

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEERE & COMPANY, et al.	:	CIVIL ACTION
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	:	
v.	:	
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LAWRENCE G. REINHOLD	:	NO. 99-CV-6313

MEMORANDUM

Padova, J.

April 24, 2000

Plaintiff, Deere Credit, Inc., filed the instant action against Defendant Lawrence Reinhold. The Complaint alleges that Defendant, an attorney licensed to practice in Pennsylvania, acted negligently when representing Plaintiff's interests in a lawsuit against a delinquent customer, Raymond Kijak, and converted legal files belonging to Plaintiff. Defendant filed a Motion for Summary Judgment on April 3, 2000. Plaintiff filed both a Response to Defendant's Motion and an Amended Complaint on April 14, 2000. Defendant then filed a Motion to Strike the Amended Complaint. For the following reasons, the Court denies both of Defendant's Motions and grants Plaintiff leave to amend the Complaint.

II. Amended Complaint

Before proceeding with the analysis of the Motion for Summary Judgment, the Court will address Defendant's Motion to Strike the Amended Complaint. Defendant requests the Court

strike the Amended Complaint from the record because Plaintiff failed to obtain leave of the Court prior to its filing.

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading after a responsive pleading is served only by leave of the court. Fed. R. Civ. P. 15(a). District courts are obligated to grant leave freely “when justice so requires.” Fed. R. Civ. P. 15(a). Although decisions on motions to amend are committed to the sound discretion of the district court, Gay v. Petsock, 917 F.2d 768, 772 (3d Cir. 1990), courts liberally allow amendments when “justice so requires,” and when the non-moving party is not prejudiced by the allowance of the amendment. Thomas v. State Farm Ins. Co., No. CIV. A. 99-CV-2268, 1999 WL 1018279, at *3 (E.D.Pa. Nov. 5, 1999).

In Foman v. Davis, 371 U.S. 178 (1962), the United States Supreme Court identified a number of factors to be considered in ruling on a motion to amend under Rule 15(a):

In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc – the leave sought should, as the rules require, be “freely given.”

Id. at 182; accord Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993). Thus, leave to amend may be denied where there is undue delay or prejudice. Lorenz, 1 F.3d at 1413. The question of undue delay and bad faith centers on the plaintiff’s motives for not amending the complaint earlier, while the issue of prejudice focuses on the effect of amendment on the defendant. Mamiye & Sons, Inc. v. Fidelity Bank, 813 F.2d 610, 614 (3d Cir. 1987).

The United States Court of Appeals for the Third Circuit has emphasized that “prejudice to the non-moving party is the touchstone for the denial of the amendment.” Cornell & Co. v.

Occupational Safety and Health Rev. Comm'n, 573 F.2d 820, 823 (3d Cir. 1978). Prejudice in the context of Rule 15(a) means “undue difficulty in prosecuting [or defending] a lawsuit as a result of a change in tactics or theories on the part of the other party.” Deakyne v. Comm’rs of Lewes, 416 F.2d 290, 300 (3d Cir. 1969). The non-moving party must do more than simply claim prejudice; rather “it must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the ... amendments been timely.” Heyl v. Patterson Int’l Inc., 663 F.2d 419, 426 (3d Cir. 1981).

In the absence of substantial prejudice, denial instead must be based on “truly undue or unexplained delay ... or futility of amendment.” Lorenz, 1 F.3d at 1414; see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434-35 (3d Cir. 1997). Courts agree that “[a]t some point, delay will become ‘undue’ placing an unwarranted burden on the court, or will become ‘prejudicial,’ placing an unfair burden on the opposing party.” Adams v. Gould, Inc., 739 F.2d 858, 868 (3d Cir. 1984), cert. denied, 469 U.S. 1122 (1985).

