

SALTZMAN & JABLON, LLC	*	IN THE
Plaintiff	*	CIRCUIT COURT
vs.	*	FOR
EASTERN STEEL CONSTRUCTORS	*	HOWARD COUNTY
and	*	
CHARLES W. ROBINSON, ESQ.	*	
Defendants	*	Case No. 13-C-03-55735 OC
* * * * *	*	* * * * *

MEMORANDUM AND ORDER

On July 7, 2003, Saltzman & Jablon, LLC, a Howard County law firm, filed a Complaint For Interpleader under Maryland Rule 2-221 naming as parties Eastern Steel Constructors, Inc. ("Eastern") and Charles W. Robinson, Esquire ("Robinson"). In the Complaint, Saltzman & Jablon, LLC, asserted that, as of April 7, 2003, it came into possession of \$534,103.46 which it described as "judgment proceeds" that had been awarded to Eastern in a lawsuit in Erie County, Pennsylvania. The proceeds resulted from a monetary judgment entered by the Court of Common Pleas of Erie County, Pennsylvania, in a lawsuit by Eastern against St. Paul Mercury Insurance Company over a surety bond given by Whipple-Allen Construction Company to insure payments to subcontractors. Whipple-Allen had employed Eastern as a subcontractor on a construction project for St. Vincent Hospital in Erie, Pennsylvania, and had failed to pay Eastern for work done. Robinson, along with Mr. Brian S. Jablon, represented Eastern in the Erie County litigation.

According to the Complaint, Robinson asserted that he was entitled to be paid attorneys' fees from the judgment proceeds. Apparently, both Eastern and Robinson authorized Saltzman & Jablon, LLC, to serve as escrow agent regarding the proceeds and to receive and hold them while Mr. Jablon, acted as an "informal mediator" of the dispute between Eastern and Mr. Robinson.

The Complaint further asserts that the parties were unable to agree on the disposition of the proceeds, and it is further alleged that Mr. Robinson was asserting an attorneys' lien on the entire proceeds and that Eastern was demanding at least \$204,769.55 be immediately released to it.

Saltzman & Jablon, LLC, asked the Clerk of Court to take possession of the proceeds pending resolution of the dispute and discharge it from any further liability upon the deposit of the proceeds with the court. After a hearing on December 3, 2003, the Court granted the interpleader request and entered an order that Saltzman & Jablon, LLC, distribute to Eastern \$204,769.65, this amount having been determined not reasonably subject to dispute. The balance, \$329,401.13, was ordered deposited with the Clerk of the Court.

Eastern was then designated as the Plaintiff for purpose of interpleading, and Robinson was designated as a Defendant as to their respective claims to the proceeds. A schedule was established for the filing of pleadings and answers concerning claims to the fund.

On January 6, 2004, Eastern filed its complaint asserting twelve counts against Robinson. In Count 1, entitled "Claim in Interpleader for Eastern's Judgment Proceeds", Eastern asserts that the judgment proceeds at issue "belong to Eastern, and to Eastern only, and Robinson has no claim or right to any of these proceeds or to any of the interest thereon." Eastern further asserts that Robinson "has no interest in Eastern's Judgment Proceeds, nor has he perfected any lien on those Proceeds." As to this count, Eastern sought payment to it of the funds deposited with the Clerk of the Court.

Besides this claim, Eastern filed 11 other counts:

Count II (Conversion/Wrongful Taking)

Count III (Breach of Fiduciary Duty)

Count IV (Constructive Fraud)

Count V (Breach of Contract [the Retainer Agreement with Robinson])

Count VI (Torts Arising from Breach of Contract)

Count VII (Breach of the Covenant of Good Faith and Fair Dealing)

Count VIII (Concealment/Non-Disclosure/Deceit)

Count IX (Intentional Misrepresentation)

Count X (Negligent Misrepresentation)

Count XI (Intentional Infliction of Emotional Distress)

Count XII (Professional Malpractice)

As to these counts, Eastern seeks compensatory damages in amounts that exceed any amount the court holds. With the exception

of Count V, Eastern also seeks as to each count punitive damages in the amount of \$5,000,000.

Robinson moved to dismiss Counts II through XII for lack of personal and subject matter jurisdiction, asserting that this Court lacks subject matter and personal jurisdiction as to these claims. Robinson also filed an Answer and Counterclaim. In his counterclaim, Mr. Robinson asserts in Count I, which he entitles "Breach of Contract", that he "has an equitable interest in and/or possessory right to and/or is entitled to distribution to him of the fund on deposit" with the court. In Count II, entitled "Equitable Relief", Robinson again asserts that he "has an equitable interest in and/or possessory right to and/or is entitled to distribution to him of the fund on deposit with this Court."

