

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BRIAN MICHAEL KUEHN,)	
Plaintiff Below/Appellant,)	
)	
v.)	C.A. No. CPU4-12-001217
)	
ANDREW CODY COTTER, and)	
TRACY CAMPBELL,)	
Defendants Below/Appellees.)	
)	

Submitted: June 22, 2012
Decided: July 20, 2012

Brian Michael Kuehn
4676 Augustine Herman Hwy.
Earleville, MD 21919
Plaintiff-Below Appellant

Andrew Cody Cotter
Tracy Campbell
1421 Norva Drive
Middletown, DE 19709
Defendants-Below Appellees

DECISION ON MOTION FOR REARGUMENT

This matter is back before the Court on Appellant, Brian Michael Kuehn’s (“Kuehn”) motion for reargument pursuant to *Court of Common Pleas Civil Rule 59(e)*. On May 25, 2012, this Court dismissed this matter on the basis appellee, Andrew Cody Cotter (“Cotter”) was age seventeen (17) at the time the contract, in question, was executed. Therefore, under *6 Del. C. 2705* he lacked capacity to contract.

Kuehn brought this appeal from Justice of the Peace Court on March 28, 2012. The complaint alleged that on March 16, 2011, Kuehn loaned Cotter and Tracy Campbell (“Campbell”) \$5,650.00 to purchase an automobile, and there is a balance due and unpaid of \$750.00. Kuehn further alleged that on March 26, 2011, \$1,000.00 was forgiven; on April

2011, Cotter paid \$2,900.00; and on April 2011, Campbell paid \$1,000.00. On April 19, 2012, Cotter and Campbell filed a joint Answer, which denied that the amount due in one numbered paragraph.

On May 4, 2012, Kuehn filed a motion for default judgment alleging two reasons: (1) failure of Cotter and Campbell to file an answer containing separately numbered averments either admitting or denying each corresponding averment; and (2) because Cotter and Campbell's answer was not proper, it must be stricken, and therefore the defendants failed to file an answer within twenty (20) days as required by *CCP Civil Rule 12(b)*. On May 11, 2012, Cotter and Campbell filed a response to the motion for default judgment, stating only: "The amended document relates back to the original filing date of the answer to complaint which is April 19, 2012." Cotter and Campbell did not attach any additional or amended documents to the response.

On May 15, 2012, Cotter and Campbell filed a motion to dismiss the appeal. In this motion, Cotter and Campbell argued that the contract is an agreement between Cotter and Kuehn. That Cotter's date of birth is March 26, 1993, thus age 17 when he entered into the contract on March 16, 2011, and as a minor, he lacked capacity to contract pursuant to *6 Del. C. § 2705*. On May 23, 2012, Kuehn filed a response, conceding Cotter was a minor when the contract was executed, but argues the complaint should not be dismissed because Cotter made a payment on the loan in April 2011 after his eighteenth (18th) birthday, thus ratifying the contract after reaching age of majority. Neither party has submitted a written document evidencing the alleged agreement.

On May 25, 2012, the Court held a hearing on Kuehn's motion for default judgment and Cotter and Campbell's motion to dismiss. Following oral argument, the Court held that under *6 Del. C. 2705*, the contract between Cotter and Kuehn was not valid. Because the Court found no contract existed between Cotter and Kuehn, the claim against Campbell was dismissed because she could not be a personal guaranty on a contract that did not exist.

On May 31, 2012, Kuehn filed a motion for reargument and on June 7, 2012, Cotter and Campbell filed responses.

Discussion

Court of Common Pleas ("CCP") Civil Rule 59(e) governs motions for reargument and provides:

[a] motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.

Motions for reargument are the device for seeking reconsideration by the trial court of its findings of fact, conclusions of law, or judgment.¹ The purpose of motions for reargument is to allow the trial court an opportunity to correct errors prior to appeal.² "New arguments, or arguments that could have been raised prior to the Court's decision, cannot be raised in a

¹ *Beatty v. Smedley*, 2003 WL 23353491, at *2 (Del. Super. Mar. 12, 2003).

