

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

CARNEGIE HILL FINANCIAL INC.,	:	
CARNEGIE HILL SECURITIES	:	
CORPORATION	:	CIVIL ACTION
CARNEGIE HILL ASSET MANAGEMENT,	:	NO: 99-CV-2592
INC.	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
	:	
DALE KRIEGER,	:	
RICHARD RUDERMAN & CO., LLC,	:	
KR SECURITIES	:	
KR FINANCIAL, LLC,	:	
Defendants.	:	

**GREEN, S.J.**

**September \_\_\_\_\_, 1999**

**MEMORANDUM - ORDER**

Presently before the Court are two motions: (1) Plaintiffs’ Motion to Strike Portions of the Defendants’ Answer and Affirmative Defenses, pursuant to Fed.R.Civ.P. 12(f), and Defendants’ response thereto; and (2) Counterclaim Defendants’ Motion to Dismiss the Counterclaim, pursuant to Fed.R.Civ.P. 12(b)(6), and Counterclaim Plaintiffs’ response thereto.

**I. FACTUAL AND PROCEDURAL HISTORY**

On May 20, 1999, Plaintiffs, Carnegie Hill Financial Inc., Carnegie Hill Securities Corporation, and Carnegie Hill Asset Management, Inc. filed suit against Dale Krieger, Richard Ruderman, and the corporate entities they allegedly controlled, for breach of fiduciary duties. Until they resigned their positions in January 1999, Krieger and Ruderman were officers and directors of Carnegie Hill Financial Inc.<sup>1</sup>

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<sup>1</sup>Carnegie Hill Financial Inc. was formed as a holding company for Carnegie Hill Securities Corporation, a broker-dealer business, and Carnegie Hill Securities Corporation, an investment advisory business.

Plaintiffs now move to strike portions of the Defendants' Answer and Affirmative Defenses, filed with the court on July 7, 1999. In their motion, Plaintiffs assert that the Defendants' responsive pleading inappropriately attacks individuals and entities who are not parties to this litigation and contains matter which is immaterial, impertinent and/or scandalous.

Carnegie Hill Financial Inc. ("Carnegie Hill Financial") also filed a motion to dismiss Dale Krieger and Richard Ruderman's counterclaim for breach of contract, pursuant to Fed.R.Civ.P.12(b)(6). In their motion, Carnegie Hill Financial argues that Dale Krieger and Richard Ruderman failed to state a claim for breach of contract because they did not allege that they have been injured by the alleged breach. In the alternative, Carnegie Hill Financial moves for a more definite statement, pursuant to Fed.R.Civ. P. 12(e), arguing that the counterclaim for breach of contract requires clear identification of the party injured by the alleged breach of contract.

For the following reasons, Plaintiffs' Motion to Strike, pursuant to Fed.R.Civ.P. 12(f) will be denied, Counterclaim Defendant's Motion for a More Definite Statement of the counterclaim, pursuant to Fed.R.Civ.P. 12(e) will be granted, and accordingly, Counterclaim Defendant's Motion to Dismiss, pursuant to Fed.R.Civ.P. 12(b)(6) will be denied without prejudice to renew, if appropriate, after the Counterclaim Plaintiffs amend their Counterclaim to identify the party claiming injury for breach of contract and the authority for bringing the counterclaim.

## **II DISCUSSION**

### **A. Plaintiffs' Motion to Strike Portions of Defendants' Answer and Affirmative Defenses.**

“Upon motion made by a party before responding to a pleading . . . the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed.R.Civ. P. 12(f). While courts possess considerable discretion in weighing Rule 12(f) motions, such motions are not favored and will generally be denied unless the material bears no possible relation to the matter at issue and may result in prejudice to the moving party, or or if the allegations confuse the issues. Miller v. Group Voyagers, Inc. 912 F.Supp. 164,168 (E.D.Pa. 1996). Moreover, a motion to strike will not be granted where the sufficiency of a defense depends on disputed issues of fact. See North Penn Transfer, Inc. v. Victaulic Co. of America, 859 F.Supp. 154, 158 (E.D.Pa., 1994).

In the instant case, Plaintiffs argue that the Defendants’ Answer “contains numerous inappropriate references” to the Pitcairn Group, an entity which is not a party to this litigation. (Pls.’ Mem. In Supp. of Mot. to Strike at 3). These references include allegations that the Pitcairn Group engaged in violations of banking laws and conducted “cult-like management activities.” Id. Plaintiffs further object to the Defendants’ labeling of the Pitcairn Group as a “clan,” arguing that the term is offensive and bears no relationship to the allegations in the Complaint which focus upon whether Krieger and Ruderman breached their fiduciary duties to the Plaintiffs. Id. at 4. According to the Plaintiff, these matters must be stricken because allowing the allegations to remain in the Answer will prejudice the presentation of their case, “insofar as [Plaintiffs] intend to rely on Pitcairn Group employees at trial in this action.” Id. at 5.

Upon consideration of the Plaintiffs’ arguments, I will deny the motion to strike as I cannot conclude that the allegations objected to in the motion are not material to the Defendants’ defense and counterclaim. Further, the arguments Plaintiffs make with regard to possible trial

prejudice may be raised at trial.

**B. Counterclaim Defendants' Motion to Dismiss**

When considering a motion to dismiss, pursuant to Fed.R.Civ.P. 12(b)(6), the Court must accept all factual allegations as true and construe the complaint liberally in the light most favorable to the nonmovant. Rocks v. City of Philadelphia , 868 F.2d 644, 645 (3d Cir. 1989). Therefore, in the instant case, I must determine whether Counterclaim Plaintiffs Reiger and Ruderman have adequately pled their breach of contract claim pursuant to Pennsylvania law.

