

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BUCKEYE DIAMOND LOGISTICS, INC. :	:	
fka BUCKEYE RECYCLERS, INC. :	:	
	:	
	:	
Plaintiff,	:	
	:	Case No. C3-01-440
	:	
v.	:	
	:	Judge Walter Herbert Rice
CHEP USA, a general partnership :	:	
	:	
Defendant.	:	

**DEFENDANT CHEP USA'S MOTION TO STRIKE PLAINTIFF BUCKEYE DIAMOND
LOGISTICS, INC.'S JURY DEMAND**

Defendant CHEP USA ("CHEP"), pursuant to Fed. R. Civ. P. 39(a), hereby moves the Court for an order striking Plaintiff Buckeye Diamond Logistics, Inc.'s ("Buckeye") jury demand on the grounds that Buckeye's only remaining claims are equitable in nature and, thus, should not be submitted to a jury. A memorandum in support of this Motion is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Pursuant to its August 11, 2003 Decision and Entry, the Court sustained CHEP's Motion for Summary Judgment with respect to the following claims asserted by Buckeye: (1) declaratory judgment that CHEP is in violation of the Ohio Deceptive Trade Practices Act (Count One); (2) declaratory judgment that CHEP's pallets that come into Buckeye's possession have either been lost or abandoned by CHEP (Count Two); (3) declaratory judgment that Buckeye has a common law lien on CHEP's pallets (Count Three); and (4) tortious interference (Count Five). (Docket # 61.) As a result of the Court's ruling, only Count Four of Buckeye's Complaint for unjust enrichment together with a declaration pursuant to O.R.C. § 2721 of CHEP's obligation to reimburse Buckeye in the future remained. Because, as the Court already noted in its Decision and Entry, these claims are solely equitable in nature (Docket # 61 at 39), the United States Constitution's Seventh Amendment right to a trial by jury does not attach. Accordingly, Buckeye's jury demand should be stricken and its claims should be tried to the Court.

II. LAW AND ARGUMENT

A. The Seventh Amendment Only Guarantees a Trial by Jury on Legal, Not Equitable Claims

The Seventh Amendment to the United States Constitution provides that:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

In Curtis v. Loether, 415 U.S. 189, 193, 94 S. Ct. 1005, 1008, 39 L.Ed.2d 260 (1974), the Court explained that:

by common law, [the framers of the Amendment] meant . . . not merely suits, which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered.

Id. (emphasis in original). Thus, "the Seventh Amendment right to a jury trial attaches to actions at law, not to those in equity." Mile High Industries v. Cohen, 222 F.3d 845, 856 (10th Cir. 2000).

To determine whether the Seventh Amendment entitles a particular litigant to a jury trial in a particular case, the Court must determine whether the case will resolve legal rights, entitling plaintiff to a trial by jury, or only equitable rights, for which there is no right to a jury. Golden v. Kelsey-Hayes Company, 73 F.3d 648, 659 (6th Cir. 1996) (affirming the trial court's granting of a motion to strike jury demand because the plaintiff's claims were entirely equitable). The question of whether a plaintiff is entitled to a jury trial is to be determined by an appraisal of the claims, defenses, and remedies. Kerr-McGee Corp. v. Bokum Corp., 453 F.2d 1067 (10th Cir. 1972) (citing, Bruce v. Bohanon, 436 F.2d 733 (10th Cir. 1970)). The issues, not the form of the complaint, will determine the method of trial. Id. Thus, only by examining the basic nature of the claims or issues presented and the type of relief sought can the determination of the right to a jury trial be reached. Id.

B. Buckeye's Claims are Equitable and Should Not be Tried to a Jury

As a result of the Court's August 11, 2003 Decision and Entry (Docket # 61), Buckeye's only remaining claims are for unjust enrichment and declaratory judgment. Because both of these claims are wholly equitable in nature, Buckeye is not entitled to a trial by jury on those claims and Buckeye's jury demand should be stricken.

1. Unjust enrichment is an equitable claim.

It is axiomatic that unjust enrichment is an equitable remedy. See Andersons, Inc. v. Consol, Inc., 348 F.3d 496, 502 (6th Cir. 2003) (explaining that the "doctrine of unjust enrichment provides an equitable remedy imposed to prevent injustice"). In fact, this Court has already determined that Buckeye's unjust enrichment claim is an equitable remedy. In its August 11, 2003 Decision and Entry, the Court refers to Buckeye's unjust enrichment claim as an "equitable" claim. (Doc. # 61 at 39.) Additionally, the Court states that with respect to the unjust enrichment claim, the "relief available is based on equitable principles of the value of the plaintiff's performance." (Doc. # 61 at 39.) Because Buckeye's unjust enrichment claim is an equitable claim, Buckeye is not entitled to try that claim to a jury.

