IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

SERVICES, LLC,)
Plaintiff,)
v.) C.A. No.: CPU4-11-005656
AMBERFIELD ASSOCIATION)
Defendant.	<i>)</i>
Charles J. Brown, III, Esq.	Charles Snyderman
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Wilmington, DE 19801	_
Attorney for Plaintiff	Attorney for Defendant

MEMORANDUM OPINION AND ORDER AFTER TRIAL

Submitted: September 11, 2013 Decided: October 18, 2013

SURLES, J.

This is a breach of contract action that arose out of a contract between Plaintiff Community Management Services, LLC ("CMS") and Defendant Amberfield Association ("Amberfield"). CMS filed a Complaint against Amberfield on October 19, 2011. A trial was held on June 24, 2013, and the Court reserved decision. This is the Court's Memorandum Opinion and Order in connection with the relief sought by the Complaint. For the reasons set forth below, the Court is entering judgment in favor of CMS.

FACTUAL AND PROCEDURAL BACKGROUND

On October 19, 2011, CMS filed a Complaint against Amberfield. The Complaint alleged that on or about April 19, 2009, the parties entered into a contractual agreement under which CMS was to provide collection and support services for Amberfield. CMS alleged that on or about June of 2011, Amberfield terminated the contract, leaving outstanding invoices. CMS alleged that Amberfield refused to pay the outstanding invoices, and as a result, CMS has suffered damages in the amount of \$31,435.70.²

Amberfield filed an Answer and Counterclaim on February 27, 2012. In its Answer, Amberfield admits to the existence of a contract with CMS and admits that its counsel informed CMS of the termination, but denies owing any amount to CMS, as the contract was unconscionable and was signed under duress as a result of undue influence and misrepresentation. In its Counterclaim, Amberfield alleges that CMS failed to perform under the terms of the contract, and that at the time the contract was signed, Amberfield had no knowledge that CMS had no right to charge the homeowners fees. Amberfield requested a full accounting from CMS to determine the damages it suffered. CMS denied that it failed to provided the contracted-for services, and stated that it did not have sufficient knowledge regarding the right to charge homeowners fees. CMS alleged that Amberfield lacked the standing to pursue the claim regarding the fees, as the homeowners themselves, not the Association, were the alleged injured parties.

CMS subsequently filed an Amended Complaint on January 19, 2012, which changed the name of Defendant from "Amberfield Homeowners Association, Inc." to "Amberfield Association."

² CMS alleges that Amberfield owes \$14,880 for unpaid invoices; \$3,640.20 for an unpaid collection fee; \$5,422.10 in interest charges; plus attorney's fees through April 2013 of \$8,098.40. Amberfield made a payment of \$605.00, which was subtracted from the total judgment requested by CMS. CMS requests additional attorney's fees for the work performed from April 2013 to the present in the amount of approximately \$4,000, which brings the grand total for judgment to \$35,435.70.

CMS submitted four exhibits into evidence³ and had one witness testify during their case-in-chief. CMS's witness was Steven Blanchies. Mr. Blanchies is the owner of CMS, and was the individual who entered into the contract with Amberfield on behalf of CMS. Mr. Blanchies testified that on April 18, 2009, he entered into an agreement with Amberfield to provide collection services and to provide support services for the newly-established Board. The contract was to begin on April 18, 2009, and would continue through April 30, 2012.

Mr. Blanchies outlined his collection process, including the mailing of demand letters and the assessment of late fees. Mr. Blanchies then testified as to his invoicing process for the Amberfield bills. He explained the interest charges and fees that would be applied to outstanding invoices. He then walked through the Amberfield invoices outstanding as of the date of trial, along with the letters he mailed to Amberfield regarding the imposition of interest and fees on the outstanding invoices. Mr. Blanchies testified that he was unaware of any concerns on behalf of Amberfield, and stated that he did not know of any problems until he received a letter from Amberfield's attorney terminating the contract. Mr. Blanchies then explained the cancellation policy in the contract.

