

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

CENDANT CORPORATION,)	
)	
Plaintiff,)	
)	
5.)	C.A. No. 98C-10-034 HLA
)	
COMMONWEALTH GENERAL CORPORATION,)	
)	
Defendant.)	

Date Submitted: September 7, 2001

Date Decided: November 19, 2001

ORDER

UPON DEFENDANT’S MOTION TO AMEND

GRANTED IN PART, DENIED IN PART

On this 19th day of November 2001, upon consideration of the Motion to Amend filed by Defendant, the response by Plaintiff and the oral argument, it appears to the Court that:

(1) This action was filed on October 5, 1998 by Cendant Corporation (“Plaintiff”) against Commonwealth General Corporation (“Defendant”). On November 17, 1998, Defendant filed its Answer and a Counterclaim. Defendant now moves this

Court to allow leave to amend that Counterclaim based on facts discovered during discovery.

(2) Pursuant to Superior Court Civil Rule 15(a) a motion to amend the pleadings will be freely granted when justice so requires. In the absence of serious prejudice to the non-amending party, amendments should be liberally allowed by the courts.¹ Here, the Plaintiff has not challenged Defendant's motion as prejudicial. Rather, Plaintiff contests the sufficiency of the pleading. When the amended pleading is insufficient on its face, the amended pleading may be dismissed.²

¹ *Paul v. Chromalytics Corp.*, Del. Super., 343 A.2d 622 (1975).

² *Itek Corp. v. Chicago Aerial Indus., Inc.*, Del. Super., 257 A.2d 232 (1969).

(3) Pursuant to Superior Court Civil Rule 9(g) damages are demanded generally, except for special damages which are pled specifically. “General damages are those necessarily and naturally resulting from the wrongful act or omission or which may be legally implied therefrom.”³ “Special damages are those that are the natural, but not the necessary result of the act complained of. Consequently, they are not * * * implied by law.”⁴ Defendant only cites one case which supports its contention that punitive damages are special damages and should be pled specifically.⁵ However, in that opinion the issue of punitive damages was not before this Court, thus any comment made by the Judge was only *dicta* and the Court need not rely on it. In Delaware, it has become practice to leave the amount of punitive damages to the sound judgement of the jury.⁶ In *Farrell*, the Court refused to allow an expert witness to testify as to the minimum amount of punitive damages as it would suggest a figure of punitive damages that the jury should award.⁷

³ *Twin Coach Co. v. Chance Vought Aircraft*, Del. Super., 163 A.2d 278, 286 (1960) (citations omitted).

⁴ *Id.*

⁵ *Ryan v. Delaware Authority for Regional Transit, et al.*, Del. Super., C.A. No. 78C-AP-114, Bifferato, J. (March 18, 1985).

⁶ *Guthridge v. Pen-Mod, Inc.* Del. Super., 239 A.2d 709, 713 (1967); *Farrell v. A.C. & S. Co., Inc.*, Del. Super., C.A. No. 85C-FE-10, Taylor, J. (June 12, 1989).

⁷ *Farrell* at *10.

(4) The Court takes the position that punitive damages should be pled generally. Thus, Defendant may not amend its Counterclaim Prayer to include a specific dollar amount for its punitive damage claim, but may amend to add a prayer for punitive damages generally.

(5) In its Response to Defendant's Motion to Amend, Plaintiff raised the issue of whether Defendant should be allowed to plead \$219 million in compensatory damages. Plaintiff alleges that this number is knowingly false and thus should not be allowed. Allegations in pleadings may be stricken when they are redundant, immaterial, or scandalous.⁸ Such motions to strike are traditionally disfavored and should only be granted if prejudice will result to the moving party if the allegation is left.⁹ Plaintiff has shown a factual basis to support the allegation. Thus, at this stage the Court will not strike the demanded damages; however, if it later becomes clear that no factual basis exists to support the claim, then Plaintiff may move to strike that allegation or file a motion in limine to keep the prayer from the jury.

For the aforementioned reasons, Defendant's Motion to Amend is **DENIED IN PART, GRANTED IN PART.**

IT IS SO ORDERED.

⁸ Superior Court Civil Rule 12(f).

⁹ *See Fowler v. Mumford*, Del. Super., 102 A.2d 535, 538 (1954).

Cendant Corp. v. Commonwealth General Corp.

C.A. No. 98C-10-034 HLA

November 19, 2001

Page 5

ALFORD, J.

ORIGINAL: PROTHONOTARY'S OFFICE - CIVIL DIV.