

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

SUSSEX PINES COUNTRY CLUB, INC.)	
)	
Plaintiff-below/Appellant,)	C.A. No. CPU6-12-000790
)	
v.)	
)	
BARRY KASPROW)	
)	
Defendant-below/Appellee,)	
)	

Submitted September 20, 2012
Decided October 11, 2012

Richard E. Berl, Jr., Esquire, Attorney for Plaintiff
Barry Kaspro, *pro se*

DECISION ON APPEAL FROM COMMISSIONER’S RECOMMENDATIONS

Defendant Barry Kaspro appealed the Commissioner’s Report recommending that his Motion to Dismiss be denied in this appeal *de novo* matter. After careful review of the record and submissions by the parties, the Court affirms the Commissioner’s recommendation for the reasons set forth herein.

FACTUAL BACKGROUND

This is a breach of contract action filed by Plaintiff Sussex Pines Country Club, Inc. against Defendant. Plaintiff’s complaint alleges that Defendant executed a Membership Agreement and that Defendant thereafter defaulted on said agreement. As a result of the default, it is alleged that Defendant owes Plaintiff a balance of \$1,955.50, plus interest and costs.

Plaintiff filed this *de novo* appeal of the Justice of the Peace Court’s decision on June 20, 2012. On July 24, 2012, Defendant filed an Answer and a Motion to Dismiss. Defendant’s motion essentially argues that Plaintiff failed to state a claim upon which relief can be granted pursuant to Court of Common

Pleas Civil Rule 12(b)(6). After a hearing, on September 10, 2012, the Commissioner issued his Report recommending that the motion be denied. Defendant has appealed that recommendation.¹

STANDARD OF REVIEW

A motion to dismiss is a case-dispositive determination. When reviewing a Commissioner's decision on a case-dispositive determination, the judge of the Court reviews the decision *de novo*. A judge may accept, reject, or modify in whole or in part the findings or recommendations made by the Commissioner.²

ANALYSIS

The threshold a plaintiff must meet to survive a motion to dismiss for failure to state a claim is low.³ The Court must accept all well-pleaded allegations of fact as true and draw all reasonable inferences in the Plaintiff's favor.⁴ Because Delaware is a notice pleading State, particularity in fact pleading is not required.⁵ A plaintiff must only "plead enough facts to plausibly suggest that the plaintiff will ultimately be entitled to the relief [sought]."⁶ A complaint for breach of contract is sufficient if it states, "first, the existence of the contract ...; second, the breach of an obligation imposed by that contract; and third, the resultant damage to the plaintiff."⁷

Plaintiff's complaint satisfies the foregoing standard. Plaintiff crossed the threshold by alleging that Defendant entered into a contract with Plaintiff, breached that contract, and that Plaintiff suffered damage as a result. Such a statement provided Defendant with fair notice of Plaintiff's claim against him.

Defendant also contends that reconsideration should be granted because: "(a) the failure of counsel for Plaintiff to include an Affidavit with his response, and (b) that the Response addressed facts

¹ Although Defendant captioned his pleading as a "Motion for Reconsideration," under CCP Civ. R. (A)(4)(ii), the pleading is actually an Appeal of the Commissioner's Report.

² *CCP Civ. R.* § 112(A)(4)(iv).

³ *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

⁴ *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

⁵ *Desimone v. Barrows*, 924 A.2d 908, 928 (Del. Ch. 2007).

⁶ *Desimone*, 924 A.2d at 929 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

⁷ *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

outside the pleadings”.⁸ As to the former, this Court’s Rules do not require Plaintiff to file an affidavit with its Response to an Appeal of the Commissioner’s Order. As to the latter, whether the Response addressed facts outside the pleadings is immaterial because the Court limits its evaluation to the pleadings in reviewing a Motion to Dismiss.

It appears that Defendant is concerned that Plaintiff did not submit proof of the claims arising in the Complaint. While the Plaintiff ultimately must prove those claims by a preponderance of the evidence, that burden of proof does not rest on the Plaintiff at this stage of the proceeding in defending a motion to dismiss.

Defendant further contends that his Motion to Dismiss should be interpreted as a Motion for Summary Judgment. Even if the Court were to treat the motion as one for summary judgment, defendant would not prevail.⁹ Court of Common Pleas Civil Rule 56(c) states that summary judgment is granted only if the pleadings “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” In reviewing the pleadings, “[a]ll facts are viewed in a light most favorable to the non-moving party.”¹⁰

The standard for granting a Motion for Summary Judgment is a two-fold inquiry. Judgment shall be rendered in favor of the moving party if: (1) the pleadings, depositions, and other documents, together with any affidavits show that there is *no genuine issue of material fact* and (2) the moving party is entitled to *judgment as a matter of law*.¹¹ If a material issue of fact exists, summary judgment is inappropriate.¹²

In determining a summary judgment motion, the Court’s responsibility is not to determine the truth of the matter at hand, but to determine whether a genuine issue of fact exists.¹³ Summary judgment may be granted where the evidence is “colorable” or “not significantly probative”, but may *not* be granted

⁸ See Defendant’s Motion for Reconsideration of Commissioner’s Order dated September 13, 2012.

⁹ *But see Appriva Shareholder Litigation Company, Inc. v. EV3, Inc.*, 937 A.2d 1275 (Del Super. 2007), holding that the Court may not consider a Rule 12(b)(6) motion as one for summary judgment under these circumstances.

¹⁰ *Dunn v. Vaudry*, 2011 WL 4638266 (Del. Super. 2011).

¹¹ CCP Civ. Rule 56 (c). (emphasis added).

¹² *Tingle v. Ellis*, Del. Super., C.A. No. 97C-11-020, Graves, J. (Aug. 10, 1999) (Mem. Op.).

¹³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

where there is sufficient evidence favoring the non-moving party so that the fact-finder could return a verdict in favor of that party.¹⁴

Viewing the evidence in the light most favorable to the non-moving party, there are potential material issues of fact that preclude the entry of summary judgment, including whether Defendant's obligations to Plaintiff were satisfied when he tendered his resignation, and whether he otherwise breached his Membership Agreement.

Plaintiff has stated a claim upon which relief may be granted and dismissal at this stage is not warranted. The Commissioner's Recommendation is AFFIRMED, and Defendant's motion to dismiss is DENIED.

IT IS SO ORDERED.

Kenneth S. Clark, Jr.
Judge

¹⁴ *Id.*