In this case, Defendant filed a responsive pleading on January 5, 2000. Rule 15(a), therefore, requires that Plaintiff obtain leave of the Court prior to filing an Amended Complaint. Notwithstanding Plaintiff’s failure to comply with Rule 15(a), the Court will allow amendment of the Complaint. The Court does not find, and Defendant has not claimed, any prejudice by the amendments. The Amended Complaint merely alters the caption to add three new plaintiffs and alleges the interrelationship of all four plaintiffs.¹ The substantive allegations of the original Complaint remain otherwise unchanged. Furthermore, Defendant has had notice of Plaintiff’s

¹The original Complaint names only Deere Credit, Inc. as Plaintiff. The Amended Complaint names Deere & Company, John Deere Company, and Deere Credit Services, Inc.

intention to amend the Complaint to add the additional parties since the Preliminary Pretrial Conference held with the Court in February, 2000. While Plaintiff did delay in filing the Amended Complaint, the delay is neither undue nor prejudicial. The Court, therefore, denies Defendant's Motion to Strike.

II. Background

The Amended Complaint alleges the following facts. Defendant was the attorney of record on behalf of the John Deere Company in the case of The John Deere Company v. Raymond J. Kijak, filed in the Court of Common Pleas of Bucks County, Pennsylvania, on August 23, 1991 (hereafter "Kijak case" or "Kijak suit"). On April 13, 1998, the Kijak court entered an order compelling the John Deere Company to comply with the Kijak defendant's discovery requests. Months later, on October 7, 1998, the Kijak court granted the Kijak defendant's motion for sanctions for Defendant's failure to comply with the April 13 order and precluded the John Deere Company from advancing any evidence at trial regarding the Kijak defendant's counterclaim. On April 10, 1999, the Kijak case was listed for trial. Due to the court's sanction order, the John Deere Company was forced to settle the counterclaim for \$25,000.00 and incurred additional legal expenses of \$4,402.90.

In November of 1999, Plaintiff Deere Credit, Inc. filed the instant suit in the Court of Common Pleas of Bucks County alleging two causes of action. Count I states a claim for negligence. Plaintiffs, the successor corporations to the John Deere Company, allege that Defendant negligently failed to comply with court orders, conduct discovery, prepare the Kijak case for trial, or notify Plaintiffs of the court's sanction order and the trial date. Count II states a claim for conversion, alleging that Defendant has wrongfully maintained possession of or

destroyed a number of case files. Defendant timely removed to this Court. The case is scheduled for arbitration on April 27, 2000.

III. Defendant's Motion for Summary Judgment

Since the Amended Complaint does not alter the substantive allegations in the case, the Court will resolve the issues raised in the Defendant's Motion for Summary Judgment.

A. Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e). That is, summary judgment is appropriate if the

non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

B. Discussion

Defendant moves for summary judgment on a variety of grounds. As a general matter, Defendant asserts the defenses of improper venue and statute of limitations. With respect to Count I, Defendant requests summary judgment on the ground that no attorney-client relationship existed between him and Plaintiffs, that Plaintiffs lack evidence that Defendant’s alleged negligence was the proximate cause of any injury to Plaintiff, and that Plaintiffs failed to mitigate their damages.² For the following reasons, the Court denies Defendant’s Motion.

1. Improper Venue

Defendant asserts that the Eastern District of Pennsylvania is the improper venue for this case and asks the Court to transfer venue to the Eastern District of Michigan. Defendant claims that none of the events or omissions giving rise to Plaintiffs’ claims occurred in Pennsylvania because he never maintained an office where files were kept in Pennsylvania, and because he does not reside in Pennsylvania.

28 U.S.C. § 1391 provides:

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in

²Defendant also argues for summary judgment on the grounds of Plaintiffs’ failure to adduce evidence showing a breach of contract. Because neither the original nor the Amended Complaint allege a cause of action for breach of contract, the Court will not address that argument.

