

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

DELPHI PETROLEUM, INC., )  
 )  
 Plaintiff, )  
 )  
 ) C.A. No. N12C-02-302FWW  
 v. )  
 )  
 MAGELLAN TERMINALS HOLDINGS, )  
 L.P., )  
 )  
 Defendant. )

Submitted: January 26, 2015  
Decided: January 30, 2015

Upon Plaintiff's Motion for Leave to File Second Amended Complaint  
**GRANTED.**

**ORDER**

Marc S. Casarino, Esquire, White and Williams, LLP, 824 N. Market St., Suite 902, P.O. Box 709, Wilmington, Delaware, 19899-0709; Peter J. Mooney, Esquire, White and Williams, LLP, 1650 Market Street, One Liberty Place, Suite 1800, Philadelphia, Pennsylvania 19103-7395, Attorneys for Plaintiff.

Herbert W. Mondros, Esquire, Margolis Edelstein, 300 Delaware Avenue, Suite 800, Wilmington, Delaware 19801; David E. Keglovits, Esquire and Erin K. Dailey, Esquire, GableGotwals, 1100 ONEOK Plaza, 100 West Fifth Street, Tulsa, Oklahoma 74103-4217, Attorneys for Defendant.

**WHARTON, J.**

This 30<sup>th</sup> day of January, 2015, upon consideration of Plaintiff's Motion for Leave to File Second Amended Complaint, Defendant's Response in Opposition and oral argument, it appears to the Court that:

(1) On February 29, 2012, Plaintiff filed an initial Complaint against Defendant alleging claims for Breach of Contract, Negligence, Unjust Enrichment and Conversion with respect to Terminalling Agreements executed by the parties in 2005 and 2011.<sup>1</sup> By stipulation of the parties, on October 8, 2013, Plaintiff filed an Amended Complaint.<sup>2</sup> In the Amended Complaint, a count for Breach of the Implied Covenant of Good Faith and Fair Dealing replaced the initial Negligence claim and a claim for Fraud was added.<sup>3</sup> The Fraud claim alleged that Defendant fraudulently induced Plaintiff to execute the 2011 Terminalling Agreement with the intent not to honor specific truck delivery provisions that Defendant knew were material to the contract.<sup>4</sup>

(2) On November 5, 2013, Defendant moved to dismiss all counts in the Amended Complaint except the Breach of Contract claim.<sup>5</sup> On May 2, 2014, the judge formerly assigned to this case dismissed, *inter alia*, Plaintiff's claim for Fraud despite finding that Plaintiff made out a *prima facie* case of fraud.<sup>6</sup> That

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<sup>1</sup> Compl., D.I. 1.

<sup>2</sup> See Stipulation and Am. Compl., D.I. 33.

<sup>3</sup> Am. Compl. at ¶¶ 14-16, 24-36.

<sup>4</sup> *Id.* at ¶¶ 24-36.

<sup>5</sup> Def.'s Mot. to Dismiss, D.I. 43.

<sup>6</sup> See May 2, 2014 Op. and Order, D.I. 67, at 7.

judge reasoned that Plaintiff cannot claim fraudulent inducement when the language Plaintiff specifically requests to be included in the agreement was, in fact, included as part of the parties' contract.<sup>7</sup>

(3) On May 12, 2014, Plaintiff filed a Motion for Reconsideration requesting that the Court reevaluate its decision to dismiss the Fraud claim.<sup>8</sup> Before the Motion for Reconsideration was ruled upon, the case was reassigned due to the former judge's retirement and the Court subsequently denied the Motion. The Court determined that although the Motion purported to seek relief under Super. Ct. Civ. R. 60(b), the substance of the Motion was actually a Motion for Reargument which was time-barred by Super. Ct. Civ. R. 59(c).<sup>9</sup> The Court additionally found that Plaintiff had failed to allege sufficient grounds to satisfy the "exceptional circumstances" test for granting relief pursuant to Super. Ct. Civ. R. 60(b)(6).<sup>10</sup>

(4) On December 22, 2014, Plaintiff filed a Motion for Leave to File Second Amended Complaint alleging that justice so requires that Plaintiff be permitted to amend the complaint for a second time because of "new facts and developments that came to light in Magellan's 2014 discovery production and during the depositions of eight Magellan employees in November and December

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<sup>7</sup> *Id.*

<sup>8</sup> *See* Pl.'s Mot. for Recons., D.I. 74.

<sup>9</sup> *See* August 1, 2014 Order, D.I. 99, at ¶ 6.

<sup>10</sup> *Id.* at ¶ 5.

2014.”<sup>11</sup> Plaintiff seeks to add the following claims: Fraudulent Concealment of Overbilling of Heating Charges; Fraudulent Billing of Tank Cleaning Charges; Fraud in the Inducement; and Return of Collateral Deposit.<sup>12</sup>

(5) On January 8, 2016, Defendant filed a Response in Opposition to Plaintiff’s Motion and asserts that “[p]ermitting the filing of the proposed fraud claims would allow Delphi to add claims that have already been rejected by the Court;”<sup>13</sup> “[a]llowing the proposed [Second Amended Complaint] to be filed would be unduly prejudicial;”<sup>14</sup> and “[t]he Proposed Amendments would be futile.”<sup>15</sup>

(6) Super. Ct. Civ. R. 15(a) provides that for second or more amendments to a complaint, “a party may amend the party's pleading only by leave of court or by written consent of the adverse party...and leave shall be freely given when justice so requires.” When determining whether to permit a party to amend its pleadings, the Court must weigh the desirability of ending a case on its merits with the potential for prejudice to the opposing party.<sup>16</sup>

(7) Defendant claims that allowing the Second Amended Complaint will “greatly increase the burden and expense of this case for both parties, disrupt the

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<sup>11</sup> Pl.’s Mot. for Leave to File Second Am. Compl., D.I. 137, at 2.

<sup>12</sup> *See Id.* at Ex. A., 6-17.

<sup>13</sup> Def.’s Resp. in Opp’n, D.I. 144, at 3.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Argoe v. Commerce Square Apts. Ltd.*, 1999 WL 463925, at \*2 (Del. Super. 1999).

schedule set by the Court, and require increased use of judicial resources.”<sup>17</sup>

Plaintiff contends that it recently acquired new information from the depositions of the Magellan employees to support the fraud claims.<sup>18</sup> Specifically, Plaintiff cites to the December 5, 2014 deposition of Paul Hafner and the November 11, 2014 deposition of Alan Cosby to support the Fraudulent Concealment of Overbilling of Heating Charges claim;<sup>19</sup> Alan Cosby’s deposition to support the Fraudulent Billing of Tank Cleaning Charges claim;<sup>20</sup> the November 13, 2014 deposition of Tony Bogle to support the Fraud in the Inducement claim;<sup>21</sup> and, as a result of these claims, Plaintiff asserts that it is entitled to have its collateral deposit returned.<sup>22</sup> Although Defendant asserts that the Second Amended Complaint was filed about one month after the close of discovery and that Plaintiff possessed the relevant documents pertinent to the new proposed claims in March 2014, Defendant concedes that the depositions that Plaintiff relies upon to support its proposed claims were not completed until November 2014.<sup>23</sup> Additionally, precluding the fraud claims and allowing the parties to litigate only the Breach of

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<sup>17</sup> Def. Resp. in Opp’n at 5.

<sup>18</sup> Pl.’s Mot. for Leave to File Second Am. Compl., at 2.

<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> *Id.* at 5-6.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *See Id.* at 4 (“Delphi waited until the week of November 10, 2014 to depose seven more Magellan employees”).

Contract claim limits Plaintiff's potential recovery of damages.<sup>24</sup> The Court finds that the desire to end the case on the merits outweighs the potential prejudice to Defendant. Therefore, justice requires that Plaintiff be permitted to file the Second Amended Complaint.

(8) Moreover, as to the Fraud in the Inducement claim, which had been dismissed by the Court in May 2014, the Court considered the “law of the case” doctrine and the exceptions. “[T]he doctrine of the law of the case normally requires that matters previously ruled upon by the same court be put to rest.”<sup>25</sup> However, the Delaware Supreme Court has instructed that “[t]he law of the case doctrine is not intended to preserve error or injustice”<sup>26</sup> and “is not inflexible in that, unlike *res judicata*, it is not an absolute bar to reconsideration of a prior decision.”<sup>27</sup> Rather, there are exceptions to the doctrine; specifically, “the doctrine does not apply when the previous ruling was clearly in error or there has been an important change in circumstances.”<sup>28</sup> Additionally, “the equitable concern of preventing injustice may trump the ‘law of the case’ doctrine.”<sup>29</sup> Because the Court finds that the May 2, 2014 Order granting Defendant’s Motion to Dismiss

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<sup>24</sup> *See Id.* at Ex. A, 2005 Terminalling Agreement, Schedule A, § 4.2; Ex. B, 2011 Terminalling Agreement, Schedule A, § 4.2 (expressly excluding consequential damages under the agreements).

<sup>25</sup> *Frank G.W. v. Carol M.W.*, 457 A.2d 715, 718–719 (Del. 1983).

<sup>26</sup> *Hamilton v. State*, 831 A.2d 881, 887 (Del. 2003).

<sup>27</sup> *Gannett Co., Inc. v. Kanaga*, 750 A.2d 1174, 1181 (Del. 2000)(citing *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998)).

<sup>28</sup> *Weedon v. State*, 750 A.2d 521, 527 (Del. 2000)).

<sup>29</sup> *Id.* at 528.

the Fraud claim was clear error when the judge formerly assigned to this case determined that Plaintiff had set forth a *prima facie* claim for fraud but nonetheless dismissed that claim, the law of the case doctrine does not preclude amendment.

(9) The Court declines to analyze Defendant’s argument that the proposed amendments would be futile. In Defendant’s written submissions to the Court and during oral argument, Defendant contended that the proposed claims are barred by the statute of limitations;<sup>30</sup> that Plaintiff’s proposed amendments fail to state a claim for fraud;<sup>31</sup> that Plaintiff’s claim for Fraud in the Inducement is impermissible “bootstrapping of fraud claims onto breach of contract claims;”<sup>32</sup> and that the claims are barred by the parties’ Agreements.<sup>33</sup> The Court expressly declines to make any determination as to the merits of these arguments or as to the viability of Plaintiff’s additional claims at this time. Therefore, Defendant is not barred from raising these issues in future submissions to the Court.

NOW, THEREFORE, IT IS **ORDERED** that the Plaintiff’s Motion for Leave to File Second Amended Complaint is hereby **GRANTED**.

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/s/Ferris W. Wharton, Judge

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<sup>30</sup> See Def.’s Resp., at 6

<sup>31</sup> See *id.* at 8.

<sup>32</sup> *Id.* at 9-11.

<sup>33</sup> *Id.* at 11.