branch, A.D. 1981 - 312

Assumpsit - Lack of Seal - Lack of Consideration

1. While a seal or a statement of intention to be legally bound may substitute for consideration, their absence does not automatically void the agreement.
2. Consideration for an agreement need not appear solely on the face of

the agreement, but rather, it may be inferred from the terms of the agreement.

3. Bargained-for, mutual promises supply adequate consideration necessary to form a valid and enforceable agreement.

Thomas M. Painter, Esq., Counsel for Plaintiff

Ronald J. Locke, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., May 27, 1982:

Plaintiff, Ernest R. Mellott, filed a complaint in assumpsit on October 20, 1981, which was served upon the defendant, Franklin D. Mellott, on October 29, 1981. The complaint alleged monies due and owing plaintiff as a result of a silent partnership agreement entered into between the parties on August 29, 1979. Defendant filed preliminary objections to the complaint in the nature of a motion for a more specific pleading and a demurrer. Arguments on the preliminary objections were heard on April 1, 1982, and the matter is now ripe for disposition.

Plaintiff concedes that defendant is entitled to a listing of the assets and liabilities of Mellott's Trucking Service at the time the partnership agreement was signed on August 29, 1979. Furthermore, plaintiff agrees that defendant is entitled to receive information concerning the various dates on which the property of the partnership was sold and distributed to creditors as alleged in the complaint. Therefore, defendant's motion for a more specific pleading is granted, and plaintiff is directed to file an amended complaint complying with defendant's request for more definite information concerning the assets and liabilities of the business on the date the partnership was formed and subsequent distributions made to creditors.

The defendant's demurrer contends that the agreement between the two parties is unenforceable since no seals are affixed to the signatures of the parties, no statement is contained in the agreement that the parties intend to be legally bound, and no mention is made of an exchange of consideration between the parties. While the parties apparently intended to have seals affixed to their signatures according to the language of the agreement, none are found on the document. However, absence of seals does not render the agreement unenforceable,

nor does the lack of a specific statement that the parties intend to be legally bound render the agreement void. While a seal or a statement of intention to be legally bound may substitute for consideration, their absence does not automatically void the agreement. 33 P.S. Sec. 6 *Brereton Estate*, 388 Pa. 206, 130 A. 2d 453 (1957).

Consideration for the agreement need not appear solely on the face of the agreement, but rather it may be inferred from the terms of the agreement. *Holmes' Appeal*, 79 Pa. 279 (1875). The "silent Partnership Agreement" entered into by plaintiff and defendant provides that plaintiff, who was formerly the sole owner of the business, agrees to one-half of the business being "legally owned" by the defendant. Provision is made in the document for the separation of the parties whereby the agreement is to serve as "legal notice" and the net worth and profits of the business are to be evenly divided. All of these terms indicate that promises were exchanged between the parties concerning division of profits, division of ownership, and distribution of proceeds in the event the business was sold or the parties separated. These bargained-for, mutual promises do indeed supply adequate consideration necessary to form a valid and enforceable agreement. *Thomas v. R. J. Reynolds Tobacco Company*, 350 Pa. 262, 38 A. 2d 61 (1944); Restatement of Contracts Sec. 75.

The language of the agreement clearly discloses the parties' mutual intention to be bound by its terms and that promises were exchanged as consideration. For these reasons, defendant's motion for a demurrer is denied.

ORDER OF COURT

NOW, this 27th day of May, 1982, the preliminary objections in the nature of a motion for a more specific pleading is granted. The preliminary objection in the nature of a demurrer is denied.

Plaintiff is granted leave to file an amended complaint within twenty (20) days of this date.

STAKE V. GREENE TOWNSHIP ZONING HEARING BOARD, C.P., Franklin County Branch, Misc. Docket Vol. Y, Page 30.

Zoning Appeal - Effective Date of Ordinance - Filing in Ordinance Book

1. The Second Class Township Code, 53 P.S. Sec. 65741 provides "ordinances shall be recorded in the ordinance book of the township. . . ."
2. The Municipalities Planning Code provides that "Zoning Ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein."
3. A zoning ordinance properly adopted by a township is in effect even though it was not recorded in the ordinance book, but was entered in the ordinance book and the book contained a notation concerning the adoption of the ordinance.
4. The notation in the Greene Township Ordinance Book was sufficient to incorporate the ordinance by reference.
5. The legislative intent in passing the Municipalities Planning Code was to make the procedure for recordation of a zoning ordinance less formal than the requirements of the Second Class Township Code.

Thomas J. Finucane, Esq., Counsel for Appellants

Welton J. Fischer, Esq., Solicitor for Appellee

Paul F. Mower, Esq., Counsel for Intervener

OPINION AND ORDER

KELLER, J., June 4, 1982:

Appellants, Kenneth E. and Bonny D. Stake, purchased a parcel of ground in Greene Township in 1979. That same year, they applied to the township for a building permit to construct a pole barn for an animal shelter, and it was granted. Appellants then began to use the building for the storage and sale of vehicles in August, 1980.

On February 23, 1981, appellants requested the Zoning Enforcement Officer to register their land as a legal nonconforming use. The request was denied on March 9, 1981, and an appeal was filed with the Greene Township Zoning Hearing Board on March 27, 1981. Hearings were held on May 4 and June 1, 1981, and the Board's decision to deny the appeal was announced on June 11, 1981, following arguments. A written