Finally, Mr. Blanchies explained the increase in price for the demand letters, and also explained the collection fees associated with the contract. He closed his testimony by stating that he did approach the members of Amberfield regarding the possible dissolution of CMS, and asked if they would be interested in signing another contract with a different company that he

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³ Plaintiff's Exhibit 1 is a copy of the signed Management Company Service Contract. The Contract is signed by the President and Vice President of Amberfield, and Mr. Blanchies. It is dated April 22, 2009. Plaintiff's Exhibit 2 is a compilation of invoices sent from CMS to Amberfield. The invoices included in the Exhibit are those that remained outstanding at the commencement of this action. Plaintiff's Exhibit 3 consists of letters sent from CMS to Amberfield regarding outstanding invoices. The letters also served to inform Amberfield about the interest rates and service charges being applied to the outstanding invoices. Plaintiff's Exhibit 4 is a table of CMS' expenses incurred in attempting to collect the unpaid invoices from Amberfield.

owned. Mr. Blanchies testified that he never told anyone in Amberfield that CMS was officially dissolved, nor did he cancel CMS's contract with Amberfield.

Amberfield submitted five documents into evidence⁴, and had two individuals testify. Amberfield's first witness was Mark Royster. Mr. Royster is the President of the Amberfield Association. Mr. Royster testified to the relationship between Amberfield and Wellington Woods,⁵ and then discussed entering into the contract with Mr. Blanchies. Mr. Royster testified that the Association was struggling to find ways to collect the homeowner's fees, and sought help from Mr. Blanchies and CMS. He stated that he was aware that CMS would collect the dues, send the money to Amberfield, and then Amberfield would pay CMS. Mr. Royster testified to the relationship between CMS and Amberfield, and then stated that Amberfield ultimately did not approve of Mr. Blanchies' approach to the collection of fees, and that the Association asked him to stop collecting. Mr. Royster testified that he did not recall a discussion with Mr. Blanchies regarding the increase in price for the demand letters. Finally, Mr. Royster testified that the only complaint he had with CMS surrounded the demand letters.

Amberfield's second witness was Louise Skinner, the Treasurer for Amberfield. Ms. Skinner testified to the conversation with Mr. Blanchies regarding the dissolution of CMS. She stated that Mr. Blanchies asked Amberfield to sign a new contract as a result of the possible dissolution. Ms. Skinner closed her testimony by stating that Amberfield paid CMS approximately \$20,835, and collected approximately \$48,000 as a result of CMS's collection strategies.

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⁴ Defendant's Exhibit 1 is a copy of the Amberfield Association Maintenance Corporation By-Laws. Defendant's Exhibit 2 is a copy of the Maintenance Declaration of Wellington Woods. Defendant's Exhibit 3 is a parcel search for the subdivision "Wellington Woods III." Defendant's Exhibit 4 is a copy of the service contract for Neighborhood Resources, LLC, Mr. Blanchies' second company. Defendant's Exhibit 5 is a letter from CMS to one of the Amberfield homeowners requesting payment on outstanding assessments.

⁵ Wellington Woods is the name of the larger tract of land within which Amberfield is located.

PARTIES' CONTENTIONS

CMS's position is that Amberfield owes a total of \$35,435.70 in unpaid invoices, collection fees, interest fees, and attorney's fees. Amberfield admits to the existence of the contractual agreement between the parties, but denies owing any money to CMS, as Amberfield, and subsequently CMS, had no authority to collect annual assessments. In the alternative, Amberfield argues that if the contract is found to be enforceable, CMS's case still fails due to ambiguities in the contract itself, in addition to the affirmative defenses of unconscionability and duress.

DISCUSSION

The Court, sitting as fact-finder, weighs the credibility and reconciles conflicts in the evidence presented.⁶ In civil claims, the plaintiff, here CMS, bears the burden to prove each and every element of its claim by a preponderance of the evidence.⁷ The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists. ⁸ The defendant, likewise, bears the burden of proof for any affirmative defenses raised.⁹

In order to succeed on the breach of contract claim, CMS must prove the following elements by a preponderance of the evidence: (1) the existence of a contract; (2) that defendant breached an obligation imposed by the contract; and (3) that plaintiff incurred damages as a result of the breach.¹⁰

There is no question as to the existence of a contract in this action. The contract was produced at trial, and both parties admitted to signing it. Amberfield argues, however, that the

⁶ Johnson v. Wagner, 2003 WL 1870365, at *4 (Del. Ch. Apr. 10, 2003).

