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UNPUBLISHED OPINION. CHECK COURT  
RULES BEFORE CITING.

Court of Chancery of Delaware.  
Re: NICASTRO

v.

RUDEGEAIR.  
**Civil Action No. 2933-CC.**

Submitted: Oct. 9, 2007.  
Decided: Nov. 13, 2007.

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John Legaré Williams Brian, [Charles Crawford](#), The  
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[WILLIAM B. CHANDLER III](#), Chancellor.

\*1 Dear Counsel:

Before me are petitioner Louis Nicastro's motions to strike portions of respondent Lori Rudegear's answer and to dismiss her counterclaims. Nicastro filed his complaint on May 2, 2007 seeking specific performance of an agreement of sale for the purchase of real property in Wilmington, Delaware. Rudegear filed her answer on July 5, 2007, which included a series of counterclaims. In his motions, Nicastro argues that the substantial portions of Rudegear's answer are immaterial or impertinent and that this Court lacks subject matter jurisdiction over her counterclaims. Because Nicastro has shown no prejudice caused by Rudegear's answer, I deny his motion to strike. Because Nicastro has not convinced me that this Court should not exercise its discretionary ancillary jurisdiction over Rudegear's counterclaims, I deny his motion to dismiss.

#### I. BACKGROUND

The allegations in this case are messy and unpleasant. Distilled to its most simple and least caustic form, the basic tale is one of fallout from broken relationships--romantic and professional. In the first part of 2006, Nicastro and Rudegear decided to expand their personal relationship into a jointly-

owned limited liability company. [\[FN1\]](#) Kopy Katz, as they called it, sold purses from leased space in a shopping center operated by Nicastro. Rudegear alleges that Nicastro improperly interfered with her involvement and participation in the management of this business. At some point, Rudegear and Nicastro entered into a contract for the sale of certain real property owned by Rudegear in Wilmington, Delaware. The sale price for the property in the contract was adjusted to take account of certain other debts and exchanges between Nicastro and Rudegear, such as the title to a vehicle. Soon after entering this agreement, Rudegear says, Nicastro wanted to modify it, and he took steps to coerce her to do so.

[\[FN1\]](#). The facts are taken from the well pleaded allegations in Rudegear's counterclaim. Many of these facts are disputed by Nicastro in his briefs and in his original complaint.

Rudegear alleges that Nicastro harassed her both mentally and physically in order to compel her consent to the contract modifications. Specifically, she says he interfered with her telephone use, screened her calls, frightened her mother with threats of sending Rudegear to jail, filed false reports of animal abuse against her, made false statements to her employer (ultimately resulting in her termination), and made unauthorized inquiries into her credit history (thereby lowering her credit score). Moreover, Rudegear alleges that Nicastro once pushed her violently into a dresser, thereby rupturing her silicone breast implant. In fact, Rudegear says, she only signed the amended agreement because she feared for her physical safety; Nicastro dragged her out of her car by her hair on the day the amended agreement was signed. Rudegear alleges these facts in support of her affirmative defenses and her counterclaims.

#### II. MOTION TO STRIKE

Under Rule 12(f), a party may petition this Court to strike portions of any pleading that are "redundant, immaterial, impertinent, or scandalous." [\[FN2\]](#) Motions to strike are disfavored; to succeed, the movant bears the considerable burden of demonstrating "clearly and without doubt that the

matter sought to be stricken has no bearing on the subject matter of the litigation." [FN3] The Court must consider two factors: (1) whether the challenged portion of the pleading is relevant to an issue in the case; and (2) whether the challenged portion is unduly prejudicial. [FN4]

[FN2]. Ct. Ch. R. 12(f).

[FN3]. *In re Estate of Cornelius*, C.A. No. 19255-NC, 2002 WL 1732374, at \*4 (Del. Ch. Jul. 11, 2002) (quoting *Topps Chewing Gum, Inc. v. Fleer Corp.*, C.A. No. 6781, 1986 WL 538, at \*1 (Del. Ch. Dec. 12, 1986)).

[FN4]. *Salem Church (Del.) Assocs. v. New Castle County*, C.A. No. 20305-NC, 2004 WL 1087341, at \*2 (Del. Ch. May 6, 2004).

\*2 Nicastro's motion to strike is easily summarized: Rudegear unnecessarily qualified portions of her answer and discussed the original agreement where the complaint discussed the amended agreement. This argument is insufficient to satisfy his burden. The crux of Rudegear's answer is her duress defense; she contends that the amended agreement is not operative. The portions of her answer that Nicastro challenges are denials of facts in the complaint that flow logically from her assertion that the amended agreement is unenforceable. Moreover, Nicastro has made no effort to demonstrate how the challenged portions of Rudegear's answer prejudice him in any way.

