

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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July 27, 2004

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**Re: Pillowtex Corporation & Fieldcrest Cannon, Inc. v. The May
Department Stores Company
Adv. Proc. No. 03-57583**

Dear Counsel:

This ruling is with respect to the motion for judgment on the pleadings (Doc. # 20) filed by The May Department Stores Company ("Defendant"). By their complaint, Pillowtex Corporation ("Pillowtex") and Fieldcrest Cannon, Inc. ("Fieldcrest") (collectively "Plaintiffs"), allege (1) the Defendant owes both

Plaintiffs money for merchandise purchased and therefore is in breach of contract and (2) a cause of action under § 542. For the reasons set forth below, the Court will deny the Defendant's motion.

The Defendant placed orders with both Pillowtex and Fieldcrest. According to the Plaintiffs, the merchandise totaled \$2,030,425.71 (owed to Pillowtex) and \$2,702,537.48 (owed to Fieldcrest), respectively.

Rule 12(c) of the Federal Rules of Civil Procedure, which is incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure, states that "[a]fter the pleadings are closed . . . any party may move for judgment on the pleadings." The court will view the facts in the complaint "in a light most favorable to the nonmoving party." Official Comm. of Unsecured Creditors v. Am. Capital Fin. Servs., Inc. (In re Mobile Toll Int'l, Inc.), 306 B.R. 778, 780 (Bankr. D. Del. 2004) (citing Hawthorne v. Mac Adjustment, Inc., 140 F.3d 1367, 1370 (11th Cir. 1998)).

Here, the Defendant claims that the Plaintiffs do not have a valid claim under § 542 as alleged in their complaint. The Defendant argues that the Plaintiffs' debts are neither matured nor payable on demand because there is a legitimate dispute over the amount owed. The Defendant, however, does acknowledge that "[a]t most, the Complaint raises a simple contract dispute governed by state law, which is not appropriate under the turnover statute."

(Doc. # 20 at 6.)

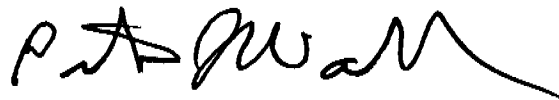
Assuming the Defendant is correct that the § 542 claim is deficient, it is undisputed that a breach of contract claim is asserted. Whatever the Plaintiffs are entitled to recover, they can do so under a breach of contract claim. If the Plaintiffs succeed on a breach of contract theory, the § 542 theory can be ignored. Indeed, even at the time of trial the complaint could be amended to substitute a breach of contract claim for a § 542 claim.

[A]n amendment may set forth a different statute as the basis of the claim, or change a common law claim to a statutory claim or vice-versa, or shift from contract theory to a tort theory, or delete a negligence count and add or substitute a claim based on warranty, or change an allegation of negligence in manufacture to continuing negligence in advertising.

6A Charles Alan Wright et al., Federal Practice and Procedure § 1497 (2d ed. 1990) (citations omitted).

Under the circumstances, I will deny the motion for judgment on the pleadings.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. J. Walsh", with a long, sweeping flourish extending to the right.

Peter J. Walsh

PJW:ipm

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:) Chapter 11
)
PILLOWTEX CORPORATION, et al.,) Case No. 03-12339 (PJW)
)
Debtors.)
)

PILLOWTEX CORPORATION and)
FIELDCREST CANNON, INC.,)
)
Plaintiffs,)
)
v.) Adv. Proc. No. 03-57583 (PJW)
)
THE MAY DEPARTMENT STORES)
COMPANY,)
)
Defendant.)

ORDER

For the reasons set forth in the Court's letter ruling of this date, the motion for judgment on the pleadings (Doc. # 20) filed by defendant The May Department Stores Company is **DENIED**.


Peter J. Walsh
United States Bankruptcy Judge

Dated: July 27, 2004