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

TYBURN RAILROAD COMPANY, Plaintiff	:	May Term, 2001
	:	No. 2805
v.	:	Commerce Case Program
CONSOLIDATED RAIL CORPORATION, Defendant	:	

OPINION

Plaintiff Tyburn Railroad Company ("Tyburn") suffered an adverse ruling in a nominally separate case and filed the instant complaint ("Complaint") in an effort to circumvent that ruling's effect. Because Pennsylvania law does not permit a dissatisfied party to initiate a declaratory judgment action simply because it is displeased with a prior court decision, the Court properly sustained the preliminary objections ("Objections") of Defendant Consolidated Rail Corporation ("Conrail"), and Tyburn's complaint ("Complaint") was properly dismissed.

BACKGROUND

Tyburn filed the Complaint against Conrail on May 24, 2001. In the Complaint, Tyburn requested a declaratory judgment that Tyburn had satisfied a stipulated judgment ("Judgment") against it in favor of Conrail, an order that Conrail cease its efforts to collect on the Judgment and relief based on Conrail's breach of the implied covenant of good faith. In a separate motion, Tyburn requested a temporary stay to prevent Conrail from engaging in discovery in aid of execution of the Judgment.

Although Tyburn presented the matter as a simple, isolated dispute, the controversy actually stretches back to 1992, when Conrail initiated an action for breach of contract against Tyburn for

claims in excess of $700,000.[1] The Parties settled the 1992 Action in July 1994 by agreeing to the entry of the $420,000 Judgment.[2] In conjunction with the Judgment, the Parties released each other from all claims, and Tyburn agreed to provide payments of 48 monthly installments of $6,400, for a total payment of $307,200. Tyburn's payments were guaranteed by a separate arrangement under which Conrail collected Tyburn's share of interline freight revenues ("IFR's") and credited them against amounts owed by Tyburn.

When Conrail divided its rail line operations in June 1999, it stopped receiving IFR's and filed a praecipe for a writ of revival in the 1992 Action for the full amount of the Judgment. Tyburn asserts that Conrail never gave notice of any default or provided any opportunity to cure, as required by the 1994 settlement, and that the judgment had been satisfied. Judge Patricia A. McInerney nonetheless granted Conrail's Motion to Compel Discovery in Aid of Execution on the Judgment over Tyburn's objections on February 9, 2001. This finding was confirmed on April 16, 2001, when Judge Matthew D. Carrafiello denied Tyburn's Motion for a Protective Order and fined Tyburn for failing to comply with the Judge McInerney's February 9, 2001 order.

Undaunted, Tyburn filed a Petition to Enforce Modified Agreement and Stay Plaintiff's Discovery in Aid of Execution ("Petition") on March 20, 2001. The Petition, much of which is identical to the Complaint, requests that the Court stay Conrail's discovery in aid of execution and order that

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[1] Consolidated Rail Corp. v. Tyburn R.R., November Term, 1992, No. 4265 (C.P. Phila.). This case is referred to as the "1992 Action."

[2] This settlement of the 1992 Action is referred to as the "Settlement."

Conrail continue accepting payments from Tyburn and cease its efforts to collect on the Judgment. Judge Matthew D. Carrafiello denied the Petition on May 11, 2001.

On May 24, 2001, Tyburn filed the instant Complaint, which reiterates the same arguments made in the Petition and requests relief nearly indistinguishable from that demanded earlier. While this Court initially granted Tyburn's request for a stay of the discovery mandated in the 1992 Action, the Court dissolved this stay when the earlier orders in the 1992 Action were brought to its attention.[3] This Court thereafter sustained Conrail's Objections on August 27, 2001 and dismissed the Complaint.[4] Tyburn subsequently filed an appeal of this Court's ruling.

DISCUSSION

Simply put, Tyburn seeks to have this Court reexamine issues raised in the 1992 Action and, more specifically, in the March 20, 2001 Petition. Because the 1992 Action embraces the claims presented in the Complaint and serves as an adequate remedy available at law, the Court properly dismissed the Complaint.[5]

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[3] The Complaint does not mention the Petition or the three earlier orders entered in the 1992 Action.

[4] Tyburn filed preliminary objections to the Objections. These preliminary objections were never moved to the Motion Court, as required by Philadelphia Civil Rule 1028. Because this is not set forth as a matter complained of on appeal, however, the Court will not address these preliminary objections.

