

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

COPELCO CAPITAL, INC.,	:	September Term, 2000
Plaintiff	:	
	:	No. 1269
v.	:	
	:	Commerce Case Program
POINT BREEZE PERFORMING ARTS CENTER, :	:	
Defendant	:	Control No. 050874
	:	Control No. 041369

OPINION

This Opinion addresses motions for summary judgment (“Motions”) filed by Plaintiff Copelco Capital, Inc. (“Copelco”), Defendant Point Breeze Performing Arts Center (“Point Breeze”) and Additional Defendant Minolta Business Systems, Inc. (“Minolta”).¹ For the reasons set forth in this Opinion, the Motions are denied, and PIGA’s Motion is granted.

BACKGROUND

It is difficult to set forth the background in this matter because the Parties agree on so little. What is clear is that this dispute centers on a purported written lease between Minolta and Point Breeze for a copier (“Lease”). The Lease includes a provision that provides for a ten-day trial period at the end of which Point Breeze, as the customer, may cancel the Lease without charge by notifying Minolta

¹ Copelco has submitted its Motion as part of its response to Point Breeze’s Motion. Although the Court questions the propriety of filing a motion for summary judgment in this manner, Point Breeze has raised no objection to this procedure and, in fact, has urged the Court to consider all three Motions together.

of the specific reasons for cancellation in writing. Copelco and Minolta assert that Minolta assigned the Lease to Copelco through an assignment (“Assignment”).

According to Copelco, the Lease was signed by Alfred Brown (“Brown”) on behalf of Point Breeze on September 9, 1999. Point Breeze counters that Brown was without authority to sign the Lease on Point Breeze’s behalf and that Brown was fraudulently induced to sign the Lease. Point Breeze also asserts that Mary Smith (“Smith”), who purportedly signed the Lease and the Assignment on behalf of Minolta, was not Minolta’s legitimate representative or agent, rendering both documents invalid.

Point Breeze admits that it did not send written notice terminating the Lease within the ten-day window set forth in the Lease. It also appears that Point Breeze did not make any payments under the Lease and that the copier covered by the Lease has been returned to Copelco. It remains unclear, however, what Smith’s and Brown’s respective scopes of authority were and what circumstances surrounded the execution of the Lease.

In its complaint, Copelco brought a claim for breach of contract against Point Breeze. Point Breeze, in turn, joined Minolta as an additional defendant based on Minolta’s alleged fraud in procuring Brown’s signature on the Lease.

DISCUSSION

Pennsylvania Rule of Civil Procedure 1035.2 allows a court to enter summary judgment “whenever there is no genuine issue of any material fact as to a necessary element of the cause of action.” A court must grant a motion for summary judgment when a non-moving party fails to “adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that

a jury could return a verdict in his favor.” Ertel v. Patriot-News Co., 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996). Where there are material issues of fact, however, summary judgment may not be granted.

The Court cannot help but conclude that there are material facts in dispute in this case. Although Minolta points to the wide latitude given the Point Breeze staff in making business decisions, Point Breeze contends that Brown was the executive director of Community Development Corporation, a Point Breeze subsidiary, and had no substantial connection to Point Breeze. It is also unclear whether Smith was an authorized Minolta agent, as Copelco contends, or whether Smith has no relation to Minolta, as Point Breeze asserts. Moreover, the facts underlying Point Breeze’s allegations of fraud cannot be considered undisputed, as the content of the conversation between Minolta’s sales representatives and Brown is unsettled.² As a result, the Court cannot grant summary judgment on any of the Parties’ claims, and each of the Motions must be denied.

CONCLUSION

Because there are material facts in dispute, the Motions are denied.

BY THE COURT:

JOHN W. HERRON, J.

Date: July 10, 2001

² Minolta’s failure to cite any case law other than that setting forth the elements of fraud and the general burden imposed on a party asserting a fraud claim also gives the Court pause in this regard.

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ORDER

AND NOW, this 10th day of July, 2001, upon consideration of the Parties' Motions for Summary Judgment in the above captioned matter, the respective memoranda, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Motions for Summary Judgment are DENIED.

BY THE COURT:

JOHN W. HERRON, J.