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391 (1994). “Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute.” Cottman Transmission Sys., Inc. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994). The determination of whether an act or omission is substantial turns on the nature of the dispute. Id. at 295. Events or omissions must be more than tangentially connected to the district to qualify as substantial under section 1391(a)(2). Id. at 294; Westcode, Inc. v. RBE Elect., Inc., No. CIV. A. 99-3004, 2000 WL 124566, at *6 (E.D.Pa. Feb. 1, 2000).

Plaintiffs assert that Defendant committed malpractice in his handling of a case for which he was the attorney of record in the Court of Common Pleas of Bucks County, a state court located in the Eastern District of Pennsylvania. See 28 U.S.C. § 118(a) (1994); Am. Compl. ¶¶ 6-7; Def’s Aff. ¶ 1. Despite Defendant’s Michigan residence, any omissions associated with the Kijak case, including failing to prepare or attend trial or file items with the court, ultimately occurred in this district before the Court of Common Pleas. The alleged omissions associated with the Kijak case are sufficient to fulfill the substantiality requirement in section 1391(a)(2), even assuming that no allegedly converted files were ever located or kept in Pennsylvania. This is not a case in which the district has “no real relationship to the dispute.” See Cottman, 36 F.3d at 294. For this reason, the Court denies Defendant’s request to dismiss the case for improper venue.

Defendant argues in the alternative that this action should be transferred to the Eastern District of Michigan. This Court may transfer the case to any other district where venue is proper “for the convenience of parties and witnesses, [or] in the interest of justice”. 28 U.S.C. § 1404(a) (1994). The decision whether to transfer an action rests in the Court’s sound discretion. Lony v. E.I.DuPont de Nemours & Co., 886 F.2d 628, 631-32 (3d Cir. 1989); Westcode, 2000 WL 124566, at *7. The party seeking transfer of venue bears the burden of establishing that transfer is warranted and must submit adequate information to facilitate the court’s analysis. Westcode, 2000 WL 124566, at *7.

The United States Supreme Court has delineated several factors to guide district court’s determinations of the propriety of transferring venue. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-9 (1947). These factors fall into two categories: the private interests of the litigants, and the public interest in the fair and efficient administration of justice. Id.; Westcode, 2000 WL 124566, at *7. The private interest factors include: (1) the plaintiff’s choice of forum; (2) the relative ease of access to sources of proof; (3) the availability and cost of compulsory process for unwilling witnesses; (4) obstacles to a fair trial; and (5) all other factors relating to the speedy and efficient adjudication of the dispute. Gulf Oil, 330 U.S. at 508-9. The public interest factors include: (1) the relative backlog and other administrative difficulties in the two jurisdictions; (2) the fairness of placing the burdens of jury duty on the citizens of the state with the greater interest in the dispute; (3) the local interest in adjudicating localized disputes; and (4) the appropriateness of having the jurisdiction whose law will govern adjudicate the dispute in order to avoid difficult problems in conflicts of laws. Id.

In support of his request to transfer venue, Defendant states that he resides in Michigan,

both Plaintiffs' witnesses reside in Iowa, and that any conversion occurred in Michigan. The Court finds these assertions insufficient to justify transferring venue under the Gulf Oil factors and, therefore, denies Defendant's request.

2. Choice of Law

Before addressing the merits of Defendant's other arguments, the Court must determine which state's law should be applied to this case. Defendant argues that Michigan law should apply since he has operated his legal practice out of the state of Michigan throughout the relevant time period.

A federal court sitting in diversity must apply the choice of law rules of the forum state. See Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 61 S. Ct. 1020 (1941). Accordingly, Pennsylvania choice of law rules govern. Pennsylvania's choice of law analysis, applicable in both contract and tort cases, combines the "significant relationship test" set forth in Restatement (Second) of Conflict of Laws, and the "government interest analysis." See Carrick v. Zurich-American Ins. Group, 14 F.3d 907, 909 (3d Cir. 1994) (citing Griffith v. United Air Lines, Inc., 203 A.2d 796 (Pa. 1964)). Under Pennsylvania law, the rights and liabilities of the parties with respect to a tort action are determined by the law of the state that has the most significant relationship to the occurrence and the parties. Griffith v. United Air Lines, Inc., 203 A.2d 796, 806 (Pa. 1964); Flamer v. New Jersey Transit Bus Operations, Inc., 607 A.2d 260, 263 (Pa. Super. Ct. 1992).

