

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

HOLL & ASSOCIATES, P.C.	:	MAY TERM 2000
	:	
v.	:	No. 1964
	:	
1515 MARKET STREET ASSOCIATES, P.C.	:	Commerce Program

MEMORANDUM OPINION

This action is the second of two consolidated actions involving a rent dispute between a commercial landlord and tenant. Defendant 1515 Market Street Associates, P.C. (“Landlord”) filed preliminary objections to the complaint of plaintiff Holl & Associates, P.C. (“Tenant”). The court sustains the preliminary objections in part and grants Tenant leave to file an amended complaint.

BACKGROUND

From 1986 to 2000, Tenant leased office space from Landlord. In 1997, Tenant vacated a portion of the leased space and stopped paying rent on that portion. In the first action, 1515 Market St. Assocs. v. Holl & Assocs., March 2000, No. 1073 (“Landlord’s action”), Landlord seeks recovery of that unpaid rent. In defense, Tenant alleges that it partially vacated the premises in accordance with a promise by the Landlord’s agent that Landlord would accept reduced rent if Tenant vacated that portion. Tenant asserts an estoppel defense and counterclaim based on the agent’s statement. Tenant also alleges as a defense and counterclaim that Landlord fraudulently misrepresented the square footage of the office.

In the second action, Holl & Assocs. v. 1515 Market St. Assocs., May 2000, No. 1964 (“Tenant’s action”), Tenant asserts that Landlord fraudulently misrepresented the size of the leased premises causing Tenant to pay excess rent and pass-through expenses. Tenant seeks to recover the excess rent and expenses paid and punitive damages. Tenant also asserts a promissory estoppel claim based on the agent’s promise that Tenant could pay less rent by vacating a portion of the office.

At issue here are the preliminary objections to the complaint in the Tenant’s action. Landlord argues that (1) the claims of fraud are legally insufficient, (2) the applicable limitations period bars the complaint, (3) the claim for promissory estoppel is legally insufficient, (4) the complaint improperly pleads punitive damages as a separate cause of action, and (5) Counts I, II and III do not contain separate demands for relief.

The court sustains all objections except the one based on the statute of limitations.

I. THE COURT SUSTAINS THE DEMURRERS TO COUNTS I AND II (FRAUD).

Count I alleges fraud based on the excess rent that Tenant paid in reliance on Landlord misrepresented the square footage. Count II alleges fraud based on the excess pass-through expenses that Tenant paid in reliance on the misrepresentations. In its preliminary objections, Landlord argues that Counts I and II are legally insufficient because they do not sufficiently allege fraud. The court agrees.

Paragraphs 14 and 15 of the complaint allege that the “leases in question define the leased premises as being a certain amount of rentable square feet located in a given suite” and that Landlord never “advised plaintiff that it was their position that the meaning of the term rentable square footage

was anything other than that as actually set forth in the lease.” Drawing all reasonable inferences in favor of Tenant, the court reads these cumbersome allegations as meaning that Landlord misrepresented the square footage of the office space. But the complaint alleges nothing about Landlord’s state of mind. Without a specific allegation that Landlord made the misrepresentation “with knowledge of its falsity or recklessness as to whether it [was] true or false” and “with the intent of misleading another into relying on it,” the claim of fraud is legally insufficient. Bortz v. Noon, 556 Pa. 489, 729 A.2d 555, 560 (1999); Green v. Saturn Corp., January 2000, No. 685, slip op. at 3 (Phila.C.P. June 2, 2000) (Herron, J.) (sustaining preliminary objection to fraud claim where complaint did not allege knowledge and scienter).¹

Therefore, the court sustains Landlord’s preliminary objections to Counts I and II. The court grants Tenant leave to amend the complaint to allege proper claims for fraud.

II. THE COURT OVERRULES THE DEMURRER BASED ON STATUTE OF LIMITATIONS.

Landlord objects on the ground that the statute of limitations bars Tenant’s claims. A party may assert the defense of statute of limitations only in a responsive pleading as new matter and not in a preliminary objection. Pa.R.C.P. 1028(a)(4), note; Pa.R.C.P. 1030(a). Therefore, the court overrules Landlord’s preliminary objection based on the statute of limitations.

