

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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October 31, 2001

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Hans J. Rubner
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Pro Se Defendant

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Attorneys for Plaintiff

Re: Montgomery Ward Holding Corp. vs. Hans J. Rubner
Adv. Proc. No. A-00-1723

Dear Mr. DeFranceschi and Mr. Rubner:

This is with respect to Defendant's motion to dismiss (Doc. # 7). I will deny the motion for the reasons discussed below.

Montgomery Ward Holding Corp. is the parent of Montgomery Ward LLC, f/k/a Montgomery Ward & Co., Inc. ("Montgomery Ward"). On July 7, 1997, Montgomery Ward and its affiliates (collectively, "Debtors") filed for relief under Chapter 11 of the United States Bankruptcy Code. On February 13, 1998, Defendant, a former

employee of Montgomery Ward, filed a proof of claim in the amount of \$30,625.00 for "compensation award at retirement".

On July 15, 1999, this Court entered an order confirming Debtors' First Amended Joint Plan of Reorganization (the "Plan"). The Plan became effective on August 2, 1999 and Debtors emerged from bankruptcy as reorganized entities.

On November 8, 2000, Plaintiff filed a complaint (the "Complaint") seeking either (a) reclassification of Defendant's proof of claim (the "Claim") from MW Class 1 to MW Class 6 under the Plan, on the grounds that Defendant is a holder of Old Common Stock as the term is defined in the Plan; or (b) the statutory or equitable subordination of Defendant's Claim to the claims of Plaintiff's general unsecured creditors pursuant to Section 510 of the United States Bankruptcy Code. 11 U.S.C. § 510. In response, Defendant filed his motion to dismiss. In response to this Court's January 16, 2001 ruling in Montgomery Ward Holding Corp. v. Robert Schoeberl, Adv. Proc. No. A-99-560 (Doc. # 11), Plaintiff filed an Amended Complaint dismissing the statutory subordination claim and providing a more definite statement with regard to its claim for equitable subordination.

Defendant moves to dismiss Plaintiff's claims for three reasons. First, Defendant disputes certain statements of fact made by Plaintiff in the Complaint. Second, Defendant argues that Plaintiff has not yet provided him with information and evidence to

which he is entitled. Finally, Defendant argues that Plaintiff has presented no evidence to support the allegations made in paragraphs 14 through 16 of the Complaint (paragraphs 18 through 20 of the Amended Complaint). None of these reasons support dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Under Rule 12(b)(6), Defendant's motion to dismiss must be denied "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claims which would entitle [the plaintiff] to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957). The Federal Rules of Civil Procedure do not require a plaintiff to set out detailed facts to support its claims. Id. at 47. All the Rules require is a short and plain statement of the claim that will give the defendant fair notice of the nature of plaintiff's claims and the grounds upon which they rest. Id.

In evaluating the sufficiency of a complaint for the purposes of Rule 12(b)(6), the court must accept as true all allegations in the complaint and construe all inferences in the light most favorable to the plaintiff. Rogin v. Bensalem Township 616 F.2d 680, 685 (3d Cir. 1980). "The issue is not whether a plaintiff will ultimately prevail but whether a claimant is entitled to offer evidence to support [its] claims." Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974), *overruled on other grounds*, Davis v. Scherer,

468 U.S. 183, 104 S.Ct. 3012, 82 L.Ed.2d 139 (1984).

Applying these standards to the Complaint and Amended Complaint, I find the allegations contained therein sufficient to support Plaintiff's claims for reclassification and equitable subordination of Defendant's Claim. Defendant's arguments in support of his motion to dismiss pertain to the strength and validity of Plaintiff's claims, not to the sufficiency of the allegations set forth in the Complaint. The fact that Defendant disputes certain statements of fact made by Plaintiff does not support dismissal. Defendant may respond to these disputed statements by denying them in his Answer and presenting contradictory evidence at the appropriate time.

Defendant is also mistaken in his assertion that Plaintiff's failure to provide him with requested evidence and information warrants dismissal. Defendant is not entitled to such information at this stage of the proceeding. The only information that Plaintiff must disclose at this stage of the proceeding is that which provides Defendant with notice of Plaintiff's claims and the grounds on which such claims rest. See Conley, 355 U.S. at 47. Defendant may obtain additional information during discovery.

Finally, I find no merit in Defendant's argument that dismissal is warranted because Plaintiff has presented no evidence supporting certain allegations made in the Complaint.

As stated above, the issue at this stage of the proceedings is not whether Plaintiff will ultimately prevail on its claims, but whether the Complaint provides Defendant with fair notice of the nature and grounds for Plaintiff's claims. See Scheuer, 416 U.S. at 236; Conley, 355 U.S. at 47. I find that it does and therefore, Defendant's motion to dismiss (Doc. # 7) is denied.

SO ORDERED.

Very truly yours,

Peter J. Walsh

PJW:ipm