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JUDICIAL CENTER
YORK, PA

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

MAX L. COHN, : No. 2019-SU-001299
Plaintiff :
v. :
RUFFLED FEATHERS PARROT SANCTUARY, : CIVIL ACTION
Defendants :

ORDER SUSTAINING DEFENDANT'S PRELIMINARY OBJECTIONS

AND NOW, this ^{28th} day of August, 2019, upon review of the preliminary objections and briefs filed in support and in opposition, Sanctuary's preliminary objection in the form of demurrer is **SUSTAINED**. Further, it is clear that there is no legal basis for Plaintiff's claim of title and that no additional discovery would resolve this deficiency; therefore, the Complaint is **DISMISSED** with prejudice.

The Prothonotary is to serve copies of this Order on counsel and parties as required by law.

BY THE COURT:


ANDREA MARCECA STRONG, JUDGE

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 :
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 : CIVIL ACTION
RUFFLED FEATHERS PARROT SANCTUARY, :
Defendants :

OPINION

Presently before the Court are the Preliminary Objections filed by Ruffled Feathers Parrot Sanctuary (hereinafter “Sanctuary”) to Plaintiff’s Complaint filed by Max L. Cohn (hereinafter “Cohn”). For the following reasons, Defendant’s preliminary objections are SUSTAINED.

FACTS AND PROCEDURAL HISTORY

Cohn filed a Motion for Writ of Seizure and Complaint in Replevin (hereinafter the “Complaint”) with this Court on April 25, 2019 seeking the return of two exotic birds together with damages for the death of a third surrendered bird. In his Complaint, Cohn asserts that he “relinquished his three (3) birds to [Sanctuary] under circumstances that left him with the impression that he could have the birds returned to him if he asked.” *Complaint*, ¶6. Cohn further offers that he volunteered with the Sanctuary in order “to continue his relationship with his birds” and that Sanctuary sent him a cease and desist and no trespass letter to “thwart the intent”. *Complaint*, ¶7-8.

On May 24, 2019, Sanctuary filed Preliminary Objections to Plaintiffs' Motion in the form of demurrer and a Brief in Support of Preliminary Objections. Sanctuary argues the allegations are insufficient to show a cause of action because the Cohn signed the "Transfer/Relinquish Bird to RFS" (hereinafter "the Agreement") contract with Sanctuary relinquishing all right to the exotic birds. *Complaint, Exhibit A*. Sanctuary asserts that document is clear and unambiguous, leaving no question as to the parties' intent and there was no additional understanding outside the four corners of the document.

Plaintiff's Memorandum of Law in Opposition was filed June 7, 2019. Cohn argues that he has established a cause of action because the document is ambiguous. Further, Cohn asserts that, since the Agreement does not contain an integration clause, the Court must allow parole evidence in order to discern the parties' intent.

A Praecipe to List Case for One-Judge Disposition was filed by Cohn on July 10, 2019 and the matter was assigned to this Honorable Court on July 18, 2019. This matter is now ripe for decision.

DISCUSSION

Pennsylvania Rule of Civil Procedure 1028(a)(4) permits any party to object to a pleading on grounds of "legal insufficiency of a pleading (demurrer)". Pa. R.C.P. 1028(a)(4). "In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the

preliminary objections.” Pennsylvania State Lodge, Fraternal Order of Police v. Dep’t of Conservation & Natural Res., 909 A.2d 413 at 415-16, aff’d, 924 A.2d 1203 (Pa. 2007).

“The question presented in demurrer is whether, on the facts averred, ‘the law says with certainty that no recovery is possible’.” Bruno v. Erie Ins. Co., 106 A.3d 48, 56 (Pa. 2014) citing MacElree v. Philadelphia Newspapers, Inc., 674 A.2d 1050, 1054 (Pa. 1996). “[P]reliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer.” Mellon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa.Super. 1994) citing International Union of Operating Engineers, Local No. 66 v. Linesville Construction Co., 322 A.2d 353 (Pa. 1974).

Pennsylvania Rules of Civil Procedure 1071-1088 govern actions in replevin. “Replevin” is action undertaken by a legal title holder to regain possession of goods and chattels and to recover damages for their capture and detention by illegal act of defendant. In re Specialty Tape Corp., 132 B.R. 297 (Bkrctcy.W.D.Pa.1991). In a replevin action the sole issue is one of title and right to possession, and all matters foreign thereto must be excluded from consideration and are not available as defenses. Gensbigler v. Shawley, 60 A.2d 360 (Pa. Super. 1948); Wilson v. Highway Service Marineland, 418 A.2d 462 (Pa. Super. 1980). Replevin suit involves question of right of possession of property only, and court has nothing to do with adjustment of equities in the case. Hahn v. Andrews, 87 A.2d 284 (Pa. Super.1952).