¹ Opinion available at <http://www.courts.phila.gov>.

III. THE COURT SUSTAINS THE DEMURRER TO COUNT III (PROMISSORY ESTOPPEL).

Count III claims promissory estoppel based on the statements of Landlord's agent. Landlord argues that the promissory estoppel claim is legally insufficient because Tenant has yet to suffer any damage from the agent's statements. The court agrees. DiSante v. Russ Fin. Co., 251 Pa.Super. 184, 380 A.2d 439, 441 (1977) (holding that promissory estoppel claim is legally insufficient where the plaintiff suffered no detriment); Rosenthal v. Carson, 149 Pa.Super. 428, 27 A.2d 499, 500-01 (1942) (holding that there is no cause of action for an injury where plaintiff suffered no damages).

Count III alleges that "[t]o the extent that [Landlord] is entitled to recover for the full rental amount [in the Landlord's action, Tenant] has been damaged by their detrimental reliance on the representations of [Landlord's] agent in that they gave up use of said space in reliance upon his representations." Complaint ¶ 27. Though Tenant may have relied on the statements of Landlord's agent by vacating the space, Tenant suffered no detriment. Tenant's loss of the use of the space was not detrimental to Tenant because Tenant paid no rent on the vacated space. Paragraph 27 is merely a speculation of the future detriment that will occur if Landlord succeeds in its action for rent. The court cannot act on a cause of action that the Tenant anticipates, but is not certain, will arise in the future. See Treski v. Kemper Nat'l Ins. Cos., 449 Pa.Super. 620, 674 A.2d 1106, 1113 (1996) (dismissing class action claims based on insurer's misrepresentations of scope of coverage where insured plaintiffs had yet to suffer injury from those misrepresentations); Ladner v. Siegel, 294 Pa. 368, 144 A. 274, 275-76 (1928) (stating that declaratory judgment act does not alter general rule that court may not render decision on controversy that may arise in the future); Schoenbrunn v. Nettrour, 360 Pa. 474, 61 A.2d

868, 869 (1948) (stating that court may not render an advisory opinion on possible liability).

At most, estoppel will serve to defeat Landlord's anticipated recovery of rent in Landlord's action. Tenant's estoppel argument is really a defense to Landlord's rent claim, and at this time estoppel cannot serve as an independent cause of action in a separate suit.²

Because Count III alleges no detriment, Tenant's promissory estoppel claim is legally insufficient. The court sustains the preliminary objection to Count III and dismisses Count III without prejudice to Tenant's right to pursue the promissory estoppel argument in Landlord's action.

IV. THE COURT SUSTAINS THE DEMURRER TO COUNT IV (PUNITIVE DAMAGES).

Count IV claims punitive damages. Landlord argues that Count IV is legally insufficient. The court agrees. A request for punitive damages cannot stand as an independent cause of action. Nix v. Temple Univ. of the Commw. Sys. of Higher Educ., 408 Pa. Super. 369, 596 A.2d 1132, 1138 (1991) (dismissing claim for punitive damages contained in a separate count). See also Hilbert v. Roth, 395 Pa. 270, 149 A.2d 648, 652 (1959) (stating that "[t]he right to punitive damages is a mere incident to a cause of action . . . and not the subject of an action in itself.") and Goodrich-Amram 2d § 1020(a)(2) (stating that a complaint must set forth each claim in a separate, self-sufficient count).

