

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

MINNESOTA CORN PROCESSORS, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
RAYMOND J. McCORMICK, JR. & MARY LOU	:	NO. 99-5932
McCORMICK,	:	
Defendants.	:	

Memorandum and Order

YOHN, J.

July , 2000

Minnesota Corn Processors (“Processors” or “plaintiff”) filed this action against husband and wife Raymond J. McCormick and Mary Lou McCormick (“Raymond” and “Mary Lou” respectively, or “McCormicks” or “defendants” jointly), asserting a claim of fraudulent transfer of assets from Raymond to Raymond and Mary Lou jointly. Defendants filed an answer asserting affirmative defenses and three counterclaims: first for declaratory judgment, second for wrongful use of civil proceedings, and third for abuse of process. Before the court are cross-motions for summary judgment on the first counterclaim, which I will deny. Also before the court are motions to dismiss each counterclaim, which I will grant as to the first and second and deny as to the third.

BACKGROUND

Processors supplies corn sweeteners and similar raw materials. *See* Compl. ¶ 7 (Doc. No. 1); Defs. Ans. & Countercls. ¶ 41 (Doc. No. 3) [hereafter “Defs. Ans.”]. Raymond is principal owner and operator of American Sweeteners, Inc. (“Sweeteners”). *See* Compl. ¶ 6. From 1985 to February 6, 1998, Processors supplied both sweeteners and credit to Sweeteners. *See* Defs. Ans. ¶ 44.

On February 13, 1998, Processors filed suit in federal district court for the District of Minnesota (“Minnesota court”) to collect on debts Sweeteners owed Processors (“Minnesota action”). *See* Defs. Mot. for Summ. J. on 1st Countercl. Ex. 6 (Doc. No. 4) [hereafter “Defs. Mot.”]. On February 23, 1998, Sweeteners filed suit against Processors “seeking damages for unjustified repudiation of its contract with Sweeteners and other misconduct.” *See* Defs. Mot. Ex. 1 ¶ 4.¹ On July 2, 1998, the parties executed a Settlement Agreement and Mutual Release effective as of June 30, 1998. *See* Compl. ¶ 8; Defs. Ans. ¶ 50; Defs. Mot. Ex. 10. By the terms of the Settlement Agreement, Processors promised to supply “certain quantities of products” to Sweeteners and Processors was granted a second mortgage and security interest in Sweeteners’ real property and equipment. *See* Defs. Ans. ¶ 50. Also, Sweeteners promised to pay Processors \$2,014,472.36, plus interest at the annual rate of 7.5%. *See* Defs. Mot. Ex. 10 at 2-3.

“In connection with the Settlement Agreement, [Raymond] executed a Guaranty to [Processors] dated July 2, 1998, whereby he personally guaranteed [Sweeteners’] obligations to [Processors].” *See* Defs. Ans. ¶ 51; Defs. Mot. Ex. 11. That same date, Raymond executed a

¹ Sweeteners’ suit was filed in the Court of Common Pleas, Chester County, Pennsylvania, and then was removed to federal court in the Eastern District of Pennsylvania. *See* Defs. Mot. Ex. 10 at 1. Sweeteners’ suit was transferred to the Minnesota court and consolidated with the Minnesota action. *See id.*

Confession of Judgment in which he waived his right to notice of entry of judgment. *See* Defs. Mot. Ex. 8. On July 27, 1998, the Minnesota court dismissed the action with prejudice pursuant to a stipulation and order signed by the parties. *See* Defs. Ans. ¶ 52. The dismissal did not incorporate the settlement agreement nor did it indicate that the court intended to retain jurisdiction to supervise the matter. *See* Defs. Ans. ¶ 52.

On December 30, 1998, Raymond “purchased a \$1.1 million participation in” a line of credit to Sweeteners. *See* Defs. Ans. ¶ 55. That same date, Processors and Sweeteners agreed to modify their Settlement Agreement, such that Processors was given an option to purchase Sweeteners’ assets if Sweeteners defaulted on its obligations, and Sweeteners received a promise of increased product supply and reduced monthly payments. *See* Defs. Ans. ¶ 56.

