

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KUTNEY INSURANCE AGENCY, INC.,
Plaintiff

vs.

JUSTIN WINTERS and TRAVELERS INDEMNITY
COMPANY,
Defendants

: NO. 16 - 1180
:
: CIVIL ACTION - LAW
:
: Motion for Judgment on
: the Pleadings
:
: Preliminary Objections

OPINION AND ORDER

Before the court are Defendant Travelers' ("Travelers") preliminary objections to Plaintiff's Reply to New Matter, file November 13, 2017, and Travelers' motion for judgment on the pleadings, filed November 6, 2017. Argument thereon was heard December 21, 2017.

By way of background, as gleaned from both the record and Travelers' filings, it appears Travelers filed its Answer and New Matter to Plaintiff's Third Amended Complaint on August 23, 2017. On September 21, 2017 (after a reply was past-due), Plaintiff's counsel requested an indefinite extension of time in which to file a Reply in order to pursue settlement prospects. Travelers' counsel agreed to an extension through September 29, 2017. Plaintiff did not file the Reply by that date, however, and on November 6, as noted above, Travelers filed the instant motion for judgment on the pleadings in which it asserts that because Plaintiff did not file a Reply to its New Matter, that New Matter is deemed admitted and those admissions support judgment in its favor.

Plaintiff filed his Reply on November 8, 2017, presumably after having received a copy of the motion. In its preliminary objections, Travelers seeks to strike that Reply as untimely.

Since Travelers has moved to strike the Reply, Plaintiff must demonstrate just cause for the delay. *See Peters Creek Sanitary Authority v. Welch*, 681 A.2d 167 (Pa. 1996). Here, there has been no such demonstration; in fact, Plaintiff has offered no reason at all why the agreed-to extension was not met. Therefore, the Reply will be stricken.

The striking of the Reply does not lead to entry of judgment on the pleadings, however. A review of the New Matter reveals that, actually, it need not be answered and by operation of law, the matters therein are deemed denied.

A plaintiff does not have to respond to conclusions of law contained in New Matter. *See Watson v. Green*, 331 A.2d 790 (Pa. Super. 1973). Further, when a fact has been put at issue by the Complaint and Answer, and is merely reiterated in the New Matter, there is no need to respond to it.¹ *Id.*

In this case, all the relevant portions of New Matter are either conclusions of law or put at issue by Travelers' Answer, as follows:

In New Matter, Travelers alleges:

4. At the time that Travelers authorized Winters to act as its insurance agent, Travelers lacked knowledge regarding any prior insurance agency agreements that Winters had with any other insurance company.

5. At the time that Travelers authorized Winters to act as its insurance agent, Travelers lacked knowledge regarding the existence of any prior non-competition agreement or other contract that would have precluded Winters from acting as a licensed insurance agent on Travelers' behalf.

¹ In fact, in that circumstance, the "matter" is not "new".

6. No non-competition agreement or other contract exists that would have precluded Winters from acting as a licensed insurance agent on Travelers' behalf.
7. Travelers never requested or instructed Winters to violate any non-competition agreement or other contract in connection with Winters' business activities.
8. Travelers never requested or instructed Winters to misappropriate or otherwise utilize trade secrets belonging to Plaintiff or any other individual or entity in connection with Winters' business activities.
9. The only activities that Travelers authorized Winters to conduct on its behalf consisted of lawful competition for insurance business in Muncy, Pennsylvania and the surrounding area.
10. At all relevant times, the only activities that Winters conducted on Travelers' behalf consisted of lawful competition for insurance business in Muncy, Pennsylvania and the surrounding area.

Some of these allegations are actually legal conclusions. To the extent they are factual allegations, the relevant facts are put at issue in the Third Amended Complaint and the Answer, as follows:

37. Upon information and belief, Defendant Travelers granted Defendant Justin Winters the agency for a territory that includes the Muncy area, based upon Defendant Justin Winters' representation that he had an existing book of business from the prior Jeffrey Winters Insurance Agency.