Nicastro has failed to satisfy his burden on both prongs of this Court's inquiry on a motion to strike under Rule 12(f). His motion is, therefore, denied.

### III. MOTION TO DISMISS

Nicastro contends that Rudegear's counterclaims are legal in nature and outside the subject matter jurisdiction of this Court. The Court of Chancery, however, routinely decides controversies that encompass both equitable and legal claims. [FN5] If there is equitable jurisdiction over at least some portion of a controversy, this Court has the power to decide the entire controversy. [FN6] This power, however, is not exercised automatically, but rather rests in the discretion of the Court. [FN7] Reasons to exercise the discretionary power of ancillary jurisdiction include: (1) to resolve a factual issue that

must be determined; (2) to avoid a multiplicity of suits; (3) to do complete and full justice; (4) to avoid a waste of judicial resources; (5) to avoid unnecessary expense; (6) to afford complete relief in a single proceeding; and (7) to overcome insufficient modes of procedure at law. [FN8] Particularly important is "whether the facts involved in the equitable counts and in the legal counts are so intertwined as to make it undesirable or impossible to sever them." [FN9]

[FN5]. 1 DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 2-4 (supp.2006) ("It is not at all unusual for cases properly within the subject matter jurisdiction of the Court of Chancery to involve both legal and equitable claims.").

[FN6]. *Park Oil, Inc. v. Getty Refining & Marketing Co.*, 407 A.2d 533, 535 (Del.1979) (per curiam); *Wilmington Homes, Inc. v. Weiler*, 202 A.2d 576, 580 (Del.1964).

[FN7]. *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, C.A. No. 19875, 2006 WL 3742596 (Del. Ch. Dec. 12, 2006) ("Simply put, once jurisdiction initially is established, the court enjoys substantial discretion in determining 'whether to continue to hear the case or to order its transfer to a law court for trial.'").

[FN8]. *Getty Refining & Marketing Co. v. Park Oil Inc.*, 385 A.2d 147, 150 (Del. Ch.1978), *aff'd*, 407 A.2d 533 (Del.1979).

[FN9]. *Id. Accord United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966) (noting that federal courts may exercise their pendant jurisdiction over state law claims when "[t]he state and federal claims ... derive from a common nucleus of operative fact").

Here, Rudegear's counterclaims range from intentional infliction of emotional distress to conversion. Nicastro's original complaint asks for specific performance of a sales agreement, and he argues that Rudegear's litany of tort actions bear no relation to the issues he raises in his specific performance case. This argument, however, ignores

Rudegear's defenses to his claim. Rudegear has alleged as affirmative defenses duress and coercion, and contends that the Court should deny Nicastro the equitable relief of specific performance because of unclean hands. Simply put, the elements that constitute Rudegear's assertions of duress and unclean hands also happen to constitute the elements of her counterclaims.

Not Reported in A.2d, 2007 WL 4054757 (Del.Ch.)

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In this situation, therefore, the *Park Oil* factors lead me to deny Nicastro's motion to dismiss. This Court will regrettably need to hear the sordid details underlying the counterclaims because those details also make up Rudegear's defenses to Nicastro's complaint. Thus, exercising its discretionary ancillary jurisdiction will allow for the resolution of the factual issues that must be determined anyway. In *Actrade Financial Technologies, Ltd. v. Aharoni*, this Court declined to dismiss a series of legal claims because the factual inquiry into those claims would be identical to the inquiry into the equitable claims. [\[FN10\]](#) Because the factual inquiry into Rudegear's equitable defenses would be the same as the inquiry into her legal claims, I deny Nicastro's motion to dismiss.

[FN10.C.A. No. 20168, 2003 WL 22389891, at \\*5 \(Del. Ch. Oct. 17, 2003\).](#)

#### IV. CONCLUSION

\*3 Nicastro has failed to meet his burden on his motion to strike and on his motion to dismiss, and both are, therefore, denied. This denial is certainly not an endorsement of Rudegear's counterclaims, nor is it in any way a tacit endorsement of Nicastro's original complaint. Both sets of claims appear rife with problems of proof, because the only witnesses will (for many of the claims) be the parties themselves. Indeed, the parties ought to carefully consider the wisdom of expending considerable time, effort, and money on a case before a court of equity where it appears from the pleadings that both plaintiff and defendant have behaved inequitably. Should the parties persist, however, they are instructed to contact chambers to set a date for trial.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III