About July 1, 1999, Raymond sold stock held in his name in another company known as Sweetener’s Plus, a New York Corporation. *See* Defs. Ans. ¶¶ 11-13; Compl. ¶ 11-14.² Plaintiff says that Raymond received \$750,000 immediately for the stock, plus promised payments of \$1.15 million with interest over five years. *See* Compl. ¶ 12-14.³ Plaintiff alleges that upon receipt of the \$750,000, Raymond converted it into a certificate of deposit held jointly in the names of Raymond and Mary Lou.

On July 26, 1999, Sweeteners filed a petition for Chapter 11 Bankruptcy protection in the Bankruptcy Court for the Eastern District of Pennsylvania. *See* Defs. Ans. ¶ 61. That litigation

² It is agreed that on July 2, 1998, Raymond owned a stake in Sweetener’s Plus of approximately 22%. *See* Compl. ¶ 10; Defs. Ans. ¶ 10.

³ Defendant alleges that he received \$750,000 immediately but was owed only \$427,440 plus interest over the five years, as well as \$669,000 to be paid in exchange for consulting services and a promise not to compete. *See* Defs. Ans. ¶ 13.

is ongoing. *See* Defs. Ans. ¶¶ 65-71.

On November 3, 1999, Processors requested that the clerk of the Minnesota court enter judgment against Raymond in the amount due under his Confession of Judgment. *See* Defs. Ans. ¶ 68; Defs. Mot. Ex. 7. The request for entry of judgment noted that it was related to case number “98-CV-699” in the Minnesota court. *See* Defs. Mot. Ex. 7. That day, the clerk of the Minnesota court entered judgment against Raymond in the amount of \$2,752,034.59 in case number “98-CV-699.” *See* Defs. Ans. ¶ 68; Defs. Mot. Ex. 13.⁴

On November 24, 1999, Processors filed this action against Raymond and Mary Lou alleging that the July 1999 sale of stock in Sweeteners Plus by Raymond, and the conversion of the proceeds thereof into a CD held jointly by Raymond and Mary Lou, was a fraudulent transfer.

On December 16, 1999, defendants filed an answer to the complaint including counterclaims. *See* Doc. No. 3. The first counterclaim seeks a declaratory judgment that the Minnesota court lacked jurisdiction to enter judgment against Raymond. The second counterclaim charges Processors with wrongful use of civil proceedings in securing the entry of judgment in Minnesota and in recording that judgment in the Court of Common Pleas of Chester County, Pennsylvania. The third counterclaim charges Processors with abuse of process “in several courts,” including procuring and transferring the Minnesota judgment, for the “improper purpose of forcing Raymond through duress to permit Processors to acquire [Sweeteners’] assets at less than fair value.” *See* Defs. Ans. ¶ 89. Also on December 16, 1999, defendants filed a

⁴ On December 3, 1999, Processors filed a motion to record the federal judgment from Minnesota in Chester County, Pennsylvania. *See* Defs. Ans. ¶ 69.

motion for summary judgment on the first counterclaim. *See* Doc. No. 4.

Plaintiff has cross-moved for summary judgment on defendants' first counterclaim or, in the alternative, to dismiss the first counterclaim, and also has moved to dismiss the second and third counterclaims. *See* Pl. Cross-Mot. on 1st Countercl. or Mot. to Dismiss Defs. Countercls. (Doc. No. 6) [hereafter "Pl. Mot."]. Defendants filed a response to plaintiff's motions. *See* Defs. Resp. to Pl. Cross-Mot. and Mot. to Dismiss (Doc. No. 10) [hereafter "Defs. Resp."]. Plaintiff filed a reply in support of its motions. *See* Pl. Reply in Support of Pl. Cross-Mot. and Mot. to Dismiss (Doc. No. 12) [hereafter "Pl. Reply"].

DISCUSSION

Defendants have answered the complaint and present three counterclaims as well. *See* Fed. R. Civ. P. 13. They will be treated in order.

