

R. J. CAREY CO., INC.,
d/b/a CAREY BOILER WORKS,
Plaintiff

vs.

TROY FRY and NICK LAIR, individually
and d/b/a STEAM SERVICES,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
: JURY TRIAL DEMANDED
:
: NO. 99-01,126
:
: CIVIL ACTION – LAW/EQUITY
: PRELIMINARY OBJECTIONS

OPINION AND ORDER

The matter before the Court concerns Preliminary Objections filed by Defendants Troy Fry and Nick Lair, individually and d/b/a Steam Services (hereinafter “Defendants”) September 10, 1999.¹

Factual Background

The Complaint, filed July 20, 1999, avers Plaintiff is a Pennsylvania corporation with its principal place of business located in Lycoming County. Complaint paragraph 1. Defendant Nicholas Lair, Jr., lives in Snyder County and Defendant Troy R. Fry lives in Union County. Complaint paragraphs 2,3. Plaintiff avers the individual Defendants have done business as Defendant Steam Services with a principal place of business unknown to Plaintiff. Complaint paragraph 4. The individual Defendants previously worked for Plaintiff. Complaint paragraphs 5,6. Plaintiff avers the individual Defendants gained knowledge of confidential business information and trade secrets of Plaintiff, which they subsequently used to Plaintiff’s detriment when they opened their own business, Steam Services, in competition with Plaintiff.

¹ Plaintiff R.J. Carey Co., Inc., d/b/a Carey Boiler Works (hereinafter “Plaintiff”) filed its Answer to the Preliminary Objections September 24, 1999. The parties submitted briefs in support of their respective positions and argument was held October 20, 1999.

Complaint paragraphs 7,9,10. Plaintiffs claim that as a result of Defendants' conduct, Plaintiff's confidential information has been disclosed to third parties, Plaintiff has lost business and business income and Plaintiff has suffered certain costs and may continue to lose business and suffer pecuniary loss. Complaint paragraph 19. The Complaint contains four counts: Intentional Interference with Contractual Relations, Misappropriation of Trade Secrets, Violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law and a request for an Injunction.

Defendants originally raised three Preliminary Objections -- Improper Venue, Motion for a More Specific Pleading and a Motion to Strike the Pleading for lack of a signed verification. However, an Amended Verification to the Complaint was filed September 24, 1999 and Defendants agreed at argument to withdraw this objection as being moot.

Discussion

In considering preliminary objections, all well-pled facts are considered as true, together with such reasonable inferences as may be drawn from such facts. ***Bower v. Bower***, 611 A.2d 181 (Pa.Super. 1992). Preliminary objections should be sustained only in cases that are clear and free from doubt. ***Ibid.***

With respect to venue, Defendants point to Pa.R.C.P. No. 2130(a), which provides that, except as otherwise provided, an action against a partnership may be brought in and only in a county where the partnership regularly conducts business, or in the county where the cause of action arose, or in a county where a transaction or occurrence took place out of which the cause of action arose. Defendants argue this rule mandates proper venue is in Snyder County, the principal place of business Defendant Steam Services. Further, the allegations by

Plaintiff of interference with Plaintiffs' business contracts concern businesses located in places other than Lycoming County and argues therefore neither the causes of action nor any transactions giving rise to them occurred in Lycoming County. Defendants' Memorandum of Law in Support of Preliminary Objections p. 2. Defendants add that the actions complained of are not against the individual Defendants, but rather against the individual Defendants acting as Defendant partnership Steam Services. *Ibid.*

Plaintiff replies that this last argument is a mischaracterization of the Complaint, and this Court agrees. It is clear from the caption that the named Defendants include the partnership as well as the individual Defendants. Several averments refer to alleged actions of the individual Defendants at a point in time when they were still in the employ of Plaintiff; *see, e.g.*, Complaint paragraphs 7,9,10,28. From these averments, it is reasonable to infer they were not at that time conducting business as the Defendant partnership. Defendants make no argument that venue is improper with respect to the named individuals.

Moreover, as noted in *Goodrich-Amram* 2d §2130(a):1, cited by Defendants, the counties in which venue is proper are designated disjunctively by Rule 2130(a). Therefore, although the Defendant partnership is located in Snyder County, venue is proper in Lycoming County if a transaction or occurrence took place in this county out of which the cause of action arose. In this case, Plaintiff avers that, while employed by Plaintiff in Lycoming County, Defendants gained knowledge of confidential business information, continuing their employment to obtain as much confidential information and trade secrets as possible while planning to start their own business and wrongfully utilize the knowledge gained to Plaintiff's detriment. Complaint paragraphs 7,9,10. Further, the loss of business can fairly be considered

to have occurred at Plaintiff's location in Lycoming County and it is this loss of business that in large part gives rise to the causes of action against Defendants. We find venue is proper in Lycoming County.

With respect to Defendants' request that this Court direct Plaintiff file a more specific pleading, we find some merit in this objection. Paragraph 11 of the Complaint avers "Plaintiff enjoyed existing business contracts as well as prospective business contracts...including but not limited to, the following..."; Plaintiff then proceeds to name several businesses and in subsequent averments indicates the actions taken by Defendants with respect to these companies.

"[A] pleading must be sufficiently specific to enable a respondent to prepare a defense." *Philadelphia County, et al. v. Com., Dept. of Ed.*, 432 A.2d 1121, 1125 (Pa.Cmwlth. 1981). Here, the vague language "including but not limited to" gives Defendants no idea whether Plaintiffs intend to claim interference with contracts or prospective contracts which Plaintiffs may have with other, yet unnamed companies. Further, with respect to the companies which are named, Plaintiffs must clearly set forth whether Plaintiff had an existing contract with each company named, or rather a prospective business contract. If the latter, Plaintiffs must aver the nature of the relationship and some indication concerning how Defendants were aware of the prospective business contract, so as to act in a manner which supports Plaintiff's claim of intentional interference with contractual relations.

Accordingly, the following Order is entered.

ORDER

AND NOW, this 24th day of November 1999, Defendants' Preliminary Objection to strike the pleading for lack of a signed verification has been rendered moot by the filing of said verification and this Objection has been withdrawn by Defendants. Defendants' Preliminary Objection concerning venue is OVERRULED. Defendants' Preliminary Objection for a more specific pleading is SUSTAINED. Plaintiff shall file an Amended Complaint within twenty (20) days of the filing date of this Order.

BY THE COURT,

William S. Kieser, Judge

cc: Marc F. Lovecchio, Esquire
Hugh A. Benson, Esquire
106 North Market Street; Selinsgrove, PA 17870
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

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