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

ROBERT S. GOLDSTEIN	)	Civil Action
	)	
v.	)	
	)	
ALEX J. MURLAND, MURLAND & NATHAN, P.C. AND MURLAND & NATHAN, LLC	)	No. 02-247

MEMORANDUM

Padova, J. **June , 2002**

Before the Court is Plaintiff Robert S. Goldstein's Motion to Dismiss Defendants' Amended Counterclaim or, in the alternative, for Summary Judgment.[1] For the reasons that follow, the Court grants the Motion and dismisses the Amended Counterclaims in their entirety. The Court further dismisses Plaintiff's original Motion to Dismiss Defendants' Counterclaim as moot.

I. Background

The instant action was filed by Robert S. Goldstein, Esq., formerly a partner and shareholder in the firm of Murland and Goldstein. Murland originally hired Goldstein as an associate in his firm in May 1991. In 1994, Goldstein purchased a 25 percent

[1]Plaintiff originally filed a Motion to Dismiss Defendants' Counterclaim. Defendants then filed Amended Counterclaims. The Court understands the Amended Counterclaims to supersede and replace the Counterclaims. Accordingly, Plaintiff's original motion to dismiss is moot. However, the Court has nonetheless considered the arguments raised by the parties with respect to the original counterclaims to the extent these arguments also apply to the amended counterclaims.

interest in the firm for $75,000, at which time the firm became known as "Murland & Goldstein, PC." Goldstein began paying this amount in monthly payments, which continued until 1999, at which time Plaintiff waived the remainder of the payments.

In January 2001, Murland and Goldstein agreed that Goldstein would receive an annual salary of $100,000, contingent upon Goldstein's commitment to stay with the firm for the entire year. On April 10, 2001, Goldstein informed Murland that he would be moving to Colorado to accept a position in his father-in-law's law firm. Goldstein left the firm on May 8, 2001. On May 17, 2001, Goldstein, Murland, and the firm entity Murland, Goldstein & Nathan, P.C. executed a Separation and Stock Purchase Agreement ("Separation Agreement"). The parties agreed to a buy-out of the shares held by Goldstein for $100,000. Under the terms of the Agreement, Defendant was to make three payments, each in the amount of $1,822, on May 30, June 15, and June 30. The balance was then to be paid in monthly payments commencing October 20, 2001. Plaintiff alleges that after making the initial three payments, Defendant failed to commence monthly payments on October 20, 2001. Plaintiff filed this action against Murland, the P.C., and Murland & Nathan, L.L.C.[2] seeking fulfillment of the contract terms.

[2]Plaintiff alleges that Murland & Nathan, L.L.C. is a successor entity to the PC. (Compl. ¶ 27.)

Defendants filed counterclaims alleging that Plaintiff breached additional terms of an oral agreement with respect to what he was going to do and what he had done prior to his departure. Plaintiff filed a motion to dismiss the counterclaims or, in the alternative, for summary judgment. Defendants subsequently filed amended counterclaims. Plaintiff filed a second motion to dismiss the amended counterclaims.

II. 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.

III. Discussion

A. Fraud and Fraud in the Inducement (Counts 1 and 2)

Defendants' first two counterclaims are for fraud and fraud in the inducement.[3] A claim for fraud consists of the following elements: a material misrepresentation of fact; a fraudulent utterance thereof; the maker was aware of its falsity or recklessness as to whether it was true or false; the statement was made or omitted with the intent of misleading or inducing the

[3]Counterclaims 1 and 2 are brought by all three Defendants, Murland, Murland & Nathan, P.C., and Murland & Nathan, L.L.C., against Plaintiff Goldstein.

plaintiff into relying on it; justifiable reliance by the plaintiff on the misrepresentation; and damages to the plaintiff as a proximate result of reliance on the misrepresentation. Shapiro v. UJB Fin. Corp., 964 F.2d 272, 284 (3d Cir. 1992); Gibbs v. Ernst, 647 A.2d 882, 889 (Pa. 1994). A claim for fraudulent inducement includes an additional element, that the misrepresentation was made with the specific intent to induce another to enter into a contract when the person had no duty to enter into the contract. In Re Allegheny Internat'l, Inc., 954 F.2d 167, 178 (3d Cir. 1992).

