

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

TOTAL CONTAINMENT, INC.,
Plaintiff,

v.

DAYCO PRODUCTS, INC.,
Defendant.

Civil Action
No. 97-6013

Gawthrop, J.

March , 1998

M E M O R A N D U M

Plaintiff Total Containment, Inc., ("TCI"), brought this action against Dayco Products, Inc., ("Dayco"), for various claims relating to specialized pipe that had been supplied to TCI by Dayco pursuant to several supply agreements. In addition to answering the complaint, Dayco has filed a counterclaim against TCI. Before the court is a motion by counterclaim defendant TCI to dismiss certain counts of the counterclaim for failure to state a claim, pursuant to Rule 12(b)(6). In the final three counts of its counterclaim, Counts XIII-XV, Dayco alleges "fraud in the inducement." TCI argues that these fraud claims do not meet the requirements of Federal Rule of Civil Procedure 9(b) and, so, fail to state a claim upon which relief can be granted. I disagree.

Federal Rule of Civil Procedure 9(b) applies to the fraud claims brought by Dayco. Christidis v. First Pa. Mortgage Trust, 717 F.2d 96, 99 (3d Cir. 1983) ("The rule applies . . . to

fraud claims based on state law."). The rule provides that "[i]n all averments of fraud and mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Further, it "requires plaintiffs to plead the circumstances of the alleged fraud with particularity to ensure that defendants are placed on notice of the 'precise misconduct with which they are charged, and to safeguard defendants against spurious charges' of fraud." Craftmatic Sec. Litig. v. Kraftsow, 890 F.2d 628, 645 (3d Cir. 1989) (quoting Seville Indus. Mach. v. Southmost Mach., 742 F.2d 786, 791 (3d Cir. 1984)).

In the instant case, Dayco alleges that TCI made material misrepresentations regarding the operating conditions of the containment system in which the pipe would need to perform. Specifically, Dayco says that specifications provided by TCI allegedly represented that the TCI containment system would be water tight and would protect the Dayco pipe from water and soil. It claims that TCI made these allegedly false and misleading statements in various meetings and telephone calls between late 1988 and 1990 including a meeting on or about October 27, 1988. Dayco further claims that it relied on these representations in developing the pipes and in entering the various agreements.

Since Dayco alleges that it incurred damages as a result of actions undertaken in reasonable reliance upon

allegedly fraudulent misrepresentations of TCI intended by TCI to cause Dayco to act, it has stated a cause of action for fraud under Pennsylvania law. See Bortz v. Noon, 698 A.2d 1311, 1315 (Pa. Super. 1997) (citation omitted) ("To state a cause of action for fraud, the plaintiff is required to establish: (1) misrepresentation; (2) a fraudulent utterance thereof; (3) an intention by the maker that the recipient will thereby be induced to act; (4) justifiable reliance by the recipient upon the misrepresentation; and (5) damage to the recipient was the proximate cause."). Moreover, because the fraud counts identify the general time frame, and one specific instance, when the allegedly fraudulent statements were made, and the nature of the alleged statements, they are pled with sufficient specificity. See Seville Indus. Mach., 742 F.2d at 791 (footnote omitted) ("The complaint sets forth the nature of the alleged misrepresentations, and while it does not describe the precise words used, each allegation of fraud adequately describes the nature and subject of the alleged misrepresentation."). The counterclaim sufficiently avers fraud so as to put TCI on notice of the precise fraud alleged and to allow TCI to answer the claims. See Republic Env'tl. Sys. v. Reichhold Chems., 154 F.R.D. 130, 132 (E.D. Pa. 1994) (citation omitted) ("If the defendant can prepare an adequate answer to the complaint, the requirements of Rule 9(b) have been met."); Great West Life Assurance Co. v. Levithan, 834 F. Supp. 858, 863 (E.D. Pa. 1993) (stating the "most basic consideration is whether the necessary degree of

detail was provided to give the adverse party adequate notice, and the ability to prepare a responsive pleading") (citing 5 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure, Civil 2d, § 1298 (1990)).

TCI also argues that Dayco has not sufficiently pled the scienter requirements of a fraud claim. Rule 9(b), however, explicitly states that a plaintiff may plead the state of mind element of fraud in general, rather than specific, terms. Fed. R. Civ. P. 9(b) ("Malice, intent, knowledge, and other conditions of mind of a person may be averred generally."); see also In re GlenFed, Inc. Sec. Litig., 42 F.3d 1541 (9th Cir. 1994) (requiring plaintiff to plead facts giving rise to inference of fraudulent intent directly contradicts language of Rule 9(b)). A court cannot, "consistent with its judicial role, impose an additional pleading requirement beyond those mandated by the Federal Rules of Civil Procedure." See In re Valuevision Int'l Inc. Sec. Litig., 896 F. Supp. 434, 446-47 (E.D. Pa. 1995) (citing In re GlenFed, 42 F.3d at 1546). Here, Dayco claims that TCI "knowingly, intentionally, and fraudulent [sic] made" the statements regarding the operating conditions of the containment system. Pl.'s Countercl. ¶ 111. Although Dayco includes this precise wording in only one of the fraud counts, given the general pleading requirements for fraudulent intent, it would be senseless to make Dayco amend its counterclaim to include such wording in each fraud count. Accordingly, I find that the

general allegations of fraudulent intent are sufficient to satisfy Rule 9(b).

I thus conclude that Dayco pleads circumstances of the allegedly fraudulent acts with sufficient particularity to place TCI on notice of the precise misconduct with which they are charged and to meet the pleading requirements of Rule 9(b). An order follows.

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O R D E R

AND NOW, this day of March, 1998, upon
consideration of the Plaintiff's Motion to Dismiss Certain Counts
of the Counterclaim, the responses thereto, and oral argument
held in open court, the Motion is hereby DENIED.

BY THE COURT:

Robert S. Gawthrop, III, J.