

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

CHARLES E. BUTLER  
JUDGE

August 23, 2016

NEW CASTLE COUNTY COURTHOUSE  
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**Re: *Christiansen v. Robbins Hose Co. No. 1***  
**C.A. No. N15C-12-109 CEB**

Counsel:

Pending before the Court is a Motion to Dismiss a lawsuit filed by Plaintiffs Sean and Elizabeth Christiansen against Robbins Hose Company ("Robbins"). The dispute arises from injuries Mr. Christiansen sustained when he responded to a fire in his capacity as a volunteer firefighter with Robbins.

The underlying facts are undisputed. Mr. Christiansen has been a volunteer firefighter with Robbins since 2004. Mr. Christiansen has also been employed with Aetna Hose, Hook & Ladder Company ("Aetna") as a full-time firefighter/EMT since April of 2004. On December 31, 2013, Mr. Christiansen was injured while responding to a fire as a volunteer with Robbins. Those injuries disabled Christiansen from performing his job duties and Aetna stopped paying him wages. Instead, he has received worker's compensation benefits from the State of Delaware pursuant to 19 *Del. C.* § 2312 as a volunteer member of Robbins. From the time of his injury through December 2014, Aetna also paid monthly premiums for healthcare insurance for the Christiansen family. According to the Complaint, in December 2014, Aetna stopped paying all health insurance

premiums and refused to pay Christiansen an expected “retention bonus” for the period of September 2013 through August 2014.

While his employment relationship was with Aetna, Christiansen’s suit here is against Robbins, alleging: (1) breach of fiduciary duty; (2) invasion of privacy; (3) interference with an employment relationship; and (4) defamation. Robbins has moved to dismiss Christiansen’s complaint pursuant to Superior Court Civil Rule 12(b)(6).

A motion to dismiss for failure to state a claim upon which relief can be granted made pursuant to Superior Court Rule 12(b)(6) will not be granted “unless it appears to a certainty that under no set of facts which could be proved to support the claim asserted would the plaintiff be entitled to relief.”<sup>1</sup> The Court must determine “whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”<sup>2</sup> When deciding a motion to dismiss, all well-pled allegations in the complaint must be accepted as true,<sup>3</sup> and every reasonable factual inference will be drawn in favor of the plaintiff.<sup>4</sup>

The Court may raise the issue of subject matter jurisdiction *sua sponte*.<sup>5</sup> Delaware Superior Court Civil Rule 12(h)(3) states: “Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.”

It is well-settled under Delaware law that breach of fiduciary duty is an equitable cause of action and the Court of Chancery has exclusive jurisdiction over

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<sup>1</sup> *Plant v. Catalytic Constr. Co.*, 287 A.2d 682, 686 (Del. Super. 1972) *aff’d* 297 A.2d 37 (Del. 1972).

<sup>2</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

<sup>3</sup> *Martin v. Widener Univ. Sch. of Law*, 1992 WL 153540, at \*2 (Del. Super. Ct. June 4, 1992) (citing *Am. Ins. Co. v. Material Transit, Inc.*, 446 A.2d 1101, 1102 (Del. Super. 1982)).

<sup>4</sup> *Master Mech. Inc. v. Shoal Constr., Inc.*, 2009 WL 1515591, at \*1 (Del. Super. May 29, 2009).

<sup>5</sup> *Boyce Thompson Inst. v. MedImmune, Inc.*, 2009 WL 1482237, at \*10 (Del. Super. May 19, 2009).

such a claim.<sup>6</sup> This is true even where the only remedy sought for the breach of fiduciary duty is money damages, because the claim arises out of a relationship that is equitable in nature.<sup>7</sup>

Christiansen states in his Complaint: “This Complaint contains mixed questions of law and equity such that Plaintiffs anticipate making application for the appointment of trial judge in this matter as a Vice Chancellor pursuant to Del. Const. Art. IV, section 13(2).” But so far as we can tell, that hasn’t happened. Until it does, this Court lacks jurisdiction to decide the issue.

If the Court were to dismiss the breach of fiduciary duty claim for lack of subject matter jurisdiction, Christiansen could transfer that claim to the Court of Chancery.<sup>8</sup> But that would likely lead to the parties litigating the same issues at the same time in different courts. To avoid the possibility of conflicting judgments and needless expense to the party, the Court will stay all proceedings in this case until the earlier of the following:

- (1) Christiansen demonstrates that this Court has been properly designated to hear and decide his equitable claim;
- (2) Christiansen requests this Court to transfer this civil action to the Court of Chancery pursuant to 10 *Del. C.* § 1902; or
- (3) Christiansen withdraws his equitable claim, such that this Court may proceed with the remaining legal claims.

**IT IS SO ORDERED.**

  
Judge Charles E. Butler

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<sup>6</sup> *Estate of Buonamici v. Morici*, 2009 WL 792390, at \*1 (Del. Super. Mar. 25, 2009).

<sup>7</sup> *Dickerson v. Murray*, 2015 WL 447607, at \*6 (Del. Super. Feb. 3, 2015).

<sup>8</sup> 10 *Del. C.* § 1902.