Cohn asserts that the Agreement is ambiguous as to the intent of the parties. A contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. Hutchison v. Sunbeam Coal Corp., 519 A.2d 385, 390 (Pa. 1986). While unambiguous contracts are interpreted by the court as a matter of law, ambiguous writings are interpreted by the finder of fact. Community College v. Society of the Faculty, 375 A.2d 1267, 1275 (Pa. 1977).

In support of his claim that the Agreement is ambiguous, Cohn states that it was his “impression” that he could reclaim the birds and it was his “intent” to do so. Cohn’s justification for looking beyond the four corners of the written document based solely on the absence of an integration clause. Cohn asserts that the absence of an integration clause means that the document is necessarily ambiguous and that the Court must then consider his allegations of an alternative “understanding”. This is not an accurate statement of law.

The absence of an integration clause does not automatically allow a claimant to escape the four corners of a written contract. “The effect of an integration clause is to make the parol evidence rule particularly applicable.” McGuire v. Schneider, Inc., 534 A.2d 115, 117 (Pa. Super. 1987). However, the absence of an integration clause does not automatically subject the written agreement to parol evidence. See International Milling Co. v. Hachmeister Inc., 110 A.2d 186, 191 (Pa. 1955) (holding that “the presence of an integration clause cannot invest a writing with any greater sanctity than the writing merits....”). Where there is no integration clause, the court “must examine the text [of the agreement] to determine its completeness.” Henry v. First Federal Savings & Loan

Assoc., 459 A.2d 772, 776 (Pa. Super. 1983) (affirming summary judgment and finding evidence of alleged prior oral representations were barred by the parol evidence rule upon finding that, even in absence of integration clause, written loan agreement was complete as to such matters). The Superior Court provided a succinct statement of the prevailing law in Gemini Equipment Co. v. Pennsy Supply, Inc.:

The general rule governing the admission of such evidence is that parol evidence of a contemporaneous oral agreement is not admissible to alter, vary, add to, modify, or contradict a written instrument complete within itself unless the oral agreement was omitted through fraud, accident, or mistake. Bokser v. Lewis, 383 Pa. 507, 119 A.2d 67 (1956), cert. denied, 351 U.S. 965, 76 S.Ct. 1031, 100 L.Ed. 1485 (1956). Moreover, parol evidence is inadmissible to show a contemporaneous oral agreement which, if made, would naturally and normally have been contained in the written agreement between the parties. Universal Film Exchanges, Inc. v. Viking Theatre Corp., 400 Pa. 27, 161 A.2d 610 (1960); P.L.E. Evidence § 312. Thus the written contract, if unambiguous, must be held to express all of the negotiations, conversations, and agreements made prior to its execution, and neither oral testimony, nor prior written agreements are admissible to explain or vary the terms of such a contract. McGuire v. Schneider, Inc., 368 Pa.Super. 344, 534 A.2d 115 (1987), aff'd per curiam 519 Pa. 439, 548 A.2d 1223 (1988) (citations and footnotes omitted).

Id., 595 A.2d 1211 (Pa. Super. 1991). Sanctuary argues that the Agreement is clear. We agree.

In order to establish that he still has legal title to the birds, Cohn must argue how the document is ambiguous. He has failed to do so. Cohn's reliance exclusively on the absence of an integration clause is misplaced and he has pled no other facts to justify in the mind of this Court that the Agreement means anything more or less than it clearly states on its face. Cohn relinquished his title to the birds when he signed the Agreement to "release absolutely and without further claim, the bird(s) to RFS."

Cohn's belief that he could reclaim the birds is belied by the clear text of the Agreement indicating that Sanctuary is not "otherwise obligated to you or another, now or in the future." If the parties agreed to less than a permanent transfer, the document would not contain language of finality. A reasonable person operating under Cohn's alleged belief would have—and should have—refused to sign a document that so clearly and completely relinquishes all rights to the birds if that was not his intent.

We note that our Superior Court has determined that it is not an "appropriate disposition" of preliminary objections for a court to dismiss complaint finally without considering the possibility that defective complaint can be cured by amendment. *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 296 Pa.Super. 37, Super.1982. In this case, the writing is clear and free from doubt. Even in considering the evidence in the light most favorable to the non-moving party, it is clear to the Court that Cohn relinquished all ownership and all future claim in the birds to Sanctuary and therefore has no legal basis to pursue an action in replevin.

CONCLUSION

Sanctuary filed preliminary objections in the form of a demurrer arguing that there is no legal basis for an action in replevin because the contract at issue is clear and free from doubt, containing no ambiguity as to the intent of the parties at the time of making. We agree. Therefore, Sanctuary's preliminary objection in the form of demurrer is SUSTAINED. Further, it is clear that there is no legal basis for Cohn to make claim of

title and that no additional discovery would resolve the deficiency; therefore the Complaint is DISMISSED with prejudice.

BY THE COURT,

Dated: 8/28/2019


ANDREA MARCECA STRONG, JUDGE