IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff/ Counter-Defendant,	)	
v.	)	**No. 06-2478 Ml/P**
STEIN WORLD, LLC,	)	
Defendant/ Counter-Plaintiff/ Third-Party Plaintiff,	)	
v.	)	
RICKY BEE,	)	
Third-Party Defendant.	)	

ORDER DENYING PLAINTIFF EQUAL OPPORTUNITY COMMISSION'S MOTION TO DISMISS DEFENDANT'S COUNTER CLAIM AND ORDER DENYING MOTION TO DISMISS THIRD PARTY COMPLAINT

Before the Court are Plaintiff-Counter-Defendant Equal Employment Opportunity Commission's ("EEOC" or "Counter-Defendant") Motion to Dismiss Defendant's Counter Claim and Third-Party Defendant Ricky Bee's ("Bee" or "Third-Party Defendant") Motion to Dismiss Third Party Complaint, both filed October 10, 2006. Bee's motion incorporates the arguments set forth in the EEOC's motion. Defendant-Counter-Plaintiff-Third-Party Plaintiff Stein World, LLC ("Stein World") responded in opposition to the EEOC's motion on October 20, 2006. The EEOC

filed a reply on November 14, 2006. Stein World filed an Amended Response on December 13, 2006. For the following reasons, the Court DENIES Counter-Defendant's Motion to Dismiss Counter-Plaintiff's Counter Claim and Third-Party Defendant's Motion to Dismiss Third Party Complaint.

I. Background

This case arises out of a Mediation Settlement Agreement entered into by Stein World and Bee on July 6, 2005, in settlement of a discrimination charge filed by Bee against Stein World, (Compl. ¶¶ 11, 15), and which requires that Stein World pay certain of Bee's medical and hospital expenses incurred after Bee filed his discrimination charge. (Id. ¶¶ 12, 17.)[1] Upon being presented with the bill in the amount of $48,426 for Bee's hospitalization for pneumonia, Stein World refused to pay the full amount, offering instead to pay $5,000. (Id. ¶¶ 18-19.)[2] The EEOC subsequently initiated the instant action on July 25, 2006, seeking the full amount of Bee's medical expenses.

[1] The Court refers to the original Complaint, not the Amended Complaint, filed on March 15, 2007, as the Court has not yet adopted the Report and Recommendation, entered on March 13, 2007, recommending that Plaintiff be permitted to amend its Complaint. In any event, the paragraphs in the original Complaint cited in this Order correspond to the same-numbered paragraphs in the Amended Complaint.

[2] The Parties agree that the amount sought is $48,426. (See Def./Counter-Pl.'s Am. Resp. to Pl. EEOC's Mot. to Dismiss Def.'s Counter Claim, Dec. 13, 2006, Doc. 32, at 2; Pl. EEOC's Reply to Def.'s Resp. to Pl.'s Mot. to Dismiss, Nov. 14, 2006, Doc. 25-1, at 3.)

In Stein World's Answer and Third-Party Complaint, which also includes Stein World's Counter Claim, Stein World alleges that, during the negotiations that concluded with the Settlement Agreement at issue, Bee represented that his hospital and medical bills were a few thousand dollars, (Answer and Third-Party Compl. ("Counter Claim"), Aug. 16, 2006, Doc. 2, ¶ 27), and that Bee nonetheless knew that the bills exceeded a few thousand dollars. (Id. ¶ 30.) Stein World further alleges that it agreed to pay Bee's medical costs not to exceed $5,000, (Counter Claim, Doc. 2, ¶¶ 28, 33), that Bee had agreed to this $5,000 cap, (id. ¶¶ 28, 34, 39) and that this agreement was made known to the Mediation Officer. (Id. ¶ 34; see also id. ¶ 37.) However, this limitation on the amount of costs that Stein World would pay is not included in the written settlement agreement. (Id. ¶ 35.) Stein World alleges that "[t]he EEOC Mediation Officer made the mistake in failing to reflect the $5,000 cap in the agreement." (Id.)

II. Standard of Review

A. Rule 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss the plaintiff's complaint "for failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion to dismiss, a court must treat all of the well-pleaded allegations

of the complaint as true, Saylor v. Parker Seal Co., 975 F.2d 252, 254 (6th Cir. 1992), and must construe all of the allegations in the light most favorable to the plaintiff, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). "Although this is a liberal pleading standard, it requires more than the bare assertion of legal conclusions. Rather, the complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." Se. Tex. Inns, Inc. v. Prime Hospitality Corp., 462 F.3d 666, 671-72 (6th Cir. 2006) (citing NHL Players Ass'n v. Plymouth Whalers Hockey Club, 419 F.3d 462, 468 (6th Cir. 2005) (citation omitted)).

