THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

RESOURCE PROPERTIES XLIV, INC., Plaintiff	: November Term, 1999
	: No. 1265
v.	:
PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, etal. Defendants	:
RESOURCE PROPERTIES XLIV, INC., Plaintiff	: March Term, 2000
	: No. 3750
v.	:
GROWTH PROPERTIES, LTD., etal. Defendants	: Control No. 090558

O P I N I O N

Albert W. Sheppard, Jr., J. ..... November 7, 2000

Defendants, LLOT, Inc. ("LLOT") and Growth Properties, Ltd.-LLOT General Partnership ("G-L") (together "Movants"), have filed Preliminary Objections ("Objections") to the Amended Complaint of plaintiff, Resource Properties XLIV, Inc. ("Resource"). For the reasons set forth in this Opinion, this court is entering a contemporaneous Order overruling the Objections.

BACKGROUND

On October 11, 1984, the Philadelphia Authority for Industrial Development ("PAID") executed three notes and mortgages in favor of CoreStates Bank ("CoreStates"), then known as The Philadelphia National Bank.[1] The Mortgages were secured by property located at 125-37 South Ninth Street ("Property").

That same day two other events occurred. First, PAID sold the Property to LLOT, G-L, Growth Properties, Ltd. ("Growth") and Sheridan Associates ("Sheridan") (collectively, "Borrowers") pursuant to an Installment Sale Agreement. The obligations of the Borrowers under the Installment Sale Agreement were coextensive with the obligations of PAID under the Notes and Mortgages.

Second, pursuant to a Letter Agreement, Radnor Financial Group, Inc. ("Radnor") agreed to purchase the Second and Third Notes and Mortgages from CoreStates upon default by the Borrowers. The Letter Agreement was subsequently modified by a Modification Agreement, dated December 31, 1991, under which Radnor agreed to secure its purchase obligations with a $2.2 million cash collateral ("Collateral"). Shortly after the Modification Agreement was signed, Radnor posted the Collateral.

In December 1994, the Borrowers defaulted on their obligations under the Installment Sale Agreement. CoreStates notified Radnor in a letter dated January 5, 1995 that it had liquidated the Collateral and applied the proceeds to the purchase price for the Second and Third Notes and Mortgages.

---

[1] The principal under the "First Note and Mortgage" was $3,000,000. The principal under the "Second Note and Mortgage" was $2,000,000. The principal under the "Third Note and Mortgage" was $1,000,000.

CoreStates subsequently brought suit against Radnor seeking to enforce Radnor's purchase obligations under the Letter Agreement and the Modification Agreement ("CoreStates-Radnor Litigation").[2] Radnor, in turn, filed a counterclaim alleging that CoreStates had improperly liquidated the Collateral. In addition, CoreStates filed a second action against ten defendants, including PAID and the Movants, on February 27, 1995, to foreclose on the First and Second Mortgages ("Foreclosure Action").[3]

On April 22, 1998, CoreStates and Radnor agreed to settle the CoreStates-Radnor Litigation. In connection with this settlement, CoreStates and Radnor executed an Agreement of Sale,[4] under which CoreStates sold all of its interest in the Notes and Mortgages to Resource. CoreStates also executed an Assignment and Allonge of Mortgages, Promissory Notes and Other Rights in favor of Resource. In addition, Radnor assigned its rights to the Second and Third Mortgages and Notes to Resource under an Absolute Assignment.[5]

In accordance with the Settlement Documents, Resource succeeded to CoreStates' interest in the Foreclosure Action. In that Foreclosure Action, Growth, LLOT and G-L argued that the Collateral was used to pay down debts owed by the Borrowers under the Second and Third Notes and Mortgages.

---

[2] CoreStates Bank v. Radnor Financial Corp., February Term 1995, No. 2943 (C.P. Phila.).

[3] CoreStates Bank v. Philadelphia Auth. for Indus. Dev., February Term 1995, No. 3110 (C.P. Phila.).

[4] The Agreement of Sale is dated as of December 31, 1997.

[5] The Agreement of Sale, the Assignment and Allonge of Mortgages, Promissory Notes and Other Rights and the Absolute Assignment are referred to collectively as the "Settlement Documents."