Defendants allege that Goldstein omitted numerous material facts and made numerous misrepresentations of material fact in his discussions and communications with the Defendants with respect to his intentions to leave the firm and his obligations with regard to preparing the files and staff for his departure. (Am. Compl. ¶¶ 46, 47f-i, 58, 59.) Defendants further allege that they relied upon the misrepresentations and omissions to their detriment, including negotiating and entering into the Separation Agreement. (Am. Compl. ¶ 42-43, 48-51, 61-64.)

In order to prove their claims of fraud and fraud in the inducement, Defendants will have to rely on the introduction of evidence relating to the alleged misrepresentations and omissions by the Plaintiff. Plaintiff argues, however, that the claims should be dismissed because such evidence is barred by

Pennsylvania's parol evidence rule. The parol evidence rule provides that:

> Where the parties to an agreement adopt a writing as the final and complete expression of their agreement, . . . evidence of negotiations leading to the formation of the agreement is inadmissible to show an intent at variance with the language of the written agreement. Alleged prior or contemporaneous oral representations or agreements concerning subjects that are specifically dealt with in the written contract are merged in or superseded by that contract. The effect of an integration clause is to make the parol evidence rule particularly applicable. Thus the written contract, if unambiguous, must be held to express all of the negotiations, conversations, and agreements made prior to its execution, and neither oral testimony, nor prior written agreements, or other writings, are admissible to explain or vary the terms of the contract.

1726 Cherry St. Partnership v. Bell Atlantic Properties, Inc., 653 A.2d 663, 665 (Pa. Super. Ct. 1995) (citing McGuire v. Schneider, Inc., 534 A.2d 115, 117-18 (Pa. Super. Ct. 1987)); see also HCB Contractors v. Liberty Place Hotel Assocs., 652 A.2d 1278, 1279 (Pa. 1995) (barring consideration of prior alleged representations concerning matters covered in the written contract, even though the representations were alleged to have been made fraudulently)). In the face of a clear and fully integrated written agreement, the rule bars the use of parol evidence to prove a fraudulent inducement claim.[4] Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287,

[4]Although Pennsylvania law applies the parol evidence rule with respect to claims for fraud in the inducement, it does not

1300-01 (3d Cir. 1996). Accordingly, Pennsylvania law prohibits recovery on a claim of fraud in the inducement where the contract represents a fully integrated written agreement. North Am. Roofing & Sheet Metal Co., Inc. v. Building & Constr. Trades Council of Phila. & Vicinity, AFL-CIO, Civil Action No. 99-2050, 2000 U.S. Dist. LEXIS 2040, at *24 (E.D. Pa. Feb. 29, 2000).

In this case, the Separation Agreement entered into by the parties contained the following integration clause:

> 25. **ENTIRE AGREEMENT**. This Agreement encompasses the entire agreement between the parties hereto with respect to the subject matter covered hereby and there are no other agreements, oral or written, not set forth herein.

---

similarly apply the rule with respect to fraud in the execution claims. Dayhoff Inc., 86 F.3d at 1300 (citing 1726 Cherry St., 653 A.2d 670). Pennsylvania law distinguishes between the two claims as follows:

> Fraud in the execution applies to situations where parties agree to include certain terms in an agreement, but such terms are not included. Thus, the defrauded party is mistaken as to the contents of the physical document that it is signing. Parol evidence is admissible in such a case only to show that certain provisions were supposed to be in the agreement but were omitted because of fraud, accident, or mistake. Fraud in the inducement, on the other hand, does not involve terms omitted from an agreement, but rather allegations of oral representations on which the other party relied in entering into the agreement but which are contrary to the express terms of the agreement.

Id. Here, the amended counterclaims for fraud are clearly fraud in the inducement claims rather than fraud in the execution claims.

(Compl. Ex. A "Separation Agreement" ¶ 25.) The contract contains no provisions relating to the alleged representations made by Goldstein to Murland. Accordingly, the written agreement is fully integrated and dismissal of the fraud/fraud in the inducement claims is appropriate.[5] See North Am. Roofing, 2000 U.S. Dist. LEXIS 2040, at *25. Plaintiff's Motion to Dismiss Counterclaims 1 and 2 is granted.[6]

B. The Remaining Counterclaims (Counts 3, 4, 5)

Defendants bring three other counterclaims: (3) breach of fiduciary duty; (4) breach of oral contract between Murland and Goldstein; and (5) breach of warranty.[7] Plaintiff contends that

---

[5]Furthermore, to the extent that any fraud claims might persist in the absence of the introduction of parol evidence, such claims would be barred by the general release contained in the Separation Agreement, as discussed in the following section.

[6]The Counterclaims are also dismissed with respect to Defendant Murland & Nathan, L.L.C. This entity had not yet been formed at the time of the Separation Agreement. The LLC fails to set forth any facts that would serve as a basis for liability on a fraud or fraud in the inducement claim relating to a contract which was negotiated, drafted, and signed prior to the entity's formation.

In the Complaint, Plaintiff alleges that the LLC is a "successor" entity to the PC, and therefore it is jointly and severally liable. (Compl. ¶ 27-29.) To the extent that the LLC is a successor entity and might otherwise have a basis for bringing a fraud or fraud in the inducement claim against Plaintiff, the LLC's claims would then be barred by the release contained in the Separation Agreement. (See Separation Agreement ¶ 16(C) (extending release to "PC'S parents, predecessors, successors, subsidiaries, affiliates, assigns, . . .")

[7]Counterclaim 3 is brought by Defendants Murland and Murland & Nathan, P.C., against Plaintiff Goldstein. Counterclaims 4 and 5 are brought by Defendant Murland against Plaintiff.

these counterclaims are barred by the general release contained in the Separation Agreement. Release is an affirmative defense. See Fed. R. Civ. P. 8(c). Generally, this defense is asserted by motion for judgment on the pleadings or summary judgment. Straight Arrow Prod. v. Conversion Concepts, Inc., Civil Action No. 01-221, 2001 U.S. Dist. LEXIS 19859, at *7 (E.D. Pa. Dec. 3, 2001). In this case, however, Defendants have incorporated the terms of the agreement, including the release, into their Counterclaim complaint, thus making it a matter properly addressed by the Counterclaim Defendant's Motion to Dismiss. See id.

Defendants argue that the release is invalid because it was fraudulently obtained through the misrepresentations and omissions made by Goldstein to the Defendants at the time the Separation Agreement was negotiated. However, as discussed above with respect to the fraud counterclaims, Pennsylvania's parol evidence rule bars consideration of the evidence that would be necessary to prove that the release provision in the Separation Agreement was invalid.[8]

---

[8]Additionally, Defendants have waived their claim of fraud. When a release is procured by fraud, a party may either (1) disaffirm the release and offer to return the consideration; or (2) affirm the voidable contract and waive the fraud. See, e.g., Nocito v. Lanuitti, 167 A.2d 262, 263 (Pa. 1961). Failure to tender back the consideration after discovery of the alleged fraud constitutes an affirmance of the contract. See id. Although Defendants contend that there were no physical shares to return, nowhere have they pleaded that they ever offered to return the consideration supporting the agreement. See Winters, 174 F. Supp. 2d at 263. Accordingly, Defendants have reaffirmed the agreement and the release, and therefore any claims covered by the release are barred. The remaining question, therefore, is whether the

Winters v. The Investment Savings Plan for Employees of Knight-Ridder, Inc., 174 F. Supp. 2d 259, 263 (E.D. Pa. 2001). The breach of contract counterclaim is, therefore, barred by the release, and the release provision must be enforced. See Straight Arrow Prods., 2001 U.S. Dist. LEXIS 19859, at *13-19; Allen v. Consolidated Rail Corp., Civil No. 93-1191, 1995 U.S. Dist. LEXIS 3020, at *9-10 (E.D. Pa. Mar. 9, 1995) (noting that when none of the exceptions to the parol evidence rule apply, a plaintiff will not be permitted to offer extrinsic evidence regarding the validity of the release agreement).

The release provision contained in the Separation Agreement is broadly worded, as follows:

> 16. **RELEASE**. Other than the obligation to make payments pursuant to the Note, to guaranty payments as provided for herein and to provide indemnification as set forth above, the parties hereby release each other as follows: . . .
>
> A. MURLAND Release of GOLDSTEIN. MURLAND does hereby remise, release and forever discharge, GOLDSTEIN and GOLDSTEIN'S executors, personal representatives, heirs, administrators and assigns from all actions, causes of action, claims and demands whatsoever, whether or not well-founded in fact or in law, and from all suits, debts, dues, sums of money, accounts, reckonings, notes, bonds, bills, specialties, covenants, contracts, controversies, agreements, leases, promises, trespasses, damages, judgments, executions, claims and demands whatsoever, at

---

remaining counterclaims fall within the scope of the release provision.

