

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

KEYSTONE COKE COMPANY AND :
VESPER CORPORATION, :
Plaintiffs, :

v. :

H. DONALD PASQUALE, HAPLOID :
CORP., OUT PARCELS, INC., :
SWEDELAND ROAD CORPORATION, :
CRATER RESOURCES, INC., :
EACH PARCEL ASIS, INC., :
RAGM SETTLEMENT CORPORATION, :
R-T OPTION CORP., UNKNOWN :
PASQUALE ENTITIES 1-100, :
Defendants. :

===== :

H. DONALD PASQUALE, OUT :
PARCELS, INC., SWEDELAND ROAD :
CORPORATION, EACH PARCEL ASIS, :
INC., RAGM SETTLEMENT CORPORA- :
TION, R-T OPTION CORP., :
Third-Party Plaintiffs, :

v. :

BEAZER EAST, INC., :
f/k/a KOPPERS COMPANY, INC., :
DRUMMOND COMPANY INC. (SUCCESS- :
OR TO ALABAMA BY-PRODUCTS :
CORPORATION), PHILADELPHIA :
NEWSPAPER REALTY, INC., PHILA- :
DELPHIA NEWSPAPERS, INC., :
Third-Party Defendants. :

===== :

HAPLOID CORP. AND CRATER :
RESOURCES, INC., :
Third-Party Plaintiffs, :

v. :

GULPH MILLS GOLF CLUB :
Third-Party Defendant. :

CIVIL ACTION

NO. 97-6074

MEMORANDUM ORDER

This action arises from environmental contamination at two sites in Upper Merion Township, Montgomery County, Pennsylvania. Presently before the court is the Motion of Crater Resources, Inc. and Haploid Corp to Dismiss Counterclaims.

Plaintiffs filed a complaint against Crater Resources, and Haploid Corp. (the "Crater defendants") and several other defendants (the "Renaissance defendants"). The Renaissance defendants filed a third-party complaint against several parties including Beazer East, Inc. ("Beazer East") pursuant to Fed. R. Civ. P. 14. The Crater defendants did not join in this third-party complaint. Beazer East filed a counterclaim against the Renaissance defendants and against the Crater defendants.

The Crater defendants argue that this counterclaim is improper because Beazer East and the Crater defendants are not opposing parties as required by Rule 13. Beazer East responds that its mislabelled claim should be treated as a cross-claim.

If Beazer East may assert a cross-claim against the Crater defendants, its mislabelling of that claim as a counterclaim is not grounds for dismissal. See Schwab v. Erie Lackawanna R.R. Co., 438 F.2d 62, 64 (3d Cir. 1971) (use of wrong terminology is not fatal).

Whether Beazer East may assert a cross-claim against the Crater defendants turns on whether they are "co-parties" for

the purposes of Rule 13(g). The Federal Rules do not address this issue and there is no settled answer among the federal courts. See Capital Care Corp. v. Lifetime Corp., 1990 WL 2165, at *1 (E.D. Pa. Jan. 11, 1990) (noting the unsettled state of the law on this issue). See also 6 Charles Alan Wright et al., Federal Practice and Procedure § 1431 (2d. ed. 1998).

The assertion of cross-claims between third-party defendants and original defendants has been permitted in this district. See Prudential-LMI Commercial Ins. Co. v. Windmere Corp., 1995 WL 472103, at * 2 (E.D. Pa. Aug. 9, 1995) (permitting cross-claim by third-party defendant against original defendant); Jorgenson Co. v. T.I. United States, Ltd., 133 F.R.D. 472, 475 (E.D. Pa. 1991) (permitting cross-claim by original defendant against third-party defendant); Capital Care Corp., 1990 WL 2165, at *2 (permitting third-party defendant to file cross-claim against original defendants). The original and third-party defendants in these cases were considered "co-parties" since they were not opposing parties and were clearly non-adverse before the filing of the cross-claim. See, e.g., Capital Care Corp., 1990 WL 2165, at *2.

At least where, as in the instant case, the putative cross-claim is transactionally related to the claims in the original complaint, allowing such a cross-claim gives force to the dictate of Rule 1 that the Federal Rules be construed to

"secure the just, speedy, and inexpensive determination of every action."

Since Beazer East's counterclaim against the Crater defendants will be treated as a cross-claim, their concern that they will unfairly be denied an opportunity to file a counterclaim against Beazer East is needless. A counterclaim may be filed by a cross-claim defendant against a cross-claim plaintiff. See 6 Charles Alan Wright et al., Federal Practice and Procedure § 1404 (2d ed. Supp. 1998) (co-party can become an opposing party after filing of an initial cross-claim and may then file any transactionally related counterclaim against a cross-claim plaintiff).

ACCORDINGLY, this day of March, 1999, upon consideration of the Motion of Crater Resources, Inc. and Haploid Corp. to Dismiss Counterclaims (Doc. #50), **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.