Eastern moved to dismiss Count II of Robinson's Counterclaim for failure to state a claim, asserting that equitable relief is not a recognized cause of action in Maryland.

A hearing was held on these motions on March 18, 2004.

An interpleader action is an equitable procedure provided for by the Maryland Rules to resolve disputes among those who "claim or may claim to be entitled to property." Rule 2-221(a). Under this Rule, when an interpleader is allowed, one of the claimants is designated the plaintiff and is allowed to file a complaint "setting forth the claim of that plaintiff to the property". Rule 2-221(d). The litigation so initiated must be "with respect to the property that is in the court." Niemeyer and Schuett, Maryland

Rules Commentary, Third Edition, p.155.

A threshold question is whether an interpleader action under Rule 2-221 provides contending claimants a comprehensive platform from which they may or must litigate all claims that they have between or among themselves, regardless of whether they are claims of entitlement to the specific property before the court. Eastern apparently takes the view that the Rule so allows, since it seeks to bring ten tort claims and one breach of contract claim in addition to its claim to the judgment proceeds. Each of the tort claims seeks compensatory damages and punitive damages. None of these claims assert in any way that the property before the Court is currently attached or impressed with an ownership interest because of these claims. Instead, these counts seek judgments of money damages against Robinson independent of the claimed right of Eastern to the property before the Court.

The right of either party to recover in an interpleader action depends on the party's title to the fund. *Rockwell v. Carroll Printing & Publishing Co.*, 191 Md. 542, 547 (1948), *Wetzel v. Collin*, 170 Md. 383 (1936), *Scott v. Marden*, 153 Md. 14 (1927). In *Rockwell*, the court determined that a preferred creditor who had a claim under a contractual arrangement with a newspaper publisher could not use that claim to support a right to claim on interpleaded funds owed to the newspaper by an advertiser that were otherwise clearly due to the newspaper for services provided. As the court states:

What his rights may be as against the appellee depend on a number of other factors which cannot be determined in an interpleader case. The appellee may be entirely solvent, in which case he can sue for his debt. It may be insolvent, in which case he can ask for a receiver. The appellee may have other creditors who are entitled to share in any assets, and the question of the validity of its agreement to turn over all of its receipts to the appellant would have to be determined in the light of the rights of other creditors, if any. **All of these questions go far beyond the purpose of an interpleader proceeding which is merely to determine who is entitled to collect the fund from the original complainant.**

Rockwell, 191 Md. at 548 (emphasis added).

Cases like *Rockwell* clearly indicate that interpleader actions are not vehicles to freeze a fund for potential future collection efforts on claims among the parties unrelated to actual entitlement to ownership of the fund itself. All of Eastern's claims represented by Counts II to XII are just such claims. They are inchoate, unliquidated claims against Robinson for compensatory and punitive damages. None of these state a claim that shows entitlement to the fund before this Court or that the fund is impressed in any way with an interest Eastern has on the fund because of these claims. These are all claims that must be litigated to judgment and appropriate levies accomplished before they have any purchase on the assets before the Court.

In argument before the Court, Eastern referenced the "may claim" language of Rule 2-221(a) and indicates that these words denote that a claim can be brought against the fund that is not presently established or adjudicated. It is certainly true that a

claim against a fund does not have to be predicated on a previously adjudicated determination. *Faulkner v. American Casualty*, 85 Md. App. 595, 623 (1991). However, a claim, even if not perfected, must be "an assertion of a right to certain property." *Id.* at 624. Merely stating that a party would like to have assets before the court frozen until the party can get a judgment on its contract and tort claims to then finally levy an attachment on the funds does not state an entitlement to the fund as envisioned by the interpleader rule. Such an outcome would be a wholesale expansion of the pre-judgment attachment standards of Rule 2-115 and Courts and Judicial Proceedings Article, Sections 3-302 to 305. There is no indication in the text or history of Rule 2-221 that interpleader practice was intended to create such an expansion of traditional restraints on pre-judgment property attachments.