I. DEFENDANTS' FIRST COUNTERCLAIM TO DECLARE THE MINNESOTA JUDGMENT VOID

Defendants argue that the Minnesota court did not have subject matter jurisdiction to enter judgment in the Minnesota action. Defendants' principal argument is that where a settlement agreement is followed by a stipulation and order of dismissal with prejudice under Fed. R. Civ. P. 41(a)(1)(ii), the entering court lacks jurisdiction over further proceedings in the

absence of a Rule 60(b) motion. *See* Defs. Mot. at 4.⁵ Plaintiff argues that a district court may enforce a settlement agreement, without consideration of a Rule 60(b) motion to vacate a judgment of dismissal in the underlying case, if there is an independent basis for federal jurisdiction. *See* Pl. Mot. at 6-8. Each cites *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994) in support of their proposition.

In *Kokkonen*, the Supreme Court confronted the question whether a federal court had jurisdiction to enforce a settlement agreement resolving a diversity suit which had been dismissed with prejudice, without reference to the terms of the agreement, and without evidence of the court's intent to retain jurisdiction over the matter. *See id.* at 376-78. The Court explained that "[e]nforcement of the settlement agreement . . . is more than just a continuation or renewal of the dismissed suit, and hence requires its own basis for jurisdiction." *See id.* at 378. Because the "suit involve[d] a claim for breach of contract," and because the parties did not "provide for the court's enforcement of a dismissal-producing settlement agreement, . . . enforcement of the settlement agreement is for state courts, unless there is some independent basis for federal

⁵ Defendants also suggest that because the Minnesota action is related to the first-filed bankruptcy proceedings in the Bankruptcy Court for the Eastern District of Pennsylvania, the entry of judgment should have been sought in this district. *See* Defs. Mot. at 4. Although plaintiff does not answer this argument, I find it unavailing. The cases cited support only the proposition that bankruptcy court jurisdiction and federal court venue *would be proper* in this district if the adversarial action was a "non-core" proceeding "related to" the bankruptcy proceeding. *See Halper v. Halper*, 164 F.3d 830, 838 (3d Cir. 1999) (explaining that action on private guaranty for obligations of bankruptcy debtor corporation "could have been brought in state court" even though it was "related to" the bankruptcy proceedings); *In re Windsor Communs. Group*, 53 B.R. 293, 296 (Bankr. Ct. E.D. Pa. 1985) (explaining that "the court where the bankruptcy case is pending is the proper venue for all related proceedings within the court's jurisdiction"). Neither supports the proposition that the Minnesota court lacked jurisdiction to enter judgment pursuant to the confession of judgment.

jurisdiction.” *See id.* at 381-82.⁶ *See also In re Phar-Mor, Inc.*, 172 F.3d 270, 274 (3d Cir. 1999) (holding that dismissal order did not evince intent to retain jurisdiction); *Parks v. Commw.*, No. 94-1382, 1996 U.S. Dist. Lexis 12242, at *3 (E.D. Pa. Aug. 20, 1998); *Jendron v. Applebaum*, No. 97-1358, 1998 U.S. Dist. Lexis 715, at *6 (E.D. Pa. Jan. 20, 1998).

The problem for defendants is that the requirements of diversity jurisdiction appear to have been met in the Minnesota action: a controversy between citizens of different states over more than \$75,000. *See* 28 U.S.C. § 1332(a)(1). Defense counsel admitted as much at oral argument on this motion. The problem for plaintiff is that the Minnesota judgment was entered under the same civil action number as the settled and dismissed action from 1998. Because defendants’ counterclaim presents factual, procedural and legal questions best addressed by the Minnesota court in the first instance, plaintiff suggests that it should be dismissed. I agree.

Plaintiff argues that defendants’ claim for declaratory relief should be dismissed “on grounds of comity.” *See* Pl. Mot. at 11-13. Plaintiff further argues that the presence of subject matter jurisdiction is not subject to collateral attack and that entry of judgment on a confession of

⁶ Also cited are *McCall-Bey v. Franzen*, 777 F.2d 1178 (7th Cir. 1985) and *Smith v. Phillips*, 881 F.2d 902 (10th Cir. 1989). In *McCall-Bey*, the Seventh Circuit considered the question of a federal district court’s jurisdiction to enforce a settlement agreement between an Illinois prisoner and the state Department of Corrections. *See McCall-Bey*, 777 F.2d at 1181. The court characterized the dispute as “a breach of contract remediable under state but not federal law, and therefore only in state court since the parties are not of diverse citizenship.” *See id.* at 1185. The court explained that “unless jurisdiction is retained[,] the settlement agreement requires an independent basis of jurisdiction in order to be enforceable in federal rather than state court.” *See id.* at 1187. Nor is *Smith v. Phillips*, 881 F.2d 902 (10th Cir. 1989) any different. *See id.* at 904 (agreeing with *McCall-Bey* that dismissal terminated federal jurisdiction absent Rule 60 motion).