The trial court accepted this argument.[6] Resource has argued that this conclusion allows Resource, as successor in interest to Radnor, to demand from the Borrowers the amount of the Collateral applied to reduce indebtedness on the Notes and Mortgages.

Resource confessed judgment against LLOT, L-G, Growth and PAID for amounts owed on the Third Note ("Confession Complaint") on November 9, 1999.[7] On March 30, 2000, Resource filed the Complaint against the Borrowers, setting forth counts for equitable subrogation and unjust enrichment/quantum meruit.[8]

Movants filed preliminary objections ("First Set") to the Complaint. The Court granted the Movants' demurrer to the Count I and allowed Resource to file an amended complaint.[9]

Subsequently, Resource filed the Amended Complaint. Movants have now filed these Objections to the Amended Complaint.

DISCUSSION

These Preliminary Objections are without merit. Parenthetically, the court notes that it had overruled previously three objections, namely: failure to join a necessary party, lack of specificity and failure to set forth all material facts.

---

[6] Paragraph 28 of the Trial Court's Findings of Facts, as cited in the Complaint, states that "CoreStates applied $1,216,579.52 from the Cash Collateral to reduce the principal balance of the second note and mortgage and $4,158.63 to reduce the accrued interest on the second note and mortgage." Resource states that it has filed an appeal with regard to this determination.

[7] Resource Properties XLIV, Inc. v. Philadelphia Auth. for Indus. Dev., November Term 1999, No. 1265 (C.P. Phila.) ("Confession of Judgment Action").

[8] The two cases were consolidated on October 12, 2000.

[9] The remaining Preliminary Objections (First Set) were overruled.

I. Demurrer to Claim for Equitable Subrogation

For the purposes of reviewing preliminary objections in the form of a demurrer, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. Ct. 2000). When presented with preliminary objections which, if granted, would result in dismissal of an action, a court should sustain the objections only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazaras, 746 A.2d 642, 643 (Pa. Super. Ct. 2000) (citation omitted). Furthermore,

> [I]t is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. Ct. 1999).

Pennsylvania law recognizes the doctrine of subrogation and defines it as "the substitution of one entity in the place of another with reference to a lawful claim, demand, or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies or securities." Public Serv. Mut. Ins. Co. v. Kidder-Friedman, 743 A.2d 485, 488 (Pa. Super. Ct. 1999) (quoting Molitoris v. Woods, 422 Pa. Super. 1, 9, 618 A.2d 985, 989 (1992)). The doctrine is "a means of placing the ultimate burden of a debt upon the one who in good conscience ought to pay it, and is generally applicable when one pays out of his own funds a debt or obligation that is primarily payable from the funds of another." High-Tech-Enterprises, Inc. v. General Accident Ins. Co., 430 Pa. Super. 605, 609, 430 A.2d 639, 642 (1993) (citation omitted).

The Movants demur to Resource's equitable subrogation claim based on three grounds. First, they argue that Pennsylvania does not allow an independent cause of action titled "equitable subrogation." Second, they urge that the facts alleged do not meet the requirements for relief based on the doctrine of equitable subrogation. Third, the Movants claim that Resource has adequate remedies available at law that prevent the Court from exercising equity jurisdiction.

A. No Independent Action

According to the Movants, equitable subrogation is a mere doctrine and there is no independent cause of action for equitable subrogation under Pennsylvania law. As a result, they contend that Count I of the Amended Complaint should be dismissed. This claim is without merit.

Pennsylvania does not require a pleader to identify a particular cause of action. See Krajsa v. Keypunch, Inc., 424 Pa. Super. 230, 235, 622 A.2d 355, 357 (1993) ("[i]t is not necessary that the plaintiff identify the specific legal theory underlying the complaint"). Rather, "[i]t is the duty of the court to discover from the facts alleged in a complaint the cause of action, if any, stated therein." Burnside v. Abbott Laboratories, 351 Pa. Super. 264, 277, 505 A.2d 973, 980 (1985).[10] If the title of a count misidentifies a claim, it is the allegations in the count that must guide the court and not the title. Miltenberg & Samton, Inc. v. Assicurazioni Generali, S.p.A., January 2000, No. 3633, slip op. at 5 n.12 (C.P. Phila.

