April 9, 2013

Third Circuit Holds Complaint Allegations Are Not Binding Judicial Admissions If Nullified By Amendment

On April 4, the Court of Appeals for the Third Circuit, which includes New Jersey, clarified the law on how an amended pleading affects judicial admissions made in an original pleading. Judicial admissions are formal concessions that are binding on a party that makes them in a judicial proceeding. Factual allegations made by litigants in their pleadings are binding judicial admissions on those litigants. In *West Run Student Housing Associates, LLC v. Huntington National Bank*, No. 12-2430, 2013 U.S. App. Lexis 6804 (3d Cir. Apr. 4, 2013), the Third Circuit held that factual allegations made in an original complaint are not binding judicial admissions where such allegations have been omitted from a subsequent amended complaint. *Id.* at *17-18. To the extent that an amended pleading does not repeat or incorporate factual allegations in the original pleading, the legal effect of an amended pleading is that it supersedes and nullifies the allegations made in the original pleading. *Id.* at *14-15.

Background

Plaintiffs in *West Run* brought suit against Huntington National Bank ("Huntington"), alleging claims for breach of contract and breach of the duty of good faith and fair dealing, in connection with loan agreements for financing three commercial real estate development projects. Plaintiffs sought funding for three off-campus student housing projects at West Virginia University (the "West Run Project"), Virginia Tech (the "Mt. Tabor Project") and James Madison University (the "Campus View Project").

Plaintiffs claimed Huntington violated the implied duty of good faith and fair dealing regarding the loan agreement for the West Run Project when Huntington financed a competitor. Plaintiffs alleged that such action created an occupancy crisis in the West Run Project and diminished its revenues. Plaintiffs also alleged that Huntington disclosed confidential information about the West Run Project to that competitor.

Plaintiffs and Huntington also entered into loan agreements in connection with the Mt. Tabor Project and the Campus View Project. Plaintiffs claimed Huntington breached these loan agreements by refusing to provide certain construction advances pursuant to the agreements. The loan agreements expressly conditioned Huntington's funding obligation upon each project first securing a certain number of presold condominium units. In plaintiffs' original complaint, they alleged that the Mt. Tabor Project presold 27 units and the Campus View Project presold 36 units, both amounts insufficient to trigger Huntington's obligation to fund the loans. Huntington moved to dismiss the breach of contract claims, contending that because plaintiffs had not met the express contractual condition related to presold units, Huntington had no obligation to provide the financing.

District Court Ruling

In response to Huntington's motion to dismiss the complaint, plaintiffs amended their complaint, omitting from the amended pleading the factual allegations related to the insufficient number of presold units. Thereafter, Huntington filed a second motion to dismiss, contending (among other things) that the allegations in the original complaint pertaining to the number of presold units were binding judicial admissions.

The district court dismissed the claims for breach of good faith and fair dealing, concluding that plaintiffs failed to plead

sufficient facts to support such claims and that the express language of the contract did not prohibit Huntington from financing competitors. Further, the district court agreed with Huntington regarding the breach of contract claims, finding that a plaintiff is not permitted to take a contrary position in the amended complaint to avoid dismissal. *Id.* at *13. The district court dismissed the breach of contract claims, holding that the allegations related to the number of presold units in the original complaint were binding judicial admissions.

The Third Circuit affirmed the district court's decision to dismiss the good faith and fair dealing claims related to the West Run Project but vacated and remanded the part of the decision that dismissed the breach of contract claims related to the Mt. Tabor Project and the Campus View Project.

Third Circuit Ruling: Amended Complaint Nullifies the Original Complaint

On appeal, plaintiffs contended (among other things) that the presale numbers in the original complaint should not have been binding judicial admissions. The original complaint, they argued, was superseded by an amended complaint that omitted those factual allegations, which plaintiffs contended were made in error.

The Third Circuit began its analysis by reviewing Rule 15(a), which permits a party to amend the pleadings within 21 days of service, and by reiterating well-established law that this rule is to be applied liberally to allow corrections to errors in the pleadings in order to ensure that claims will be decided on their merits, not on technicalities. *Id.* at *12-13. An amended complaint supersedes the original, and therefore judicial admissions made in an original complaint can be withdrawn by amendment. *Id.* at *14. The court found that, to the extent an amended pleading does not repeat or incorporate factual allegations in the original pleading, the effect of an amended pleading is that it supersedes and nullifies the original. *Id.* at *14-15.

The court rejected the district court's finding that a party is not permitted to take a contrary position in an amended complaint in order to avoid dismissal. To the contrary, the Third Circuit observed, plaintiffs routinely amend complaints to correct factual inadequacies in response to a motion to dismiss. *Id.* at *15-16. Thus, a party can cure a defective pleading even when the amended pleading contains allegations that contradict the allegations in the original pleading. *Id.*

The procedural posture in *West Run* was a key factor in the court's conclusion that the omitted allegations were not binding judicial admissions. Persuaded by the Seventh Circuit's reasoning in *Kelley v. Crosfield Catalysts*, 135 F.3d 1202 (7th Cir. 1998), the court in *West Run* found that, in determining viability of claims at the motion to dismiss stage, a court cannot consider evidence outside the four corners of the amended complaint to resuscitate facts that have been omitted via amendment. *Id.* at *17. Evidence outside the pleading is normally not permitted at the motion to dismiss stage, and allegations made in a superseded complaint are outside the pleading. *Id.* Therefore, the court found, a plaintiff cannot be bound by such superseded allegations at the motion to dismiss stage. *Id.* at *18-19.

Significantly, the court emphasized that a party asserting contrary allegations in an amended pleading does not do so without a consequence. *Id.* at *18. At the summary judgment stage, for example, a superseded pleading may be offered as evidence for rebutting a subsequent contrary assertion in an amended pleading. *Id.* Here, because plaintiffs' original complaint was verified (in state court), plaintiffs will have a heavy burden explaining why the allegations contained therein were incorrect. *Id.* at *18 n. 4. The court concluded that, rather than looking outside the four corners of the amended complaint to the presale numbers alleged in the original complaint, the district court should have converted Huntington's motion to dismiss into a motion for summary judgment before considering such omitted allegations. *Id.* at *19.

The court's ruling serves as a reminder of the advisability of amending pleadings, where permitted by the federal rules, when errors are discovered. Failure to do so could bind a party to such erroneous factual allegations, rendering them judicial admissions that could result in dismissal of the claim. As always, a defendant moving for dismissal of a complaint should be aware that the motion may provide a road map to a plaintiff as to how to immunize its claims against dismissal.