judgment is *res judicata*.⁷ *See id.* I need not determine general applicability of the rule, however, because defendants agree that the subject matter jurisdiction of a court is not susceptible to collateral attack generally. *See* Defs. Resp. at 2.⁸ Defendant argues, however, that this case fits within a narrow exception permitting a collateral attack on subject matter jurisdiction when “the judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction.” *See* Defs. Resp. at 2 (citing Restatement (Second) Judgments § 12(3) (1982)).⁹

The important question under this exception is “whether the court involved is one in which a challenge to subject matter jurisdiction *could be given* substantially the same quality of consideration that is available in a trial court of general jurisdiction.” *See* Rest. (2d) Judgments § 12 cmt. e (identifying “tribunals staffed by judges untrained in law or whose jurisdiction is so

⁷ Although “*res judicata*” is listed as an affirmative defense in Fed. R. Civ. P. 8(c), courts have held that it may be the basis of a motion to dismiss pursuant to Fed. R. Civ. P. 12(b). *See Williams v. Murdoch*, 330 F.2d 745, 749 (3d Cir. 1964); *SEPTA v. Pennsylvania*, No. 95-4500, 1999 U.S. Dist. Lexis 12882, *14 (E.D. Pa. Aug. 23, 1999).

⁸ Although I need not make a formal determination of whether the parties state the rule correctly, plaintiff appears to state accurately the general rule barring collateral attacks on the subject matter jurisdiction of a court entering an earlier judgment. *See, e.g., Hodge v. Hodge*, 621 F.2d 590, 592 (3d Cir. 1980); *SEPTA v. Pennsylvania*, No. 95-4500, 1999 U.S. Dist. Lexis 12882, at *11 (E.D. Pa. Aug. 23, 1999). I note that courts have applied the rule even when the challenged judgment was entered by default. *See Government Employees Ins. Co. v. Jackson*, No. 89-4010, 1995 U.S. Dist. Lexis 16814, at *1-2 (E.D. Pa. Nov. 6, 1995).

⁹ Defendant cites *Hodge v. Hodge*, 621 F.2d 590, 593 (3d Cir. 1980) and *In re Taylor*, 884 F.2d 478, 481 (9th Cir. 1989) in support of this proposition. Neither case helps. *See Hodge*, 621 F.2d at 593 (stating that exception did not apply to party who, eight years after entry of decree by agreement, sought to challenge the court’s subject matter jurisdiction over real property passed in the decree); *In re Taylor*, 884 F.2d at 482 (stating but not applying the exception and holding that bankruptcy court lacked jurisdiction to enter a “default judgment” after underlying and adversary actions were dismissed).

narrow as to be nearly ministerial”) (emphasis added). Although defendants argue that the clerk of the Minnesota court performs purely ministerial functions, defendants do not argue that the United States District Court for the District of Minnesota lacks the ability to consider the question of its subject matter jurisdiction, if properly presented. Nor is it a reasonable factual inference that the Minnesota court is unable to evaluate its subject matter jurisdiction. Nor does it appear material that judgment was entered upon a confession of judgment. The Third Circuit has noted recently that “a judgment against a reasonably sophisticated, corporate debtor who has signed an instrument containing a document permitting judgment by confession as part of a commercial transaction is enforceable in the same manner as any other judgment.” See *FDIC v. Deglau*, 207 F.3d 153, 168 (3d Cir. 2000) (quoting *Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1272 (3d Cir. 1994)).¹⁰ Defendants make no showing which persuades the court to digress from the general rule.

