

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

RELIANT HEALTHCARE MANAGEMENT, INC.	:	January Term, 2008
	:	
<i>Plaintiff</i>	:	No. 3083
	:	
v.	:	Commerce Program
	:	
ASHTON HALL et al.	:	
	:	Control No. 009080237
<i>Defendants</i>	:	

OPINION

The motion for summary judgment filed by plaintiff/counterclaim defendant requires this Court to rule whether defendants/counterclaim plaintiffs may maintain the claims of breach of contract, breach of fiduciary duty, intentional and negligent misrepresentation, and contribution and indemnification, asserted in their counterclaim. For the reasons below, the claims may not be maintained.

Background

Plaintiff, Reliant Healthcare Management, Inc. (“Reliant,”) is a manager of nursing homes. Defendant, Ashton Hall, Inc. (“Ashton Hall”) was the owner of a nursing home formerly managed by Reliant. Individual Defendant, Stanley Segal, was the president in control of Ashton Hall. Former Defendant 50 Jersey LLC (“50 Jersey,”) a New Jersey company, is the current manager of Ashton Hall, and was successor in interest of Oakhurst Properties. LLC (“Oakhurst,”) an entity which acquired Ashton Hall from Segal. Former individual Defendants Newt Weinberger (“Weinberger,”) and Eliezer Friedman (“Friedman,”) are the sole members of 50 Jersey.

Early in 2007, the Ashton Hall nursing home was experiencing significant

administration problems under Segal's management, and had failed to comply with regulations promulgated by the Pennsylvania Department of Health. In March 2007, these problems reached their zenith when the U.S. Department of Justice asked Segal to change management of the nursing home.¹

On April 16, 2007, Ashton Hall and Reliant entered into a "Management Agreement" whereby Reliant would immediately begin to manage the nursing home for a period of four years.² Reliant assumed management responsibilities to enable the nursing home to achieve regulatory compliance. Under the agreement, any party could terminate the contract at any time, without notice, if occupancy of the nursing home fell below 85% for a period of 180 days.³ This occupancy requirement became effective July 3, 2007, the day in which the nursing home received permission to admit new patients.⁴ The Management Agreement also provided that any party could terminate the agreement if the other party failed to observe a material term of the agreement. Termination for failure to observe any material terms required the non-breaching party to give written notice of termination, and afford the breaching party five days to cure the breach.⁵ The agreement also required Ashton Hall to provide the working capital for the operation of the nursing home.⁶

After Reliant assumed its management duties, Segal realized that he lacked the money to fund the nursing home on behalf of Ashton Hall.⁷ To satisfy Ashton Hall's funding obligations, Segal tapped a trust fund established for the benefit of his

¹ Deposition of Defendant Segal, Exhibit A to Reliant's motion for summary judgment, pp. 11-13.

² Management Agreement, Exhibit A to Reliant's motion for summary judgment at Article I.

³ Management Agreement, Exhibits F to Reliant's motion for summary judgment at Articles 4.01.3(v).

⁴ Admission of Defendant Segal, Exhibit A to Reliant's motion for summary judgment at 50-52.

⁵ Management Agreement, Exhibit A to Reliant's motion for summary judgment at Article 4.01.2.

⁶ Management Agreement, Exhibit A to Reliant's motion for summary judgment at Article 1.08.

⁷ Deposition of Defendant. Segal, Exhibit A to Reliant's motion for summary judgment, p. 389.

children.⁸ But despite the injection of cash from the trust fund, Ashton Hall continued to lack capital and Segal was faced with the prospect of losing the property and nursing home to creditors.

