IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

DAN TROXELL and DENISE TROXELL, Plaintiffs	: :	
v.	:	NO. 99-01,055
SAMPSON MODULAR HOME SALES, Defendant	: :	

OPINION and ORDER

This is a dispute over the purchase and construction of a modular home. The defendant, Sampson Modular Home Sales, has asked the court to dismiss the case because the Troxells already sued Sampson once on the underlying contract and should not be permitted to take another shot at the company. We reject this contention because there is no rule rationing suits to one per contract. The pertinent inquiry is whether the suit results from the same occurrence and as all too many homeowners know, more than one unfortunate occurrence can take place when dealing with a contractor.

Factual Background

On 17 October 1995, the Troxells contracted with Sampson for the purchase and installment of a modular home. On 8 October 1996, while the home was still under construction, the Troxells filed an action against Sampson alleging breach of contract because the foundation had collapsed. That action was settled when the parties entered into an agreement on 17 August 1998.

On 29 July 1999 the Troxells filed another suit against Sampson, alleging

breach of contract because some work remained incomplete and other work was unprofessional. Sampson filed preliminary objections arguing that the claims made in the second suit were waived because they were not included in the first suit.

Discussion

This case turns on an interpretation of R.Civ.P. No. 1020(d)(1), which states:

> If a transaction or occurrence gives rise to more than one cause of action against the same person, including causes of action in the alternative, they shall be joined in separate counts in the action against any such person.

Rule 1020(d)(4) adds that failing to do so results in a waiver of that claim. The purpose of these rules is to avoid multiplicity of suits, thereby ensuring the prompt disposition of all rights and liabilities of the parties in a single suit. Hineline v. Stroudsburg Elec. Supply Co., Inc., 586 A.2d 455, 456 (Pa. Super. 1991). Rule 1020 is, in a way, the civil equivalent to the Double Jeopardy clause of the Constitution.

The question confronting the court is whether the two Sampson suits arose out of the same transaction or occurrence. There is surprisingly little case law on the issue, but the Hineline case provides some guidance, stating that two cases arise out of the same transaction or occurrence if they involve a common factual background or common factual or legal questions. Id. at 457. To resolve the issue, a court should consider what evidence would be introduced to prove each case. "Where the evidence that would establish one complaint is distinct from the evidence that would establish the other complaint, the complaints do not arise from the same transaction or occurrence." Id.

Here, the complaints are based on two difference occurrences. In the first

suit, the foundation allegedly collapsed, and the factual allegations in the complaint relate only to that event. In the second suit, the work was allegedly shoddy and incomplete, and the factual allegations relate only to those alleged facts. Although there might be some similar factual and legal questions, such as whether the contract was valid and what duties it imposed on each party, those issues are not the primary ones a jury would be focusing on at trial. Rather, the issues would be whether the foundation collapsed, as opposed to whether the work was incomplete and shoddy. The evidence required to prove these allegations would be very different in the two trials. Therefore, the purpose of the rule–judicial economy–would hardly be served by finding that the Troxells had waived their second claim.[1]

For these reasons, the court finds that the two complaints are based on separate occurrences. However, we are troubled by the fact that they appear to be based on the same transaction–a contract for sale and construction of the home.[2] And thus we reach the important issue in this case, which neither party has raised or addressed: Does the phrase "transaction or occurrence" mean that *either* can trigger a waiver? If the answer to this question is affirmative, the case must be dismissed.

We decline to interpret the rule in that fashion for cases in which two occurrences arise from the same transaction. To do otherwise would render the word "occurrence" useless. We hold, instead, that when two cases are based on the

---

[1] Naturally, on a sheerly superficial level granting the demurrer and dismissing the case would promote judicial economy because it would reduce this court's case load. However, we hardly think that is what the constructors of the rule had in mind.

[2] See United National Insurance Co. v. M. London, Inc., 487 A.2d 385, 393 (Pa. Super. 1985), which defines transaction as "the act of transacting or conducting any business, negotiation, management, or proceeding."

same contract, the court must look to whether they are based on the same occurrence.

This is the more reasonable conclusion because there is no legitimate reason why a party should be limited to one suit per contract. Contracts are often complex, giving rise to many different duties, and either party may breach such contracts by engaging in very different behavior, as in this case. To illustrate our point more clearly, consider the case of a contract for the construction of five separate homes, to be built one after another. If there is a problem with the first home, and the buyer sues to have it resolved, should the buyer be prevented from suing on the subsequent homes, when problems arise with them as well, simply because one contract covered all the homes? If the buyer refuses to pay for the first home and the builder sues and gets the money, should the buyer be able to refuse to pay for the other homes? Such an interpretation would hardly constitute a desirable public policy, for it would permit people to commit a second breach with impunity, so long as a suit had already been brought on the contract.

The mere fact that the various duties of the parties happen to be set forth in the same document is not a good enough reason to bounce the buyer out of court. Therefore, the Troxells had a right to sue Sampson as soon as the foundation collapsed, without jeopardizing their right to sue for other breaches.

Red Herrings

Sampson attempts to muddy the waters by raising two issues that are largely irrelevant to the legal question in this case. First, it argues that the Troxells knew Sampson would not complete the work because Sampson previously told them it

would do no further work so long as the first suit was pending. Obviously, this statement would not have alerted the Troxells that the company would not finish the work after the first suit was resolved. But even if Sampson had told the Troxells in no uncertain terms that it would never do another bit of work on the home, it is not clear to this court that the Troxells would have waived their claim for unfinished work. After all, the two breaches would still be separate occurrences, and everything in the above discussion would still apply.

Secondly, Sampson argues the second suit cannot be brought because it violates the settlement agreement, which released Sampson for all liability on the contract. One need only read page 2 of that General Release to see that this argument has no merit, for the agreement is specifically limited to future damages arising from the occurrences in the first complaint, namely the collapsed foundation.[3]

Conclusion

Although the Troxells would certainly have been permitted to join both

[3] IT IS EXPRESSLY UNDERSTOOD AND AGREED that this Release and settlement is intended to cover not only all now known injuries, losses and damages, but all future injuries, losses and damages, not now known, or anticipated, which arise from, or are in any way related to, the occurrences set forth in Plaintiffs' Complaint in the above-captioned matter, which may later develop, or be discovered, including all of the effects and consequences thereof.

causes of action together in one suit, they were not required to do so because the suits were based on separate occurrences. To permit Sampson to escape the consequences of its alleged shoddy and incomplete work merely because previously it had constructed a foundation that collapsed would be a topsy-turvy system of justice indeed.

O R D E R

AND NOW, this _____ day of December, 1999, for the reasons stated in the foregoing opinion, the preliminary objections filed by the defendant are dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Kyle Rude, Esq.
Charles Dominick, Esq.
340 Market St., Ste. 300
Kingston, PA 18704-2837
Gary Weber, Esq., Lycoming Reporter