

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

PHILADELPHIA FACTORS, INC.	: JUNE TERM, 2002
v.	: No. 1726
THE WORKING DATA GROUP, INC., AMERICAN WATER WORKS SERVICE CO., and SOVEREIGN BANCORP, INC.	: Commerce Program : Superior Court Docket No. 2508EDA2003

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OPINION

Albert W. Sheppard, Jr., J. September 16, 2003

This Opinion is submitted in support of this court's Order of July 3, 2003, which sustained the Preliminary Objections of defendant, Sovereign Bank ("Bank"), to the New Matter of the defendant, Working Data Group, Inc. ("WDG"), asserting a cross claim against the Bank.

For the reasons discussed, it is respectfully submitted that that Order should be affirmed.

Factual Background

American Water Works Service Co. (“AWW”) and WDG had a contract under which WDG performed consultant services for AWW.

At the same time, the plaintiff, Philadelphia Factors, Inc. (“PFI”), entered into an Accounts Purchase Agreement (“Agreement”) with WDG pursuant to which PFI purchased certain accounts receivable of WDG. In furtherance of this Agreement WDG assigned to PFI certain invoices owed to WDG by AWW for consultant services.

On February 27, 2002, PFI sent a letter to AWW advising that PFI was an assignee and owner of certain present and future invoices from WDG and that payment of any accounts receivable due WDG should be made directly to PFI, at a specific post office box.

Unfortunately, things started to go awry. On March 27, 2002, AWW mistakenly wired \$244,123.70 to WDG’s account at the Bank, instead of making the payment to PFI as requested. The Bank, then, used those funds to offset other outstanding loans that the Bank had made to WDG. Despite repeated requests by PFI and WDG, the Bank refused to return the deposited funds. Based on this situation, PFI brought various claims against WDG, AWW and the Bank.

Although the pleadings embodied a number of claims, counter claims and cross claims among the litigants, the Order pertinent to this appeal involves only WDG and Bank. In response to PFI’s third amended Complaint WDG asserted, *inter alia*, New Matter pursuant to Pa. R.C.P. 2252(d) (a cross claim) against the Bank. Essentially, WDG asserted that the Bank tortiously converted and retained property which it knew or had reason to know belonged to PFI, **or to itself WDG**. WDG further alleged that this

tortious conduct of the Bank, coupled with the actions of PFI (plaintiff) and AWW resulted in the destruction of WDG's business.

The Bank in response filed Preliminary Objections in the nature of a demurrer, arguing that WDG failed to state a cognizable legal theory of recovery.

This court conducted oral argument, following which it sustained the Objections by Order dated July 3, 2003.

This appeal ensued.

Discussion

"[A] preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. . . . If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected [citations omitted]." Allegheny County v. Comm., 507 Pa. 360, 372, 490 A.2d 402, 408 (Pa 1985). "The question presented by a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible." Werner v. Plater-Zyberk, 799 A.2d 776, 782 (Pa. Super. 2002) (citing, DeMary v. Latrobe Printing and Publishing Co., 762 A.2d 758,761 (Pa. Super. 2000).

Conversion is "the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification." Stevenson v. Economy Bank of Ambridge, 413 Pa. 442, 197 A.2d 721, 726 (Pa. 1964) (quoting, Gottesfeld v. Mechanics and Traders Insurance Co., 196 Pa. Super. 109, 115, 173 A.2d 763, 766 (Pa. Super. 1961). Thus, to prevail on its cross claim, WDG must assert facts demonstrating the existence of this

right, use, or possession of the money at the time of the interference without the owner's consent and without lawful justification.

WDG cannot meet this burden because it cannot demonstrate that the money belonged to it. In its Answer to plaintiff's Complaint, WDG admits PFI's allegation that PFI was the purchaser and assignee, and thus, the owner of those WDG accounts receivable. WDG cannot sustain a wrongful conversion claim where it cannot demonstrate for itself the existence of a right in the property. WDG admits that the funds had been sold to PFI. The claim for the conversion of the funds belonged to PFI and not WDG.

In its memorandum in opposition to the Preliminary Objections and at oral argument, counsel for WDG contended that WDG had the right to retain twenty-five percent of the funds paid to PFI. But, there is no such allegation in the verified pleadings filed by WDG nor is there any mention of such holdback in the pleadings filed by PFI. In fact a WDG April 3, 2002 letter admits and confirms that "Philadelphia Factors, Inc. is the Cash Manager and owner of all receivables owed to The Working Data Group by its customers", and that the "transfer of \$224,123.70 was intended for Philadelphia Factors who is the owner of all invoices referenced above" (Complaint Exhibit "D"). WDG's ownership claim to twenty-five percent of the Funds is unsupported by any pleading or other matter of record and is contradicted by the record evidence of WDG's own correspondence and statements against self interest.

In its response to this court's 1925(b) Order, WDG takes exception with that part of the appealed-from Order that adds "with prejudice." This court does not believe that the presence of this language necessitates the appeal. WDG is apparently concerned

that this language could have an adverse effect on its defenses should it be sued in the future by the Bank. The Order applies only to this case and any concern for a possible future action brought by the Bank is speculative. Further, the words “with prejudice”, in reality add nothing to the Order. The Order would have meant the same, that is, dismissal of the counterclaim, even in the absence of these words.¹

Finally, it should be recognized that the Bank credited the subject funds against a debt owed by WDG in the nature of outstanding loans. Thus, the money was actually put to use for the benefit of WDG. True, the conduct of the Bank may be susceptible to criticism, but it did not amount to the conversion of property belonging to WDG.

Conclusion

WDG was not the owner of the money which AWW misdirected to the Bank. WDG had sold and assigned its rights to the money to PFI. Thus, WDG cannot recover for a claim of conversion.

For these reasons, it is respectfully submitted that this court’s Order should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

¹ This court recognizes that there are instances where the addition of the words, “without prejudice” in an order may carry an added meaning. However, that situation does not obtain here.