

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

LINDA KELLEHER)
) Civil Action
 v.)
) No. 01-3386
CITY OF READING, ET AL.)

MEMORANDUM

Padova, J.

January , 2002

The instant matter arises on the Motion of Plaintiff Linda Kelleher ("Kelleher") to dismiss the counterclaim brought by Defendant Jeffrey Waltman ("Waltman"). Kelleher is the City Clerk of the City Council for Reading, Pennsylvania. Waltman is a member of the City Council. Plaintiff's cause of action stems from various actions related to the publication of allegedly private e-mails and disciplinary actions taken against her. In the counterclaim, Defendant alleges that Plaintiff breached her duty of loyalty to Waltman through several specific actions. For the reasons that follow, the Court concludes that Defendant's counterclaim fails to state a claim upon which relief may be granted, and therefore grants Plaintiff's motion and dismisses the counterclaim.

I. Legal Standard

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR,

Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

II. Discussion

In considering whether to sustain or dismiss the counterclaim, the Court must first determine whether Plaintiff owed a duty of loyalty to Defendant Waltman. Pennsylvania common law recognizes a duty of loyalty owed by an agent to her principal in all matters affecting the subject of her agency. Sylvester v. Beck, 178 A.2d 755, 757 (Pa. 1962); SHV Coal, Inc. v. Continental Grain Co., 545 A.2d 917, 920-21 (Pa. Super Ct. 1988), rev'd on other grounds, 587 A.2d 702 (1991). These duties of loyalty are expressed and explained in Sections 387-98 of the Restatement (Second) of Agency.

Defendant cites the following provision in the City of Reading Home Rule Charter as establishing the duty of loyalty:

Within thirty (30) days of taking office, City Council shall appoint an officer of the City who shall have the title of City Clerk. The City Clerk shall give notice of Council meetings to its members and the public, take the minutes of all City Council meetings, keep the journal of its proceedings, shall have the power of a notary public, shall serve as secretary to the Council and perform such other duties as are assigned by the administrative code, the Council, or state law. The term of City Clerk shall be two (2) years with the option to be re-appointed for successive terms. The City Clerk shall serve at the pleasure of Council.

306 Pa. Code § 11.2-225 (2001). The provision establishes a principal-agent relationship between the City Clerk and the City Council giving rise to a duty of loyalty. "Agency is the fiduciary

relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." Restatement (Second) of Agency § 1 (1958). The Charter provides that the City Council appoint and supervise the City Clerk, who in turn serves at the pleasure of the Council. Under the definition of agency contemplated under the Restatement, a duty of loyalty is owed by Plaintiff to the City Council.

In this case, however, the Counterclaim is brought not by the City Council, but by an individual Council member. Although the Charter does not explicitly mention an agency relationship between the City Clerk and individual members of the City Council, Defendant contends that Plaintiff also owes a duty of loyalty to the individual members of the City Council. Defendant fails to cite any authority in support of his proposition. Nevertheless, the Court agrees that in order for the duty of loyalty to the City Council to be meaningful, that duty necessarily extends its reach to the individuals comprising the Council. However, the Court further observes that the duty owed to individual City Council members cannot exceed the scope and limits of the duty owed to the City Council as a whole. Thus, the Court will consider the duty owed to Defendant to be that described in his Motion - namely, a duty to the individual council members "in the performance of their duties as members of City Council." (Def.'s Mem. at 5) (emphasis

added).¹ Subject to the aforementioned limitation, the Court agrees that Plaintiff owed a duty of loyalty to Defendant Waltman.

Examining the allegations contained in the counterclaim in light of the duty owed by Plaintiff to Waltman, the Court concludes that Defendant has failed to state a claim upon which relief may be granted, because none of the actions allegedly taken by Plaintiff breach the duty of loyalty owed by Plaintiff to Councilman Waltman in the performance of his duties as a member of the City Council. The conduct involved did not involve the functions or administrative responsibilities of the City Council. Rather, they related to the individual Defendant's own political rivalries and political image. The Court will discuss each of the specific allegations in turn.