Second, principles of comity counsel against a collateral attack in one federal district court on a judgment entered by another federal district court. See *FDIC v. Aaronian*, 93 F.3d 636, 639 (9th Cir. 1996); *Indian Head Nat’l Bank v. Brunelle*, 689 F.2d 245, 251 (1st Cir. 1982). “Comity must serve as a guide to courts of equal jurisdiction to exercise forbearance to avert conflicts and to avoid ‘interference with the process of each other.’” See *EEOC v. University of Pa.*, 850 F.2d 969, 974 (3d Cir. 1988) (citation omitted) (discussing “first-filed” rule); *Hayman Cash Register Co. v. Sarokin*, 669 F.2d 162, 168 (3d Cir. 1982) (discussing retransfer of transferred actions). Defendant seeks to have the court do precisely that which principles of

¹⁰ Of course, due process must be afforded. See *Deglau*, 205 F.3d at 168-69 & 175-76. No due process claim has been raised.

comity discourage: vacate the earlier judgment of another federal district court. I will not do so in this case.

Finally, I find guidance in the recent opinion of the Third Circuit in *FDIC v. Deglau*, 207 F.3d 153 (3d Cir. 2000). The *Deglau* court, confronting a case like this one, addressed the question of which law applies to the procedure used to attack a federal confessed judgment. *See Deglau*, 207 F.3d at 161. In *Deglau*, the appellant had personally guaranteed loans to his closely held corporation by executing a guaranty including “a warrant of attorney clause allowing the bank to confess judgment against the [appellants] for their personal loans and the loans to [the corporation].” *See id.* at 158. Following default on the loans, confessed judgment was entered against the appellants in the Eastern District of Pennsylvania. *See id.* at 159. The Third Circuit clarified the rule that “a motion to open or vacate a judgment entered in the federal court is procedurally governed by Rule 60.” *See id.* at 161. The court explained that controlling case law in the Third Circuit “requires the application of federal procedure to this case.” *See id.* at 161. Such a result made sense because “conceptually, a petition to open is essentially the defensive phase of a confession of judgment case.” *See id.* Consequently, in this circuit, Rule 60 provides the proper procedure for attacking a federal judgment entered on a confession of judgment.¹¹ To entertain an original counterclaim for declaratory relief from a confessed judgment entered in federal court would be inconsistent with the Third Circuit’s conclusion that a confessed judgment should be challenged by motion under Rule 60(b). Although *Deglau* does not control the the result in this case, it certainly informs and supports it.

¹¹ The court held also that state “law governs the substantive aspects of motions to open or strike confessed judgments.” *See Deglau*, 207 F.3d at 166 & 167.

Because defendant has not challenged the Minnesota judgment in the Minnesota court, nor alleged its inability to do so, the counterclaim will be dismissed. The cross-motions for summary judgment will be denied as moot.

II. DEFENDANTS' SECOND COUNTERCLAIM FOR WRONGFUL USE OF CIVIL PROCEEDINGS

In their second counterclaim, defendants allege that the Minnesota judgment was procured and recorded without probable cause for an improper purpose. *See* Defs. Ans. ¶ 88. Plaintiff argues that defendants fail to state a claim upon which relief may be granted.

A. Rule 12(B)(6) Standard of Review

Plaintiff has filed a motion to dismiss this second counterclaim for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the claim. *See Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). In deciding a motion to dismiss, the court must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant.” *Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994) (citing *Rocks v. Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989)). At this stage of the litigation, “[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). In deciding a motion to dismiss, a district court also may consider exhibits attached to the complaint and matters of public record. *See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). Moreover, “a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document.” *Id.*

(citations omitted).

B. Wrongful Use of Civil Proceedings

Defendants present their claim under Pennsylvania's Dragonetti Act,¹² which provides:

(a) A person who takes part in the procurement, initiation, or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings:

(1) He acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and

(2) the proceedings have terminated in favor of the person against whom they are brought.

See Defs. Resp. at 4 (citing 42 Pa. C.S.A. § 8351).

Plaintiff argues that defendants fail to state a claim because the Minnesota judgment favored plaintiff and did not terminate in defendants' favor. I agree.

First, defendants do not argue that they have already obtained a favorable result in the Minnesota judgment. Rather, defendants' suggest that if the court grants defendants' first counterclaim for declaratory relief, then the second counterclaim will become ripe. *See* Defs. Resp. at 4. Defendants cite no case on point. Because the plain language of the statute requires more, I will grant plaintiff's motion to dismiss defendant's second counterclaim.

