

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK,	)	No. 637,2012
RAYMOND BUCHTA, W. SCOTT BLACK,	)	
and BLACKBALL PROPERTIES, LLC,	)	
	)	
	)	
Certain Defendants-Below	)	
Appellants,	)	
	)	
v.	)	Trial Court Below:
	)	Court Of Chancery of the
GARY STAFFIERI and	)	State of Delaware
ADRIA CHARLES STAFFIERI,	)	C.A. No. 7439-VCL
	)	
	)	
Plaintiffs-Below	)	
Appellees.	)	

**APPELLANTS' RESPONSE IN OPPOSITION TO  
APPELLEES' MOTION TO DISMISS**

1. On December 5, 2012, Appellants filed their Notice of Appeal, which appealed a Post-Trial Order dated October 24, 2012 ("PTO") and Orders denying a Motion for Reargument dated November 7 and 8, 2012.

2. The PTO granted: 1) a claim for a Declaratory Judgment establishing easement rights; and 2) a Permanent Injunction prohibiting interference with the rights. PTO at 8-9. The PTO also granted an award of attorneys fees based upon the Bad Faith Exception to the American Rule (the "Exception"). PTO at 10-11.

3. The Amended Complaint did not plead a count claiming attorneys fees under the Exception. "[A] claim for attorneys fees should be clearly stated in the pleadings as special damages." *Kramer v. American Pacific Corp*, 1998 WL 442766, \*1, Quillen, J. (Del. Super., July 28, 1998).

4. Court of Chancery Rule 8(a) requires two separate types of pleadings in a Complaint: a) "a short and plain statement of the claim showing that the pleader is entitled to relief"; and b) "a demand for judgment for the relief to which the party deems itself entitled." The separate counts that assert independent causes of action constitute type 1. And the prayer for relief is type 2. Consequently, in order to state a claim for attorneys fees under the Exception, it must be pled in both the body the Complaint and in the "WHEREFORE" clause.

5. The Appellees' Amended Complaint dated June 6, 2012 ("AC") contained a claim for Declaratory Judgment at Count VI, but neither the claim nor the prayer requested attorneys fees under the Exception.

6. AC Count I for Permanent Injunction did not contain a request for attorneys fees under the Exception. And the prayer for relief at the end of Count I only stated: "order said Defendants to pay Plaintiff's [sic] costs (including attorneys' fees)...," with no mention of the Exception.

7. Court of Chancery Rule 10(b) confirms that the Appellees did not satisfy the Rule 8 and 9 standards to assert a claim for attorneys fees based upon the Exception. Specifically, the Rule provides that "[a]ll averments of [a] claim...shall be made in numbered paragraphs," and "[e]ach claim founded upon a separate transaction or occurrence...shall be stated in a separate count... ." Thus, a "claim" is only averred in a complaint where it is contained in a numbered paragraph beneath a count heading.

8. Because no claim for attorneys fees under the Exception was pled by the Appellees, the award in the PTO cannot be a part of the final judgment. Instead, the award could only be pursuant to the Court of Chancery's discretionary powers to award fees as a part of "Costs." 10 Del. C. § 5106. See *Weinberger v. UOP, Inc.*, 517 A.2d 653, 656 (Del. Ch. 1986).

9. Court of Chancery Rule 58 provides that "[t]he order of the Court shall constitute the judgment of the Court." Accordingly, the final judgment in the court below is embodied by the 3 Orders appealed from.

10. This Court has previously held that "judgments on the merits become final without waiting for a ruling on the issue of costs alone." *Emerald Partners v. Berlin*, 811 A.2d 788, 791 (Del. 2001) (*en Banc*). That decision also stands for the proposition that only "an outstanding application for an award of attorneys fees" delays the finality of a judgment.

11. The Appellees did not file an application for attorneys fees until December 21, 2012, a few weeks after this Appeal was filed and the 30-day appeal deadline elapsed. Thus, there was no "outstanding application" to hold up the Appellants' right to appeal the final judgment of the court below.

12. In addition, the correct legal characterization of any attorneys fees award as "Costs" means that the judgments dated October 24, November 7, and November 8, 2012 were final and appealable. Under the clear and plain holdings of this Court in *Emerald Partners*, this appeal is properly founded upon three (3)

"final judgments." As a consequence, the Appellees' Motion is without merit.

13. The result suggested by the Appellants herein serves the salutary purpose of economizing judicial resources. If this Court reverses the Court of Chancery's decision regarding the existence of easement rights and/or the grant of attorneys fees under the Exception, then the Court below will not be bothered with having to determine a specific monetary fee amount.

WHEREFORE, the Appellants respectfully request that this Court enter an Order in accordance with the form attached, denying the Appellees' Motion To Dismiss.

ABBOTT LAW FIRM



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Attorneys for Appellants

Dated: March 1, 2013

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ORDER

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2013, the  
Appellees having moved this Court to dismiss the appeal,

IT IS ORDERED that the Motion is **DENIED**.

\_\_\_\_\_  
*Justice*

CERTIFICATE OF SERVICE

I, Richard L. Abbott, Esquire, hereby certify that on this 1<sup>st</sup> day of March, 2013, I caused the foregoing **APPELLANTS' RESPONSE IN OPPOSITION TO APPELLEES' MOTION TO DISMISS** to be electronically filed with this Court and served via U.S. First Class Mail upon the following individuals:

Mr. Gary Staffieri  
Mrs. Adria Charles Staffieri  
100 Sackville Mills Lane  
Wallingford, PA 19086

A handwritten signature in cursive script that reads "Richard L. Abbott". The signature is written in black ink and is positioned above a horizontal line.

Richard L. Abbott, Esquire (#2712)