E-mail to Political Rival: On March 9, 2001, Plaintiff revealed in an e-mail message to a David Kamioner, one of Waltman's political rivals, that Waltman had not yet filed a Financial Interest Statement. (Counterclaim ¶ 7.) Defendant contends this violated sections 391, 394, and 395 of the Restatement. The Court disagrees. Section 391 bars an agent from acting "on behalf of an

¹Reading the duty of loyalty owed to individual counsel members to be any broader than that owed to the City Council as a whole would yield results inconsistent with the language of the Home Charter, which provides that the Clerk serves at the pleasure of the City Council. For example, the City Council as a whole has the authority to discipline the Clerk, but an individual City Council member does not have similar authority. Thus, there are clearly limitations on the degree to which the Clerk serves individual members of the City Council "at their pleasure."

adverse party in a transaction connection with his agency without the principal's knowledge." Restatement (Second) Agency § 391. Section 394 bars an agent from acting on behalf of those "whose interests conflict with those of the principal in matters in which the agent is employed." Restatement (Second) Agency § 394. Although Kamioner is Waltman's political rival and therefore either an adverse party or one with conflicting interests insofar as Waltman's personal political interests are concerned, he is not an adverse party or one with conflicting interests in relation to the City Council. Thus, Plaintiffs' actions cannot be a breach of the duty owed by Plaintiff to Waltman by virtue of his membership in the City Council.

Similarly, the e-mail does not constitute a breach of § 395. Section 395 prohibits communication of information that is confidential and learned of by virtue of the agency relationship, that is used "on [the agent's] own account or on behalf of another." Restatement (Second) of Agency § 395. That section again focuses on the use of such information for the purpose of "competing with the principal." Restatement (Second) of Agency § 395 comt. a. Even assuming the truth of the allegations in the counterclaim, they do not constitute a breach of the duty owed because they were focused on Waltman's potential reelection campaign rather than his duties as a Councilman.

Undermining Waltman's Authority: The next two claims are based on e-mails that "make fun" of Councilman Waltman for getting lost in the parking garage and for where his headquarters are located. (Counterclaim ¶¶ 9, 11.) Defendant relies on § 394 of the Restatement. Again, as with the claim relating to the Kamioner e-mail, the Court concludes that these communications did not violate § 394, because none of the individuals involved can be thought of as having interests conflicting with those of the Councilman Waltman in the performance of his role as a member of the City Council.

Facsimile: According to the final allegation of the counterclaim, Plaintiff addressed a facsimile regarding City personnel and promotion matters to all members of the City Council except Defendant. (Counterclaim ¶ 13.) Defendant received the facsimile in error. (Def.'s Mem. at 7.) Defendant claims that Plaintiff had no legitimate reason for failing to exclude him in the distribution. Defendant relies on § 392 of the Restatement, which bars an agent from acting unfairly to multiple principals. Restatement (Second) Agency § 392 (1958). Defendant contends that this section applies insofar as Plaintiff owed a duty to each of the individual council members, and that she breached § 392 by failing to treat Waltman on the same footing as the other council members. Assuming without deciding that this could constitute a breach of duty claim by leaving "Councilman Waltman uninformed

about City Council business,"² by Defendant's own admission, he received the fax, albeit "in error." (Def.'s Mem. at 7.) Thus, in order to allow the claim to proceed, the Court would need to extend § 392 to include the "intent" or "attempt" to breach the duty of loyalty. Defendant cites, and this Court has identified, no support for the existence of such a claim.

III. Conclusion

For the above stated reasons, the Court concludes that Defendant's counterclaim fails to state a claim upon which relief may be granted. Accordingly, the Court grants Plaintiff's motion to dismiss the counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6). An appropriate Order follows.

²In order for it to be possible for § 392 to apply in this context, the Court would need to determine that it is possible for Plaintiff to breach her duty to one council member and not to the others, when her duty to all of them arises from the same single duty owed to the City Council as a whole. Although the Court has serious reservations about such an interpretation, it need not reach this issue here.

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ORDER

AND NOW, this day of January, 2002, upon
consideration of Plaintiff's Motion to Dismiss Counterclaim
Pursuant to F.R.C.P. 12(b)(6) (Doc. No. 11), and any response
thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED**.
Defendant Waltman's counterclaim is **DISMISSED**.

BY THE COURT:

John R. Padova, J.