In this case, there are other compelling reasons that these claims should not be entertained in the limited action properly before this Court. The existence of the fund under the Court's jurisdiction is purely accidental and results only because the escrow agent and "informal mediator" who the parties picked has his office in this county. The claims raised by Eastern all relate to actions that took place in Pennsylvania, where Robinson was representing Eastern in the underlying litigation. Robinson resides in and has his law offices in Pennsylvania. The litigation that produced the fund took place in state courts in Pennsylvania. It is also noted that the parties are now actively engaged in

litigation in the Court of Common Pleas of Butler County, Pennsylvania, over the retainer agreement. The only connection with Maryland is that Eastern has its corporate offices in Harford County, Maryland, and numerous phone calls and correspondence between Eastern representatives and Robinson occurred with the Eastern representative receiving them in Harford County. Robinson denies that he ever personally came into Maryland in connection with the representation or has ever been present in Maryland for legal representation or business purposes. Additionally, one of the counsel who came into the underlying litigation in Pennsylvania has his office in Ellicott City, Maryland, and agreed to accept the judgment proceeds and attempted to mediate the dispute between the parties.

As early as *Wilmer v. Philadelphia & Reading Coal and Iron Co.*, 124 Md. 599 (1915), the Court of Appeals made clear that an interpleader action was limited to the fund before the court when it said,

A defendant in a strict interpleader suit cannot have relief by cross-bill against the complainant.¹ The reason for this rule is manifest. The litigation between the plaintiff and defendant must be confined to the thing or debt in the hands of the plaintiff, and the defendant cannot inject into the litigation a different subject matter.

Wilmer, 124 Md. at 611.

While the interpleader and general pleading rules in Maryland have become more flexible since *Wilmer*, there is no indication that the

¹ *Wilmer v. Philadelphia & Reading Coal and Iron Co.*, 124 Md. 599, 611 (1915) (quoting *Wakeman v. Kingsland et al.*, 18 Atl. 680 (1889)).

sound principle articulated above has been altered.²

More recently, the Court of Appeals in cases such as *Farmers & Mechanics Bank v. Walser*, 316 Md. 366 (1989), has adopted the view of the Federal courts, applying the analogous federal rule that interpleader actions are limited to the fund adjudication purposes that caused the device to develop. Relying on cases such as *State Farm Fire & Casualty Co. v. Tahire*, 386 U.S. 523 (1967), the Court of Appeals in *Farmers & Mechanics* indicated that it accepted for the Maryland rule the view expressed in *Tahire* that interpleader was not meant to be "an all-purpose 'bill of peace'" as to claims among the parties. *Id.* at 383. Such an extension would, in the words of the *Tahire* court quoted in *Farmers & Mechanics* "require that the tail be allowed to wag the dog." *Id.* See also *Allstate Insurance Co. v. McNeill*, 382 F.2d 84 (4th Cir. 1967).

In this case, the Court discerns no grounds to permit Eastern, within the ambit of the limited interpleader action, to use the tail of this action to wag the dog that otherwise comfortably rests in Northwestern Pennsylvania. Robinson is entitled to come into Maryland to assert his claim on the court-held assets without subjecting himself to a flood of claims unrelated to the present ownership of the funds before the court. Eastern can assert its non-fund related claims in other appropriate forums, but this

² This Court does also recognize that in some cases, there may need to be established an efficient and orderly way to adjudicate the issues on the interpleader claim when those issues may be present in other pending or impending litigation between the parties. Mechanisms such as consolidation, stay, or transfer may be employed to insure that the issues are heard in a fair and orderly fashion.

interpleader action is narrowly contained to those claims that demonstrate an entitlement to the funds in question. Claims II to XII do not allege such, and they must be dismissed.

The Court's decision here is grounded solely on the proper scope of an interpleader action under Rule 2-221. While finding that Eastern can not pursue its contract and tort claims in this Rule 2-221 action in Howard County, Maryland, the Court does not resolve the issue of whether Robinson's other contacts with Maryland, excluding his participation in the interpleader action, are sufficient to subject him to suit brought in an appropriate Maryland forum.

Eastern has moved to dismiss Count II of Robinson's Counterclaim, which is entitled "Equitable Relief" and merely restates the claim made in Count I of the Counterclaim that Robinson has an entitlement to the funds before the Court. Count II is a duplication of the claim made in Count I, and this Court discerns no reason that it is necessary or adds in any way to the claim made in Count I. It therefore will be dismissed.

For the reasons stated above, it is, this ____ day of April, 2004,

ORDERED, that Robinson's motion to dismiss is granted and Counts II through XII of Eastern's complaint are dismissed; and it is further,

ORDERED, that Eastern's motion to dismiss is granted and Count II of the Robinson counterclaim is dismissed.

Dennis M. Sweeney
JUDGE

Copies Mailed _____ to:

Brian Jablon, Esq.
Saltzman & Jablon, LLC
3201 Rogers Avenue, Ste. 301
Ellicott City, MD 21043

Saul J. Singer, Esq.
14 Yeatman Court
Silver Spring, MD 20902

Charles W. Robinson, Esq.
170 Thorn Hill Road
Warrendale, PA 15086