

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

JAMES PERRY, et al. : CIVIL ACTION
: :
v. : :
: :
FINE GRINDING CORPORATION, : :
et al. : NO. 96-6250

MEMORANDUM AND ORDER

BECHTLE, J.

MAY , 1997

Presently before the court is Plaintiffs James and Pearl Perry's (jointly, "Plaintiffs") motion to dismiss the counterclaim filed by Defendants Fine Grinding Corporation ("FGC"), Fine Grinding Corporation Defined Benefit Plan ("Plan"), Herbert Everett, and Timothy Everett (collectively, "Defendants"). For the following reasons, the motion will be granted in part and denied in part.

I. BACKGROUND

Plaintiff James Perry was an FGC employee from June 1965 until he resigned on April 7, 1995. In October 1983, FGC established the Plan for the benefit of its employees and their families. Plaintiffs were a participant and a beneficiary under the Plan. In November 1995, Plaintiffs applied for benefits under the Plan, and Defendants refused to pay. Defendants admit that benefits are owed, but allege that because James Perry committed fraud, they are unable to calculate the amounts due.

On September 13, 1996, Plaintiffs commenced this civil action under the Employment Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("ERISA"), seeking to recover payment of benefits under the Plan (Count I), and asserting that the trustees breached their fiduciary duties (Count II), Defendants failed to provide him with information regarding his entitlement to benefits (Count III), and they interfered with his protected rights (Count IV).

On December 10, 1996, Defendants filed an Answer and Counterclaim alleging claims of breach of loyalty (Count I), tortious interference with prospective contractual relations (Count II), and fraud (Count III). On December 30, 1996, Plaintiffs filed a motion to dismiss the Counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). On January 16, 1997, Defendants filed a responsive brief.

II. DISCUSSION

A. Lack of Subject Matter Jurisdiction

Plaintiffs argue that the counterclaims are permissive, not compulsory.¹ Therefore, because the citizenship of the parties

1. The Federal Rules of Civil Procedure provide for two types of counterclaims--compulsory counterclaims, which must be raised in the same action, and permissive counterclaims, which may be brought in a separate action. Compulsory counterclaims arise out of the same transaction or occurrence as the claims and therefore necessarily arise out of the same nucleus of operative fact and the court exercises jurisdiction over them under 28 U.S.C. § 1367(a). Ambrovage v. United Mine Workers, 726 F.2d 972, 990 (3d Cir. 1984). However, the court may only exercise jurisdiction
(continued...)

is not diverse and the counterclaims do not rely on any federal question, the court lacks an independent ground of jurisdiction and must dismiss them. (Pls.' Mem. Supp. Dismissal at 2.) The court agrees in part and disagrees in part.

The court has original jurisdiction over Plaintiffs' ERISA claims pursuant to 28 U.S.C. § 1331. There is no federal question presented in the counterclaims and the parties' citizenship is not diverse. Therefore, the court can exercise jurisdiction only if it finds that it has supplemental jurisdiction under 28 U.S.C. § 1367. Pursuant to that statute, the court may hear the counterclaims that do not have an independent basis for jurisdiction if they are "so related to claims in the action within [its] original jurisdiction that they form a part of the same case or controversy. . . ." 28 U.S.C. § 1367(a). In order for the court to exercise its supplemental jurisdiction, the federal claim must have substance sufficient to confer subject matter jurisdiction, the state and federal claims must derive from a common nucleus of operative fact, and the claims must be such that they would ordinarily be expected to be tried in one proceeding. MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1102 (3d Cir. 1995), cert. denied, 117 S. Ct. 64 (1996).

1. (...continued)
over permissive counterclaims if there is an independent ground for jurisdiction. See Reitz v. Deiter, 840 F. Supp. 353, 355 (E.D. Pa. 1993).

Plaintiffs' claims focus on the benefits to which they believe they are entitled under the Plan, the Plan's trustees breach of fiduciary duties, the failure to provide him with information regarding his entitlement, and interference with his protected rights. Thus, the operative facts will relate to James Perry's duration and hours of employment, the Plaintiffs entitlement to benefits under the Plan, and the management of the payment of benefits under the Plan.

Defendants admit Plaintiffs are entitled to some benefits under the Plan. However, they contend that James Perry committed fraud which resulted in his receiving excessive pay. (Defs.' Mem. Opp. Dismissal at 3.) Because of these actions, they argue that they cannot calculate the amounts owed. Id.

The evidence that will be presented to prove Count III of the Counterclaim will substantially overlap the evidence presented to prove Plaintiffs' claims. Essential facts alleged in the Complaint constitute part of the defense as well as the cause of action set forth in that counterclaim. There will be evidence presented about Plaintiff James Perry's employment duties at FGC, his hours of work and the alleged misrepresentations. The court finds that the counterclaim for fraud arises out of the same transaction and nucleus of operative fact as the Plaintiffs' claims, and is therefore a claim over which this court shall exercise jurisdiction pursuant to 28 U.S.C. § 1367(a).

However, Counts I and II of the Counterclaim are permissive claims that do not arise from a common nucleus of operative fact and would not ordinarily be tried in the same proceeding as the Plaintiffs' claims. They allege that James Perry breached his duty of good faith and loyalty to FGC by working for the competition and diverting customers away from FGC in return for a commission, taking equipment that belonged to the company, committing acts of industrial sabotage, having an ownership interest in a direct competitor, and disclosing confidential information to the competitor, and that he interfered with prospective contractual relations by diverting customers. These counterclaims relate to James Perry's contact and relations with third parties and competing businesses. They require the presentation of documentary and factual evidence of specific business transactions which have no relationship to the ERISA claims and the calculation of benefits due Plaintiffs. The court therefore may not exercise jurisdiction over them under 28 U.S.C. § 1367, and will dismiss them without prejudice.

B. Lack of Capacity

Plaintiffs also argue that the court should dismiss the counterclaims pursuant to Rule 12(b)(6) because they sued FGC in a fiduciary capacity, and FGC is now counterclaiming in its capacity as a corporation. The court disagrees. Plaintiffs have alleged wrongful actions by the corporation in its corporate capacity. Plaintiffs also ask for relief from FGC in its

corporate capacity. Therefore, the court will not dismiss on this ground.

IV. CONCLUSION

For the above reasons, Plaintiffs' motion will be granted in part and denied in part.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of May, 1997, upon consideration of Plaintiffs James and Pearl Perry's Motion to Dismiss Defendants Fine Grinding Corporation, Fine Grinding Corporation Benefits Plan, Herbert Everett, and Timothy Everett's Counterclaim, and Defendants' response thereto, IT IS ORDERED that said motion is GRANTED in part and DENIED in part. Counts One and Two of Defendants' Counterclaim are hereby DISMISSED WITHOUT PREJUDICE.

LOUIS C. BECHTLE, J.