Under Pennsylvania law, a cause of action for breach of contract may be established by showing the existence of a contract to which the plaintiff and defendant(s) were parties, the essential terms of that contract, a breach of the duty imposed by the contract and injury or damages resulting from the alleged breach. Electron Energy Corp. v. Short, 408 Pa.Super. 563, 597 A.2d 175 (1991), *aff'd* 533 Pa. 66, 618 A.2d 395 (1993). In their breach of contract counterclaim, Krieger and Ruderman assert that Carnegie Hill Company and Carnegie Hill Financial executed a \$125,000.00 promissory note, wherein Carnegie Hill Financial agreed to pay \$125,000.00 to Carnegie Hill Company in the event of a default. They further assert that they are successors-in-interest to all rights and liabilities of the Carnegie Hill Company. According to the terms of the Note executed by the two corporate entities, a default would occur if Dale Krieger resigned employment with Carnegie Hill Financial or Carnegie Hill Financial ceased business operations. Because Dale Krieger resigned his employment with Carnegie Hill Financial and Carnegie Hill Financial subsequently failed to pay Carnegie Hill Company the \$125,000.00 due under the Note, Krieger and Ruderman claim that Carnegie Hill Financial

breached its duty to pay Carnegie Hill Company, along with its successors and assigns, under the Note.

In their counterclaim, however, Krieger and Ruderman assert that payment on the Note is immediately due and payable to Krieger, Ruderman & Co. LLC. And, the ad damnum clause of the counterclaim states that “counterclaim Plaintiff Krieger Ruderman & Co. LLC demands immediate payment of the \$125,000.00 due under the Note.

In its Motion to Dismiss, Carnegie Hill Financial argues that Krieger and Ruderman have not sufficiently alleged injury resulting from the breach of contract because they have alleged that Krieger Ruderman & Company is due payment under the Note. Furthermore, because Krieger Ruderman & Company is not a named party in this litigation, and Krieger and Ruderman have not identified how they, as individuals, have been injured, Carnegie Hill Financial concludes that the motion to dismiss must be granted on the ground that Krieger and Ruderman have failed to allege the requisite element of injury necessary to successfully state a claim for breach of contract. In the alternative, Carnegie Hill Financial asserts that the Court should grant their Motion for a More Definite Statement, pursuant to Fed.R.Civ.P. 12(e), directing Krieger and Ruderman to clarify the entities claiming injury for breach of contract.

In deciding a motion to dismiss pursuant to Rule 12(b)(6), I must draw every reasonable inference in favor of the Counterclaim Plaintiffs. Even after drawing every reasonable inference in favor of Krieger and Ruderman, however, I still cannot determine from the ambiguous allegations of the counterclaim whether Krieger Ruderman & Company, a party not named in the counterclaim, is claiming injury, or if Krieger and Ruderman, the named counterclaim plaintiffs, are claiming that their status as successors-in-interest to Carnegie Hill Company translates into

their right to payment under the Note. Because it is unclear whether the Counterclaim Plaintiffs Krieger and Ruderman have adequately pled the element of injury in their breach of contract claim against Carnegie Hill Financial, I will grant Carnegie Hill Financial's Motion for a More Definite Statement and deny the Motion to Dismiss without prejudice to renew, if appropriate, after Krieger and Ruderman amend the counterclaim to clarify the entity claiming injury on the breach of contract claim.

### **III CONCLUSION**

For the reasons outlined above, Plaintiffs' Motion to Strike, pursuant to Fed.R.Civ.P. 12(f) will be denied, Counterclaim Defendant's Motion for a More Definite Statement of the counterclaim, pursuant to Fed.R.Civ.P. 12(e) will be granted, and accordingly, Counterclaim Defendant's Motion to Dismiss, pursuant to Fed.R.Civ.P. 12(b)(6) will be denied without prejudice to renew, if appropriate, after the Counterclaim Plaintiffs amend their Counterclaim to identify the party claiming injury for breach of contract and the authority for bringing the counterclaim.

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CORPORATION	:	
CARNEGIE HILL ASSET MANAGEMENT,	:	CIVIL ACTION
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Plaintiffs,	:	
v.	:	
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DALE KRIEGER,	:	
RICHARD RUDERMAN & CO., LLC,	:	
KR SECURITIES	:	
KR FINANCIAL, LLC,	:	
Defendants.	:	

**ORDER**

**AND NOW**, this \_\_\_\_ day of September 1999, upon consideration of (1) Plaintiffs' Motion to Strike Portions of Defendants' Answer and Affirmative Defenses and Defendants' response thereto; and (2) Counterclaim Defendant Carnegie Hill Financial's Motion to Dismiss Counterclaim Plaintiffs Krieger and Ruderman's breach of contract claim, pursuant to Fed.R.Civ.P. 12(b)(6), and Counterclaim Plaintiffs' response thereto, **IT IS HEREBY**

**ORDERED** that:

1. Plaintiffs' Motion to Strike Portions of Defendants' Answer and Affirmative Defenses is **DENIED**;
2. Counterclaim Defendant Carnegie Hill Financial's Motion for a More Definite Statement, pursuant to Fed.R.Civ.P. 12(e) is **GRANTED**. Counterclaim

Plaintiffs Krieger and Ruderman are **DIRECTED** to amend their counterclaim to identify the party asserting injury as a result of the alleged breach of contract within ten (10) days of this Order; and

3. Counterclaim Defendant's Motion to Dismiss, pursuant to Fed.R.Civ.P. 12(b)(6), is **DENIED WITHOUT PREJUDICE** to renew, if appropriate, after Counterclaim Plaintiffs amend their counterclaim.

BY THE COURT,

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CLIFFORD SCOTT GREEN, S.J.