[5] One might think that the coordinate jurisdiction rule would bar Tyburn's action. Certainly the same policy reasons behind the coordinate jurisdiction rule are applicable here. See Riccio v. American Republic Ins. Co., 550 Pa. 254, 260, 705 A.2d 422, 425 (1997) ("[t]he coordinate jurisdiction rule is premised on the sound jurisprudential policy of fostering finality in pre-trial proceedings, thereby promoting judicial economy and efficiency"); Commonwealth v. Starr, 541 Pa. 564, 574, 664 A.2d 1326, 1331 (1995) (the various rules which make up the law of the case doctrine, including the coordinate jurisdiction rule, "operate (1) to protect the settled expectations of the parties;

It is "axiomatic" under Pennsylvania law that "equity will entertain jurisdiction only in the absence of an adequate remedy at law." City of Phila. v. Pierre Uniforms, Inc., 369 Pa. Super. 246, 253, 535 A.2d 142, 145 (1987). Specifically, a claim already being addressed by the court cannot give rise to a second claim in equity:

> When a claim at law, arising out of the same controversy and covering the same issues, is already pending before the court, a subsequent complaint in equity may be properly dismissed. This is because there is in existence for the pleading party a full, complete and adequate non-statutory remedy at law.

Redmond Finishing Co. v. Ginsburg, 301 Pa. Super. 51, 54, 446 A.2d 1330, 1331-32 (1982) (citing Myshko v. Galanti, 453 Pa. 412, 309 A.2d 729 (1973)). See also Chartiers Valley Sch. Dist. v. Virginia Mansions Apts., Inc., 340 Pa. Super. 285, 301, 489 A.2d 1381, 1390 (1985) (where plaintiffs had adequate statutory remedies available to them, trial court properly sustained preliminary objections and dismissed the plaintiffs' complaint with prejudice). Thus, a party cannot file a complaint in equity seeking a redress of claims that are encompassed within an action already before the Court.

Here, the issues raised by the Complaint concern the Judgment's validity and satisfaction, although Tyburn seems more concerned with the discovery authorized by Judges McInerney's and Carrafiello's orders. See Transcript of Oral Argument, June 13, 2001 ("Transcript") at 14-15

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(2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end"). However, the coordinate jurisdiction rule prohibits judges of coordinate jurisdiction from overruling each other's decisions in the same case. Baysmore v. Brownstein, 771 A.2d 54, 58 (Pa. Super. Ct. 2001). In the Court's opinion, it strains credulity to argue that the instant case is anything but the same case as the 1992 Action. Nevertheless, the Court will limit itself to the matters raised in the Objections and eschew further discussion of why Tyburn's continued prosecution of the Complaint's claims would violate the coordinate jurisdiction rule.

(Tyburn's attorney emphasized his concern that the discovery authorized in the 1992 Action would give Conrail a competitive advantage). Each of these issues is properly addressed in the 1992 Action, in which the Judgment was originally entered and where the Court has the authority to grant the Complaint's requests for relief found.

By filing the Petition on March 20, 2001, Tyburn implicitly acknowledged that the allegations in the Complaint belong in the 1992 Action and not in a new action. The Petition and the Complaint are essentially identical, and, while allegations in the Complaint are not repeated verbatim, they are substantially the same as those set forth in the Petition.[6] The only additional allegations of any substance in the Complaint are the following:

- Tyburn has paid the full amount required under the Settlement. Complaint at ¶ 15.[7]
- Conrail's efforts to take discovery constitute bad faith. Id. at ¶ 18.
- Because the Parties are engaged in an ongoing business relationship, disclosure of the records requested in connection with the 1992 Action would give Conrail an unfair advantage. Id. at ¶ 19.

Additionally, there is little if any difference between the relief requested in the Complaint and that requested in the Petition. Both actions request that the Court order Conrail to cease its efforts to

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[6] For example, Paragraph Five of the Complaint is identical to Paragraph One of the Petition. With the exception of minor word changes, Paragraph Six of the Complaint is the same as Paragraph Two of the Petition. Other corresponding paragraphs include Complaint Paragraph Seven and Petitioner Paragraph Three; Complaint Paragraph Eight and Petition Paragraph Four; Complaint Paragraph Nine and Petition Paragraph Five; Complaint Paragraph Ten and Petition Paragraph Six; Complaint Paragraph 11 and Petition Paragraph Seven; Complaint Paragraph 12 and Petition Paragraph Eight; Complaint Paragraph 13 and Petition Paragraph Nine; Complaint Paragraph 14 and Petition Paragraph Ten; and Complaint Paragraph 17 and Petition Paragraph 12.