² *Id.*

motion for reargument.”³ Motions for reargument “will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”⁴ “A motion for reargument is not intended to rehash the arguments already decided by the court.”⁵

a. Motion for Default Judgment

In consideration of the motion for default judgment, the Court did not misapprehend the law or the facts in its initial analysis of Kuehn’s motion for Default Judgment. CCP Civil Rule 8(b) governs the appropriate form of denials in responsive pleadings and provides as follows:

[a] party shall state in short and plain terms the party’s defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies... Denial shall fairly meet the substance of the averments denied... Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits[.]

When determining whether a pleading has met the rule requirements, “Delaware courts, in their discretion, look to the underlying substance of a *pro se* litigant’s filings rather than rejecting filings for formal defects and hold those *pro se* filings to ‘a somewhat less stringent technical standard’ than those drafted by lawyers.”⁶

³ *Citimortgage, Inc. v. Bishop*, 2011 WL 1205149, at *1 (Del. Super. Mar. 29, 2011).

⁴ *Beatty*, 2003 WL 23353491 at *2.

⁵ *Citimortgage*, 2011 WL 1205149 at *1.

⁶ *Sloan v. Segal*, 2008 WL 81513, at *7 (Del. Ch. Jan 3, 2008) (citations omitted).

Accordingly, the defendants' timely filed answer, while inartful, properly responds to the averments in the complaint. First, Rule 8(b) provides that answers may contain general denials. Thus, the answer is not improper because in one sentence it admits the contract and guaranty, but denies breach and the amount of damages alleged. It would be inconsistent with the policy of interpreting *pro se* pleadings to strike this answer and enter judgment by default, especially in light of the fact that this answer addresses each element of Kuehn's breach of contract claim by admitting the contract/guaranty, but denying breaching the terms of the contract and the amount of damages alleged. Therefore, Kuehn's motion for reargument dismissing his motion for default judgment is denied.

b. Motion to Dismiss

In considering motions to dismiss filed pursuant to *CCP Civil Rule 12(b)(6)*, the Court must assume that all well-pleaded facts in the complaint are true.⁷ The complaint should not be dismissed unless "the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible to proof."⁸

To state a claim upon which relief can be granted for breach of contract, the Plaintiff must allege that: (1) a contract exists between the parties; (2) the defendant(s) breached an obligation imposed by the contract; and (3) plaintiff incurred damages as a result of this breach.⁹

The provisions of 6 *Del. C.* § 2705 govern capacity to contract and provide that:

⁷ *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. 1982).

⁸ *Id.* (citations omitted).

⁹ *VLIW Tech., LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).

[a]ny person who has attained 18 years of age shall have full capacity to contract; provided such person has not been declared legally incompetent to contract for reasons other than age. Any person who has attained the age of 18 years shall become fully responsible for that person's own contracts.

The only case I have been able to find addressing the issue involving contracts executed by minors is *King v. Cordrey*, W.W. Harr. 418, 36 Del. 418, 177 A303 (1935). This case held that where a minor executed a warrant of attorney authorizing him to appear in Court and confess judgment against without service of process was not void but voidable. The majority opinion notes that the document was executed by a minor before he reached the age of 21.

Subsequent to this decision, decided by a divided court with Judge Rodney dissenting, the legislature enacted *6 Del. C. § 2705* which provided that only minors who have attained the age of 18 shall have full capacity to contract. The general rule is that, in the absence of a statute providing otherwise, the contract of an infant are not void but merely voidable. 43 CJ 5 2nd § 212. In this instance, the statute is abundantly clear that the capacity to contract requires the minor shall have attained the age of 18. It is only logical to conclude that the legislature was aware of the *King* case and decided against that approach, when it passed the statute

In this case, Kuehn alleged a loan agreement between him and Cotter with Campbell as a guarantor. He seeks damage for breach by Cotter in failing to make repayments. At the time of the agreement, Cotter lacked a capacity to contract, therefore, there can be no valid contract. Accordingly, since there is no valid contract Kuehn cannot establish an essential element of his case.

Conclusion

For the reasons set forth in this Opinion, it is hereby ORDERED that Kuehn's motion for reargument is hereby DENIED.

So Ordered this 20th day of July, 2012.

Alex Smalls,
Chief Judge.

Kuehn-OP July 2012