Before undertaking a choice of law analysis, however, a court must first determine if there is a "false conflict" between the ostensibly competing bodies of law. See Lacey v. Cessna Aircraft Co., 932 F.2d 170, 187 (3d Cir. 1991) (citing Cipolla v. Shaposka, 267 A.2d 854, 855

(Pa. 1970)). The United States Court of Appeals for the Third Circuit has stated that under Pennsylvania law, “[a] false conflict exists if only one jurisdiction’s governmental interests would be impaired by the application of the other jurisdiction’s law. In such a situation, the court must apply the law of the state whose interests would be harmed if its law were not applied.” Id.

The litigation that Defendant is presently accused of mishandling was pending in a Pennsylvania state court, and Defendant was handling that litigation pursuant to his license to practice law in Pennsylvania. Pennsylvania, therefore, has an interest in enforcing Defendant’s obligation to render competent service to his client. Defendant asserts that the state of Michigan also has an interest in this case since it is his state of residence. Defendant, however, fails to explain how or why any interest of the state of Michigan would be impaired by the application of Pennsylvania law. Conversely, the Court determines that Pennsylvania’s interests would be harmed by the application of Michigan law to this dispute. For this reason, the Court concludes that the case presents a “false conflict,” and that it is proper to apply Pennsylvania law.

3. Statute of Limitations

Having decided that Pennsylvania law is applicable to this case, the Court rejects Defendant’s argument that the statute of limitations bars Plaintiffs’ suit. Under Pennsylvania law, plaintiffs seeking recovery for legal malpractice on a theory of negligence must file suit within two years of the time when the harm is suffered or the alleged malpractice is discovered. Bailey v. Tucker, 621 A.2d 108, 116 (Pa. 1993); Fiorentino v. Rapoport, 693 A.2d 208, 219 (Pa. Super. Ct. 1997); see also 42 Pa. Cons. Stat. Ann. § 5524 (West 2000).³

³Other courts in this district apply an alternate rule that a cause of action for malpractice accrues at the time an attorney breaches his or her duty to the plaintiff. See Pettit v. Smith, No. CIV. A. 98-6707, 1999 WL 1052007, at *3 (E.D.Pa. Nov. 19, 1999). Where the plaintiff does

According to Defendant, his attorney-client relationship with Plaintiffs ended by May of 1997. Plaintiffs' suit filed in November of 1999, therefore, is barred pursuant to the two-year statute of limitations. Plaintiffs argue that the harm from Defendant's negligence occurred on October 7, 1998, when the Kijak court issued an order granting sanctions against Plaintiffs for Defendant's failure to comply with a discovery order. (Pl. Exh. A at 6). The Court agrees with Plaintiffs that the harm was suffered on October 7, 1998, when the Kijak court precluded Plaintiffs from offering evidence relevant to any defense to the Kijak defendant's counterclaim. Plaintiffs initiated the instant suit in November of 1999, well within the two-year limitation period. Therefore, Pennsylvania's statute of limitations does not bar Plaintiffs' suit.

4. Lack of an Attorney-Client Relationship

To recover for legal malpractice, a plaintiff must establish that: (1) he or she employed the defendant attorney; (2) the defendant failed to exercise ordinary skill and knowledge; and (3) the defendant's negligence was the proximate cause of damage to the plaintiff. Rizzo v. Haines, 555 A.2d 58, 65 (Pa. 1989). Absent special circumstances, an attorney cannot be held liable for negligence to any party other than his client. Mentzer & Rhey, Inc. v. Ferrari, 532 A.2d 484, 486 (Pa. Super. Ct. 1987).

