

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

ALBERT F. MCDONALD and )  
STEPHEN F. MCDONALD, )  
Plaintiffs, )  
vs. )  
GERALD R. BALDY and )  
ELLEN T. BALDY, )  
Defendants, )  
)

C.A. No. CPU6-13-000908

Submitted October 29, 2014  
Decided November 25, 2014

Plaintiffs, *pro se*  
Defendant, *pro se*

**DECISION ON APPEAL FROM COMMISSIONER’S RECOMMENDATION**

This is an appeal of the Commissioner’s Recommendation to deny the Defendant’s Motion to Dismiss the matter. For the reasons stated below, the Commissioner’s Recommendation is **AFFIRMED**, and the Motion is **DENIED**.

**Procedural History**

Plaintiffs Albert and Stephen McDonald filed this breach of contract action on September 20, 2013, seeking \$25,402.18 in damages plus \$4,000.00 in fees for lost wages and personal time spent on the case. The Complaint alleges that Defendants Gerald and Ellen Baldy formed a partnership with Plaintiffs and are responsible for 50 percent of the debts incurred by the partnership. Defendants filed a Motion to Dismiss on May 30, 2014. Plaintiff filed a Response to the Motion to Dismiss on June 25, 2014. On July 3, 2014, a hearing on the motion was held before the Commissioner. On September 5, 2014, the Commissioner issued a Report recommending that Defendants’ Motion to Dismiss be denied.

On September 17, 2014, Defendants filed an appeal of the Commissioner's recommendation pursuant to Court of Common Pleas Civil Rule 112(A)(4)(iii). On September 22, 2014, Plaintiffs filed a responsive pleading in opposition to Defendant's appeal. On September 24, 2014, this Court granted a continuance of the October 14, 2014 trial date, pending the outcome of this appeal.

### **Standard of Review**

A motion to dismiss pursuant to Court of Common Pleas Civil Rule 12(b)(6) or pursuant to Court of Common Pleas Rule 12(c) is a case-dispositive determination.<sup>1</sup> When reviewing a Commissioner's decision on a case-dispositive determination, the judge of the Court reviews the decision *de novo*. A judge may accept, reject, or modify in whole or in part the findings or recommendations made by the Commissioner.<sup>2</sup>

### **Discussion**

The threshold a plaintiff must meet to survive a motion to dismiss for failure to state a claim is low.<sup>3</sup> The Court must accept all well-pleaded allegations of fact as true and draw all reasonable inferences in the Plaintiff's favor.<sup>4</sup> Because Delaware is a notice pleading state, particularity in fact pleading is not required.<sup>5</sup> A plaintiff must only "plead enough facts to plausibly suggest that the plaintiff will ultimately be entitled to the relief [sought]."<sup>6</sup> A complaint for breach of contract is sufficient if it states, "first, the

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<sup>1</sup> Defendants asked the Court to dismiss the complaint on the grounds that "it is abundantly clear that the Plaintiffs could provide no support for any charges filed in their complaint." Mot. Dis. ¶ 2. Viewing this request generously, the Court is considering the motion under Rule 12(b)(6) for failure to state a claim and under Rule 12(c), a motion for judgment on the pleadings.

<sup>2</sup> Ct. Com. Pl. Civ. R. 112(A)(4)(iv).

<sup>3</sup> *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

<sup>4</sup> *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

<sup>5</sup> *Desimone v. Barrows*, 924 A.2d 908, 928 (Del. Ch. 2007).

<sup>6</sup> *Desimone*, 924 A.2d at 929 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

existence of the contract ...; second, the breach of an obligation imposed by that contract; and third, the resultant damage to the plaintiff.”<sup>7</sup>

Plaintiffs’ complaint satisfies the foregoing standard. It alleges that Plaintiffs entered into a partnership with Defendants, and that Defendants owe contribution to Plaintiffs for partnership debts under the partnership terms. Plaintiffs’ complaint put Defendants on sufficient notice of Plaintiffs’ claims.

Rule 12(c) provides that “after the pleadings are closed...any party may move for a judgment on the pleadings.” Rule 12(c) motions are explained as follows:

A motion for judgment on the pleadings admits, for the purpose of the motion, the allegations of the opposing party’s pleadings but contends that they are insufficient as a matter of law. The motion presents a question of law and cannot be granted where the pleading raises any material issue of fact. It is the plaintiff’s burden to establish the existence of the genuine issue of material fact.<sup>8</sup>

The contentions between Plaintiffs and Defendants are purely factual as admitted at the motion to dismiss hearing on July 3, 2014. The parties dispute the amount of the debt owed to the bank, whether Ellen Baldy was a partner (thus, creating a dispute as to the percentage of debt owed by each partner), and the debt owed as a result of stock trading losses. Neither party has raised a legal issue that could be decided to determine the outcome of the case. Defendants admitted at the motion hearing that the issues were “all factual.”<sup>9</sup> Assuming the allegations of the complaint to be true for the purposes of this motion, they are not insufficient as a matter of law.

In sum, the Court finds that Plaintiffs have stated a claim upon which relief may be granted and that there are genuine issues of material fact. Dismissal at this time is

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<sup>7</sup> *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

<sup>8</sup> *Leary v. Eschelweck*, 2012 WL 1664236 (Del. Super. May 8, 2012) (citations omitted).

<sup>9</sup> Transcript of Proceedings at 7. (July 3, 2014).

inappropriate. Therefore, the Commissioner's Recommendation is **AFFIRMED**, and Defendant's Motion to Dismiss is **DENIED**.

**IT IS SO ORDERED** this \_\_\_\_\_ day of November, 2014.

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**Kenneth S. Clark, Jr.**  
**Judge**