

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: CV-11-209
JON - YORK - 3/15/2012

WILLIAM I. JOHNSON,

Plaintiff,

v.

DANA E. JOHNSON and
LINDA J. OUELLETTE,

Defendants,

ESTATE OF EMERSON JOHNSON,
ESTATE OF ETHEL J. IRVING, DANA
JOHNSON, and LINDA J. OUELLETTE

Counterclaim Plaintiffs,

v.

WILLIAM I. JOHNSON

Counterclaim Defendant,

and

JO ROSEN JOHNSON

Third-Party Defendant and
Counterclaim Defendant,

and

ELEANOR PHINNEY

Party-in-Interest,

**ORDER ON COUNTERCLAIM DEFENDANT'S MOTION FOR A
MORE DEFINITE STATEMENT**

Counterclaim Defendant, William I. Johnson, and Third-Party and
Counterclaim Defendant, Jo Rosen Johnson, move this court to order a more
definite statement of the allegations in the Counterclaim, pursuant to M.R. Civ.

P. 12(e). The motion has been fully briefed by the parties and oral argument was held on March 8, 2012.

BACKGROUND

The Plaintiff, William Johnson, and the Defendants, Dana Johnson and Linda Ouellette, are siblings. Emerson Johnson and Ethel Irving, both deceased, are the parties' father and mother, respectively. This case was brought by William Johnson against his siblings, who are the personal representatives of their parents' respective estates, seeking remedies for alleged tortious interference with an expected inheritance, seeking constructive trust, and seeking the return of certain personal property. The Defendants brought a Third-Party Complaint against William Johnson's wife, Jo Rosen Johnson, and a Counterclaim against both William and Jo Johnson. This pleading consists of ten (10) counts and seventy-two (72) numbered paragraphs. The Counterclaim Defendants now move for a more definite statement. They have isolated twenty-seven (27) statements and argued that these paragraphs do not meet the notice pleading standards of M.R. Civ. P. 8(a), and in certain circumstances M.R. Civ. P. 9(b), (f), and (g).

DISCUSSION

A motion for a more definite statement "is not a bill of particulars of pre-Rules practice designed to enable the defendant to be better prepared for trial." 2 Harvey, *Maine Civil Practice* § 12:16 at 431 (3d. ed. 2011). That is left to discovery proceedings. Instead, the motion is only available when the party required to make a responsive pleading cannot reasonably be required to frame his answer because of vagueness or ambiguity, rather than simple lack of detail. *Haghkerdar v. Husson College*, 226 F.R.D. 12, 14 (D. Me. 2005). The Law Court has stated that

a 12(e) motion is appropriate in a case in which a party felt there was “any doubt” as to what a party was seeking; that is, where there is doubt as to what issues must be met. *Nemon v. Summit Floors, Inc.*, 520 A.2d 1310, 1314 (Me. 1987).

On the other hand, the Maine Rules of Civil Procedure also require a plaintiff to plead certain allegations “with particularity.” See M.R. Civ. P. 9. When pleading fraud or mistake, the fraud and the circumstances surrounding the fraud must be stated with particularity such that the defendant is aware of the actions or circumstances that must be explained or denied but it should not be overburdened with detail. Harvey § 9.2 at 383. Not all failures to plead within Rule 9(b) are so vague as to warrant an order for a more definite statement under 12(e).

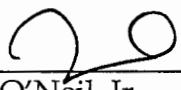
The Counterclaim, in general, is not so defective as to warrant the granting of the motion for a more definite statement. The Counterclaim Plaintiffs have alleged specific actions taken by William and Jo Johnson, including but not limited to, unauthorized acquisition of property described in the attached exhibits (Counterclaim ¶ 7), misrepresentation of the value of assets transferred for safe-keeping (Counterclaim ¶ 12), acquisition of real property by forgery or undue influence (Counterclaim ¶ 14), and breach of fiduciary duty under a power of attorney (Counterclaim ¶ 27). Although some of the fraud allegations do not meet the Rule 9 requirements, they are not so vague as to require a more definite statement. The court finds that the specific details of these numerous allegations and counts can be better established through discovery. Given the number of counts and the apparently extensive factual record to be developed, the court is willing to allow a more liberal discovery process than allowed under the Maine Rules of Civil Procedure.

However, the claim stated in Count 10, "Third-Party Claim" against Jo Johnson is so vague and ambiguous that it does not meet the "intelligible" standard of M.R. Civ. P. 12(e). Earlier paragraphs allege that "Jo Johnson is jointly and severally liable for any judgment that Dana Johnson or Linda Ouellette may owe to William Johnson." (Counterclaim ¶ 4.) Again, under Count 10, the Counterclaim Plaintiffs state that they are "entitled to recover all or part of what William Johnson may recover from them, from Jo Johnson." (Counterclaim ¶ 72.) Nowhere in this extensive pleading do the Counterclaim Plaintiffs assert a basis on which Jo Johnson may be held to be jointly and severally liable for any amounts ultimately adjudged owed to William Johnson. This does not meet the standard of notice pleading because there is no way for the Third-Party Defendant to know what is being asserted against her and she cannot be expected to make a reasonable response to such a vague allegation.

The Third-Party Defendant's motion is GRANTED only with respect to Count 10. The Counterclaim Plaintiffs are ORDERED to serve a more definite statement of the basis for its third-party claim against Third-Party Defendant, Jo Johnson within 10 days of receipt of this order.

The Clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

DATE: 3/15/12



John O'Neil, Jr.
Justice, Superior Court

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