¹² Plaintiff responds that under either Pennsylvania or Minnesota law, the action underlying the wrongful use of civil proceedings claim must have terminated in favor of the claimant. *See* Pl. Mot. at 13-14. Because plaintiff does not argue that Pennsylvania law should not apply, and because plaintiff will suffer no prejudice from its application, I apply Pennsylvania law for purposes of this motion.

Second, even construed most favorably to defendants, the judgment of the Minnesota court is being litigated presently and thus is pending in this matter. Federal courts in Pennsylvania have held that, under Pennsylvania law, “it is premature to assert a counterclaim for malicious prosecution in the action which is alleged to have been maliciously or wrongfully brought.” See *United States ex rel Sacks v. Philadelphia Health Mgt. Corp.*, 519 F. Supp. 818, 826 n.9 (E.D. Pa. 1981). See also *Muirhead v. Zucker*, 726 F. Supp. 613, 617 (W.D. Pa. 1989) (dismissing § 8351 claim where allegedly wrongful RICO litigation was still pending in another court); *Zappala v. Hub Foods, Inc.*, 683 F. Supp. 127, 131 (W.D. Pa. 1988) (dismissing a counterclaim, which alleged that the principal action constituted wrongful use of civil proceedings, because that action was pending and the counterclaim thus was premature).

The rationale of the cited cases extends easily to the present situation. Plaintiff has challenged a judgment and simultaneously sought a declaration that the challenged proceeding was wrongfully initiated. Because the alleged wrongful proceeding did not terminate in defendants’ favor, their second counterclaim is premature and will be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

III. DEFENDANTS’ THIRD COUNTERCLAIM FOR ABUSE OF PROCESS

In their third counterclaim, defendants argue that the Minnesota judgment and the present action were instituted for the improper purpose of coercing Raymond to sell Sweeteners to Processors at less than fair value. See Defs. Ans. ¶ 89; Defs. Resp. at 5-10. Plaintiff moves to dismiss the claim under Rule 12(b)(6).

First, plaintiff argues that Minnesota law should apply and that under Minnesota law, “an abuse of process claim [is] not ripe until the litigation underlying such a claim had ended.” *See* Pl. Mot. at 15 (citing *Blue Earth Valley Tel. Co. v. Commonwealth Utils. Co.*, 167 N.W. 554, 556 (Minn. 1918)). Defendants’ argue that Pennsylvania law controls the claim. *See* Defs. Resp. at 10. Neither party analyzes the issue, which I will not resolve because plaintiff’s characterization appears inaccurate. Over 50-years after plaintiff’s cited decision, the Minnesota Supreme Court explained that “[t]he essential elements of an action for abuse of process are only two, namely, (a) the existence of an ulterior purpose, and (b) the act of using the process to accomplish a result not within the scope of the proceeding in which it was issued, whether such result might otherwise be lawfully obtained or not.” *See Pow-Bel Constr. Corp. v. Gondek*, 192 N.W.2d 812, 814 (Minn. 1971) (quoting *Hoppe v. Klapperich*, 28 N.W.2d 780, 786 (1947)); *see also Bigelow v. Galway*, 281 N.W.2d 835, 837 (Minn. 1978) (“A complaining party must establish two essential elements to support an abuse of process claim.”). Although the prior termination of proceedings may have been factually relevant in *Blue Earth Valley Tel. Co.*, it does not appear to be an essential requirement for such a claim under Minnesota law. Consequently, defendants’ counterclaim does not fail because proceedings have not terminated.