Landlord also argues that the complaint does not state a claim upon which the court may award

² Landlord is wrong that promissory estoppel is always an affirmative defense and never a cause of action. Estoppel may be a claim or a defense. See e.g., Langer v. Superior Steel Corp., 105 Pa. Super. 579, 161 A. 571, 572-73 (1932) (overruling demurrer to plaintiff's promissory estoppel claim). Estoppel is an equitable means of enforcing otherwise unenforceable promises, whether the promisor is the plaintiff or the defendant. See Kreutzer v. Monterey County Herald Co., 560 Pa. 600, 747 A.2d 358, 361-62 (2000).

punitive damages. The court agrees. "'Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others.'" Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 747 (1984), quoting and adopting Restatement (Second) of Torts § 908(2). The complaint alleges nothing about Landlord's motive and alleges nothing from which the court could infer that Landlord acted recklessly. The mere assertion that Landlord's conduct was "fraudulent, extreme and outrageous" does not satisfy the fact pleading requirements of Pa.R.C.P. 1019(a). Though Pa.R.C.P. 1019(b) allows a plaintiff to plead state of mind generally, that rule does not relieve a plaintiff from pleading state of mind at all. See Ammlung v. Platt, 224 Pa.Super. 47, 302 A.2d 491, 497-98 (1973). At best, the facts in Counts I and II give rise to a claim for restitution based on mutual mistake. Atherholt v. Hughes, 209 Pa. 156, 58 A. 269 (1904); Hoover v. Senseman, 3 Cent.Rptr. 540 (Pa. 1886); Landreth v. Howell, 1904 WL 3290, *6 (Pa.Super.); E.A. Schopler, Relief, By Way of Rescission or Adjustment of Purchase Price, For Mutual Mistake as to Quantity of Land, Where Contract of Sale Fixes Compensation at a Specified Rate Per Acre or Other Unit Area, 153 A.L.R. 4 (1944); C.T. Drechsler, Relief By Way of Rescission or Adjustment of Purchase Price For Mutual Mistake as to Quantity of Land, Where the Sale Is in Gross, 1 A.L.R.2d 9 (1945); Restatement (Second) of Contracts §§ 152, 158 (mutual mistake and restitution). Punitive damages are not available for a defendant's mere mistake. Restatement (Second) of Torts § 908, cmt. b. See also Bisk Candy Co. v. Stout, 289 Pa. 369, 137 A. 612, 615 (1927) (affirming trial judge's refusal to submit charge to jury that would have allowed recovery of punitive damages "without regard to whether defendant's act was a mere mistake or was wantonly done.").

Therefore, the court sustains the preliminary objection and dismisses Count IV. The court

grants leave to Tenant to amend Counts I and II to plead the Landlord's state of mind and to include a demand for punitive damages in each Count.

V. THE COURT SUSTAINS THE PRELIMINARY OBJECTION TO THE COMPLAINT FOR FAILURE TO CONFORM TO A RULE OF COURT

Landlord argues that the plaintiff violated Pa.R.C.P. 1020(a) by failing to include a demand for relief in each count. The court agrees. Pa.R.C.P. 1020(a) clearly states that a complaint must set forth each cause of action in a separate count containing a demand for relief. See also Goodrich-Amram 2d § 1020(a)(2). Instead of stating a demand for relief in each count, Tenant made a single demand for relief at the end of the complaint. The court sustains the preliminary objection for failure to conform to a rule of court and grants Tenant leave to amend the complaint to insert a separate demand for relief in each count.

CONCLUSION

For the foregoing reasons, the Landlord's preliminary objections are sustained in part and denied in part. Tenant shall file an amended complaint within twenty (20) days of the date of entry of this Memorandum Opinion and accompanying Order.

BY THE COURT:

JOHN W. HERRON, J.

DATE: August 10, 2000

Control No. 061511

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ORDER

AND NOW, this 10th day of August 2000, upon consideration of defendant's preliminary objections to the plaintiff's complaint and plaintiff's response thereto, and in accordance with the court's contemporaneously-filed memorandum opinion, IT IS HEREBY ORDERED that

- (1) The preliminary objection on the basis of statute of limitations is OVERRULED.
- (2) All other preliminary objections are SUSTAINED.
- (3) Counts III and IV of the complaint are DISMISSED.
- (4) Plaintiff shall file an amended complaint within twenty (20) days of the date of entry of this order.

BY THE COURT:

JOHN W. HERRON, J.