

RICHARD B. BELL and SUSAN M. BELL, Plaintiffs,
v. RONALD D. SHELLITO, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2007-3992

Motion for Judgment on the Pleadings - Demurrer - Recoupment - Counterclaim

1. A motion for judgment on the pleadings may be treated as a demurrer if the pleadings remain open.
2. A demurrer may be upheld only if, on the facts averred, the law absolutely bars recovery.
3. When deciding a demurrer, the Court must accept as true all well-pleaded facts as well as all inferences reasonably derived from those facts.
4. A counterclaim is a claim presented by a defendant in opposition to, or deduction from, the claim of the plaintiff.
5. A counterclaim encompasses both a set-off and a recoupment.
6. Recoupment is an essentially defensive counterclaim arising out of some aspect of the same transaction that forms the basis of the plaintiff's claim.
7. A defendant who asserts a counterclaim based on recoupment cannot recover an affirmative judgment against the plaintiff on the basis of the recoupment, but the defendant may reduce or eliminate the plaintiff's claim against him.
8. Recoupment is an equitable remedy that survives the statute of limitations for the underlying claim.
9. A demurrer to a counterclaim for recoupment will be sustained if the plaintiff's claim is based on the breach of a sales agreement that is entirely separate and distinct from the power of attorney upon which Defendant predicates his counterclaim for recoupment.

Appearances:

David W. Rahausser, Esq., *Counsel for Plaintiffs*

OPINION

Walsh, J., September 11, 2008

Facts

The Court must decide the preliminary objection^[1] of Plaintiffs, Richard and Susan Bell to the new matter of Defendant Ronald Shellito. Plaintiffs sued for monetary damages associated with Defendant's alleged breach of an agreement of sale. The agreement provided that Plaintiffs would sell long haul trucking equipment to Defendant, who would pay them in accord with the terms of the agreement. Defendant answered the complaint by admitting virtually all of Plaintiffs' allegations. However, Defendant then went on to add new matter that alleges that Susan Bell abused a power of attorney that Defendant had given to her to manage the trucking business. Mainly, the allegations concern Bell's alleged failure to file Defendant's personal taxes for the years 1998-2004 and her alleged unauthorized transfer of money from business accounts to her personal account. Furthermore, Defendant alleges that he stopped payment on the sales agreement when he finally learned of Bell's actions and that he would not have entered into the sales agreement in the first instance if he had known of Bell's acts. Finally, Defendant seeks "recoupment for back taxes, penalties, and interest he incurred as a result of Plaintiff Susan Bell's nondisclosure." See Defendant's Answer and New Matter.

On May 16, 2008, Plaintiffs filed a motion for judgment on the pleadings urging the Court to grant judgment on the basis of the admissions in Defendant's Answer and New Matter and to strike the New Matter because it should have been brought as a counterclaim. After reading the pleadings, the Court elected to treat Plaintiffs' motion as a preliminary objection in the nature of a demurrer, and the Court will now resolve that issue.

Discussion

A demurrer falls under Pa. R.C.P. 1028(a)(4), and the legal standard for a demurrer is well established. A demurrer may be upheld only if, on the facts averred, the law absolutely bars recovery. Werner v. Plater-Zyberk, 799 A.2d 776 (Pa. Super. Ct. 2002). When deciding a demurrer, the Court must accept as true all well pleaded facts and also all inferences reasonably derived from those facts. Hess v. Fox Rothschild, LLP, 925 A.2d 798, 805 (Pa. Super. Ct. 2007). Here, Plaintiffs have demurred to Defendant's New Matter in the form of a claim for recoupment.

A counterclaim is "a claim presented by a defendant in opposition to, or deduction from, the claim of the plaintiff; a counterclaim encompasses both a set-off and a recoupment." Stulz v. Boswell, 453 A.2d 1006, 1008 (Pa. Super. 1982). Recoupment is an essentially defensive counterclaim arising out of some aspect of the same transaction that forms the basis of the plaintiff's claim. Commonwealth v. Berks County, 72 A.2d 129, 130 (Pa. 1950). A defendant who asserts a counterclaim based upon recoupment can not recover an affirmative judgment against the plaintiff on the basis of recoupment, but the defendant may reduce or eliminate the plaintiff's claim against him. Id. Lastly, recoupment is an equitable remedy that survives the statute of limitations. Stulz at 1009.

Here, although Defendant invokes the doctrine of recoupment, the facts he has pled fail to support his claim. Plaintiffs have sued Defendant over the breach of the sales contract for the long haul trucking equipment. Thus, the sales agreement constitutes the transaction that forms the basis of the plaintiffs' claim. Accordingly, Defendant may only assert recoupment based upon any equitable or legal consideration that arises out of the sales agreement. Instead, Defendant bases his claim for recoupment upon Plaintiff Susan Bell's alleged abuse of a prior power of attorney that was revoked in January 2005 prior to the execution of the May 2005 sales agreement. Although Defendant alleges that he would not have signed the sales agreement if he had known of Bell's actions, Defendant has failed to allege any facts indicating that the prior power of attorney or any abuse thereof constituted an aspect of the sales agreement. Thus, the Court will sustain Plaintiffs' demurrer to Defendant's New Matter asserting recoupment.

Conclusion

In conclusion, Defendant seeks recoupment for Susan Bell's alleged abuse of her power of attorney, but he has failed to allege any facts demonstrating that the abuse constitutes an aspect of the sales agreement. Thus, the Court will sustain Plaintiffs' demurrer and strike Defendant's counterclaim for recoupment.

ORDER OF COURT

September 11, 2008, the Court having reviewed the Preliminary Objections of Plaintiffs, the record, the briefs of the parties, and the law, it is hereby ordered that Plaintiff's preliminary objection is granted and Defendant's New Matter and claim for recoupment are dismissed.

[1] Plaintiffs actually filed a motion for judgment on the pleadings, but, after reviewing the pleadings and evaluating the nature of the motion filed by Plaintiffs, the Court has elected to treat the motion as a demurrer.