ANSWER: Travelers admits only that it licensed Winters to service customers in the Muncy area on its behalf. Travelers denies that it licensed Winters based on either a representation that Winters had an existing book of business from the prior Jeffrey Winters Insurance Agency or knowledge by Travelers to that effect.

38. Upon information and belief, Defendant Travelers granted Defendant Justin Winters his agency for the territory, including the Muncy area, with knowledge that Defendant Justin Winters intended to utilize the information from the Muncy Book of Business to solicit business.

ANSWER: Travelers admits only that it licensed Winters to service customers in the Muncy area on its behalf. Travelers denies that it licensed Winters based on either a representation that Winters had an existing book of business from the prior Jeffrey Winters Insurance Agency or knowledge by Travelers to that effect.

41. Defendant Travelers has knowledge that Defendant Justin Winters did not have the legal right to utilize the information contained in the Muncy Book of Business for the Jeffrey Winters Insurance Agency to solicit business on behalf of the Defendant Travelers.

ANSWER: Denied. By way of further answer, Travelers denies that it had any knowledge at any time that should have led it to believe that Winters lacked the legal right to compete for business in the Muncy area. Travelers further avers that it was at all times lawful for Winters to do so, and that none of the agreements that purportedly existed between either Justin or Jeffrey Winters and Nationwide precluded Winters from competing for business from the insureds whose policies comprise the Muncy Book of Business.

42. Despite Defendant Travelers having knowledge that Defendant Justin Winters did not have the legal right to utilize the information from the Muncy Book of Business from the Jeffrey Winters Insurance Agency, Defendant Travelers granted Defendant Justin Winters an agency for the territory, including the Muncy area, and has allowed him to issue insurance policies for the customers previously serviced through the Jeffrey Winters Insurance Agency.

ANSWER: Travelers admits only that it authorized Winters to service customers in the Muncy area on Travelers' behalf. Travelers denies that it had any knowledge at any time that should have led Travelers to believe that Winters lacked the legal right to compete for business in the Muncy area. Travelers further avers that it was at

all times lawful for Winters to do so, and that none of the agreements that purportedly existed between either Justin or Jeffrey Winters and Nationwide precluded Winters from competing for business from the insureds whose policies comprise the Muncy Book of Business.

43. Defendant Travelers allowed Defendant Justin Winters to and assisted Defendant Justin Winters in contacting and offering price match policies to the Plaintiff's customers that were part of the Muncy Book of Business.

ANSWER: Travelers admits only that it authorized Winters to service customers in the Muncy area on Travelers' behalf. Travelers denies that it performed any illegal act in authorizing Winters to do so, and further avers that it was at all times lawful for Winters to compete for business from the insureds whose policies comprise the Muncy Book of Business.

44. Defendant Travelers, by granting Defendant Justin Winters a service area, in providing price match policies, and because Defendant Travelers was on notice that the Muncy Book of Business had already been sold to Nationwide, actively participated in the same misappropriation of trade secrets, per Pa.C.S. Section 5301 *et seq.*, committed by Defendant Winters.

ANSWER: This paragraph contains solely legal conclusions. Thus, no response is required. To the extent a response is required, Travelers denies the allegations of this paragraph, and specifically denies that it misappropriated, or assisted Justin Winters in misappropriating, trade secrets.

57. Upon information and belief, it is believed that Defendant Travelers granted Defendant Justin Winters the agency for a territory that includes the Muncy area, based upon Defendant Justin Winters' representation that he had an existing book of business from the prior Jeffrey Winters Insurance Agency.

ANSWER: Travelers admits only that it licensed Winters to service customers in the Muncy area on its behalf. Travelers denies that it licensed Winters based on either a representation that Winters had an existing book of business from the prior Jeffrey Winters Insurance Agency or knowledge by Travelers to that effect.

