

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

DELAWARE BROADCASTING CO.,)	
)	
Plaintiff Below,)	
Appellant,)	
)	
v.)	C.A. No. 2002-01-293
)	
MAYNARD'S)	
)	
Defendant Below,)	
Appellee.)	
)	
DELAWARE BROADCASTING CO.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2002-04-125
)	
MAYNARD'S PIANO BAR)	
RESTAURANT, LLC.,)	
)	
Defendant.)	

Submitted: August 13, 2004
Decided: August 23, 2004

Stanley C. Lowicki, Esquire
The Janeve Building
830 West Street
Wilmington, DE 19801
Attorney for Plaintiff

Lacy E. Holly, III, Esquire
Houghton, Holly & Gray, LLP
603 Main Street, P.O. Box 700
Odessa, DE 19730
Attorney for Defendant

ON PLAINTIFF'S PENDING MOTIONS

COMES NOW, the Court finds as follows:

1) The proceeding under Civil Action No. 2002-01-293 is an appeal from Justice of the Peace Court docketed on January 24, 2002. In that proceeding, Plaintiff sought monetary damages in the amount of \$5,100.00 for advertising services provided. The Justice of the Peace Court entered judgment for the defendant on January 11, 2002 and plaintiff brought this appeal.

2) In the Justice of the Peace Court proceeding, Defendant attempted to bring a counterclaim against Plaintiff seeking damages in the amount of \$15,000.00 for reckless and impermissible debt collection actions. In that allegation, Defendant avers that it was named as Maynard's in the proceeding, but it was incorporated as Maynard's Piano Bar with its principle place of business at 423 North Broad Street, Middletown, Delaware 19709. Defendant's counterclaim was denied by the Justice of the Peace Court on January 10, 2002 as untimely under J.P. Court Civil Rule 14(A).

3) On January 24, 2002, Plaintiff filed its Complaint on appeal in this Court seeking damages in the amount of \$5,100.00, for breach of contract.

4) On July 22, 2002, defendant filed an Answer, which included various general affirmative defenses. One such defense avers that there is no legal entity as "Maynard's", and seeks dismissal of the Complaint.

5) On April 9, 2002, Plaintiff filed a separate action which is docketed under Case No. 2002-04-125 and captioned “Delaware Broadcasting, Co. v. Maynard’s Piano Bar Restaurant, LLC.” In that proceeding, Delaware Broadcasting Co. seeks contractual damages in the amount of \$5,100.00 for advertising services allegedly rendered to Maynard’s Piano Bar Restaurant, LLC.

6) In an Order issued October 10, 2003, this Court dismissed the case filed under Civil Action No. 2002-04-125. Plaintiff’s Motion for Reargument was denied by order of this Court on August 13, 2004. Delaware Broadcasting Co. v. Maynard’s Piano Bar Restaurant, LLC, Flickinger J., Order 2002-04-125. Therefore, as a result of this order, the only case pending in these proceedings is Civil Action No. 2002-01-293, which is the appeal from the Justice of the Peace Court.

7) Plaintiff and Defendant filed several motions in the pending action which were stayed until the motion for reargument on the Court Order dismissing Civil Action No. 2002-04-125 was decided. That matter having been considered and decided, the pending motions are now appropriate for consideration and are decided as follows:

(a) Defendant’s request for document production dated December 30, 2003 and request for Interrogatories dated December 30, 2003 was dismissed by this Court on January 23, 2004. That order is not subject to reconsideration and these requests are not subject to renewal and pending motions are dismissed.

(b) Defendant's motion to dismiss these proceedings on the basis that there is no legal entity such as "Maynard" was considered by this Court on September 12, 2003, and denied. That order is not subject to reconsideration or renewal. Therefore, Defendant's Motion to Dismiss is Denied.

(c) Plaintiff's motion for deposition and subpoena duces tecum dated January 23, 2004 was withdrawn. Therefore, that issue is moot.

(d) Plaintiff moves to amend the caption of these proceedings to change the named defendant from "Maynard" to "Maynard's Piano Bar & Restaurant, LLC." Defendant opposes the motion on the basis that the mirror image rule set forth in Dzedzej v. Prusinski, Del. Supr., 259 A.2d 384, (1969) requires an appeal from the Justice of the Peace Court have the same parties and the same issues as below. There is one case to the contrary on this issue, but I do not find it controlling. I find that to grant the motion would permit plaintiff to theoretically add a party who was not in the litigation below. Therefore, the motion is Denied.

Accordingly, there being no outstanding pending matters in this proceeding, the Clerk shall schedule this case for trial.

So Ordered this 23rd day of August, 2004

Alex J. Smalls
Chief Judge

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