

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MCHARRIS REALTY, LLC, : CV-22-00586
Plaintiff :
vs. :
JEFFREY SWEETING a/k/a JEFFERY SWEETING, :
Defendant :

OPINION AND ORDER

AND NOW, this 18th day of January 2023, following argument on Plaintiff's Preliminary Objections to Defendant's New Matter, the Court hereby issues the following Opinion and Order.

BACKGROUND

Plaintiff commenced this action before the Magisterial District Court with the filing of a Landlord/Tenant Complaint on May 26, 2022. On June 6, 2022, Magistrate District Judge Aaron S. Biichle entered judgment in favor of Defendant.

On June 15, 2022, Plaintiff filed a Notice of Appeal from the judgment below, and filed a Complaint on June 16, 2022.¹ The Complaint alleges that Plaintiff and Defendant entered into a residential lease agreement (the "Lease") on April 1, 2021, pursuant to which Plaintiff leased a residential property to Defendant for a term of

¹ Although the Notice of Appeal was docketed at CV-22-00586, the Complaint received a separate docket number of CV-22-00588. The parties stipulated that these dockets address the same matter and that the Complaint filed to CV-22-00588 was intended to be Plaintiff's operative pleading in the appeal docketed to CV-22-00586. On July 13, 2022, the Court consolidated these dockets under docket number CV-22-00586.

24 months in exchange for rent payments of \$1,500.00 per month. Plaintiff alleges that Defendant did not pay rent for any month between September 2021 and June 2022 inclusive, thus breaching the Lease. Plaintiff further alleges that although Defendant waived his right to written notice to quit under the Lease, Plaintiff provided written notice to vacate within 30 days "as a courtesy" on March 25, 2022, but as of the filing of the Complaint, Defendant remained at the residence. Plaintiff seeks payment of overdue rent and late fees totaling \$15,300.00 as of the filing of the Complaint.

On June 15, 2022, the same day Plaintiff filed the Notice of Appeal of the adverse June 6, 2022 MDJ judgment, Plaintiff also filed a second action against Defendant before MDJ Biichle arising out of the Lease. On June 28, 2022, MDJ Biichle entered judgment of \$1,647.51² for Plaintiff and granted Plaintiff possession of the property, which Defendant could avoid by paying the amount of the judgment.

On July 6, 2022, Defendant filed a Notice of Appeal from the June 28, 2022 MDJ judgment, at which time the Prothonotary entered a rule to file complaint upon Plaintiff; this Notice of Appeal was docketed to CV-22-00639. The parties agreed that this action arose out of the same Lease as CV-22-00586, with the difference being that CV-22-00586 covered Plaintiff's claims prior to June 15, 2022 and

² The judgment consists of \$1,500.00 for "Rent in Arrears" and \$147.51 for court costs.

CV-22-00639 covered Plaintiff's claims after June 15, 2022 and going forward.

Based on that agreement, the Court consolidated the dockets on August 9, 2022.

On August 3, 2022, Defendant filed an Answer and New Matter to Plaintiff's Complaint. The Answer denied many of the factual averments in the Complaint, indicating that the New Matter elaborated on these denials. Defendant's New Matter alleged that in 2012, Plaintiff and Defendant entered into an "Installment Sales Agreement" for Defendant to live at the property and make payments towards the purchase of the property, with monthly payments that began at approximately \$1,500 and which Plaintiff raised to \$2,000 in 2017. Defendant alleges that in February of 2022 "Plaintiff's agent" suggested Plaintiff and Defendant "sign a fake, backdated Lease, and that Plaintiff would then give Defendant a fake Notice to Vacate," so that Plaintiff could obtain rent payments not from Defendant but from the Lycoming County STEP Inc. office ("STEP"), the administrator of the county's Emergency Rental Assistance Program. Defendant alleges that a different representative of Plaintiff assured him Plaintiff could expedite the application for rental assistance due to connections with employees of STEP. Defendant avers that although he signed the fraudulent, backdated "Lease," he "believed that the Installment Agreement continued to be in full force and effect."

The New Matter contains two counts premised upon these factual averments. Count I raises the affirmative defense of fraud, contending that Plaintiff – through its representatives – falsely informed Defendant that the backdated Lease "was *solely*

for the purpose of obtaining emergency rental assistance funds for Plaintiff from STEP,”³ and that Defendant relied on this false representation when he agreed to sign the document in February 2022. Count II raises the affirmative defense of failure to form a valid contract, averring that because Defendant did not believe or actually intend the Lease to function as a contract, there was no “meeting of the minds” between the parties regarding the intent to be bound by its terms.