Reliant offered to buy the Ashton Hall property and nursing home from Segal, and drafted a purchase agreement.⁹ On August 16, 2007, Segal rejected the offer.¹⁰ In the rejection letter, Segal advised Reliant that he had hired a different manager for the nursing home, and forbade Reliant from drafting any checks on behalf of Ashton Hall.¹¹ On August 22, 2007, Reliant replied to Segal's letter, asserted its intention to continue as manager pursuant to the Management Agreement, and sent copies of its reply to the Pennsylvania Department of Health, and the U.S. Offices of the Attorney General and the Department of Health and Human Services.¹²

To extricate Ashton Hall and himself from the funding obligation, Segal sought to sell the property and business to another party. In December 2007, Segal negotiated with Oakhurst Properties ("Oakhurst,") a New Jersey entity associated with individual Defendants Weinberger and Friedman. Oakhurst agreed to buy the Ashton Hall property and the nursing home, if its affiliate, 50 Jersey, replaced Reliant as manager of the nursing home, no later than the closing date.¹³ On December 28, 2007, Segal agreed to Oakhurst's offer, and the parties scheduled a closing date.¹⁴ In the meantime, Ashton

⁸ Deposition of Defendant Segal, Exhibit A to Reliant's motion for summary judgment, p. 336.

⁹ Exhibit D to Defendants answer in opposition to Reliant's motion for summary judgment.

¹⁰ Letter from Segal to Reliant, Exhibit F to Defendants' answer in opposition to Reliant's motion for summary judgment.

¹¹ Letter from Segal to Reliant, Exhibit F to Defendants' answer in opposition to Reliant's motion for summary judgment.

¹² Letter from Reliant to Segal, Exhibit G to Defendants' answer in opposition to Reliant's motion for summary judgment.

¹³ Deposition of Defendant Segal, Exhibit A to Reliant's motion for summary judgment, pp. 387-390.

¹⁴ Asset Purchase Agreement, Exhibits G and H to Reliant's motion for summary judgment.

Hall continued to be bound to its obligation fund the nursing home.¹⁵

On January 10, 2008, as the closing date approached, 50 Jersey asked its attorney, Bruce G. Baron (“Baron,”) whether the Management Agreement between Reliant and Ashton Hall could be terminated.¹⁶ Baron inquired with Segal whether any grounds existed to terminate Reliant. On January 11, 2008, Segal replied by forwarding a list of ten purported breaches by Reliant.¹⁷ Items 1 and 4 of the list stated that Reliant had breached the Management Agreement by allowing occupancy at the nursing home to fall below 85% for 180 days, and failing to make mortgage payments.¹⁸ Baron drafted a termination letter based on these representations and forwarded it to Segal on January 16, 2008. Segal forwarded that letter to Reliant. In the letter, Segal informed Reliant that Ashton Hall was terminating the Management Agreement. The letter stated:

The basis for the Termination is provided in Section 4.01(3)(v) in that the occupancy of the nursing Home has dropped below 85% for a period of 180 days. In addition, to the extent there is any dispute concerning the foregoing basis for termination, Notice is also given that the Agreement is terminated because Reliant has failed to make required payments on the Owner’s first mortgage loan financing, for which termination is authorized by Section 4.01(4); and, Reliant did not provide such failure to the Owner.¹⁹

On January 25, 2008, Reliant filed a complaint against Ashton Hall, Segal, 50 Jersey, Weinberger and Friedman. The Complaint asserted the claims of breach of contract and fraud against Defendants Ashton Hall and Segal; tortious interference with

¹⁵ Deposition of Defendant Segal, Exhibit A to Reliant’s motion for summary judgment, p. 387.

¹⁶ Deposition of George C. Baron, Exhibit D to Reliant’s motion for summary judgment, p. 75.

¹⁷ Deposition of George C. Baron, Exhibit D to Reliant’s motion for summary judgment, p. 75.

¹⁸ Letter from Segal to Baron, January 11, 2008, Exhibit L to Reliant’s motion for summary judgment.

