MONTOUR OIL SERVICE COMPANY, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
vs.	:	NO. 03-01,820
CLIFFORD BUTTON and JOYCE BUTTON, t/d/b/a TUSSEYVILLE GREENHOUSE, Defendant	:	JUDGMENT ON THE PLEADINGS

Date: November 2, 2004

OPINION and ORDER

Before the Court for determination is the Motion for Judgment on the Pleadings of Plaintiff Montour Oil Service Company (hereafter "Montour Oil") filed March 18, 2004. The Motion will be denied.

This case was instituted by the filing of a Complaint on October 30, 2003. Defendants Clifford and Joyce Button, t/d/b/a Tusseyville Greenhouse, (hereafter "Tusseyville") filed a response to the Complaint entitled "Defendants (sic) Response" on November 21, 2003. The Court determined this to be Tusseyville's Answer to the Complaint. Included within that document was Tusseyville's New Matter, which raised the contention that Lycoming County was not the proper venue for this action. Montour Oil filed preliminary objections to the New Matter on December 3, 2004. On February 4, 2004, this Court granted the preliminary objections pursuant to Pa.R.C.P. 1006(e) and dismissed with prejudice from the New Matter the claim raising the issue of venue.[1] The Court permitted Tusseyville to file an amended Answer and New Matter within twenty days of entry of the order.

[1] Pennsylvania Rule of Civil Procedure 1006(e) provides, in pertinent part, that, "Improper venue shall be raised by preliminary objection and if not so raised shall be waived."

On March 1, 2004, Tusseyville filed a document entitled "Defendants (sic) Response and Amended Pleadings." The following day Tusseyville filed a Notice of Appeal regarding this Court's February 4, 2004 Order granting Montour Oil's preliminary objections. On June 21, 2004, the Superior Court quashed Tusseyville's appeal.

In the Motion for Judgment on the Pleadings, Montour Oil contends that Tusseyville's November 21, 2003 Response admits liability for the outstanding debt. Montour Oil argues that Tusseyville has admitted that it received fuel oil from Montour Oil and that there remains an outstanding balance owed to Montour Oil for the delivery of said oil Montour Oil argues that this admission is based on the fact that Tusseyville's responses to the allegations of the Complaint are general, evasive denials that under Pa.R.C.P. 1029(b) have the effect of an admission.

Thus, the issue before the Court is whether Tusseyville has admitted liability for the outstanding debt owed to Montour Oil, which would make judgment on the pleadings appropriate.

The cause of action alleged in the Complaint is a breach of contract claim. According to the allegations in the Complaint, Montour Oil is a supplier of petroleum fuel products. Complaint, ¶3. Tusseyville is a floral and plant greenhouse. Id., ¶4. Between October 2002 and August 2003, Montour Oil delivered fuel oil to Tusseyville. Id., ¶5. Tusseyville owes Montour Oil $10,328.23 for the delivery of that fuel oil. Id., ¶7. Tusseyville had made intermittent and inadequate attempts to bring this balance current. Id., ¶8. Montour Oil notified Tusseyville of the delinquent account and made numerous demands for payment. Id., ¶¶9, 10. Tusseyville had failed to and refused to pay for the fuel oil it received. Id., ¶10.

For purposes of the Motion for Judgment on the Pleadings, the Court will confine its analysis to Tusseyville's Response filed November 21, 2003. Tussyeville's Response and Amended Pleadings filed March 1, 2004 offers nothing as to the allegations raised in the Complaint. In the Response and Amended Pleadings, Tusseyville asserts that it was denied due process at the hearing held on Montour Oil's preliminary objections to Tusseyville's New Matter, re-asserts the improper venue argument, and asserts that the proper defendant is not before the Court as a corporation by the name of Tusseyville Greenhouse does not exist and the individuals, Clifford and Joyce Button, were not named as defendants in the Complaint.[2]

In the Response, Tusseyville admitted that it is a floral and plant greenhouse, but denied that it is a corporation; instead, it asserts that it does business as a sole proprietorship. As to the allegation that Montour Oil delivered fuel oil to it from October 2002 to August 2003, Tusseyville has denied it and said that it is a factually inaccurate statement. Defendants' Response, ¶5. As to the allegation that Tusseyville owes Montour Oil $10,328.23, it again has denied the allegation and said that the averment is a factually inaccurate statement. Id., ¶7. As to the allegation that Tusseyville has made intermittent and inadequate attempts to bring the balance current, Tusseyville has denied the allegation and averred that it has made continuous and significant payments. Id., ¶8. As to the allegation that Tusseyville has failed to pay and

[2] The original caption on the Complaint only listed Tusseyville Greenhouse as a defendant. In Paragraph 2 of the Complaint, the defendant is identified as Tusseyville Greenhouse, a business corporation. On March 18, 2004, Montour Oil filed a Petition for Permission to Amend Complaint seeking to have the identity of the defendant in the case be listed as Clifford and Joyce Button, t/d/b/a Tusseyville Greenhouse. This request was based upon Tusseyville's statement in Paragraph 2 of its Response in which it averred that, "… The Defendants do business as a sole proprietorship." On October 20, 2004, this Court granted the Petition in that the case caption was to be amended to identify the defendant as "Clifford Button and Joyce Button, t/d/b/a Tusseyville Greenhouse."

refuses to pay for the fuel oil received, it has denied the allegation and averred that it has continued to make payments and at no time has it refused to pay for oil received. Id., ¶10.