PRELIMINARY OBJECTIONS TO NEW MATTER

On August 31, 2022, Plaintiff filed Preliminary Objections to Defendant’s New Matter. Plaintiff’s first preliminary objection seeks to strike Count I from the New Matter, alleging that the allegations therein are scandalous and impertinent.⁴

Specifically, Plaintiff avers that the allegations of fraud in Count I of the New Matter “are not material and not appropriate as [they] relate[] to” the action for eviction, and “bear on the moral character of Plaintiff” to cast it “in a derogatory light.” Thus, Plaintiff argues, the allegation of fraud and its underlying factual averments are not relevant to the merits of Plaintiff’s claim but rather “are intended to harass Plaintiff.”

Plaintiff’s second preliminary objection seeks to strike Count I, and specifically its request that the Court hold the Lease “unenforceable and invalid on the basis of fraud” and find “that the Installment Agreement signed by the parties remains in full force and effect,” from the New Matter on the similar grounds that it

³ Emphasis in original.

⁴ Pa. R.C.P. 1028(a)(2) permits preliminary objections for “failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter.”

fails to conform to rule of law. Specifically, Plaintiff argues that Count I contains general assertions of fraud meant to harass Plaintiff, but does not put Plaintiff on notice as to the nature of the asserted affirmative defense. This is because, Plaintiff contends, Count I of the New Matter “lacks any specific or particular averments as to how Defendant relied on the alleged misrepresentations,” and only alleges injury to the extent that Defendant “is now involved in litigation concerning the Lease which he signed.” Ultimately, Plaintiff argues the insufficiency of these averments “render[s] [Plaintiff] unable to prepare a response” and thus “appear to be made with the purpose of harassing Plaintiff and to confuse the issue before the Court.”

On September 26, 2022, Defendant filed a response to Plaintiff’s Preliminary Objections. Defendant essentially claims that although the averments in the New Matter may cast Defendant in a negative light, they are relevant to the matter at hand, and necessary and sufficient to explain the nature of Defendant’s response to Plaintiff’s allegations.

At argument, Plaintiff characterized the allegation of fraud as an attempt to muddy the waters, noting that the New Matter does not allege that any party actually submitted an application to STEP or took any other steps to obtain rental assistance funds.⁵ Plaintiff reiterated its assertion that Defendant had not pled that he actually relied on any false representations as required to state a claim for fraud.

⁵ Plaintiff and Defendant expressed disagreement over whether any party actually took such steps. At this stage of proceedings, however, the Court’s inquiry is limited to an assessment of the pleadings.

Defendant responded that Count I of the New Matter is not scandalous or impertinent primarily because it is material to his defense against Plaintiff's claims. Additionally, Defendant argued that any personal offense taken by Plaintiff or its agents is categorically insufficient to render otherwise relevant assertions of fact scandalous or impertinent. Regarding the sufficiency of the pleadings, Defendant argues that he concisely pled relevant dates, the contents of conversations, and other factual circumstances surrounding his alleged signing of the backdated Lease as well as his understanding that the Lease was a sham that did not displace the Installment Agreement. Defendant contends that he pled that he signed the Lease – which Plaintiff is attempting to use to evict him – based upon the false representation that the Lease was inoperative; this allegation, Defendant argues, sufficiently pleads reliance on a false statement.

ANALYSIS

A. Plaintiff's First Preliminary Objection

Allegations in a pleading are scandalous or impertinent when they are "immaterial and inappropriate to the proof of the cause of action."⁶ When considering objections that allegations are scandalous and impertinent, courts should strike those matters "sparingly... and only when a party can affirmatively

⁶ *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 829 (Pa. Super. 2017) (quoting *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 115 (Pa. Cmwlth. 1998)).

show prejudice.”⁷ A court properly strikes allegations of a party’s illicit or impure behavior when those allegations “ha[ve] no obvious bearing on the equities between the parties,”⁸ but allegations casting a party in a negative light are nonetheless proper when they bear upon the elements of the applicable claims.⁹

In order to evaluate whether allegations are scandalous or impertinent, the Court may not view them in a vacuum but must consider whether they address the elements of the underlying claim. Here, the underlying claim is that a valid lease existed between Plaintiff and Defendant, and Defendant failed to satisfy contractual requirements under the Lease. This breach of contract claim has the following elements: “(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages.”¹⁰ Thus, the question

⁷ *Id.* (quoting *Commonwealth Dep’t of Env’tl. Res. v. Hartford Accident and Indem. Co.*, 396 A.2d 885, 888 (Pa. Cmwlth. 1979)).