B. The Court Does Not Evaluate Evidence at this Stage

Despite bringing the motions pursuant to Rule 12(b)(6), the EEOC and Bee make several arguments that relate to the evidence to support the allegations. First, they argue, albeit correctly, that in cases involving reformation of a contract due to mistake, the complaining party must prove the mistake through clear, cogent, and convincing evidence. (Pl. E.E.O.C.'s Mem. in Supp. of Mot. to Dismiss Def.'s Counter Claim ("Mem."), Oct. 10, 2006, Doc. 13-2, at 9 (arguing that Stein World's claim must

therefore fail).) However, this elevated standard of proof does not mean a court should examine the evidence at this early stage of the litigation. See, e.g., Zion Hill Baptist Church v. Taylor, 2004 WL 239760, at *3 (Tenn. Ct. App. Feb. 9, 2004) (referring to the record evidence); Worley v. White Tire of Tenn., Inc., 182 S.W. 3d 306, 308 (Tenn. Ct. App. 2005) (noting that only "[f]ollowing a lengthy trial" did the trial court find "by clear, cogent, and convincing evidence that there was a mutual mistake of fact"); Estate of Acuff v. O'Linger, 56 S.W. 3d 527 (Tenn. Ct. App. 2001) (reviewing trial court's findings of fact); Pierce v. Flynn, 656 S.W. 2d 42 (Tenn. App. 1983) (reviewing trial court's findings of fact). The Parties have not had the opportunity to produce and proffer evidence, and the Court declines to evaluate any evidence at this stage.

The EEOC and Bee's contentions regarding the parol evidence rule are likewise irrelevant at this stage. In Tennessee, "parol evidence is normally not allowed to contradict the terms of a written document . . ., except where there is fraud or mistake. In these situations, parol evidence is admissible," so long as such evidence is "clear and convincing." Worley, 182 S.W. 3d 310 (citing Clayton v. Haury, 452 S.W.2d 865, at 867-68 (1970)); see also Lowry v. Lowry, 541 S.W. 2d 128, 133 (Tenn. 1976) (holding that the parol evidence rule applies "in the absence of fraud, misrepresentation, duress, undue influence,

mutual mistake, and incapacity") (superseded on other grounds). However, as this rule addresses admissibility of evidence, it is a matter more properly determined at the summary judgment stage, not upon a 12(b)(6) motion. See, e.g., Ward v. Glover, 206 S.W. 3d 17 (Tenn. Ct. App. 2006); First Tenn. Bank Nat'l Ass'n v. Bad Toys, Inc., 159 S.W. 3d 557 (Tenn. Ct. App. 2004).

Finally, it is immaterial at this stage of the litigation, that is, upon a Rule 12(b)(6) motion, whether Stein World can "prove that Mr. Bee knew that his medical expenses were more than a few thousand dollars at the time of the mediation" or "that Mr. Bee misrepresented what his medical expenses would be." (Mem., Doc. 13-2, at 7-8 (referring to various pieces of purported evidence).) The motions seek dismissal under 12(b)(6), not summary judgment, and the Court considers only whether Stein World has adequately stated a claim as set forth in the allegations in the Counter Claim and Third-Party Complaint, not whether sufficient evidence exists for Stein World to proceed on those claims.

III. Analysis

Stein World alleges that Bee fraudulently misrepresented that the total expenses to be covered by Stein World amounted to a few thousand dollars; this induced Stein World to enter into the Mediation Settlement Agreement and or to omit the agreed-upon cap of $5,000 from the Agreement, as Stein World believed

that expenses would not exceed that cap. (Counter Claim, Doc. 2, ¶¶ 31-32, 37, 39, 41.) Stein World thus seeks rescission of the agreement or reformation of the agreement to reflect the allegedly agreed-upon cap. (Id. at 6-7.)

"Reformation is an equitable doctrine by which courts may correct a mistake in a writing so that it fully and accurately reflects the agreement of the parties." Lane v. Spriggs, 71 S.W. 3d 286, 289 (Tenn. Ct. App. 2001) (internal quotations omitted). However, "it is well-settled that a unilateral mistake alone by one party is insufficient for invalidating an agreement; it must be coupled with or induced by the fraud or inequitable conduct of the other party." Zion Hill Baptist Church v. Taylor, 2004 WL 239760, at *3 (Tenn. Ct. App. Feb. 9, 2004); see also Lane, 71 S.W. 3d at 289 ("In order to reform a writing on the basis of mistake, there must have been either a mutual mistake or a unilateral mistake induced by fraud.") (citing Williams v. Botts, 3 S.W. 3d 508, 509 (Tenn. Ct. App. 1999)).

