SUPERIOR COURT
OF THE
STATE OF DELAWARE

CHARLES E. BUTLER
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: ***PJM Interconnection, et al v. City Power Marketing, LLC, et al***
C.A. No. N12C-11-062 CEB
Upon Consideration of Plaintiffs' Motion to Dismiss Defendants' Counterclaim and Strike the Defendants' Sixth Affirmative Defense.
DENIED.

Gentlemen:

This is a suit is for money damages resulting from an alleged breach of contract. While plaintiffs claim their right to relief is clear and unambiguous, defendants argue that under the terms of the contract, plaintiffs had 2 years in which to seek recoupment of the funds at issue here. As defendants' claim is in the

nature of a "statute of limitations" defense, it appears as their Sixth Affirmative Defense in the pleadings. Defendants go one better, however, and affirmatively counterclaim that plaintiffs' efforts to recoup the money is itself a breach of contract by plaintiffs, to wit the 2 year limitations period in the contract. According to defendants, plaintiffs breached the contract by seeking repayment of the money after 2 years had elapsed since its initial payment.

Plaintiffs have moved to dismiss the counterclaim and to strike defendants' sixth affirmative defense. Plaintiffs argue that the Federal Energy Regulatory Commission ("FERC") has ruled the 2 year "limitations period" is not a limitation on plaintiffs' efforts to collect the amounts in controversy and, given this ruling by FERC, this Court has no "jurisdiction" over defendants' similar arguments, raised here.

"Jurisdiction" refers to the power of a court to decide.[1] We are not convinced that the term is well used in this context. This Court clearly has "jurisdiction" to hear and decide this dispute – an avowal directly asserted by plaintiffs themselves in filing the complaint in this Court. Defendants fairly point out the illogic in plaintiffs' position: plaintiffs allege the Court has jurisdiction over their complaint but deny the Court has jurisdiction over the defense of the complaint.

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[1] *See e.g.*, *Knight v. Haley*, 176 A. 461, 464 (Del. Super. 1934)(defining jurisdiction as the right and authority to decide).

The FERC case that resulted in the ruling on the inapplicability of the 2 year limitation period arose from plaintiffs' effort to oust City Power Marketing, LLC ("City Power") as a member of the PJM system. Citing two "events of default" under the Operating Agreement (one of which was City Power's failure to repay the money plaintiffs are suing for here), plaintiffs filed an action before FERC.[2] City Power apparently defended the ouster action by arguing, *inter alia*, that under the Operating Agreement, PJM had but 2 years in which to settle accounts with City Power and PJM failed to do so, rendering its claim that City Power had defaulted ineffective.[3] FERC considered City Power's argument and rejected it.[4]

FERC's decision certainly implicates the doctrines of collateral estoppel, res judicata and related issues of claim/issue preclusion. And even if those doctrines were not implicated, the Court is interested in what, if any, precedential effect the FERC ruling ought to be given in this dispute. But plaintiffs' motion to dismiss asks too much. Under plaintiffs' view, any issue raised and decided within a federal administrative hearing would not only have preclusive effect (a point that is certainly "up for grabs,") but would also divest state courts and federal district courts of jurisdiction. While there can be no question that the preemptive reach of

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[2] Under the terms of the Operating Agreement, the ouster of a member must be approved by FERC. Operating Agreement section 4.1(c).

[3] Operating Agreement section 15.1.6.

[4] *PJM Interconnection, L.L.C.* 142 FERC P61,019 (Issued Jan. 8, 2013).

federal administrative agencies is broad, we are not convinced that their reach extends to divest state courts of their statutory jurisdiction.[5] Plaintiffs would have us rule on the merits of their complaint while denying defendants any defense to the action. That position is inconsistent with the Court's general jurisdiction and unsupported by any of the cases cited by plaintiffs in their moving papers.

Procedurally, after this complaint was filed by plaintiffs in state court, defendants removed it to federal court, which is indeed a court of limited jurisdiction. That was where plaintiffs first moved to dismiss the counterclaim, citing the limited jurisdiction of federal courts. We have no opinion on whether plaintiffs' argument had any more currency in federal court. But we remain unconvinced that, to the extent plaintiffs argue that the administrative ruling had jurisdictional effect, it divested this Court of jurisdiction. This case was remanded by the federal court to this Court, a court of general jurisdiction. We think defendants' counterclaim may well be foreclosed; but if it is foreclosed, it is not because this Court lacks jurisdiction over the dispute or defendants' counterclaim.

Thus, insofar as plaintiffs' motion is limited to a request to dismiss the counterclaim based upon the Court's alleged lack of jurisdiction, the motion is **DENIED**. While the Court may have its questions about the viability of defendants' counterclaim and affirmative defense in light of the FERC ruling, we

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[5] The Superior Court of Delaware is a Court of general jurisdiction. 10 *Del. C.* §541.

conclude that this Court nonetheless has jurisdiction to rule on those questions in due course.

IT IS SO ORDERED.

Very truly yours,

Charles E. Butler