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

Thomas Shaw	:	CIVIL ACTION
v.	:	
Travelers Express Co., Inc.	:	NO. 98-4373

M E M O R A N D U M

Padova, J. February 5, 1999

Plaintiff Thomas Shaw ("Shaw") has filed suit against Defendant Travelers Express Co., Inc. ("Travelers") for intentional interference with its contractual relations with United Check Cashing Company ("UCC"). Before the Court is Travelers's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, the Court will deny Defendant's Motion.

I. FACTUAL BACKGROUND

According to Shaw's Complaint, on or about August 11, 1994, Shaw entered into an agreement with UCC under which he became a franchisee operating a UCC agency in Bethlehem, Pennsylvania. (Compl. at ¶ 4.) Shaw also entered into an agreement with Travelers under which Shaw was authorized to sell money orders issued by Travelers. (Id. at ¶ 5.) Pursuant to the Shaw-Travelers agreement, Travelers had a pre-authorized right to

access Shaw's bank account to pay for money orders issued by Shaw. (Id. at ¶ 7.) On or about August 29, 1997, Travelers attempted to access Shaw's bank account, but there were insufficient funds to pay the amount owing to it. (Id. at ¶ 8.) Shaw's account was low on funds because of an employee theft. (Id.)

Upon discovering that there were insufficient funds to cover the amount owed, Travelers severed its business relationship with Shaw, pursuant to the Shaw-Travelers agreement. (Id. at ¶ 9.) In addition, Travelers, without just cause and with the intent to harm Shaw, notified UCC of the shortage in Shaw's account and other business dealings of Shaw. (Id. at ¶ 10.) As a result of that notice, UCC terminated its agreement with Shaw. (Id.) Travelers's actions were not privileged or justified in any way. (Id. at ¶ 11.) Shaw suffered damages in excess of $100,000 by losing his franchise with UCC and the income derived from that franchise as well as the good will and value that he had built up in his business. (Id. at ¶ 12.)

II. LEGAL STANDARD

A claim may be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure only if the plaintiff can prove no set of facts in support the claim that would entitle him 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 the allegations as true. Id.; Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989) (holding that in deciding a motion to dismiss for failure to state a claim, the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the nonmoving party").

III. DISCUSSION

Travelers seeks dismissal of Shaw's Complaint on two grounds: (1) the Complaint represents a duplication of a claim raised by Shaw in prior litigation, and is therefore barred by the doctrine of res judicata; and (2) the Complaint fails to state a cause of action for intentional interference with contractual relations.

A. Res Judicata

In October, 1997, UCC filed suit against Shaw, Express Cash,[1] and others alleging breach of contract and ten other counts. United Check Cashing v. Shaw, et al., Civ.A.No.

[1]According to Travelers, Express Cash, Inc. ("Express Cash"), is a corporate entity wholly or partially owned by Plaintiff, in Whitehall, Pennsylvania. (Mot. at 1.)

97CV6701, United States District Court for the Eastern District of Pennsylvania (Padova, J.)(the "UCC action"). Travelers was not named as a defendant in the UCC action. Shaw filed a counterclaim in which he attempted to join Travelers as a counter defendant. Shaw asserted counter-claims against Travelers for breach of fiduciary duty of confidentiality, conspiracy to induce breach of fiduciary duty of confidentiality, misappropriation, common law conspiracy to misappropriate trade secret, common law invasion of privacy, and common law conspiracy to invade privacy.

Travelers argues that Shaw is attempting to re-litigate the same claims against it that were raised and dismissed with prejudice in the UCC action, and therefore, Shaw's Complaint is barred by the doctrine of res judicata. "The doctrine of res judicata requires the occurrence of four elements. . . (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality in the persons for or against whom the claim is made." City of Pittsburgh v. Zoning Board of Adjustment of City of Pittsburgh, 559 A.2d 896, 901 (1989). The defense of res judicata can be asserted on a motion to dismiss. Adams v. Gould, Inc., 739 F.2d 858, 869 n.14 (3d Cir. 1984). The issue of res judicata can be resolved on a Rule 12(b)(6) motion "when all relevant facts are shown by the court's own records, of which the court takes notice." Day v. Moscow, 955 F.2d 807, 811

(2d Cir. 1992).

The parties agree that the allegations underlying Shaw's claim against Travelers in this case are essentially the same as those made by Shaw against Travelers in the UCC action. (Pl.'s Opp. at 2)("Unquestionably, the allegations made in this litigation are similar to those made in the aborted 'Counterclaim' in the United Check Cashing Litigation".) The parties disagree, however, on whether Travelers was a party to the UCC action, a requirement for the application of the res judicata bar.

The parties' disagreement stems from Shaw's improper attempt to join Travelers in its counterclaim in the UCC action. By definition, a counterclaim is a claim for affirmative relief asserted by a party, usually a defendant, against an opposing party, usually the plaintiff. Fed. R. Civ. P. 13. Because Travelers was not a plaintiff in the UCC action, Shaw's attempt to join him as a party to the UCC action via a counterclaim was improper.

The proper vehicle for a defendant to bring a third party into an action is to implead the third party under Rule 14 of the Federal Rules of Civil Procedure. A third party claim is asserted by a separate pleading, called a third party complaint. Fed. R. Civ. P. 7. A summons must be issued on the third party complaint and served in the same manner as required for a summons

on the original complaint. Fed. R. Civ. P. 14(a). The Court takes judicial notice of the fact that Shaw never filed a third party complaint against Travelers and that Travelers never made an appearance in the UCC action. Fed. R. Evid. 201(b). The Court concludes that Travelers was not a party to the UCC action. Therefore, Shaw's Complaint against Travelers in this case is not barred by res judicata.

B. Interference with Contractual Relations

Shaw's Complaint states a claim against Travelers for intentional interference with contractual relations. To state such a claim, a plaintiff must plead (1) an existing contractual relationship between the plaintiff and a third party, (2) a purpose or intent to harm the plaintiff, (3) the absence of privilege or justification on the part of the defendant, and (4) the occurrence of actual harm or damage to the plaintiff as a result of the defendant's conduct. Capecci v. Liberty Corp., 176 A.2d 664, 666 (Pa. 1962). Shaw alleges that Travelers intentionally interfered with his contract with UCC. In his Complaint, Shaw has pled all of the required elements of an interference claim. Travelers argues that Shaw has failed to state a claim because it was his own conduct, not the alleged conduct by Travelers, that caused UCC to terminate its agreement with UCC. The Court cannot resolve this factual issue on a Rule

12(b)(6) motion. Therefore, the Court will deny Travelers's Motion to Dismiss.

An appropriate order follows.

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O R D E R

AND NOW, this 5th day of February, 1999, upon consideration of Defendant's Motion to Dismiss (Doc. No. 3), Plaintiff's Response thereto (Doc. No. 6), and Defendant's Reply (Doc. No. 7), **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is **DENIED**.

BY THE COURT:

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John R. Padova, J.