Once the relevant pleadings are closed, any party may move for judgment on the pleadings. Pa.R.C.P. 1034. In deciding a motion for judgment on the pleadings, a court may only consider the pleadings and documents that are properly attached to the pleadings. ***Casner v. American Federation of State, County, and Municipal Employees***, 658 A.2d 865, 869 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings is in the nature of a demurrer in that the well-pleaded allegations of the non-moving party are viewed as true, but only those facts that he has admitted may be used against the non-moving party. ***Felli v. Commonwealth, Dep't of Transp.***, 666 A.2d 775, 776 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings may be granted only when there are no material facts at issue and the movant is entitled to judgment as a matter of law. ***Ibid***; ***Casner***, 658 A.2d at 869.

Responses to pleadings are governed by Pa.R.C.P. 1029. It provides as follows:

> (a) A responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive. A party denying only a part of an averment shall specify so much of it as is admitted and shall deny the remainder. Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth.
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> (b) Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subdivisions (c) and (e) of this rule, shall have the effect of an admission.
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> (c) A statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a

> belief as to the truth of an averment shall have the effect of a denial.
>
> (d) Averments in a pleading to which no responsive pleading is required shall be deemed to be denied.
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> (e) In an action seeking monetary relief for bodily injury, death or property damage, averments in a pleading to which a responsive pleading is required may be denied generally except that the following averments of fact which must be denied specifically:
>
> (1) averments relating to the identity of the person by whom a material act was committed, the agency or employment of such person and the ownership, possession or control of the property or instrumentality involved:
>
> (2) if a pleading seeks additional relief, averments in support of such other relief; and
>
> (3) averments in preliminary objections.

Pa.R.C.P. 1029.

Generally, a response to a factual allegation in the form of the sole word "Denied" constitutes a general denial and therefore an admission. ***Swift v. Milner***, 538 A.2d 28, 30 (Pa. Super. 1999). However, the mere use of this word does not end a court's inquiry into the matter. A Court must examine the pleadings as a whole to determine whether the defendant has admitted the factual allegations of the complaint. ***Cercone v. Cercone***, 386 A.2d 1, 6 (Pa. Super. 1978). It should also be remembered that the Rules of Civil Procedure " '… shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The Court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.'" ***Ibid***. (quoting Pa.R.C.P. 126). "It must be emphasized that '… the

rights of litigants should not be made to depend on the skill of the pleaders but rather on the justice of their claims.'" ***Kappe Assocs., Inc. v. Aetna Cas. & Surety Co.***, 341 A.2d 516, 519 (Pa. Super. 1975) (quoting ***Avondale Cut Rate, Inc. v. Assoc. Excess Underwriters, Inc.***, 178 A.2d 758, 762 (Pa. 1962)).

Judgment on the pleadings is not appropriate. Reading the Response as a whole, the Court cannot conclude that Tusseyville has admitted liability for the debt owed Montour Oil. The cumulative effect of Tusseyville's response is that there is no breach of contract since it made payment for the fuel oil it received. As to the allegation in the Complaint that Tusseyville owes Montour Oil the sum of $10,328.23, Tusseyville responded, "Denied. The statement is factually inaccurate." Defendants' Response, ¶7. Arguably, this response, in isolation, could constitute an admission under ***Swift***, *supra*. However, a complete reading of the response belies that conclusion.

If one where to read that response one would be left with the impression that the allegation was denied because it was factually inaccurate. The question then is, "Why is the allegation factually inaccurate?" That question is answered by Tusseyville's responses in Paragraphs 8 and 10 of the Response. In Paragraphs 8 and 10, Tusseyville has denied that it made intermittent and inadequate attempts to bring the balance current and that it refused to make payments for the fuel oil it received. Contrary to the allegations in the Complaint, Tusseyville has averred in the Response that it made significant payments on the debt and that at no time did it refuse to pay for the fuel oil it received. The thrust of Tusseyville's Response is that Tusseyville is denying that it failed to pay for the fuel oil it received and consequently

does not owe Montour Oil $10,328.23. Therefore, judgment on the pleadings is inappropriate since Tusseyville has not admitted liability.

Accordingly, the Motion for Judgment on the Pleadings is denied.

ORDER

It is hereby ORDERED that he Motion for Judgment on the Pleadings of Plaintiff Montour Oil Service Company filed March 18, 2004 is DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: E. J. Rymsza, Esquire
Clifford I. Button
136 Neff Road; Centre Hall, PA 16828
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)