

1990 WL 175688

Only the Westlaw citation is currently available.
United States District Court, E.D. Pennsylvania.

Barbara O'Hara BIRSTER

v.

O'HARA SANITATION COMPANY, INC.,
Betty O'Hara as Executrix for the Estate
of William O'Hara, Sr., Betty O'Hara,
Individually, William J. O'Hara, Jr., Patrick
O'Hara, Michael O'Hara, Thomas O'Hara,
Browning–Ferris Industries, Inc., Nicholas J.
Caramenico and Steven E. Speece, Esquire.

Civ. A. No. 90–2786.

|
Nov. 7, 1990.

Attorneys and Law Firms

[Paul R. Rosen](#), [Richard E. Miller](#), Philadelphia, Pa., for plaintiff.

[Eric J. Lobenfeld](#), [Robin D. Adelstein](#), [Lawrence V. Brocchini](#), pro hac vice, [Thomas B. Rutter](#), Philadelphia, Pa., [Eric J. Lobenfeld](#), [Robin D. Adelstein](#), [Lawrence V. Brocchini](#), New York City, [Arthur H. Kahn](#), Dale P. Schomer, Philadelphia, Pa., for defendants.

MEMORANDUM AND ORDER

[WEINER](#), District Judge.

*1 The plaintiff brought this action, seeking rescission of a transaction in June of 1988 pursuant to which she transferred her shares of defendant O'Hara Sanitation Company, Inc. to O'Hara Sanitation Company. Plaintiff sought to share in the several hundred thousand shares of stock which defendant Browning–Ferris Industries, Inc. paid for the assets of O'Hara Sanitation Company and other companies to Browning–Ferris Industries in November of 1989. Plaintiff also raised issues regarding the operation of O'Hara Sanitation Company, including alleged diversion of funds and corporate opportunities,

excessive compensation, failure to declare dividends, breach of fiduciary duty, alleged concealment of intention to sell, intentional infliction of emotional distress and other allegations. Defendants filed a Counterclaim against plaintiff and added Thomas Birster as a Counterclaim Defendant. On August 3, 1990, counsel for the parties informed the court that, after intense negotiations, they had reached a settlement. The parties asked the court for permission to put the settlement “on the record.” Counsel for the respective parties appeared and read the settlement agreement to the court stenographer. Once the settlement was recorded, the action was dismissed pursuant to Local Rule 23(b). Unfortunately, the court has now been informed that the settlement has gone awry. As a result, certain of the defendants have filed a motion to enforce the settlement which motion is presently pending before the court. The plaintiffs contend that the settlement conditions have not been met and, therefore, the suit should continue. However, because the court intends to preside over any trial on the merits of this matter which would take place if the settlement agreement is found not to be enforceable, the court does not consider it appropriate for it to hear and resolve the underlying dispute concerning the validity of the settlement. Accordingly, we will direct the Clerk to temporarily reassign this case from the calendar of the undersigned to the calendar of the Honorable Joseph L. McGlynn, Jr., who has kindly consented to hear and decide the limited issue of the enforcement of the settlement.

ORDER

The Clerk is DIRECTED to temporarily REASSIGN the above-captioned matter from the calendar of the undersigned to the calendar of the Honorable Joseph L. McGlynn, Jr. for the limited purpose of resolving defendants' motion to enforce the settlement.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp., 1990 WL 175688