[7] In contrast, the Petition alleged that Tyburn had paid all but $26,422.96 of the amount due under the Settlement. Petition at ¶ 15.

conduct discovery in aid of execution on the Judgment. Similarly, where the Petition asks that Conrail be directed to accept the outstanding Judgment payments, the Complaint requests a declaration that Conrail has been paid in full and an order that Conrail file a praecipe to mark the Judgment satisfied. Thus, Tyburn's claims raised in the Complaint have been raised earlier in the 1992 Action, indicating that Tyburn itself agrees that the 1992 Action provided it with an appropriate remedy at law. See also Transcript at 14-15 (attorney for Tyburn conceded that Tyburn would have remedies available in the event that Conrail executed on the Judgment).

Moreover, the remedy available to Tyburn through the 1992 Action is adequate. To determine the adequacy of a remedy available at law, "it is the remedy itself, and not its possible lack of success, that is the determining factor." Chartiers Valley Sch. Dist., 340 Pa. Super. at 294, 489 A.2d at 1386. Here, the 1992 Action provided a vehicle by which Tyburn could have secured the same relief sought in the Complaint, whether by motion or on appeal, and Tyburn's chances of success are irrelevant. For these reasons, the Court cannot now exercise equity jurisdiction over the claims raised in the Complaint.

It is worth noting that general policy considerations for refusing to exercise equity jurisdiction abound as well. Given that the Petition and the Complaint are essentially identical and that Judge Carrafiello denied the Petition, Tyburn's conduct is wholly inappropriate and amounts to an end run around the judicial process. Granting any relief based on the Complaint would have directly contravened and undermined the rulings of Judges McInerney and Carrafiello in the 1992 Action. If such conduct were permitted, it would allow a party to institute a proceeding for a declaratory

judgment to overturn any court ruling with which it was dissatisfied. Thus, Tyburn is limited to pursuing its claims in the context of the 1992 Action.

Tyburn contends that, even if it has a remedy available at law, Pennsylvania Rule of Civil Procedure 1509(c) ("Rule 1509(c)") requires that this Court transfer its action to the law side of the Court and precludes this Court from dismissing its action entirely. While Rule 1509(c) directs a court to certify an action to the law side of the court where a preliminary objection asserting a "full, complete and adequate non-statutory remedy at law" is sustained, this principle is not without limitations:

> The language of Rule 1509(c) specifically provides for the transfer of the case from equity to law when the court determines that there is an adequate remedy at law. In this case the court below dismissed the complaint. In view of the factual posture of this case, however, dismissal of the complaint was proper. . . . When an action at law arising out [of] the . . . same controversy and covering the same issues is already pending in the law side of the court, transfer of the complaint in equity as contemplated by Rule 1509(c) is unnecessary and the complaint may be properly dismissed.

Myshko, 453 Pa. at 415-16, 309 A.2d at 731. See also Hertzog v. Witco Chem. Corp., Kendall Ref. Co. Div., 447 Pa. 202, 204, 290 A.2d 256, 258 (1972) (where an action at law addressing the legal issues in dispute was pending at the time of the equity action's dismissal, allowing both actions to continue "would be a squandering of judicial resources such as may not be countenanced if we are intent, as we are, upon the maintenance of orderly legal process"); Easton Theatres, Inc. v. Wells Fargo Land & Mortgage Co. 265 Pa. Super. 334, 355, 401 A.2d 1333, 1344 (1979) ("a court may dismiss a complaint in equity on its own motion where it appears from the record that the plaintiff has an adequate remedy at law").

In this dispute, the 1992 Action, which is currently pending before the Court, covers those issues raised in the Complaint and provides an adequate remedy. Accordingly, the Court was not required to transfer this case to the law side of the Court and properly dismissed the Complaint.

CONCLUSION

For all of the reasons stated, Tyburn's Complaint was appropriately dismissed.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: October 26, 2001