IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MULTIFOODS DISTRIBUTION GROUP, INC., a Colorado corporation,	)	
Plaintiff,	)	
v.	)	C.A. No. 01C-09-032 MMJ
RP2S PIZZA, INC., a Delaware corporation, d/b/a Ripe Tomatoes Pizza, PES PIZZA, INC., d/b/a Ripe Tomatoes Pizza, and PAUL E. SASS, SYDNEY C. LICKLE and F. PETER JORDAN, JR., individuals,	)	
Defendants.	)	

ORDER

FOLLOWING A BENCH TRIAL ON JULY 24, 2006

Decided: August 1, 2006

1. Plaintiff Multifoods Distribution Group, Inc. "Multifoods" filed a Complaint on September 9, 2001, seeking, *inter alia*, judgment for amounts allegedly due under personal guarantees executed by defendants Paul E. Sass, Sydney C. Lickle and F. Peter Jordan. On May 6, 2003, defendant Sass filed an answer to the complaint, and cross claims against defendants Lickle and Jordan, seeking contribution for any amount Sass might be found liable to Multifoods.

2. In their Answer to Cross Claim, Lickle and Jordan admitted that they were guarantors. However, they denied that they are liable to either Multifoods for the debts alleged, or to Sass for contribution. Multifoods stipulated to dismissal of the claims against Lickle and Jordan on May 20, 2003. Lickle and Jordan, however, remain in this action as cross-claim defendants.

3. There are two separate amounts claimed by Multifoods. Sass has conceded that Lickle and Jordan are not subject to contribution on the $16,595.09 claim. The total amount of the claim in dispute is $9,708.05.

4. After Multifoods dismissed its claims against Lickle and Jordan, Sass and Multifoods entered into a settlement agreement. In satisfaction of both claims ($16,595.09 plus $9,708.05 for a total amount of $26,303.14), Sass agreed to pay Multifoods $19,000. During trial, Sass testified that the settlement did not enumerate the percentage to be allocated to each claim. Additionally, Sass testified that he did not "pay 100 cents on the dollar" to settle the claims.

5. As the cross-claim plaintiff, Sass has the burden of proving, by a preponderance of the evidence, entitlement to contribution damages and the amount of any damages.

6. The evidence at trial was as follows. Sass had an interest in three stores trading as Ripe Tomatoes Pizza, located in Dover, Delaware; Newark,

Delaware; and Marlton, New Jersey. Lickle and Jordan had interests only in the Newark store. Lickle and Jordan severed their business interests in the Newark store with Sass in February 2001. Lickle and Jordan subsequently continued the business without Sass.

7. At some point prior to February 2001, Multifoods received an order for a large number of pizza boxes imprinted with "Ripe Tomatoes Pizza." The Newark store periodically requested delivery of boxes, on an as-needed basis, payable upon receipt.

8. A Debit Memo dated June 22, 2001 states that payment of $9,708.05 was due for a large number of pre-printed boxes (and for some cheese) held in storage by Multifoods. The items had been ordered, but not delivered to any store. The Debit Memo lists the billing address as "Ripe Tomato's Pizza, 250 E Delaware Ave, Newark, DE 19711." The customer number is 10055558 - 9000.

9. Lickle and Jordan testified that they believe that the boxes were ordered to supply all three Ripe Tomatoes Pizza stores, including two stores in which they did not have an interest. The Debit Memo does not indicate the number of boxes to be supplied to each store. Although the billing address is in Newark, the customer number is not for the Newark store. Other trial exhibits list the Multifoods customer number for the Newark store as 10051854 - 9000.

10. Lickle and Jordan testified that Sass was the bookeeper for the Newark store. Sass failed to produce any evidence that any of the items in the Debit Memo were ordered specifically to be reserved for delivery to the Newark store. Lickle and Jordan testified that shortly before they severed their business relationship with Sass, they first became aware of a large number of unpaid bills for the Newark store. In February 2001, the books were in disarray and information on the business computer was irretrievable.[1]

11. Finally, Lickle testified that she had been informed by Multifoods that any outstanding bills regarding the Newark store had been paid in full.

12. The Court having considered the foregoing, as well as all testimony and evidence presented during trial, finds:

(A) Cross-claim plaintiff Sass has failed to prove by a preponderance of the evidence that there are any claims by plaintiff Multifoods for which cross-claim defendants Lickle and Jordan are liable as guarantors; and

(B) Even assuming that liability had been established by Sass, cross-claim plaintiff Sass has failed to prove by a preponderance of the evidence any specific amount to which Sass may be entitled, Sass having admitted that his

[1]Lickle and Jordan testified that Sass threw the computer on the office floor prior to leaving the premises.

settlement with Multifoods was a compromise and there being no evidence as to what portion of that settlement may be subject to contribution.

THEREFORE, the verdict following the non-jury trial is in favor of defendants and cross-claim defendants Sydney C. Lickle and F. Peter Jordan, and against defendant and cross-claim plaintiff Paul E. Sass. There being no remaining claims, this case is hereby **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.

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The Honorable Mary M. Johnston