58. Upon information and belief, Defendant Travelers granted Defendant Justin Winters his agency for the territory, including the Muncy area, with knowledge that Defendant Justin Winters intended to utilize the information from the Jeffrey Winters Insurance Agency's Muncy Book of Business to solicit business.

ANSWER: Travelers admits only that it licensed Winters to service customers in the Muncy area on its behalf. Travelers denies that it licensed Winters based on either a representation that Winters had an existing book of business from the prior Jeffrey Winters Insurance Agency or knowledge by Travelers to that effect.

60. Defendant Travelers has knowledge that the books of business from competitive agencies specifically, including Nationwide, are subject to confidentiality and non-competition provisions.

ANSWER: Denied. By way of further answer, Travelers denies that it had any knowledge regarding whether Nationwide viewed its customer information as confidential, or regarding Nationwide's practices for maintaining the confidentiality of such information. Travelers further denies that it had any knowledge regarding Nationwide's practices with regard to non-compete clauses in its agents' contracts, and that any such provision prevented Travelers from authorizing Winters to service Travelers' policyholders on its behalf.

61. Defendant Travelers has knowledge that Defendant Justin Winters did not have the legal right to utilize the information contained in the Muncy Book of Business for the Jeffrey Winters Insurance Agency to solicit business on behalf of the Defendant Travelers.

ANSWER: Denied. By way of further answer, Travelers denies that it had any knowledge at any time that should have led it to believe that Winters lacked the legal right to compete for business in the Muncy area. Travelers further avers that it was at all times lawful for Winters to do so, and that none of the agreements that purportedly existed between either Justin or Jeffrey Winters and

Nationwide precluded Winters from competing for business from the insureds whose policies comprise the Muncy Book of Business.

62. Defendant Travelers had knowledge of the proprietary nature of the Muncy Book of Business and was therefore a party to the misappropriation of trade secrets per 12 Pa.C.S. Section 5301 *et seq.* ANSWER: This paragraph states only legal conclusions. Thus, no response is required. To the extent a response is required, Travelers denies that the Muncy Book of Business was proprietary in nature or that Travelers had knowledge, at any relevant time, of the alleged proprietary status of the insureds whose policies allegedly comprise that book of business. Travelers further denies that the Muncy Book of Business qualifies as a trade secret under 12 Pa.C.S. Section 5301 *et seq.*, or that Travelers engaged in any misappropriation of trade secrets.

63. Despite Defendant Travelers having knowledge that Defendant Justin Winters did not have the legal right to utilize the information from the Muncy Book of Business from the Jeffrey Winters Insurance Agency, Defendant Travelers granted Defendant Justin Winters an agency for the territory, including the Muncy area, and has allowed him to issue insurance policies for the customers previously serviced through the Jeffrey Winters Insurance Agency. ANSWER: Travelers admits only that it licensed Winters to service customers in the Muncy area on its behalf. The remaining averments of this paragraph are legal conclusions. Thus, no response is required. To the extent a response is required, Travelers denies that Winters lacked the ability to compete for business from the insureds whose policies comprise the Muncy Book of Business, or that Travelers misappropriated trade secrets or otherwise engaged in unlawful activity by authorizing Winters to service customers in the Muncy area on Travelers' behalf.

64. Defendant Travelers allowed and assisted Defendant Justin Winters in contacting and offering price match policies to the Plaintiff's customers that were part of the Muncy Book of Business. ANSWER: Travelers admits only that it licensed Winters to service customers in the Muncy area on its behalf. Travelers denies that it

was unlawful for Travelers to license Winters to service customers on its behalf, or to issue the alleged price match policies to customers solicited by Winters.

Therefore, no new matters having been raised, no response was required. The allegations are deemed denied and Travelers is not entitled to judgment on the pleadings.

ORDER

AND NOW, this 26th day of December 2017, for the foregoing reasons, Defendant Travelers' preliminary objections are sustained and Plaintiff's Reply to New Matter, filed November 8, 2017, is hereby STRICKEN.

Defendant Travelers' Motion for Judgment on the Pleadings is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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