Defendant argues that Plaintiffs Deere Credit, Inc., Deere & Company, and the John Deere Company cannot establish the existence of an attorney-client relationship. Defendant asserts that he never represented nor received remuneration for legal services from Deere Credit,

not know about existence of the injury, however, and such knowledge could not reasonably be gained within the prescribed period, the limitations period does not begin to run until the discovery of the injury is reasonably possible. Id. Even under this rule, Plaintiffs' claims are timely since they would not reasonably have known about Defendant's failure to respond to discovery requests until the Kijak court issued the sanction order in October 1998.

Inc., or Deere & Company in the Kijak suit. (Reinhold Aff. ¶¶ 1-14.) Defendant further presents evidence that the John Deere Company, the named plaintiff in the Kijak case, ceased to exist on January 31, 1992. Id. Plaintiffs submit evidence indicating that the John Deere Company merged with Deere & Company and assigned all its rights to the John Deere Capital Corporation, who in turn assigned its rights to Deere Credit, Inc. (Brown Aff. ¶¶ 8-9). On the basis of the parties' submissions, there is a genuine issue of material fact as to the existence of an attorney-client relationship. Summary judgment in favor of Defendant, therefore, is inappropriate.

5. Negligence

An attorney is negligent if he or she fails to possess and exercise that degree of knowledge, skill, and care which would normally be exercised by members of the profession under the same or similar circumstances. Gans v. Mundy, 762 F.2d 338, 341 (3d Cir. 1985) (citation omitted); Fiorentino, 693 A.2d at 212 (citations omitted). A plaintiff, therefore, must prove that the defendant failed to exercise ordinary skill or knowledge. Rizzo, 555 A.2d at 65. An attorney's considered decision that involves at minimum the exercise of ordinary skill and capacity and is an informed judgment does not constitute malpractice, even if the decision is subsequently proven to be erroneous or produces a negative result. Gans, 762 F.2d at 341 (citations omitted).

Although the court may evaluate a defendant's conduct in light of the relevant standard of care, the actual standard of care is a question of fact for the jury. Id. However, the court should grant summary judgment if the evidence of negligence is too speculative to establish any material issue of fact. Id. at 343. Plaintiffs often use expert testimony to establish the relevant standard

of care, but such testimony is not always required. Id. at 342;Rizzo, 555 A.2d at 66. “Where the issue is simple and the lack of skill obvious, the ordinary experience and comprehension of lay persons can establish the standard of care.” Rizzo, 555 A.2d at 66; see also Gans, 762 F.2d at 341-42.

Defendant argues that Plaintiffs cannot establish negligence by stating his belief that he exhibited ordinary skill in the Kijak case by notifying the Pennsylvania Supreme Court of his change of address and relying on opposing counsel to serve a Certificate of Active Status on him. Defendant also points to Plaintiffs’ failure to submit an expert report regarding the appropriate standard of care, and argues that Plaintiffs cannot prove that his handling of the Kijak case demonstrated an obvious lack of skill.

Plaintiffs have not submitted an expert report or testimony regarding the standard of care. Instead, they submit evidence that Defendant failed to notify opposing counsel and the Bucks County Court of Common Pleas of his new address after he moved in August of 1996, (Pl. Exh. D at 32), and that Plaintiffs never authorized Defendant to withdraw his appearance or cease representing them in the Kijak case. (Richardson Aff. ¶¶ 2-5). The Court determines that this evidence could be reasonably perceived by a jury as demonstrating an obvious lack of skill. Plaintiffs, therefore, raise a genuine issue of material fact as to the element of negligence, even in the absence of expert testimony. See Gans, 762 F.2d at 341-42; Rizzo, 555 A.2d at 502. For this reason, the Court will not grant summary judgment in favor of Defendant on this issue.

