

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CITY OF HARRINGTON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. K14C-10-034 WLW
	:	
THE DELAWARE STATE	:	
FAIR, INC.,	:	
	:	
Defendant.	:	

Submitted: March 27, 2015
Decided: June 22, 2015

ORDER

Upon Plaintiff's Rule 12(c) Motion for Judgment on the Pleadings
Denied

Max B. Walton, Esquire of Connolly Gallagher LLP, Newark, Delaware; attorney for Plaintiff.

Craig A. Karsnitz, Esquire of Young Conaway Stargatt & Taylor, LLP, Georgetown, Delaware; attorney for Defendant.

Witham, R.J.

Upon consideration of the City of Harrington's (hereinafter "Plaintiff" or "the City") Rule 12(c) Motion for Judgment on the Pleadings and the response of The Delaware State Fair (hereinafter "Defendant" or "the Fair"), and the record in this case, the Court finds that:

1. On October 28, 2014, the City filed its complaint against the Fair, alleging breach of contract and requesting Declaratory Judgment. The City argues that it provides wastewater services within and outside of its municipal limits, and one of the recipients of this service is the Fair. The City argues that the Fair is a contract user of the wastewater services because the Fair's property is outside the City limits.

2. The City asserts that three (3) wastewater contracts exist as to the Fair's use of the water. They are (a) "Final Agreement" dated May 13, 1996; (b) "Wastewater Agreement First Amendment" dated November 1, 1999; and (c) "Wastewater Agreement Second Amendment" dated June 28, 2006, also known as the "2006 Agreement" (collectively "wastewater agreements").

3. The 2006 Agreement reserved 30,000 gallons per day of additional capacity to serve the Fair's 2006 expansion. This agreement allowed for the capacity to go from 60,000 gpd (gallons per day) to 90,000 gpd. The City argues that preserving this capacity foreclosed the opportunity for the City to seek other developers to connect to the City's wastewater since most was reserved for the Fair's use, although the Fair denies this statement. According to the City, the parties contracted for "Section 8 of the 2006 Agreement" to ensure the City received

adequate revenue for the Fair's anticipated expansion. This included a Reconciliation Charge stating that, although the Fair is allocated a total of 90,000 gpd, it must use a minimum of 80,000 gpd in order for the contract to be fulfilled, or the Fair should pay for the usage based on the minimum or should reduce the flow reserved to the annual daily flow.

4. After the agreement was finalized, the Fair did not utilize 80,000 gpd of capacity. For the years 2006-2011, the Fair paid the City the Reconciliation Charge required by the 2006 Agreement.

5. The City also states that it entered into an agreement with the Kent County Levy Court for the treatment and disposal of sewage discharge (the "Kent County Agreement") because there were many problems involving the upkeep of the treatment plant. The Agreement expanded the treatment capacity for the City's wastewater users, and let the City close its own treatment plant. As a result of the Agreement, now a portion of the fee that users pay goes to Kent County for the services provided by the Kent County Agreement. The City states that Kent County is now contractually responsible for the treatment of sewage from the City, but that the cost of maintenance of the system is the responsibility of the City.

6. The City further asserts that if a new user wants to use the wastewater service provided by the City, they are charged an impact fee for such service by the City and *another* impact fee by Kent County. The City argues that the Fair breached its contractual obligation when it failed to use the minimum of 80,000 gpd of wastewater for years 2012-2014, and then failed to pay the Reconciliation Charges provided under Section 8 of the 2006 Agreement. The Fair does not dispute that it has

not paid the Reconciliation Charges.

7. In response, the Fair argues that the Kent County Agreement has relieved the Fair of its Reconciliation Charge obligations from the 2006 Agreement. The City argues this constitutes a material breach of contract of the 2006 Agreement for non-payment of the 2012-2014 Reconciliation Charges. The City argues that the Fair's obligation to pay Reconciliation Charges are not altered by the Kent County Agreement, while the Fair argues that their contractual obligation has fundamentally changed since the City is no longer treating the Fair's wastewater.

8. The City argues that the 2006 Agreement is still viable and enforceable, even though the City contracted with Kent County to perform treatment services. The Fair disagrees, arguing that the City failed to give notice to the Fair of its agreement with Kent County, and that since wastewater has been conveyed outside the City limits to Kent County, the 2006 Agreement has been fundamentally altered. The Fair claims that when the City closed its treatment plant, the issue of the Reconciliation Charge became moot because no treatment capacity was being provided pursuant to the 2006 Agreement.

9. On December 16, 2014, the Defendant filed its answer and counterclaim and argues the affirmative defenses of Waiver and Commercial Frustration. The Defendant alleged the following Counterclaims against the Plaintiff: Breach of Contract, Unjust Enrichment, and a Declaratory Judgment.

10. In the City's motion for Judgment on the Pleadings, it argues it also should be paid for Reconciliation Charges due. The City argues that because the contract set aside 90,000 gpd for the Fair's use, and the Fair did not use the minimum

City of Harrington v. The Delaware State Fair
C.A. No. K14C-10-034 WLW
June 22, 2015

of 80,000 gpd, the Fair breached when it did not pay the Reconciliation Charges due. The City argues that since the Fair has not incurred any impact fees from Kent County, its claims are not ripe, with reference to counterclaims I and III. The City argues it was not unjustly enriched as a matter of law, and this claim must fail because the contract governs the relationship between the parties, with reference to counterclaim II. Lastly, the City argues that the Fair did not suffer any loss under the doctrine of commercial frustration, as the principle purpose of the contract was not inhibited, since it was reasonably foreseeable that the City would take steps to expand sewer capacity, with reference to counterclaim IV.

11. The procedural standard of review for a motion for judgment on the pleadings under Rule 12(c) is similar to that for a motion to dismiss under rule 12(b)(6).¹ The Court accepts the non-moving party's well-pled allegations as true and reviews all reasonable inferences in the non-moving party's favor.² "A motion to dismiss a claim under Rule 12(c) should be denied unless the non-moving party 'could not recover under any reasonably conceivable set of circumstances susceptible of proof.'"³

12. The Fair's reasoning for opposing the City's motion is based on the assertion that the City is asking this Court to accept its version of facts which are in

¹ *McMillan v. Intercargo Corp.*, 768 A.2d 492, 500 (Del.Ch. 2000).

² *MPT of Hoboken TRS, LLC v. HUMC Holdco, LLC*, 2014 WL 3611674, at *5 (Del. Ch. July 22, 2014).

³ *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund*, 624 A.2d 1199, 1205 (Del. 1993).

dispute, and also asks the Court to accept contractual provisions that are in dispute.

13. The Fair first argues that there is a difference in the wastewater agreements between the terms “wastewater treatment plant capacity” and “sewer capacity.” The Fair contends that the City’s use of the term “sewer capacity” is not used in the wastewater agreements. When the Court held oral arguments on this motion, it became abundantly clear that the parties were arguing over the meanings of essential terms of the wastewater agreements.

14. The Fair argues that when the Plaintiff unilaterally entered into a contract with Kent County, this breached the wastewater agreements with the Fair. The Fair also argues that entering into an agreement with Kent County constitutes unjust enrichment because of this unilateral action that the City took with respect to the formation of a new contract.

15. While the Court agrees that it may enforce the plain language of an unambiguous contract, it is also clear that the parties understood the essential terms of the wastewater agreements differently. In the pleadings and during oral argument, the parties had a discrepancy over “sewer treatment plant capacity” and “sewer capacity.” Terms of a contract are questions of fact, as well as the application of a contract term.⁴ Granting the motion on this ground alone would be improper, as there is more than one reasonable interpretation of the terms of the wastewater agreements.

16. In evaluating the unjust enrichment and commercial frustration claims, the Court finds it is premature to grant the Plaintiff’s motion at this time. There is not

⁴ *Robinson v. Re/Max Avenues, Inc.*, 2009 WL 74129, at *2 (Del. Super. Jan. 9, 2009)

City of Harrington v. The Delaware State Fair
C.A. No. K14C-10-034 WLW
June 22, 2015

solely one reasonable interpretation of the contract.

“Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or circumstances indicate the contrary.”⁵

17. In reviewing the facts in the light most favorable to the nonmoving party, it appears that the Fair may have suffered some amount of commercial frustration, as the shutting down of the treatment facility speaks directly to the ability of one party to perform its contractual obligation to the other, however this must be proven. Further, there may be a claim for unjust enrichment, if facts support that no contract exists concerning the relationship of Kent County and the Fair.

“The threshold inquiry is whether a contract already governs the parties' relationship. “If there is a contract between the complaining party and the party alleged to have been enriched unjustly that governs the matter in dispute, then the contract remains ‘the measure of [the] plaintiff's right.’”⁶

18. Although the Plaintiff and Defendant had an express agreement concerning the payment of the Reconciliation Charge, the parties did not stipulate to

⁵ *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 901 A.2d 106, 113 (Del. 2006) citing Restatement (Second) Contracts § 265 (1981).

⁶ *Caldera Properties-Lewes/Rehoboth VII, LLC v. Ridings Dev., LLC*, 2009 WL 2231716, at *30 (Del. Super. May 29, 2009) aff'd sub nom. *Ridings Dev., LLC v. Caldera Properties* (c) Lewes/Rehoboth VII, LLC, 998 A.2d 851 (Del. 2010) citing *Reserves Development LLC v. Severn Savings Bank, FSB*, 2007 WL 4054231, * 11 (Del.Ch. Nov.9, 2007), rearg. den., 2007 WL 4644708 (Del.Ch. Dec.31, 2007), aff'd, 961 A.2d 521 (Del.2008) (“Reserves”).

City of Harrington v. The Delaware State Fair
C.A. No. K14C-10-034 WLW
June 22, 2015

the wastewater facility closing and the paying of fees to a third party/third facility. However, without further discovery, this may not prove to be the case, therefore the Court will not grant the Motion for Judgment on the Pleadings.

19. The Court does not believe it may grant a motion for judgment on the pleadings at this time. Essential terms of the wastewater agreements are in dispute, and it is not apparent that the Fair is unable to recover under any reasonable set of circumstances. Because material issues of fact exist, the motion is **DENIED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLWJr./dsc
Via File & ServeXpress
oc: Prothonotary