[10] This principle is set forth in a number of Pennsylvania cases. See, e.g., Kelly by Kelly v. Ickes, 427 Pa. Super. 542, 549, 629 A.2d 1002, 1005 (1993) ("it is always incumbent upon the trial judge to determine whether the facts pled in the complaint state any theory upon which plaintiff may recover"); Manor Junior College v. Kaller's Inc., 352 Pa. Super. 310, 319, 507 A.2d 1245, 1250 (1986) ("[i]t is the duty of the trial court to discover the cause or causes of action which are supported by the facts alleged"); Bartanus v. Lis, 332 Pa. Super. 48, 56, 480 A.2d 1178, 1182 (1984) ("[t]he duty to discover the cause or causes of action rests with the trial court").

October 11, 2000) (Herron, J.) (citations omitted).[11] Thus, if a complaint alleges facts that would entitle a plaintiff to relief on any theory, a demurrer must be overruled, regardless of the title of the count at issue.

Here, the fact that Resource has titled the first Count as a claim for "equitable subrogation" is irrelevant. So long as the allegations in the Amended Complaint provide a basis for recovery based on that doctrine, the Amended Complaint should not be dismissed. Thus, the Movants' assertion that equitable subrogation is not a valid claim is immaterial.[12] Rather, this Court must examine the Amended Complaint to see if the facts alleged entitle Resource to relief.

B. Inadequate Facts for Equitable Subrogation Claim

In order to sustain a claim based on equitable subrogation, a claimant must satisfy five prerequisites:

1. The claimant paid the creditor to protect his own interests;
2. The claimant did not act as a volunteer;
3. The claimant was not primarily liable for the debt;
4. The entire debt has been satisfied; and
5. Allowing subrogation will not cause injustice to the rights of others.[13]

---

[11] Available at http://courts.phila.gov/cptcvcomp.htm.

[12] Even if this were not so, in at least one case, a Pennsylvania court has allowed a plaintiff to proceed on a count of equitable subrogation. See Judge v. Allentown and Sacred Heart Hosp. Center, 90 Pa. Commw. 520, 496 A.2d 92 (1985) (overruling demurrer to count for equitable subrogation).

[13] For discussion on the application of this element, see infra.

Tudor Development Group, Inc. v. United States Fidelity & Guaranty Co., 968 F.2d 357, 362 (3rd Cir. 1992) (citing United States Fidelity & Guaranty Co. v. United Penn Bank, 362 Pa. Super. 440, 524 A.2d 958 (1987)).[14]

The Movants assert that the Amended Complaint does not allege the elements required. This court disagrees.

1. Own Interests and Not a Volunteer

Generally, a party may not invoke the doctrine of subrogation if the party has acted as a volunteer. Dominski v. Garrett, 276 Pa. Super. 18, 25, 419 A.2d 73, 77 (1980). Specifically,

> [I]t is only in cases where the person paying the debt of another will be liable in the event of default or is compelled to pay in order to protect his own interests, or by virtue of legal process, that equity substitutes him in the place of the creditor without any agreement to that effect; in other cases the debt is absolutely extinguished.

Kaiser v. Old Republic Ins. Co., 741 A.2d 748, 754 (Pa. Super. Ct. 1999) (citation omitted).

Here, Radnor, Resource's predecessor in interest, incurred liability solely due to the default by the Borrowers. Moreover, the Collateral was liquidated allegedly without Radnor's consent to secure its compliance with the Letter Agreement and to protect it interests thereunder. This satisfies the requirement that Resource, as Radnor's successor, act in its own interests and not as a volunteer.

[14] A careful examination of the Superior Court's opinion in United States Fidelity reveals no evidence that the Third Circuit took the five-element Tudor test from that case. In addition, no Pennsylvania court has explicitly adopted this test. However, both parties rely on the Tudor test in their briefs.

2. No Primary Liability

Second, a subrogee must show that it does not have primary liability for the debt that has been satisfied. High-Tech-Enterprises, 430 Pa. Super. at 609, 430 A.2d at 642; Dominski, 276 Pa. Super. at 25, 419 A.2d at 779. Nowhere in the Amended Complaint does Resource allege explicitly that it had no primary liability for the Notes and Mortgages. However, in Paragraph 34, Resource alleges that "Radnor had no liability to CoreStates under the Installment Sale Agreement or the Notes and Mortgages." Because Radnor assigned its interests in the Second and Third Notes and Mortgages to Resource,[15] one can infer that Resource similarly inherited Radnor's liabilities, or lack of them, under these instruments. This leads to the conclusion that Resource had no primary liability under the Notes and Mortgages.

