

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FLEMING COMPANIES, INC.,

Plaintiff,

v.

ORDER

03-C-0221-C

KRIST OIL CO., INC.,

Defendant.

This is a civil action for monetary relief in which plaintiff Fleming Companies, Inc. alleges that defendant Krist Oil Co., Inc. breached the parties' contract by failing to pay \$1,059,437.33 for convenience food products it received.

Presently before the court is plaintiff's motion to strike certain affirmative defenses defendant pleaded in its answer. Plaintiff would like this court to strike defenses 2, 3, 6 and 9-17, which read as follows:

2. That any or/all named plaintiffs lack standing to assert a cause of action or to bring a cause of action as the same may have been or may be set forth in the Complaint.
3. The plaintiff's Complaint and the relief sought therein is barred in whole or in part by the legal and equitable doctrines of waiver, estoppel, unclean hands, and

laches.

6. That any or all named defendants are improper parties, improperly designated or otherwise improperly brought into this action.

9. That the claim set forth in this Complaint did not accrue within the applicable limitations period and is, therefore, barred by the applicable Statute of Limitations.

10. Plaintiff's claims are barred in whole or in part by a prior adjudication pursuant to principles of collateral estoppel or res judicata.

11. Plaintiff's claims are barred because they are based, in whole or in part, on plaintiff's own illegal, immoral or wrongful conduct.

12. That this Court has no jurisdiction over the subject matter of plaintiff's action and that the actions of Defendant relative to Plaintiff are not subject to judicial review.

13. That plaintiff's claim is not cognizable under the laws of the United States.

14. That the matters alleged in plaintiff's Complaint are not ripe for judicial determination.

15. That plaintiff has failed to exhaust its administrative remedies, and therefore, has no jurisdiction in Federal Court.

16. Defendant claims a set-off against any and all damages claimed by plaintiff, due to plaintiff's tortious interference with defendant's business operations, fraud and misrepresentation, violation of the Wisconsin Fair Dealership Law, and other legal harms.

17. Prior to this action, on or about 1 April 2003, plaintiff has commenced a Chapter 11 Bankruptcy Action in the U.S. Bankruptcy Court for the District of Delaware, case no. 03-10945 (MFW).

Dft.'s Ans., dkt. #4, at 2-4.

“Affirmative defenses are pleadings and, therefore, are subject to all pleading requirements of the Federal Rules of Civil Procedure.” Heller Financial, Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1294 (7th Cir. 1989). Defenses must set forth a “short and plain” statement of the defense. See Fed. R. Civ. P. 8(b). Although motions to strike are disfavored “because [they] potentially serve only to delay,” Heller Financial, 883 F.2d at 1294; see also United States v. 416.81 Acres of Land, 514 F.2d 627, 631 (7th Cir. 1975), they can be useful in limited situations. “[W]here . . . motions to strike remove unnecessary clutter from the case, they serve to expedite, not delay,” Heller Financial, 883 F.2d at 1294. An affirmative defense will be stricken “only when it is insufficient on its face,” but a court may strike affirmative defenses that are “nothing but bare bones conclusory allegations.” Id.

Plaintiff has alleged a simple breach of contract claim. Defendant’s laundry list of affirmative defenses seems to be nothing more than a scattershot approach to litigation. In fact, some of defendant’s defenses have not even been customized for the present lawsuit. For example, in the second defense, defendant alleges that “any or/all named plaintiffs lack standing” and the sixth defense it alleges that “any or all named defendants are improper parties,” suggesting that it does not realize that this lawsuit is between *one* plaintiff and *one* defendant. Moreover, in defendant’s brief in response to plaintiff’s motion to strike, defendant fails to cite even one case in support of its nebulous assertions and does not address the arguments raised in plaintiff’s brief in support. Defendant should take heed that

“[a]rguments not developed in any meaningful way are waived.” Central States, Southeast and Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F.3d 799, 808 (7th Cir. 1999). In any event, I turn to the substance of the defenses.

Plaintiff argues that defendant has not alleged any facts to support defense 2 and 14, which pertain to issues of standing and ripeness. Although I tend to agree with plaintiff that these defenses appear to be frivolous, I cannot say that they are insufficient on their face. Heller Financial, 883 F.2d at 1294. The same is true as to defenses 3 (equitable doctrines of waiver estoppel, unclean hands and laches); 9 (statute of limitations); 10 (collateral estoppel and res judicata); and 12 (subject matter jurisdiction). Therefore, plaintiff’s motion to strike as to these defenses will be denied.

However, defenses 6 (improper parties); 11 (illegal and immoral conduct); 13 (no cognizable claim); 15 (failure to exhaust administrative remedies); 16 (set-off); and 17 (bankruptcy) are insufficient on their face and defendant’s brief does nothing to shed light on them. Accordingly, plaintiff’s motion to strike these defenses will be granted.

A word is required as to defense 16 (set-off). A set-off against plaintiff’s asserted damages would be a counterclaim, not a defense. Although plaintiff pointed out this labeling error, defendant failed either to respond to plaintiff’s argument or correct its pleading. I will strike defense 16. If defendant wishes to pursue a set-off by counterclaim, it should file the appropriate pleading.

ORDER

IT IS ORDERED that plaintiff Fleming Companies, Inc.'s motion to strike certain affirmative defenses is GRANTED in part and DENIED in part; defendant Krist Oil Company, Inc.'s defenses numbered 6, 11, 13, 15, 16 and 17 are STRICKEN.

Entered this 15th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge