

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

E. AARON ENTERPRISES, INC.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
FRANK AMBROSE, INC. D/B/A	:	No. 2918 EDA 2011
AMBROSE INTERNATIONAL AND	:	
AMBROSE INTERNATIONAL AND	:	
FLORIDA PAPER, INC., D/B/A ARTHUR'S	:	
PAPER	:	

Appeal from the Order Entered October 5, 2011,
in the Court of Common Pleas of Montgomery County
Civil Division at No. 08-22659

BEFORE: STEVENS, P.J., FORD ELLIOTT, P.J.E., AND ALLEN, J.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: Filed: February 14, 2013

E. Aaron Enterprises, Inc. ("EAE") appeals from the order entered October 5, 2011, granting summary judgment in favor of defendants/appellees. We affirm.

EAE initiated this breach of contract and unjust enrichment action by filing a Complaint against Defendants on August 12, 2008. EAE asserted a claim of \$67,666.01, plus an "approximate amount of \$10,000" in costs and attorneys fees.[Footnote 2] [Am. Compl., Ex. B.] EAE filed an Amended Complaint, *sua sponte*, on August 26, 2008. The sums sought by EAE are allegedly owed pursuant to a "Credit Application" from Defendant, Florida Paper, Inc. d/b/a Arthur's Paper ("Florida Paper"). The Credit Application was executed by Jeffrey Wagenberg, who is identified on the application as

“COO Ambrose International” (“Ambrose Int’l”). [Footnote 3] [Am. Compl., Ex. A].

[Footnote 2] [Pl.’s Am. Compl. at ¶ 16].

[Footnote 3] [Pl.’s Supp. Reply to Defs.’ Prelim. Obj., Wagenberg Dep., filed 10/23/09].

Trial court opinion, 5/10/12 at 1-2 (bracketed information in original).

On October 5, 2011, the trial court granted appellees’ motion for summary judgment, finding that EAE lacked standing to bring the instant lawsuit. The underlying sale was made by a non-party entity, Priority Papers, Inc. (“Priority”). (*Id.* at 2.) However, nowhere in EAE’s amended complaint does it mention Priority or aver how EAE is related to Priority, such that it should be permitted to sue on Priority’s behalf. (*Id.*) Reconsideration was denied, and this timely appeal followed.

EAE presents the following issues for this court’s review:

1. Whether the Trial Court erred in granting Summary Judgment in favor of Defendants on Plaintiff’s breach of contract claim?
2. Whether the Trial Court erred in granting Summary Judgment in favor of Defendants on Plaintiff’s unjust enrichment claim?
3. Whether the Trial Court abused its discretion in denying Plaintiff’s Motion for Reconsideration?
4. Whether the Trial Court abused its discretion by granting Summary Judgment in favor of Defendants when it was determined that an indispensable party had not been joined to the action?

EAE’s brief at 4.

Initially, we note:

Our scope of review of a trial court's order disposing of a motion for summary judgment is plenary. Accordingly, we must consider the order in the context of the entire record. Our standard of review is the same as that of the trial court; thus, we determine whether the record documents a question of material fact concerning an element of the claim or defense at issue. If no such question appears, the court must then determine whether the moving party is entitled to judgment on the basis of substantive law. Conversely, if a question of material fact is apparent, the court must defer the question for consideration of a jury and deny the motion for summary judgment. We will reverse the resulting order only where it is established that the court committed an error of law or clearly abused its discretion.

Grimminger v. Maitra, 887 A.2d 276, 279 (Pa.Super.2005) (quotation omitted). “[Moreover,] we will view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.” ***Evans v. Sodexho***, 946 A.2d 733, 739 (Pa.Super.2008) (quotation omitted).

Ford Motor Co. v. Buseman, 954 A.2d 580, 582-583 (Pa.Super. 2008), ***appeal denied***, 601 Pa. 679, 970 A.2d 431 (2009).

We have stated as a general policy that “[a] party seeking judicial resolution of a controversy in this Commonwealth must, as a prerequisite, establish that he has standing to maintain the action.” ***Bergdoll v. Kane***, 557 Pa. 72, 731 A.2d 1261, 1268 (1999) (citation omitted). Our Commonwealth's standing doctrine is not a senseless restriction on the

utilization of judicial resources; rather, it is a prudential, judicially-created tool meant to winnow out those matters in which the litigants have no direct interest in pursuing the matter. Such a requirement is critical because only when "parties have sufficient interest in a matter [is it] ensure[d] that there is a legitimate controversy before the court." *In re T.J.*, 559 Pa. 118, 739 A.2d 478, 481 (1999).

In re Hickson, 573 Pa. 127, 135-136, 821 A.2d 1238, 1243 (2003)

(footnote omitted).

In practical terms, we are assured that there is a legitimate controversy if the proponent of a legal action has somehow been "aggrieved" by the matter he seeks to challenge. *Independent State Store Union v. Pennsylvania Liquor Control Board*, 495 Pa. 145, 432 A.2d 1375 (1981). A litigant can establish that he has been "aggrieved" if he can show that he has a substantial, direct and immediate interest in the outcome of the litigation in order to be deemed to have standing. *Bergdoll*[, *supra*].

Id. at 136, 821 A.2d at 1243.

Here, as the trial court states, the invoices clearly identify Priority, not EAE, as the seller of the paper. (Trial court opinion, 5/10/12 at 4-5; amended complaint, 8/26/08, Exhibit B.) EAE is not referenced anywhere on the invoices. In addition, the credit application does not refer to Priority. The credit application is between EAE and Florida Paper. (*Id.* at 4; amended complaint, 8/26/08, Exhibit A.) Without some explanation as to the legal relationship between EAE and Priority, EAE cannot seek to recover on Priority's behalf. All the evidence suggests that Priority, not EAE, is the aggrieved party. Priority was the supplier of the paper products for which

payment is sought. EAE has failed to provide any evidence whatsoever to support its position that it has the requisite standing to sue on behalf of Priority. EAE relies on the credit agreement, but as the trial court observes, EAE has not established any nexus between the credit agreement and the subsequent invoices for paper sold by Priority. (*Id.* at 7.) There is nothing to suggest that Priority was made a party to the credit application. (*Id.* at 6.) As such, the trial court did not err in granting summary judgment for appellees.

In its third issue on appeal, EAE argues that the trial court should have granted its motion for reconsideration. EAE contends that the trial court abused its discretion in refusing to grant reconsideration and consolidating the instant suit with an identical action filed by Priority following oral argument on appellees' summary judgment motion but before entry of the judgment. (EAE's brief at 16.) However, Pennsylvania case law is clear that the refusal of a trial court to reconsider, rehear, or permit reargument of a final decree is not an appealable order. *Provident Nat. Bank v. Rooklin*, 378 A.2d 893, 897 (Pa.Super. 1977). Even if we were to consider appellant's consolidation issue, we would not find an abuse of discretion on the record before the court.

Finally, EAE argues that the trial court should not have granted summary judgment on the grounds that Priority was an indispensable party. (EAE's brief at 18-20.) Rather, the trial court should have dismissed the

action without prejudice and allowed EAE to join Priority. (*Id.*); *see* Pa.R.C.P., Rule 1032(b), 42 Pa.C.S.A. (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, the court shall order that the action be transferred to a court of the Commonwealth which has jurisdiction or that the indispensable party be joined, but if that is not possible, then it shall dismiss the action.”).

The trial court did not grant summary judgment on the basis that Priority was an indispensable party; rather, the trial court found that EAE failed to establish that it had standing to bring the action in the first place. EAE cites the trial court’s reference in its opinion to “Priority’s indispensable relationship to the underlying lawsuit.” (Trial court opinion, 5/10/12 at 2.) However, taken in context, it is clear that the trial court was explaining why EAE lacked standing. (*Id.*) The trial court did not engage in an indispensable party analysis pursuant to Rule 1032(b).

The aggrieved party in this case was Priority. EAE failed to aver the existence of any legal relationship between itself and Priority sufficient to confer standing to sue on Priority’s behalf. Therefore, the trial court did not err in granting summary judgment for appellees on this basis.

Order affirmed.