

Georgia State University College of Law Reading Room

Georgia Business Court Opinions


1-23-2018

Frances B. Bunzl Order Denying William C. Lankford's Motion to Dismiss Third Party

John J. Goger

Fulton County Superior Court Judge

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Business Organizations Law Commons](#), and the [Contracts Commons](#)

Institutional Repository Citation

Goger, John J., "Frances B. Bunzl Order Denying William C. Lankford's Motion to Dismiss Third Party" (2018). *Georgia Business Court Opinions*. 439.

<https://readingroom.law.gsu.edu/businesscourt/439>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact mbutler@gsu.edu.

IN IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

FRANCES B. BUNZL, <i>et al.</i> ,)	
)	
Plaintiffs,)	CIVIL ACTION
)	FILE NO. 2013CV227097
v.)	
)	Bus. Case Div. 4
BENNETT L. KIGHT, <i>et al.</i> ,)	
)	
Defendants.)	

**ORDER DENYING WILLIAM C. LANKFORD'S
MOTION TO DISMISS THIRD PARTY COMPLAINT**

The above styled action is before this Court on William C. Lankford's Motion to Dismiss Third-Party Complaint. Having considered the foregoing motion and argument of counsel at a November 17, 2017 global hearing in this matter and other related actions, the Court finds as follows:

In the Bunzls' initial Response to Bennett L. Kight ("Kight") and William C. Lankford's ("Lankford") Petition for Approval of Interim Account, Suzanne Bunzl Wilner ("Suzanne") and Anna Wilner ("Anna") filed a counterclaim against Kight and Lankford and Frances B. Bunzl ("Frances") and Patricia H. Bunzl ("Patricia") filed a Third-Party Complaint against Kight, Lankford, Judith C. Kight, Robert F. Kight and John Does 1 through 10. In the instant motion Lankford moves to dismiss the third-party claims asserted against him by Frances and Patricia as improper under O.C.G.A. §9-11-14(a). That Code Section provides in part:

*When defendant may bring in third party. At any time after commencement of the action a **defendant**, as a third-party plaintiff, may cause a summons and complaint to be served **upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him...***

(Emphasis added). See Watkins v. M & M Clays, Inc., 199 Ga. App. 54, 56, 404 S.E.2d 141, 143 (1991) (“Third-party practice allows a defendant or a plaintiff/defendant in counterclaim to bring in as a party one “who is or may be liable to him for all or part of the...claim against him”); Quality Ford Sales, Inc. v. Greene, 201 Ga. App. 206, 206, 410 S.E.2d 389, 390 (1991) (“The third-party defendant's secondary liability to the original defendant for his liability on the main claim is required if a third-party complaint is to meet the statutory requirements”).

Here, Lankford argues that neither Frances nor Patricia are parties to the original action so they lack standing to bring third-party claims and, insofar as he was a party to the original action, third-party claims cannot be properly asserted against him. Further, because Frances and Patricia do not allege secondary liability as to Lankford and are not making a claim against him to recover damages for which they may be liable, Lankford argues the third-party claims against him should be dismissed.

Frances and Patricia assert they were properly joined as parties to this lawsuit and that they have claims against Lankford that are proper for adjudication in this litigation as their claims against Kight and Lankford, which relate to those individuals allegedly fraudulent conduct, are compulsory counterclaims under O.C.G.A. §9-11-13(a) or permissive counterclaims under O.C.G.A. §9-11-13(b). Frances and Patricia contend their claims were properly raised in their response to Kight and Lankford’s Petition for Interim Accounting as the claims arise out of the transactions and occurrences alleged by Kight and Lankford in their Petition and are logically related to their claim for approval of interim accounting since the Bunzls’ claims relate to Kight and Lankford’s administration of the Bunzl Trusts.

The Court finds the instant motion is moot. On Oct. 28, 2015 (after Lankford resigned as Co-Trustee, after then-presiding Judge Melvin Westmoreland removed Kight as Co-Trustee, and

after the Bunzls and Gus H. Small—as the new Administrative Trustee—dismissed with prejudice Kight and Lankford’s Petition for Interim Accounting, the Bunzls filed a “Motion to Amend Complaint” seeking leave of court to file an Amended and Recast Complaint “to properly align the parties, to add additional counts against Defendants, and to add additional Defendants.”

Although Lankford opposed the motion, on Dec. 16, 2015 Judge Westmoreland entered an order granting the motion and expressing stated therein that “[a]ll claims raised within the Amended and Recast Complaint relate back to March 13, 2013, the original filing date of the Response to Petition for Approval of Interim Accounting, Counterclaim, and Third-Party Complaint, as if filed on that date.” The First Amended and Recast Verified Complaint names as Plaintiffs: Frances, Suzanne (individually, as beneficiary of the Bunzl Trusts and as General Trustee), Anna (individually and as beneficiary of the Bunzl Trusts and as General Trustee) and Patricia (individually and as General Trustee). The amended pleading realigning the parties, filed with leave of court, moots Lankford arguments with respect to the proprietary of the Bunzls’ original responsive pleading and the third-party claims asserted therein. Accordingly, Lankford’s Motion to Dismiss Third-Party Complaint is HEREBY DENIED.

SO ORDERED this 24 day of January, 2018.



JOHN J. GOGER, JUDGE
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit