

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

TIMOTHY RILEY and JACOB SCHILLING

No. 2:18-cv-01037-CB

Plaintiffs,

v.

SOUTHSIDE SIN CITY INC.,
THE GARAGE DOOR SALOON, MARK
WELSHONSE, POLICE OFFICER
MICHAEL ROSFELD; POLICE CHIEF
JAMES K. LOFTUS; and UNIVERSITY
OF PITTSBURGH OF THE
COMMONWEALTH SYSTEM OF HIGHER
EDUCATION,

Defendants.

Type of Pleading:
Response to Defendant University of
Pittsburgh Commonwealth System
of Higher Education’s Motion to
Dismiss Cross-Claim

Filed on behalf of:
SOUTHSIDE SIN CITY INC., THE
GARAGE DOOR SALOON and
MARK WELSHONSE

Attorney for this party:

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TIMOTHY RILEY and JACOB SCHILLING	:	No. 2:18-cv-01037-CB
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Plaintiffs,	:	
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	:	
v.	:	
	:	
SOUTH SIDE SIN CITY INC.,	:	
THE GARAGE DOOR SALOON, MARK	:	
WELSHONSE, POLICE OFFICER	:	
MICHAEL ROSFELD; POLICE CHIEF	:	
JAMES K. LOFTUS; and UNIVERSITY	:	
OF PITTSBURGH OF THE	:	
COMMONWEALTH SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Defendants.	:	

DEFENDANT SOUTH SIDE SIN CITY INC, THE GARAGE DOOR SALOON AND MARK WELSHONSE RESPONSE TO DEFENDANT UNIVERSITY OF PITTSBURGH-COMMONWEALTH SYSTEM OF HIGHER EDUCATION’S MOTION TO DISMISS CROSS-CLAIM

AND NOW, comes the Defendant, South Side Sin City Inc., The Garage Door Saloon and Mark Welshonse (hereinafter collectively referred to as Garage Door), by and through counsel, Paul C. Schneider, and files the within Response as follows:

Defendant University of Pittsburgh-Commonwealth System of Higher Education (hereinafter referred to as University) files its Motion to Dismiss Garage Door’s Cross-Claim for Contribution and Indemnification alleging Garage Door’s Cross-Claim is implausible, factually baseless, has no legal basis for indemnification, and premature as to a claim of contribution. The University’s Motion to Dismiss Garage Door’s Cross-Claim should be dismissed as Garage Door

has stated a claim that is supported directly and circumstantially by sufficient facts to support a claim for relief for both indemnification and contribution.

ARGUMENT

A. Garage Door avers that the allegations raised in the pleading are sufficient to state the claims set forth therein and sufficiently place the University on notice of the nature of its claim. Further, by way of testimony and other documentary evidence, Garage Door can both directly and circumstantially establish sufficient facts to support its contention that the University was responsible for the dismissal of Plaintiffs' criminal charges. Specifically, the Garage Door intends to offer the testimony of Mark Welshonse (owner of the Garage Door) the Plaintiffs, the assistant district attorney that was originally assigned to the preliminary hearing, the assistant district attorney that eventually disposed of the criminal matters and other as of yet unknown individuals to establish that the University, its representatives and/or associates shared responsibility for that dismissal.

To survive a motion to dismiss Garage Door must state a claim that is plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). In order for a claim to be plausible the Court is to infer from the facts plead there exists more than the mere possibility of misconduct which would give rise to a claim. *Iqbal*, 556 U.S. at 679. The facts in the Complaint must raise a right to relief beyond speculation. *Twombly*, 550 U.S. at 555. As stated in Garage Door's Answer and Counter Claim, Mark Welshonse was present at the preliminary hearing in Plaintiff's criminal matters that are the genesis for the suit. He, as a victim, was part of the negotiations for the plea agreement between the Plaintiffs and the assistant district attorney assigned to the case that was withdrawn without his consent. Also having his criminal charges dismissed was Daniel Ernest Humphrey; who is

related to a high ranking official at the University, was a co-defendant with Plaintiffs at the preliminary hearing but failed to appear personally or through counsel, despite what is shown in the disposition. Additionally, law enforcement representatives from the University, the original arresting agency, failed to appear at the preliminary hearing. Instead, county detectives who had no role in the incident were present. From this set of facts this Court can infer that it is beyond reasonable and likely the University played a role in having the Plaintiffs' criminal charges dismissed.

Garage Door is not asserting, as the University claims, that the dismissal of the charges prompted Plaintiffs to file their lawsuit. Garage Door is claiming that had it not been for the improper actions of the University, the plea agreement would have been accepted by the court and Plaintiffs would have been convicted of the underlying charges thus invalidating the claims against Garage Door in this case. It is noted that the University takes the position that indemnity is only applicable where the University is liable over Garage Door for the harm caused to Plaintiffs. But it was the University through the actions of its employees that created the claims that allow Plaintiffs to seek a remedy for a harm that would not have otherwise existed. Indemnity is recognized in cases where community opinion would consider that in justice the responsibility should rest upon one defendant rather than the other. *Mixer v. Mack Trucks Inc.*, 308 A.2d 139 (1973).

B. The University also takes the position that Garage Door's claim for contribution should be dismissed because they have not paid any obligation in the lawsuit. In support of the position the University relies on *Pittsburgh Logistics Systems Inc. v. Landstar Ranger, Inc.* Civil Action No. 17-1667, 2018 U.S. Dist. Lexis 145735 (W.D. Pa. Aug 28, 2018). However the facts of that case are not analogous and the University's reliance is misplaced. In *Pittsburgh Logistics*

Systems the Plaintiff filed a cross-claim for contribution for potential damages should two other parties sue that plaintiff at some other time. Unlike that case, the Garage Door, has already been named a party in a suit. The case goes on to state that before the issue of contribution and indemnity is ripe for resolution the plaintiff must have suffered *a harm*. Citing *Globe Ground Support LLC v. Glazer Enters Inc.*, No. 05-4373, 2006 U.S. Dist. Lexis 2434 at 38 (E.D. Pa. Jan 23, 2006). (...a claim for contribution is not viable until judgment has been made, claiming contribution before plaintiff is held liable, pays out any damages or suffers any harm is a premature claim). Citing *Hotel Emples and Restaurant Local No. 274 Health and Welfare Fund v. Stadium Hotel Restaurant Group*, No. 10-1279, 2012 U.S. Dist. Lexis 40627 qt 10-11 (E.D. Pa. Mar. 26, 2012). It is not the mere payment of an obligation that allows Plaintiff to file a claim for contribution. It is when any harm or damage is suffered by Plaintiff as it is stated by the Court, Plaintiff will suffer damages when the two parties eventually do sue. See *Pittsburgh Logistics Sys*. The case herein is distinguishable because the Garage Door is not claiming contribution for damages from a future suit that has not yet been filed. The Garage Door is seeking contribution for a suit that has already been filed naming them and the University as Defendants. Harm is suffered in that Garage Door is now responsible for defending these claims in federal court, incurring the costs, expenses, time and fees associated with such complex litigation.

CONCLUSION

For the reasons stated herein, Defendant University of Pittsburgh- Commonwealth System of Higher Education's motion to dismiss should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendants' Garage Door's response to Defendant University of Pittsburgh-Commonwealth System of Higher Education's Motion to Dismiss Cross-Claim was served upon the persons and in a manner indicated below on the 6th day of November, 2018.

Service by regular first class mail addressed as follows:

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