

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LENUTA CHITUC,
Plaintiff

CIVIL ACTION NO. 16 - 785

v.

ROBERT KOENIGSBERG,
Defendant

JUDGMENT ON THE PLEADINGS

OPINION AND ORDER

Before the Court are Defendant, Robert Koenigsberg's motion for judgment on the pleadings pursuant to Pa. R.C.P. 1034. The parties agree that the cause of action brought in the instant case is a breach of contract for the failure of Mr. Koenigsberg to pay the amount owed under a lease agreement between the Plaintiff and the tenants, Mr. Koenigsberg's son and another tenant. Mr. Koenigsberg did not sign the lease agreement. Plaintiff alleges that Mr. Koenigsberg orally promised to pay amounts owed by his son under the lease if his son failed to pay and that Plaintiff relied upon that promise.

Rule 1034 of the Rules of Civil Procedure provides for judgment on the pleadings when the pleadings are close. Pa. R.C.P. 1034. Judgment on the pleadings only can be granted when the facts are not in dispute and the law is clear making a trial a fruitless exercise. Rice v. Rice, 468 Pa. 1, 359 A.2d 782, 784 (Pa. 1976); Gallo v. J.C. Penney Casualty Insurance Co., 328 Pa.Super. 267, 476 A.2d 1322 (1984)(citations omitted). For purposes of the motion, the Court "must accept as true all well-pleaded statements of fact of the party against whom the motion is granted and consider against him only those facts that he specifically admits." Jones v. Travelers Ins. Co., 356 Pa. Super. 213, 217, 514 A.2d 576, 578 (1986)(citations omitted). "The parties cannot be deemed to admit either conclusions of law or unjustified inferences." Id. (citations omitted). The Court "should confine itself to the pleadings themselves and any

documents or exhibits properly attached to them.” Jones, supra, at 217, 578 A.2d at 578; Gallo v. J.C. Penney Casualty Ins. Co., 328 Pa. Super. 267, 270, 476 A.2d 1322, 1324 (1984).

The motion for judgment on the pleadings in this case relates to the statute of frauds. “No action can be brought against a defendant for her promise to answer for the debt of another, unless it is in writing.” 33 P.S. § 3. Presbyterian Med. Ctr. v. Budd, 832 A.2d 1066, 1071 (Pa. Super. 2003). 33 P.S. § 3, known as a statute of frauds, provides the following.

No action shall be brought whereby to charge any executor or administrator, upon any promise to answer damages out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt or default of another, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him authorized. 33 Pa. Stat. Ann. § 3.

Plaintiff contends that the writing requirement of the statute of frauds was satisfied because the lease mentions that Plaintiff received \$1,000 security deposit from Mr. Koenigsberg and because Mr. Koenigsberg signed two checks in the amount of \$500 each. This Court disagrees. None of the cases presented to the Court suggest that a lease not signed by the party to be charged or checks (without notations) constitute a memorandum or note within the statute of frauds.

In the alternative, Plaintiff contends that the statute of frauds does not bar the claim because it falls under an exception to the statute of frauds known as the “leading object” or “main purpose” rule. See, Webb Mfg. Co. v. Sinoff, 449 Pa. Super. 534, 539, 674 A.2d 723, 725 (Pa. Super. 1996). “The suretyship provision of the Statute of Frauds, however, does not apply if the main object of the promisor is to serve his own pecuniary or business purpose.” Id. Plaintiff contends that since the exception was pled, the motion for judgment on the pleadings must be denied. Where sufficient facts are pled to raise the defense, the Court should not grant a demurrer on the basis of the statute of frauds. Webb Mfg. Co., supra, 674 A.2d at 726. The Court does not believe that sufficient facts were pled to meet the requirements of the exception.

In this case, the Plaintiff pled that Mr. Koenigsberg orally guaranteed the obligations of his son and without that guarantee the Plaintiff would not have rented the premises to his son. There was no allegation of a pecuniary or business purpose or benefit.

As the Court noted in Webb Mfg. Co., the statute of frauds “is not rendered inapplicable merely because a stockholder may indirectly receive some gain when he promises to pay the debt of a corporation.” Webb Mfg. Co., supra, 674 A.2d 726 (citation omitted). Similarly, “[t]he mere fact that such person is concerned in promoting the financial success of the company is not sufficient to justify the treating of the promise of guaranty as an original undertaking.” Id. (citation omitted). The Court does not believe that sufficient facts have been pled to bring the case within the “leading object” or “main purpose” rule.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 2nd day of **March 2017**, following argument held March 1, 2017, it is ORDERED and DIRECTED that the motion for judgment on the pleadings is GRANTED and the complaint is DISMISSED.

BY THE COURT,

March 2, 2017
Date

Richard A. Gray, J.

c: J. Howard Langdon, Esquire
Gregory A. Stapp, Esquire
April McDonald, CST (re: arbitration)