⁸ In *Biros v. U Lock Inc.*, 255 A.3d 489 (Pa. Super. 2021), the plaintiff advanced money for the purchase of a property in the form of a loan to the defendant, and sued when the defendant failed to pay the amount. The defendant responded, *inter alia*, that the money the plaintiff advanced was “derived from illicit gambling activity.” The trial court struck this allegation as scandalous and impertinent, and the Superior Court affirmed, explaining “[w]hatever the source of [the plaintiff’s] funds, she pled and proved that she paid for the Property expecting repayment, and that [the defendant] has remained in possession and enjoyment of the Property ever since, without any apparent ability to make repayment. Thus, the source of [the plaintiff’s] funds has no obvious bearing on the equities between the parties to this case.”

⁹ In *Breslin*, the trial court struck as scandalous and impertinent the plaintiff’s allegations that pressure ulcers constitute *per se* evidence of substandard medical care and that the defendant nursing home “operated its facility ‘to maximize profits and/or excess revenues’ to the peril of facility residents.” The Superior Court reversed, explaining that because these allegations “may bear upon [the defendant nursing home’s] non-delegable duties” to residents, they were neither immaterial nor inappropriate to the plaintiff’s allegations of negligence.

¹⁰ *CoreStates Bank, Nat’l Assn. v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. 1999).

raised by Plaintiff's first preliminary objection is whether Count I of Defendant's New Matter bears upon these elements.

The Court finds that Count I of the New Matter directly addresses the elements of Plaintiff's claim. Specifically, Count I avers that Plaintiff's agents committed fraud when 1) they told Defendant that the Lease would be used solely to obtain funds from STEP but would not otherwise alter the contractual relationship arising from the Installment Agreement; 2) Defendant signed the Lease based on the representation that Plaintiff would not wield it as a valid contract; and 3) contrary to that assertion, Plaintiff sought to evict Defendant under the Lease, much to Defendant's surprise. These allegations, which explain the nature of the Affirmative Defense, directly respond to Plaintiff's contention that the Lease is a valid contract that required Defendant to take certain actions. Therefore, regardless of whether they cast Plaintiff in a negative light, they are both material and appropriate to the underlying cause of action, and thus neither scandalous nor impertinent.

B. Plaintiff's Second Preliminary Objection

The Court further finds that Count I of Defendant's New Matter includes sufficient factual averments to put Plaintiff on notice of the nature of the affirmative defense in a manner that provides Plaintiff the opportunity to prepare a rebuttal to that defense. Count I of the New Matter, incorporating the factual averments in Defendant's Answer, pleads the following allegations with specificity:

- The nature of the Installment Agreement, including when it was signed;
- The names of the two “agents” of Plaintiff who allegedly made false statements to Defendant, including the approximate dates of when those false statements were made;
- The specifics of the alleged scheme that Plaintiff’s agents proposed to induce Defendant to sign the Lease; and
- The specific statements that Defendant relied upon in signing the Lease despite believing it was not a legally binding contract.

Regarding the last of these allegations, Defendant alleges that Plaintiff’s agents “misrepresented to Defendant that the proffered Lease was *solely* for the purpose of obtaining emergency rental assistance funds for Plaintiff,” and that Defendant “signed the proffered Lease *solely* for the purpose of a STEP application... and relied on the misrepresentation of Plaintiff’s agents that the Installment Agreement would in fact continue in full force and effect.”¹¹ Contrary to Plaintiff’s assertion that Count I of the New Matter “lacks any specific or particular averments as to how Defendant relied on the alleged misrepresentations,” the cited pleadings are sufficiently specific to put Plaintiff on notice of the content of the allegedly false statements and the manner in which Defendant claims he relied upon them.

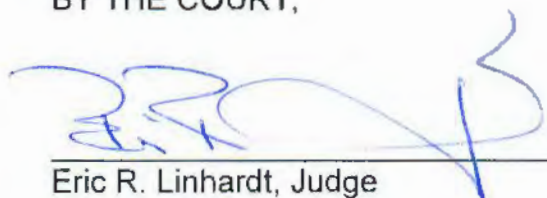
¹¹ New Matter, ¶¶ 31, 37 (emphasis in original).

ORDER

For the foregoing reasons, the Court finds that Count I of Defendant's New Matter directly responds to the elements of Plaintiff's claim in a material and appropriate manner, and sufficiently apprises Plaintiff of the nature of Defendant's Affirmative Defense in a manner that allows Plaintiff to prepare to meet that defense. Therefore, the Court OVERRULES Plaintiff's Preliminary Objections to Defendant's New Matter. Plaintiff shall file a responsive pleading to Defendant's Answer and New Matter within twenty (20) days of this Opinion and Order.

IT IS SO ORDERED this 18th day of January 2023.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Brandon Griest, Esq.
Lindsay Scheller, Esq.
Gary Weber, Esq. (Lycoming Reporter)