6. Proximate Cause and Mitigation of Damages

The final element that a plaintiff in a malpractice action must prove is that the

defendant's negligence was a proximate cause of the plaintiff's injury. Rizzo, 555 A.2d at 65. Proximate cause is "that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." McPeake v. William T. Cannon, Esquire P.C., 553 A.2d 439, 441 (Pa. Super. Ct. 1989) (quoting Wisniewski v. Great Atlantic and Pacific Tea Co., 323 A.2d 744, 748 (Pa. Super. Ct. 1974)). A jury may reasonably attribute the harm to the negligent conduct where the conduct is a substantial factor in bringing about the harm, and where there is no rule of law relieving the actor from liability because of the manner in which the harm has resulted. Wisniewski, 323 A.2d at 748. This means that a defendant's conduct is not the proximate cause of the plaintiff's injury where the extent or manner of the harm is not reasonably foreseeable or other intervening and superceding causes occur. McPeake, 553 A.2d at 442; Wisniewski, 323 A.2d at 748-49.

Defendant argues that the opposing counsel's failure to serve any discovery requests or a document certifying the active status of the Kijak case constitute an intervening cause, especially since the latter caused him to believe that the case had been terminated. Plaintiffs' evidence that Defendant failed to alert the Kijak court or opposing counsel of his change of address produces a genuine issue of material fact as to this issue. Summary judgment is, therefore, inappropriate.

Defendant further asserts that Plaintiffs' failure to request the court set aside the default judgment is an intervening cause sufficient to prevent any alleged misconduct from proximately causing Plaintiffs' injury. Although framed as a question of proximate cause, this argument actually relates to the issue of mitigation of damages. "[O]ne injured by the tort of another is not entitled to recover damages for any harm that he could have avoided by the use of reasonable effort or expenditure after the commission of the tort." Yost v. Union RR. Co., 551 A.2d 317,

322 (Pa. Super. Ct. 1988)(quoting Restatement (Second) of Torts § 918(1) (1979)). When determining damages in tort cases, the jury may consider the plaintiff's failure to mitigate damages from the defendant's conduct. Id. at 322. The factors for determining whether an injured plaintiff has used care to avert the consequences of a tort are the same as those used to determine whether a person has been guilty of negligent conduct. Id. That is, the injured party is required to exercise only reasonable judgment. Id. If different courses of action are open, the injured party is not required to choose the course that events later show to have been the best in order to obtain full recovery. Id.

Mitigation of damages is an affirmative defense that the defendant bears the burden of proving. Koppers Co., Inc. v. Aetna Cas. & Surety Co., 98 F.3d 1440, 1448 (3d Cir. 1996). To prove a failure to mitigate, a defendant must show: (1) what reasonable damages the plaintiff ought to have taken; (2) that those actions would have reduced the damages; and (3) the amount by which the damages would have been reduced. Id. Defendant essentially asserts that Plaintiffs failed to mitigate their damages by failing to request the trial court set aside the default judgment or seek an interlocutory appeal. Defendant's argument fails because Defendant admits that he cannot show either that setting aside the default judgment would have reduced Plaintiffs damages nor the amount by which the damages might have been reduced. (Def's Br. at 22). Defendant, therefore, cannot establish two elements of his affirmative defense. The Court, therefore, denies Defendant's request for summary judgment on this basis.

Based upon the foregoing discussion, the Court denies Defendant's Motion. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEERE & COMPANY, et al.

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CIVIL ACTION

v.

LAWRENCE G. REINHOLD

NO. 99-CV-6313

ORDER

AND NOW, this day of April, 2000, upon consideration of Defendant's Motion for Summary Judgment (Doc. No. 6), and Plaintiffs' Response thereto (Doc. No. 9), **IT IS HEREBY ORDERED** that Defendant's Motion is **DENIED**.

BY THE COURT:

John R. Padova, J.