Plaintiff’s second argument is that under the law of either state, defendants’ allege “various ulterior motives for [Processors’] conduct of litigation . . . but do[] not allege any ‘perversion’ or coercive use of process issued in that litigation.” *See* Pl. Reply at 6; *see also* Pl. Mot. at 14-18. Defendants argue that their averments adequately demonstrate “primary and ulterior objectives well beyond the scope of any legitimate effort to collect a debt.” *See* Defs. Resp. at 5. I agree. “The gravamen of abuse of process is the perversion of the particular legal

process for a purpose of benefit to the defendant, which is not an authorized goal of the procedure.” *See Shiner v. Moriarty*, 706 A.2d 1228, 1236 (Pa. Super. Ct. 1998). *See also Rosen v. Tesoro Petroleum Corp.*, 582 A.2d 27, 32 (Pa. Super. Ct. 1990) (citing *McGee v. Feege*, 5335 A.2d 1020, 1023 (Pa. 1987)). ““To establish a claim for abuse of process it must be shown that the defendant (1) used a legal process against the plaintiff[;] (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to the plaintiff.”” *See Shiner*, 706 A.2d at 1236 (citation omitted). A defendant will not be liable for doing no more than carrying out the process to “its authorized conclusion, even though with bad intentions.” *See id.* (citation omitted). Rather, liability requires that a plaintiff prove “some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process.” *See id.* (citation omitted).

Defendants’ third counterclaim contains sufficient allegations that plaintiff has perverted the process by “some definite act or threat not authorized by the process.” *See id.* Defendants have alleged that plaintiff’s counsel “threatened to force [Raymond] into personal bankruptcy unless [Raymond] promptly accepts [Processors’] proposals and accedes to [Processors’] demands” regarding Sweeteners. *See Defs. Ans.* ¶ 81. Moreover, defendants have alleged that plaintiff has proceeded against defendants “for the improper purpose of forcing [Raymond] through duress to permit [Processors] to acquire [Sweeteners’] assets at less than fair value, to the detriment of [Sweeteners’] other creditors, and in furtherance of [Processors’] inequitable scheme to acquire or destroy ASI’s business.” *See id.* ¶ 89; *see also id.* ¶¶ 80 & 83. In short, defendants allege more than mere bad intent. Defendants allege both specific threats and facts permitting a reasonable inference of a primary improper purpose exceeding the scope of the suit

to enforce the Minnesota judgment.

Plaintiff's final argument is that defendants lack standing to raise the claims of Sweeteners' other creditors. This cursory assertion does not dispose of the counterclaim. Defendants have alleged individualized injury in both coercion to breach fiduciary obligations, *see* Defs. Ans. ¶ 83, and in suffering distress and other damages, *see id.* ¶ 84. Therefore, I will deny plaintiff's motion to dismiss the third counterclaim because defendants have alleged facts which state a claim for relief.

CONCLUSION

Because factual, procedural and legal questions exist as to whether the Minnesota court had subject matter jurisdiction to enter judgment on the confessed judgment, because the subject matter jurisdiction of a court is not susceptible to collateral attack, and because principles of comity counsel this court not to entertain a collateral attack on a judgment entered by another federal district court, I will dismiss defendants' first counterclaim for declaratory relief. Because the counterclaim is dismissed, I will deny the parties' cross-motions for summary judgment. Further, because defendants' second counterclaim is premature, I will dismiss it as well. Finally, I will deny the motion to dismiss defendants' third counterclaim, because defendants have alleged sufficiently both specific threats and an improper purpose exceeding the scope of instituted proceedings.

An appropriate order follows.

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

MINNESOTA CORN PROCESSORS, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
RAYMOND J. MCCORMICK & MARY LOU	:	NO. 99-5932
MCCORMICK,	:	
Defendants.	:	

Order

And now, this _____ day of July, 2000, upon consideration of plaintiff's complaint (Doc. No. 1), defendants' answer and counterclaims (Doc. No. 3), defendants' motion for summary judgment on their first counterclaim (Doc. No. 4), plaintiff's cross-motion for summary judgment and motions to dismiss (Doc. No. 6), defendants' brief in opposition to plaintiff's motions (Doc. No. 10), and plaintiff's reply in support of its motions (Doc. No. 12), it is hereby ORDERED AND DECREED that:

1. Plaintiff's motion to dismiss defendants' first counterclaim is GRANTED;
 2. Plaintiff's motion for summary judgment on defendants' first counterclaim is DENIED;
 3. Defendants' motion for summary judgment on their first counterclaim is DENIED;
 4. Plaintiff's motion to dismiss defendants' second counterclaim is GRANTED; and
 5. Plaintiff's motion to dismiss defendants' third counterclaim is DENIED.
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William H. Yohn, Jr., Judge