



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

October 31, 2006

Henry A. Heiman, Esquire
Heiman, Gouge & Kaufman, LLP
800 N. King Street, Suite 303
P.O. Box 1674
Wilmington, DE 19899-1674

Deirdre M. Richards, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
3 Mill Road, Suite 306A
Wilmington, DE 19806

Re: Healy v. Healy
C.A. No. 19816-NC
Dated Submitted: July 24, 2006

Dear Counsel:

This is an action for equitable contribution brought by two guarantors
against a third guarantor.

I. BACKGROUND

Michael Healy (“Michael”) and Plaintiff James V. Healy (“James”) are brothers and owned a construction company known as The Healy Group, Inc. which did business through two wholly-owned subsidiaries, Healy Management Services and John E. Healy & Sons, Inc. (collectively, the “Healy Companies”). Plaintiff Sylvia T. Healy (“Sylvia”) is James’s wife. Defendant Janet B. Healy (“Janet”) is Michael’s wife.

During 1998 and 1999, the Healy Companies entered into contracts for several construction projects supported by performance and payment bonds issued by Travelers Casualty and Surety Company of America (“Travelers”). Travelers, apparently uncomfortable with the financial status of the Healy Companies, required additional security for its undertaking, and Buckley & Company, Inc. (“Buckley”) agreed to indemnify Travelers in the event that claims were successfully placed against the bonds. Buckley, however, required James, Michael, Sylvia, and Janet (and others) to enter into guaranty agreements under which they would be obligated to reimburse Buckley for any payments that Buckley was required to make to Travelers. Buckley did make payments under its indemnity agreement to Travelers and obtained a judgment against the four

guarantors for \$925,000. That amount was negotiated down to \$750,000. James and Sylvia have paid Buckley \$389,212.¹

In addition, the Healy Companies borrowed substantial sums from Wilmington Savings Fund Society (“WSFS”). James, Sylvia, Michael, and Janet, together with others, guaranteed repayment of the WSFS loans. When the Healy Companies defaulted on the loans, WSFS settled its claims by accepting payment in the amount of \$909,203 from James and Sylvia and a mortgage on real estate solely owned by Sylvia.

James and Sylvia brought this action against Janet to obtain reimbursement from her of their payments in excess of a fair and equitable allocation of the guaranty obligations among them.² Sylvia now seeks partial summary judgment against Janet as to Janet’s liability (but not the amount thereof) to Sylvia.

II. CONTENTIONS

Sylvia is seeking equitable contribution from Janet for payments she has made under their jointly executed guaranty of Healy Companies’ debt. With her

¹ There is a discrepancy between the Complaint and James’s Affidavit. Although it is immaterial for current purposes, the Complaint lists the payment amount as \$398,212; the Affidavit shows the payment as \$389,212.

² James and Sylvia could not seek recovery from Michael because his obligations have been discharged in bankruptcy.

October 31, 2006

Page 4

motion for partial summary judgment, Sylvia seeks a judgment of liability against Janet. To follow would be a hearing to determine the amount of that liability. She alleges that Janet, as one of three guarantors, is responsible for one-third of all payments pursuant to the guaranties, or \$553,067.67.

Janet claims that she has already paid \$260,000 and should no longer be liable under any guaranty for any additional payments. She alleges that, in any event, James defrauded her and she has a claim in setoff against both plaintiffs which would extinguish any liability to them under the guaranty. In addition, Janet argues that Sylvia's claim is barred by the doctrine of unclean hands because Sylvia used corporate resources of the Healy Companies for her own personal construction jobs and she participated in James's fraudulent preparation of financial documents and manipulation of pension funds. She also alleges that Sylvia's claim is not ripe for judicial consideration because the granting of a mortgage (without payment or subsequent foreclosure) cannot be counted as payment toward the joint obligation. Janet finally argues that efficient case management would require keeping Sylvia as a party, thereby making inadvisable the separate relief sought by Sylvia.

III. ANALYSIS

A. *Applicable Standard*

Motions for summary judgment are, of course, evaluated under Court of Chancery Rule 56. If there are no genuine, material issues of fact, a party may obtain summary judgment if it is entitled to judgment as a matter of law. When assessing a motion for summary judgment, the Court must view the facts in the light most favorable to the nonmoving party.³ In order to withstand a motion for summary judgment, the moving party is required to present some evidence, either direct or circumstantial, to support all of the elements of the claim. A motion for summary judgment is properly denied if the moving party fails to make a showing sufficient to establish the existence of each element essential to the party's case.⁴ Also, "[o]nce the moving party presents evidence that if undisputed would entitle it to summary judgment, the burden then shifts to the opposing party to dispute the facts by affidavit or proof of similar weight."⁵ A party invoking an affirmative defense and seeking to avoid a summary judgment on that defense bears the burden of producing evidence that rationally creates a triable issue of fact regarding the

³ *Judah v. Del. Trust Co.*, 378 A.2d 624, 632 (Del. 1977).