Thus, the elements of fraud are applicable to both the Counter Claim for unilateral mistake and the Third-Party Complaint for fraudulent misrepresentation. Indeed, the EEOC's argument as to fraudulent inducement simply incorporates its arguments as to fraudulent misrepresentation. (Mem., Doc. 13-2, at 9-10.) Because the Court need only address the fraud issue

and because Bee simply adopts the EEOC's argument, the Court addresses both motions together.[3]

The Parties discuss at length whether Stein World has properly alleged fraud. The EEOC and Bee contend that Stein World must allege five separate elements, including that Bee had a fiduciary duty to disclose a material fact to Stein World and failed to so disclose. (Mem., Doc. 13-2, at 5-6, 8-9 (citing Shah v. Racetrac Petroleum Co., 338 F.3d 557, 571 (6th Cir. 2003)).) However, Stein World, in its response, contends that no such duty to disclose existed, arguing not that Bee failed to disclose information but rather that Bee made an affirmative misrepresentation through his statements. (Def./Counter-Pl.'s Resp. to Pl. E.E.O.C.'s Mot. to Dismiss Def.'s Counter Claim ("Resp."), Oct. 20, 2006, Doc. 21-1, at 4 ("[I]n this matter Bee induced Stein World to enter into the Mediation Settlement Agreement based upon his *affirmative statement* that the charges were not that great . . . ." (emphasis added)).) This is

[3] Stein World's allegation is that *Bee,* not the EEOC, fraudulently induced Stein World to agree to the terms of the settlement agreement as written and fraudulently misrepresented the amount of medical expenses he incurred. It is not clear, therefore, that a claim of unilateral mistake may be brought against the EEOC. The Court need not address this issue, however.

Additionally, the EEOC does not address whether the alleged mistake can, as a matter of law, constitute a mistake at all. Instead, the EEOC's argument focuses only on the elements of fraud, relevant to both the fraudulent misrepresentation and fraudulent inducement/unilateral mistake claims.

Finally, an Order Granting Request for Entry of Default against Bee was entered on October 11, 2006, rendering moot Bee's Motion to Dismiss. The Court set aside the entry of default on March 7, 2007, and Bee's motion is therefore no longer moot.

consistent with the language in the Counter Claim and Third-Party Complaint: "At the mediation, Bee . . . represented that his hospital and medical bills were but a few thousands of dollars," (Counter Claim, Doc. 2, ¶ 27; see also id. ¶ 39), and Bee accepted the $5,000 cap. (Id. ¶ 34.) Thus, Stein World alleges that Bee affirmatively misrepresented (1) that the expenses were low and (2) that he would accept a $5,000 cap on coverage by Stein World.

The appropriate standard is therefore the one set out in Stein World's response to the motion. (Resp., Doc. 21-1, at 5-6.) Specifically, as this Court noted in Honeycutt v. First Federal Bank, under Tennessee law, "[a]n action for intentional or reckless misrepresentation contains four elements: (1) an intentional misrepresentation of material fact, (2) knowledge of the representation's falsity, (3) an injury caused by reasonable reliance on the representation, and (4) the misrepresentation involves *a past or existing fact.*" 278 F. Supp. 2d 893, 897 (W.D. Tenn. 2003) (emphasis added) (citing Spectra Plastics, Inc. v. Nashoba Bank, 15 S.W. 3d 832, 840-41 (Tenn. Ct. App. 1999)). Where the allegation is one of affirmative misrepresentation, rather than non-disclosure or concealment, Stein World need not allege the violation of a fiduciary duty to disclose. Finally, the EEOC and Bee do not contend that Stein World has failed to allege any of these elements, but rather

that Stein World failed to allege a failure to disclose a material fact in violation of a fiduciary duty. The Court need not determine, therefore, whether Stein World properly alleged each of the four elements.[4]

The motion is therefore DENIED, as the EEOC and Bee challenge the Counter Claim and Third-Party Complaint only on the grounds that Stein World has failed to allege a duty to disclose. A duty of disclosure is not a required element in this case, since Stein World alleges an affirmative misrepresentation, not a failure to disclose a material fact.

IV. Conclusion

For the reasons discussed above, the Court DENIES Counter-Defendant's Motion to Dismiss Counter-Plaintiff's Counter Claim and Third-Party Defendant's Motion to Dismiss Third Party Complaint.

So ORDERED this 27th day of March, 2007.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT JUDGE

[4] Neither must the Court decide whether Defendant has adequately stated a claim of mutual mistake, as the motion presently before the Court does not address such a claim.