¹⁹ Termination letter, Exhibit K to Reliant’s motion for summary judgment.

current and prospective contractual relations against Defendants 50 Jersey, Weinberger, Friedman and Segal; and defamation and conspiracy against all Defendants. On May 1, 2008, Defendants Segal and Ashton filed preliminary objections to Reliant's complaint. Preliminary objections were sustained in part and overruled in part. The claim of tortious interference asserted by Reliant against Defendants was dismissed.²⁰ On August 15, 2008, Defendants Ashton Hall and Segal filed a counterclaim asserting twenty-five counts against Reliant. Reliant filed preliminary objections to the counterclaim, and this Court sustained in part and overruled in part the preliminary objections. Only the counterclaims of breach of contract, breach of fiduciary duty, intentional and negligent misrepresentation, and contribution and indemnification, survived the preliminary objections.²¹ On March 17, 2009 Defendants 50 Jersey, Weinberger and Friedman filed a praecipe to discontinue their counterclaim against Reliant, and on April 6, 2009, Reliant filed a stipulation to settle, discontinue and end all claims asserted against Defendants 50 Jersey, Weinberger and Friedman.

Plaintiff Reliant moved for summary judgment on its claims and the counterclaims of Defendants Ashton Hall and Segal. Ashton Hall and Segal cross-moved for summary judgment on their counterclaims. This Court issued an Order and Opinion on December 21, 2009 denying Defendants' motion for summary judgment on their counterclaims. The Court also granted in part and denied in part Plaintiff's motion for summary judgment on its claims. The Order granted summary judgment in favor of Plaintiff as to the breach-of-contract claim, and denied the motion as to the claims of conspiracy and defamation. The Order also denied Plaintiff's motion as to all claims

²⁰ Docket No. 0801-3083, control No. 08042472, Order entered July 18, 2008.

²¹ Order dated March 17, 2009.

individually asserted against Defendant Segal. The Order did not address Plaintiff's motion for summary judgment on the counterclaims of Ashton Hall and Segal, and the Court now addresses that portion of the motion.

Discussion

Under the Pennsylvania Rules of Civil Procedure “the court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Under the Rules, a motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. For purposes of summary judgment, the record includes any pleadings, interrogatory answers, depositions, admissions, and affidavits.²²” Summary judgment is properly granted when “an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action.”²³

I. Defendants’ breach-of-contract claim fails as a matter of law.

In the Order-and-Opinion of December 21, 2009, this Court held that Defendants Ashton Hall and Segal had breached the Management Agreement by failing to provide Reliant with thirty-day written notice before termination.²⁴ Attacking Defendants’ breach-of-contract claim, Reliant argues that the claim fails as a matter of law because Defendants’ material breach of the Management Agreement discharged Reliant of any subsequent duty or liability thereunder.²⁵

“[A] material breach by one party to a contract entitles the non-breaching party to suspend performance.... If a breach constitutes a

²² Scalice v. Pa. Emples. Benefit Trust Fund, 883 A.2d 429, 435 (Pa. 2005) (citing Pa. R.C.P. 1035.2(1), 1035.2).

²³ Young v. DOT, 560 Pa. 373, 375-376 (Pa. 2000) (explaining Pa. R.C.P. 1035.2(2)).

²⁴ Order and Opinion dated December 21, 2009.

²⁵ Memorandum of law of Plaintiff Reliant in support of its motion for summary judgment, p. 26.

material failure of performance, then the non-breaching party is discharged from all liability under the contract.... In determining materiality for purposes of breaching a contract, we consider the following factors:

- a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- b) the extent to which the injured party can be adequately compensated for that part of the benefit of which he will be deprived;
- c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- d) the likelihood that the party failing to perform or offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
- e) the extent to which the behavior of the party failing to perform or offer to perform comports with standards of good faith and fair dealing.²⁶

In this case, un-rebutted evidence shows that Ashton Hall and Segal improperly terminated the Management Agreement. The improper termination deprived Reliant of its expected benefits, and constituted a material breach of the Management Agreement. By materially breaching the Management Agreement, Ashton Hall and Segal discharged Reliant of any duty or liability arising therefrom. The claim of breach of contract asserted by Ashton Hall and Segal in their counterclaim fails as a matter of law.