> law or in equity, that PC ever had, now has or that MURLAND ever had, now has or that MURLAND's executors, heirs, administrators and assigns hereafter may have against GOLDSTEIN, by reason of any matter, cause or thing whatsoever, up to and including the day and date of this Release.
>
> * * *
>
> C. PC Release of GOLDSTEIN. PC does hereby remise, release and forever discharge, GOLDSTEIN and GOLDSTEIN'S executors, heirs, administrators and assigns from all actions, causes of action, claims and demands whatsoever, whether or not well-founded in fact or in law, and from all suits, debts, dues, sums of money, accounts, reckonings, notes, bonds, bills, specialties, covenants, contracts, controversies, agreements, leases, promises, trespasses, damages, judgments, executions, claims and demands whatsoever, at law or in equity, that PC ever had, now has or that PC's parents, predecessors, successors, subsidiaries, affiliates, assigns, officers, directors, employees, agents, stockholders, representatives, insurers and their respective executors, heirs, administrators, successors and assigns hereafter may have against GOLDSTEIN, by reason of any matter, cause or thing whatsoever, up to and including the day and date of this Release.

(Separation Agreement ¶ 16.)[9] The broadly worded release clearly encompasses all of Defendants' counterclaims.

Defendants, however, argue that their claims fall under the indemnification exception to the release language, which provides as follows:

> A. Indemnification. GOLDSTEIN shall indemnify and hold harmless MURLAND, his

[9]The agreement also contains identical releases by Goldstein of any such claims against Murland and PC.

> heirs, personal representatives, administrators, executors and assigns, from, against and with respect to the amount of any and all deficiencies (hereinafter referred to as "GOLDSTEIN Deficiencies") totaling more than One Thousand ($1,000.00) Dollars in the aggregate. Notwithstanding the foregoing, GOLDSTEIN shall have no obligation to indemnify MURLAND hereunder for any claim covered by malpractice insurance. This obligation shall continue for three (3) years from execution hereof.

(Separation Agreement ¶ 14A)(emphasis added).

"GOLDSTEIN Deficiencies" is defined as:

> (1) Any and all loss or damage resulting from any misrepresentation, omission, breach of warranty, representation, covenant or agreement on the part of GOLDSTEIN contained herein;
> (2) Any and all of the liabilities of GOLDSTEIN of any nature whatsoever, whether known or unknown on the date hereof, whether or not such debts, liabilities or obligations constitute or arise from a breach of any representation or warranty made by GOLDSTEIN herein; and
> (3) Any and all acts, suits, proceedings, demands, assessments, judgments, claims, reasonable attorneys' fees, costs and expenses incident to any of the foregoing matters set forth in subparagraphs (1) and (2) above.

(Separation Agreement ¶ 14B.)

The Court disagrees with Defendants that their counterclaims fall within the scope of the indemnification provisions. The counterclaims asserted by the Defendants are not claims for indemnification as contemplated by the plain language of the provision. Accordingly, as there is no exception to the general release language to protect the counterclaims, the claims must be

dismissed. Plaintiff's Motion to Dismiss the remaining counterclaims on the basis of the general release is granted.

An appropriate Order follows.

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

ROBERT S. GOLDSTEIN	)	Civil Action
	)	
v.	)	
	)	
ALEX J. MURLAND, MURLAND & NATHAN, P.C., AND MURLAND & NATHAN, LLC	)	No. 02-427

ORDER

AND NOW, this day of June, 2002, upon consideration of Plaintiff Robert S. Goldstein's Motion to Dismiss Defendants' Amended Counterclaim (Doc. No. 11), and any and all responses thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED**. Defendant's Amended Counterclaims are **DISMISSED** in their entirety. **IT IS FURTHER ORDERED** that Plaintiff's Motion to Dismiss Defendants' Counterclaim (Doc. No. 7) is **DISMISSED** as moot.

BY THE COURT:

_____
John R. Padova, J.