

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**DANNY K. CARROLL, M.D.,** )  
 )  
**Plaintiff,** )  
 )  
**v.** )  
 )  
**DANNY RAY, and VICTORY FARMS** )  
**STALLION STATION, INC.,** )  
 )  
**Defendants.** )

**Case No. CIV-15-99-RAW**

**ORDER**

Before the court is the motion of the plaintiff for partial judgment on the pleadings pursuant to Rule 12(c) F.R.Cv.P. Plaintiff brings this lawsuit arising out of the joint ownership of a horse by plaintiff and defendant Ray. Plaintiff brings claims for, *inter alia*, breach of contract. The written agreement between the parties includes a “buy/sell provision” which plaintiff alleges defendant breached. Defendant Ray answered the complaint and brought a counterclaim against plaintiff for breach of contract. Defendant alleged that plaintiff (1) breached his “duty of good faith and fair dealing” implicit in the contract and (2) breached his oral agreement to sell his ½ interest in the horse for a certain price.

A motion for judgment on the pleadings is evaluated under the same standard as a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 n.2 (10<sup>th</sup> Cir.2002). In the present motion, plaintiff asserts that the written agreement between the parties qualifies as a sale of “goods” under the UCC.

Therefore, plaintiff argues, the alleged oral agreement is unenforceable under the applicable statute of frauds. *See* 12A O.S. §2-201(1). In response, defendant Ray concedes the point, but maintains his argument regarding alleged breach of good faith and fair dealing.

It is the order of the court that the plaintiff's motion for partial judgment on the pleadings (#14) is hereby granted. Defendant's counterclaim (#11) remains pending, but is dismissed to the extent it seeks to recover directly upon an alleged oral agreement.

**ORDERED THIS 29th DAY OF JULY, 2015.**

**Dated this 29<sup>th</sup> day of July, 2015.**

A handwritten signature in cursive script, reading "Ronald A. White", written over a horizontal line.

Ronald A. White  
United States District Judge  
Eastern District of Oklahoma