3. Entire Debt

Pennsylvania law also holds that until the creditor is fully paid, subrogation will not be permitted. Stofflett v. Kress, 342 Pa. 332, 336, 21 A.2d 31, 33 (1941) ("until [the superior creditor] is fully paid subrogation cannot be allowed on any terms whatever"); Hagans v. Constitution State Service Co., 455 Pa. Super. 231, 240, 687 A.2d 1145, 1149 (1997) ("subrogation presupposes an actual payment and satisfaction of a debt or claim by the entity asking to be subrogated").[16] Paragraph 38 of the

---

[15] According to Paragraph 22 of the Amended Complaint, "Radnor assigned all of its rights in and to the Second Note and Mortgage and the Third Note and Mortgage, including all subrogation rights, to Resource."

[16] Additionally, Resource cites a Federal case that states that "whether the creditor has been paid in whole by the surety or whether part of his claim has been recovered from the debtor or the debtor's collateral" is irrelevant, so long as the entire debt is fully paid. American Surety Co. of N.Y. v. Bethlehem Nat'l Bank of Bethlehem, Pa., 33 F. Supp. 722, 724 (E.D. Pa. 1940), rev'd on other grounds, 116 F.2d 75 (3rd Cir. 1940). The Movants do not contest this statement.

Complaint alleges that "[t]he entire debt on the Second Note and Mortgage has been satisfied . . . ." Thus, the Complaint alleges full satisfaction of the debt.

4. No Injustice

In reviewing requests for subrogation, "great care should be taken by the court that the subrogation will work no injustice to the rights of others." U.S. Steel Homes Credit Corp. v. South Shore Development Corp., 277 Pa. Super. 308, 316, 419 A.2d 785, 790 (1980) (citation omitted). Cf. Jacobs v. Northeastern Corp., 416 Pa. 417, 429, 206 A.2d 49, 55 (1965) (holding that "[r]ights of subrogation . . . are created by law to avoid injustice"). However, no case requires a plaintiff to assert affirmatively in its complaint that no injustice will result from granting the relief. Indeed, while Pennsylvania case law is replete with language stating that relief will be denied when injustice will result, this appears to be a directive for the trial court and not a mandate to a plaintiff drafting its pleading.[17] Consequently, Resource's failure to explicitly assert that no injustice will result from granting the relief requested is not fatal.

The Complaint alleges all the elements of equitable subrogation. As a result, the allegations are sufficient to support granting relief based on that doctrine.

[17] As stated supra, no Pennsylvania case has adopted the five-element Tudor test or requires a plaintiff to allege no resulting injustice as part of a test for equitable subrogation.

C. Entitlement to Equitable Relief

The Movants next argue that Resource was assigned Radnor's counterclaim against CoreStates in the CoreStates-Radnor Litigation. As such, they claim that Resource has an adequate remedy available at law, precluding the court from granting equitable relief. Again, this court cannot agree.

In reviewing an equitable matter, "a court of equity will not invoke its jurisdiction where there is an adequate remedy at law and statutory remedies, if adequate, must be exhausted before equitable jurisdiction may be resorted to." Clark v. Pennsylvania State Police, 496 Pa. 310, 313, 436 A.2d 1383, 1385 (1981). However, "[t]he mere fact that a remedy at law exists is not sufficient to oust equitable jurisdiction; the question is whether the remedy is adequate or complete." Hercules v. Jones, 415 Pa. Super. 449, 453, 609 A.2d 837, 839 (1992) (citing Peoples-Pittsburgh Trust Co. v. Saupp, 320 Pa. 138, 182 A. 376 (1936)).

Here, Resource does not have an adequate remedy at law. According to the Complaint, the Collateral was used to reduce the amount outstanding under the Second and Third Notes. As such, the Borrowers, not CoreStates, benefitted from any payoff, and counterclaims against CoreStates in the CoreStates-Radnor Litigation are irrelevant. In addition, even if a remedy exists at law in the CoreStates-Radnor Litigation, the settlement of that litigation could preclude any recovery or at least make any available recovery inadequate. Consequently, the Objections based on other equitable relief available are overruled.

