

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

OLWIDAS, LLC	:	March Term, 2011
<i>Plaintiff</i>	:	Case No. 03536
v.	:	
AMIT AZOULAY	:	Commerce Program
<i>Defendant</i>	:	
v.	:	
JONATHAN NADAV	:	
<i>Additional Defendant</i>	:	Control No. 11041866

OPINION

The preliminary objections of Additional Defendant Jonathan Nadav ask this Court to dismiss the Joinder Complaint of Defendant Amit Azoulay pursuant to Pa. R.C.P. 2256(a). For the reason below, the Preliminary Objections are sustained.

Background

Plaintiff Olwidas, LLC (“Olwidas,”) filed a complaint (the “Original Action,”) against Amit Azoulay (“Azoulay”), president, manager, and 1/3 owner of Olwidas. The complaint alleges that Azoulay, as manager of Olwidas, committed financial improprieties for personal gain detrimental to Olwidas.

Azoulay filed a counterclaim against Olwidas. In the counterclaim, Azoulay asserts that Olwidas entered into an agreement for the sale of property owned by Olwidas, located at 8614 Thomas Mill Terrace, in Philadelphia, Pennsylvania (the “Property.”) According to the counterclaim, Olwidas, through its 2/3 owner Jonathan

Nadav (“Nadav,”) has refused to ratify the sale. The counterclaim seeks to compel Olwidas to ratify the sale, and therefore “is not founded upon the transaction, occurrence or series of transactions or occurrences out of which the original cause of action arose may not join an additional defendant.”

Azoulay has also filed a Joinder Complaint against Nadav. Nadav, as Additional Defendant under the Joinder Complaint, has filed Preliminary Objections asserting that he may not be joined as an additional defendant pursuant to Pa. R.C.P. 2256(a). The Rule states:

An original defendant who asserts against the plaintiff a counterclaim not founded upon the transaction, occurrence or series of transactions or occurrences out of which the original cause of action arose may not join an additional defendant.¹

In the Response in Opposition to the Preliminary Objections, at paragraph 8, Azoulay argues that Nadav may be joined pursuant to Pa. R.C.P. 2252(a)(4) which states:

... any party may join as an additional defendant any person not a party to the action who may be

* * *

(4) liable to or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based.²

Discussion

The general rule embodied by Pa. R.C.P. 2252(a)(4), which allows joinder of “any person,” is outweighed by the specific rule embodied by Pa. R.C.P. 2256(a), which precludes joinder of an additional defendant when a party, who is an original defendant,

¹ Pa. R.C.P. 2256(a).

² Pa. R.C.P. 2252(a)(4). Azoulay improperly cites Pa. R.C.P. 2250(A)(4) in support of his argument. However, Pa. R.C.P. 2250 was rescinded effective July 1, 1994.

“asserts against the plaintiff a counterclaim not founded” upon the transactions or occurrences alleged in the original cause of action. *Generalibus specialia derogant*: “Things special restrict things general.”

In this case, the averments in the counterclaim are not founded upon the same transactions or occurrences asserted by Olwidas in the original action. The Joinder Complaint asserted against Jonathan Nadav may not be maintained. The Preliminary Objections of Additional Defendant Jonathan Nadav are sustained and Amit Azoulay’s Joinder Complaint is stricken in its entirety.

By The Court,

Mark. I. Bernstein, J.

Dated: 8/2/11