In Webb v. RLR Associates, Ltd., No. 03 Civ. 4275(HB), 2004 WL 555699 (S.D.N.Y. Mar. 19, 2004), attached hereto as Exhibit "A," the defendant filed a motion to strike the plaintiff's jury demand after the court granted summary judgment in favor of defendant on all of plaintiff's legal claims. The only claims that remained for consideration were for unjust enrichment and breach of fiduciary duty. The defendant filed its motion to strike the plaintiff's jury demand on the grounds that the claims that once entitled the plaintiff to a jury had been dismissed.

In granting the defendant's motion to strike, the court explained that under the Seventh Amendment, "a plaintiff is entitled to a jury if his claims 'involve rights and remedies of the sort traditionally enforced in an action at law, rather than in an action in equity.'" Id. at * 2 (quoting S.E.C. v. Commonwealth Chem. Secs., Inc., 574 F.2d 90, 95 (2d Cir. 1978)). The court added that "if the relief [the plaintiff] seeks is equitable in nature, a jury trial is not warranted." Id. (citing Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry, 494 U.S. 558, 565, 110 S. Ct. 1339, 1344, 108 L.Ed.2d 519 (1990)). The court concluded that the plaintiff was "not entitled to a jury trial based on his claim for unjust enrichment . . . because this claim is well grounded in equity." Id. at * 3. Therefore, the defendant's motion to strike the plaintiff's jury demand was granted and the case was set for a non-jury trial.

The procedural facts in the instant action are nearly identical to those in Webb. Buckeye originally asserted several legal and equitable claims in its Complaint when it made its jury demand. Subsequently, the Court dismissed all of Buckeye's legal claims when it sustained CHEP's Motion for Summary Judgment. As a result, only equitable claims remain, for which a jury trial is not warranted. Therefore, Buckeye's jury demand should be stricken and Buckeye's claims should be tried to the Court.

2. Buckeye's claim for declaratory judgment is an equitable claim.

The fact that Buckeye also seeks declaratory relief does not support its demand for a jury. "In actions seeking declaratory relief, the right to a jury trial is preserved only where it otherwise exists." Golden, supra, at 662; see also, Robinson v. Brown, 320 F.2d 503, 505 (6th Cir. 1963) (explaining that the "inclusion of a claim for declaration of rights in the complaint did not . . . convert an equity case into an action at law.") "Seeking declaratory relief does not entitle one to a jury trial where the right to a jury trial does not otherwise exist." Golden, supra, at 662.

In its remaining claim for declaratory judgment, Buckeye is seeking a judgment dictating the amount CHEP must reimburse it in the future for its anticipated storage and sorting of CHEP pallets. Thus, the underlying claim is essentially a claim for unjust enrichment in the future. Instead of seeking damages for services already allegedly provided, Buckeye is seeking a remedy going forward for any alleged "services" it may provide. As set forth above, unjust enrichment is a wholly equitable claim to which the right to a jury trial does not attach. Accordingly, neither of Buckeye's remaining claims should be submitted to a jury and CHEP's Motion to Strike should be granted.

C. Striking the Jury Demand Furthers the Interest of Judicial Economy

Aside from the fact that Buckeye's remaining claims do not warrant a trial by jury, a trial to the Court furthers the interest of judicial economy. Currently, the parties estimate that a jury trial will last somewhere between 4 to 6 days. CHEP submits that by trying the case to the Court, the trial time may be reduced by 1 to 2 days.¹ Additionally, by trying this case to the Court, CHEP's concerns regarding the disclosure of its confidential and proprietary commercial, financial, and business information to the jury will be necessarily resolved without further argument or briefing. (See e.g., Docket # 92.)²

III. CONCLUSION

Because Buckeye's only remaining claims for determination are wholly equitable in nature, Buckeye is not entitled to a trial by jury on those claims. Therefore, CHEP respectfully requests that the Court grant this Motion and strike Buckeye's jury demand.

¹ If the Court grants this Motion, CHEP will waive the right to try its conversion claim to a jury.

² CHEP will, however, still pursue its argument that evidence presented to the Court should remain confidential during trial.

Respectfully submitted,

s/ John C. McDonald

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Defendant CHEP USA's Motion to Strike Jury Demand was served the 22nd day of September, 2004, via the Court's electronic filing notification upon:

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