

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

RUDOLPH A. KARLO, MARK K. McLURE,	)	
WILLIAM S. CUNNINGHAM, JEFFREY	)	Civil Action No. 10-1283
MARIETTI, DAVID MEIXELSBERGER,	)	
BENJAMIN D. THOMPSON and RICHARD	)	
CSUKAS, on behalf of themselves and all others	)	
similarly situated,	)	
	)	Honorable Nora Barry Fischer
Plaintiffs,	)	
	)	
vs.	)	
	)	<b>ELECTRONICALLY FILED</b>
PITTSBURGH GLASS WORKS, LLC,	)	
	)	
Defendant.	)	

**PLAINTIFFS’ MOTION TO DISMISS DEFENDANT’S COUNTERCLAIM [DOC. 8]**

The above-named Plaintiffs move, pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Defendant PGW’s Counterclaim, stating as follows:

1. In its Counterclaim, PGW alleges that, by filing the above-captioned lawsuit, Plaintiffs have breached certain Separation Agreements and Releases (the “Releases”), which they were compelled to execute at the time of their wrongful termination from employment by PPG.

2. As discussed more fully in Plaintiffs’ Brief in Support of this Motion, which is incorporated by reference as if fully set forth herein, PGW’s Releases are invalid and unenforceable under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et seq.*, including the Older Workers Benefit Protection Act (“OWBPA”), 29 U.S.C. § 626(f), controlling regulations promulgated by the Equal Employment Opportunity Commission (“EEOC”), 29 C.F.R. § 1625, and case-law.

3. Because PGW’s Releases are invalid and unenforceable, they cannot form the basis for PGW’s Counterclaim for breach of contract.

4. PGW's Counterclaim for unjust enrichment is similarly doomed, as the claim cannot be asserted where a contract exists. As discussed in Plaintiffs' Brief, the invalidity and unenforceability of the ADEA waiver in the PGW Releases does not operate to void the entire agreement, and thus the remaining contractual obligations between the parties remain, thereby barring PGW's quasi-contract claim.

5. Moreover, the EEOC regulations prohibit PGW from counterclaiming for any monies paid to secure the invalid releases. At most, PGW could only seek a set-off for those amounts against any award of damages received by the Plaintiffs on their ADEA claims, which amount cannot exceed the actual award, and which decision is solely within the sound discretion of the trial court. *See* 29 C.F.R. § 1625.23(c).

WHEREFORE, Plaintiffs therefore respectfully request that this Court dismiss with prejudice PGW's Counterclaim. For the convenience of the Court, a Proposed Order is attached hereto.

Respectfully submitted,

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

Date: December 22, 2010

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