⁴ *Watson v. Taylor*, 2003 WL 21810822, at *2 (Del. Aug. 4, 2003).

⁵ *Fleet Fin. Group, Inc. v. Advanta Corp.*, 2001 WL 1360119, at *1 n. 4 (Del. Ch. Nov. 2, 2001).

sustainability of its affirmative defense.⁶ A motion for summary judgment does not allow the Court to weigh the evidence.⁷

B. Sylvia's alleged inequitable conduct and her right to equitable contribution

Equity requires that “when a party who seeks relief in this Court ‘has violated conscience or good faith or other equitable principles in his conduct, then the doors of the Court of Equity should be shut against him.’”⁸ The notion of a “no harm, no foul” exception to the application of this doctrine has been rejected.⁹ Fraud will typically suffice to hold a party ineligible for relief under the unclean hands doctrine.¹⁰

Janet asserts that Sylvia (1) used Healy & Sons laborers for her own personal construction business, (2) participated in the preparation of Healy

⁶ *Milford Power Co., LLC v. PDC Milford Power, LLC*, 866 A.2d 738, 746 (Del. Ch. 2004).

⁷ *Sikander v City of Wilmington*, 2005 WL 1953040, at *2 (Del. Super. 2005).

⁸ *Monsanto Co. v. Rohm & Haas Co.*, 456 F.2d 592, 598 (3d Cir. 1971) (“It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. . . . In fashioning a remedy for unclean hands, the Court has a wide range of discretion in refusing to aid the “unclean litigant.”). *See, E.J. Stephen, Inc. v. Ceccola*, 1984 WL 8238, at *817 (Del. Ch. July 9, 1984) (*citing Bodley v. Jones*, 59 A.2d 463 (Del. 1947)); *ONTI, Inc. v. Integra Bank*, Del. Ch., 1998 WL 671263, at *3 (Aug. 25, 1998).

⁹ *Nakahara v. The NS 1991 Am. Trust*, 739 A.2d 770, 791 (Del. Ch. 1998). “Equity does not reward those who act inequitably, even if it can be said that no tangible injury resulted.” *Id.* at 794.

¹⁰ *Ryan v. Ryan*, 1992 WL 2556, at *1 (Del. Ch. Jan. 8, 1992); *Derickson v. Derickson*, 281 A.2d 487, 488 (Del. Ch. 1971).

Companies' financial statements which were materially misleading in that they failed to include pension misappropriations, and (3) used Healy & Sons equipment for personal use. Janet relies upon her deposition testimony and that of her husband to the effect that Sylvia used the business facsimile machine, had invoices sent to Healy & Sons, and utilized employees of Healy and Sons in her own personal construction projects.

Although Janet's contentions are far from compelling, the Court cannot conclude, after accepting Janet's factual assertions and giving her the favorable inferences that can reasonably be drawn from those facts, that Sylvia is entitled to judgment as a matter of law. The "facts" upon which Janet relies border on the speculative and may not withstand the process of trial, but that is the point: trial is the appropriate stage for resolving these issues.¹¹ Janet presents the following circumstantial evidence to support her defense: Sylvia used the facsimile machine at her husband's office, was frequently at her husband's office, and on occasion the laborers employed by Healy & Sons could also be found working on construction jobs for Sylvia Healy.¹² To resist Sylvia's motion, Janet merely needed to sponsor

¹¹ Another question that may be significant is whether the "unclean hands" conduct "relate[s] directly to the matter in controversy." *Nakahara*, 739 A.2d at 792 & n.107.

¹² Deposition of Michael Healy at 3-5; Deposition of Janet Healy at 8-12.

evidence that rationally creates a triable issue of fact regarding her affirmative defense, which she has achieved with the deposition testimony presented to the Court.¹³

The Court notes that Janet presented no evidence to support her allegation that Sylvia participated in the preparation of Healy Companies' falsified financial statements. Therefore, that contention played no part in this ruling.

IV. CONCLUSION

For the reasons set forth above, Plaintiff Sylvia T. Healy's Motion for Partial Summary Judgment is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-NC

¹³ See *Milford Power Co., LLC*, 866 A.2d at 746.