

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF CHRISTIANSTED AT ST. CROIX

IRVING BALL

PLAINTIFF

vs.

STEPHEN A. TOTH

DEFENDANT

CIVIL NO. 84/82

ACTION FOR BREACH OF CONTRACT

MEMORANDUM OPINION
(MAY 13, 1982)

JOHN B. NICHOLS, Esq.
7 King Street
Christiansted, St. Croix
--Attorney for Defendant

RONALD T. MITCHELL, Esq.
P.O. Box 9517
St. Thomas, U.S.V.I.
--Attorney for Defendant

SILVERLIGHT, Judge

This matter comes before the Court on Motion of Defendant to Dismiss pursuant to Rule 12(b)(6) F.R.Civ.P. or in the alternative for Summary Judgment pursuant to Rule 56 F.R.Civ.P. Since the contract annexed to the complaint and referred to therein, is incorporated in and constitutes a part of the complaint,^{1/} we may proceed under Rule 12(b)(6) F.R.Civ.P. The Motion will be DENIED.

The thrust of defendant's position is that plaintiff cannot prevail because his claim asserts representations allegedly made but not included in the written agreement thereby barred by the

^{1/} Rule 10(c) provides, in pertinent part
...A copy of any written instrument which
is an exhibit to a pleading is a part
thereof for all purposes.

doctrine of integrated agreements. ^{2/} There is no doubt that the doctrine is applicable to the case at bar. See generally Restatement of Law, Second, Contracts, sections 209 et seq. However, defendant misses the mark in failing to recognize that plaintiff's claim is asserted as fraud in the inception. Paragraph 4 of the complaint expressly refers to the assurances allegedly given by defendant prior to the execution of the contract and paragraph 5 asserts the plaintiff's reliance on those assurances.

While it is conceded that the complaint may be inartfully drawn, it cannot be said that the pleading falls short of giving notice to defendant of the nature and scope of the claims. ^{3/} If plaintiff can prove by clear and convincing evidence that defendant's assurances induced plaintiff to enter into the agreement, plaintiff will be able to prevail at trial. See Restatement (Second) Contracts 214.

Professors Wright and Miller addressed the question of Rule 12(b)(c) dismissals in their textbook which has attained the status of a procedural handbook of the law. They state that:

The motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted. Rule 8 indicates that a complaint need only set out a generalized statement of facts from which defendant will be able to frame a responsive pleading. Few complaints fail to meet this liberal standard and become subject to dismissal. Moreover, the courts are reluctant to dispose of the complaint on technical grounds in view of the policy of the federal rules to determine actions on their merits.

WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL §1357 at

^{2/} This doctrine is commonly called the parol evidence rule.

^{3/} See Rules 8(a)(2); 8(e)(1) and 8(f) F.R.Civ.P.

BALL V. TOTH
MEMORANDUM OPINION
PAGE 3

598-99(1960 & Supp. 1982).

Accordingly, the motion to Dismiss and the Motion for
Summary Judgment will be DENIED.

DATED: May 13, 1982

ENTERED:


IRWIN J. SILVERLIGHT, JUDGE