In sum, the Complaint presents facts that support a grant of relief based on the doctrine of equitable subrogation. Further, Resource does not have alternative adequate remedies available at law. As a result, the demurrer to Count I of the Amended Complaint is overruled.

II. Objections to the Amended Complaint as a Whole

In its earlier order, this court had overruled the remaining three Objections embodied in the First Set of Preliminary Objections to Count II of the Complaint. However, Movants have resubmitted these same Objections. In the interest of completeness of the record, the Court will briefly explain its reasoning for overruling those remaining Objections.

A. Failure to Join a Necessary Party

Rule 1028(a)(5)[18] allows preliminary objections based on nonjoinder of a necessary party, which is defined as one "whose presence, while not indispensable,[19] is essential if the Court is to completely resolve the controversy before it and render complete relief." In re Bishop, 717 A.2d 1114, 1119 (Pa. Super. Ct. 1998) (citation omitted). If jurisdiction over a necessary party cannot be obtained, a court may proceed in the action even in the absence of such a party. See Rule 2232(c).

The Movants argue that PAID is a necessary party because it is the maker of the Second and Third Notes. However, PAID sold the Property to the Borrowers, and there is no indication that PAID has any interest or obligation under the Notes or Mortgages. In addition, the Objections do not set forth any potential claim any party would have against PAID as a result of improper use of the Collateral or through equitable subrogation. As a result, the Objections on this ground are overruled.[20]

---

[18] Pennsylvania Rules of Civil Procedure are referred to individually as "Rules."

[19] Pennsylvania law defines an "indispensable party" as "one whose rights are so connected with the claims of the litigants that no relief can be granted without impairing or infringing upon those rights." Hubert v. Greenwald, 743 A.2d 977, 979-80 (Pa. Super. Ct. 1999) (citation omitted). If an indispensable party has not been joined, Rule 1032(b) requires that the party be joined, that the action be transferred to a court having jurisdiction or that the action be dismissed.

[20] The Movants' argument is further undermined by the fact that PAID is a party to the Confession of Judgment Action, which was consolidated with this matter.

B. Lack of Specificity

Pennsylvania Rule of Civil Procedure 1028(a)(3) permits preliminary objections based on insufficient specificity in a pleading. To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the facts alleged are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991) (citation omitted). See also In re The Barnes Foundation, 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995) ("a pleading should formulate the issues by fully summarizing the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [the] cause of action is based").

Here, the Complaint sets forth the precise details as to when each transaction took place, the parties involved in each transaction and other disputes and settlements related to this action. As a result, the Complaint allows each of the Movants to prepare a defense. This Objection is overruled.

C. Lack of Material Facts

Under Rule 1019(a), a complaint must set forth all material facts. To comply with this Rule, a "complaint must apprise the defendant of the nature and extent of the plaintiff's claim so that the defendant has notice of what the plaintiff intends to prove at trial and may prepare to meet such proof with his own evidence." Weiss v. Equibank, 313 Pa. Super. 446, 453, 460 A.2d 271, 274-75 (1983) (citation omitted).[21] As stated above, the Complaint does not lack detail and includes all facts necessary to support each of Resource's claims. Accordingly, the Objection based on lack of material facts is overruled.

[21] It is often difficult to distinguish between the tests for material facts and sufficient specificity.

CONCLUSION

Each of the Objections to Count I - Equitable Subrogation and the Objections to Count II - Unjust Enrichment are without merit. Accordingly, the Objections are overruled in their entirety.

This court is issuing a contemporaneous Order overruling the Preliminary Objections.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

RESOURCE PROPERTIES XLIV, INC., Plaintiff	: November Term, 1999
	: No. 1265
v.	:
PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, etal. Defendants	:
RESOURCE PROPERTIES XLIV, INC., Plaintiff	: March Term, 2000
	: No. 3750
v.	:
GROWTH PROPERTIES, LTD., etal. Defendants	: Control No. 090558

O R D E R

AND NOW, this 7th day of November 2000, upon consideration of defendants' Preliminary Objections to the Amended Complaint and plaintiff's response, and all matters of record, and in accord with the Opinion contemporaneously filed, it is hereby **ORDERED** that the Preliminary Objections are **Overruled**. The defendants shall file an answer within twenty-two (22) days of this Order.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.