II. Ashton Hall and Segal may not maintain the claim of contribution and indemnification.

Count XVI of Defendants' counterclaim asserts the claim of contribution and indemnification against Reliant. Ashton Hall and Segal aver that the Management Agreement requires Reliant to indemnify and hold harmless Defendants for breaches of the Management Agreement allegedly committed by Reliant.²⁷ Reliant moves for summary judgment against this claim, and argues that the material breach of contract committed by Ashton Hall and Segal discharged Reliant from any obligation to

²⁶ Widmer Eng'g, Inc. v. Dufalla, 2003 Pa. Super. 391, P23; 837 A.2d 459, 467-468 (Pa. Super. 2003).

²⁷ Counterclaim of Ashton Hall and Segal, Count XVI, pp. 93-94.

indemnify Ashton Hall and Segal.²⁸ In this case, un-rebutted evidence shows that Ashton Hall and Segal materially breached the Management Agreement by improperly terminating Reliant as manager of the nursing home. The material breach committed by Ashton Hall and Segal discharged Reliant from any duty or liability under the Management Agreement, and Defendants may not maintain the claim of contribution and indemnification asserted in Count XVI of their counterclaim.

III. Ashton Hall and Segal may not maintain the breach-of-fiduciary-duty claim.

Count II of Defendants' counterclaim asserts the claim of breach of fiduciary duty against Reliant. Defendants aver that Reliant excluded Ashton Hall and Segal from management of the nursing home, failed to collect monies owed to the business, and caused Defendants to incur increased and unnecessary expenses.²⁹ Ashton Hall and Segal have offered no evidence to support such factual and legal averments, except an affidavit signed by Defendant Stanley Segal.³⁰ In the motion for summary judgment, Reliant argues that Ashton Hall and Segal may not maintain the claim of breach of fiduciary duty because they have failed to offer any evidence showing either the existence of a fiduciary duty, or any breach thereof.³¹

In Pennsylvania, "a non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a

²⁸ Memorandum of law in support of Reliant's motion for summary judgment, p. 31.

²⁹ Counterclaim of Defendants Ashton Hall and Segal, ¶¶ 232-238.

³⁰ Affidavit of Stanley J. Segal, attached to the answer of Ashton Hall and Segal to Reliant's motion for summary judgment.

³¹ Memorandum of law in support of Reliant's motion for summary judgment, p. 28.

matter of law.”³² In this case, Ashton Hall and Segal have offered no evidence showing either the existence of a fiduciary duty, or a breach thereto, and the affidavit offered by Segal is insufficient to establish the absence of a genuine issue of material fact. The motion for summary judgment of Plaintiff Reliant is granted as to the claim of breach of fiduciary duty asserted by Defendants in Count II of their counterclaim.

IV. Ashton Hall and Segal may not maintain the claims of intentional and negligent misrepresentations.

Counts V and VI of Defendants’ counterclaim assert the claims of intentional and negligent misrepresentation.³³ According to Ashton Hall and Segal, Reliant misrepresented the financial conditions of the nursing home to the Defendants, made improper cash calls to Segal, and used Segal’s cash contributions for improper reasons.³⁴ Ashton Hall and Segal have offered no evidence to support such factual and legal averments, except an affidavit signed by Defendant Stanley Segal. For the reasons explained in the section above, the affidavit is insufficient to establish the absence of a genuine issue of material fact, and the motion for summary judgment of Plaintiff Reliant is granted as to the claims of intentional and negligent misrepresentation asserted in Counts V and VI of Defendants’ counterclaim.

By The Court,

Mark I. Bernstein, J.

³² Ario v. Ingram Micro, Inc., 600 Pa. 305; 965 A.2d 1194, 1207 (Pa. 2009).

³³ Counterclaim of Defendants Ashton Hall and Segal, ¶¶ 258,263.

³⁴ Memorandum in support of the motion for summary judgment of Ashton Hall and Stanly Segal, ¶ D.