

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

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YORK PAPER CO.,	:	August Term, 2001
Plaintiff	:	
	:	No. 3111
v.	:	
	:	Commerce Case Program
BARTASH PRINTING, INC.,	:	
Defendant	:	Control No. 121165

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**OPINION**

Plaintiff York Paper Co. (“York”) has filed preliminary objections to the new matter and counterclaim of Additional Defendant Roxcel Corp. (“Roxcel”). For the reasons set forth in this Opinion, the Court is overruling York’s preliminary objections.

**BACKGROUND**

The underlying dispute in this matter centers on the Bartash Printing, Inc.’s (“Bartash”) alleged failure to pay \$238,147.85 owed for paper (“Paper”) supplied by York and Bartash’s counterclaim against York for damage allegedly caused by the inferior quality of the Paper. In response to Bartash’s counterclaim, York joined Roxcel, the original supplier of the Paper, as an additional defendant, with Roxcel in turn filing a new matter and counterclaim. Under consideration in this Opinion are York’s preliminary objections (“Objections”), which challenge a paragraph of Roxcel’s new matter asserting that York’s claims are barred by its bad faith in carrying out the transaction in question.<sup>1</sup>

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<sup>1</sup> The Objections also assert that Roxcel’s request for attorneys’ fees is improper. Under Pennsylvania law, “a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception.” Snyder v. Snyder, 533 Pa. 203, 212, 620 A.2d 1133, 1138 (1993) (citations omitted). To the extent that 42

## DISCUSSION

York attempts to cage Roxcel's bad faith affirmative defense as a claim for breach of the contractual duty of good faith, which has questionable status in Pennsylvania. Because Roxcel's bad faith allegation is more limited than York would have the Court believe, the Objections are overruled.

Pennsylvania case law is not particularly clear as to when a party has a legitimate claim for breach of the contractual duty of good faith. Several Pennsylvania courts have cited with approval Section 205 of the Restatement (Second) of Contracts (1979), which states that "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." See, e.g., Braun v. Kelsey-Hayes Co., 635 F. Supp. 75, 77 (E.D. Pa. 1986); Atlantic Richfield Co. v. Razumic, 480 Pa. 366, 378 n.7a, 390 A.2d 736, 742 n.7a (1978); Liazis v. Kosta, Inc., 421 Pa. Super. 502, 510, 618 A.2d 450, 454 (1992); Germantown Mfg. Co. v. Rawlinson, 341 Pa. Super. 42, 60, 491 A.2d 138, 147 (1985). In contrast, a number of decisions have stated that the contractual duty of good faith arises under Pennsylvania law in only limited circumstances. See, e.g., Northview Motors, Inc. v. Chrysler Motors Corp., 227 F.3d 78, 91 (3d Cir. 2000); Commonwealth, Dept. of Transp. v. E-Z Parks, Inc., 153 Pa. Commw. 258, 268, 620 A.2d 712, 717 (1993); Creeger Brick & Bldg. Supply v. Mid-State Bank & Trust Co., 385 Pa. Super. 30, 35, 560 A.2d 151, 153 (1989). This has created a murky legal swamp that leaves it uncertain when breach of the contractual duty of good faith claims are permitted and when they are not.

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Pa. C.S. § 2503 and Philadelphia Local Rule 227.5 authorize Roxcel to recover based on events that have not yet taken place, the request is proper, and the Objections thereto are overruled.

Fortunately, in the instant dispute, the Court must dip only its big toe into this mire and need not go for a proverbial swim. The contractual relations here are governed by the Uniform Commercial Code, under which “[e]very contract or duty . . . imposes an obligation of good faith in its performance or enforcement.” 13 Pa. C.S. § 1203.<sup>2</sup> Furthermore, Roxcel is not attempting to assert a claim for breach of the contractual duty of good faith, but merely sets it forth as an affirmative defense. Cf. CoreStates Bank, N.A. v. Cutillo, 723 A.2d 1053, 1059 (Pa. Super. Ct. 1999) (allowing new matter for failure to deal in good faith where relationship between parties may have given rise to contractual duty of good faith). In these specific circumstances, the Court has reached the narrow conclusion that a party responding to a Uniform Commercial Code breach of contract claim may assert as an affirmative defense that the claimant failed to act in good faith. Thus, the Objections are without merit.

### CONCLUSION

Because Pennsylvania statute decrees that a contract under the Uniform Commercial Code embraces a duty of good faith, Roxcel may assert that York failed to uphold this duty as an affirmative defense.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: February 6, 2002

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<sup>2</sup> “Good faith,” in turn, is defined as “[h]onesty in fact in the conduct or transaction concerned.” 13 Pa. C.S. § 1201.

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**ORDER**

AND NOW, this 6th day of February, 2002, upon consideration of Plaintiff York Paper Co.'s Preliminary Objections to the New Matter and Counterclaim of Additional Defendant Roxcel Corp., Roxcel Corp.'s responses thereto, and all other matters of record, and in accordance with the Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Preliminary Objections are OVERRULED. York Paper Co. is directed to file an answer to Roxcel Corp.'s New Matter and Counterclaim within 20 days of the date of entry of this Order.

BY THE COURT:

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JOHN W. HERRON, J.