⁷ Reynolds v. Reynolds, 237 A.2d 708, 711 (Del. 1967).

⁸ Id

⁹ Warwick Park Owners Ass'n, Inc. v. Sahutsky, 2005 WL 2335485, at *4 (Del. Ch. Sept. 20, 2005).

¹⁰ VLIW Tech., LLC v. Hewlett-Packard, Co., 840 A.2d 606, 612 (Del. 2003).

contract is void under the doctrine of mutual mistake. Prior to the incorporation of Amberfield, the tract of land on which the Amberfield development sits was called Wellington Woods. Amberfield argues that because the collection of assessments is against the Maintenance Declaration of Wellington Woods, that the entire contract between CMS and Amberfield is void. However, according to testimony at trial, Amberfield was collecting assessments from homeowners prior to the contract with CMS, and seeks to continue doing so, albeit without the help of a management service. If the contract is actually void, as contended by Amberfield, once Amberfield discovered the mistake, they would have ceased attempting to collect fees from the other homeowners in the development. However, Amberfield has not ceased collections. The Court thus finds that there was no existence of mutual mistake, and CMS has therefore met their burden with regards to this element.

Second, CMS must prove by a preponderance of the evidence that Amberfield breached an obligation imposed by the contract. Here, CMS alleges that Amberfield breached the contract by terminating it prior to its end date, which thus required Amberfield to pay CMS for all services rendered and all amounts owed at that time. CMS alleges that it was unaware that Amberfield sought to terminate the contract until CMS received a letter from Amberfield's attorney.

Amberfield raised the idea that it did not terminate the contract, but instead believed that Mr. Blanchies was discontinuing his services after he informed some members of the Amberfield board that he was considering the possibility of dissolving CMS. However, as stated during trial, Mr. Blanchies did not explicitly inform Amberfield that the contract was terminated, nor did he cease providing services to Amberfield. Amberfield did not confirm with Mr. Blanchies that the contract was terminated. Instead, Amberfield assumed that the contract was terminated. This

assumption does not support its contention that Mr. Blanchies, rather than Amberfield, breached the contract by discontinuing services. CMS has therefore proven by a preponderance of the evidence that Amberfield breached the contract by terminating it in the third year.

Finally, CMS must prove that it suffered damages as a result of the breach. CMS produced multiple documents outlining the amounts Amberfield owed at the time of the breach, including outstanding invoices. CMS also brought to the Court's attention a clause in the contract that states, "A the time of cancellation or expiration of contract, all uncollected CMS collection & service fees will be billed to Client MC and are due and payable in full." The section continues on to describe the interest rates for delinquent invoices, including a 12% interest charge on invoices over 30 days delinquent, and a 25% collection fee on invoices over 60 days delinquent.¹¹

The standard amount of damages recoverable in a breach of contract action is "the expectation interest of the non-breaching party." The damages cannot be speculative, and the party must prove the damages to a reasonable certainty. Here, CMS's expectation damages are outlined in Plaintiff's Exhibit 4, which is an expense chart. The chart includes the amounts owed by Amberfield on past due invoices, along with the interest charges and collection fees incurred on invoices over 60 days old. The chart also includes CMS's attorney's fees through July 2013.

With regards to the attorney's fees, Delaware has a general rule that requires each party to bear its own attorneys' fees unless such fees are to be awarded in accordance with a contractual agreement.¹⁴ In the contract signed by both CMS and Amberfield, under the heading

¹¹ Plaintiff's Exhibit 1, page 2.

¹² Munro v. Beazer Home Corporation, et al., C.A. No. U608-03-081, at *11 (Del. C. P., June 23, 2011)(citing E.I. DuPont de Nemours and Co. v. Pressman, 679 A.2d 436, 445 (Del. 1996)).

¹³ Munro, at *11 (citing LaPoint v. AmerisourceBergen Corp., 2007 WL 2565709, at *9 (Del. Ch. Sept. 4, 2007), aff'd sum nom. AmerisourceBergen Corp. v. LaPoint, 956 A.2d 652 (Del. 2008).

"Cancellation of Contract," the client is responsible for the attorney's fees and costs associated with the collection of unpaid invoices. 15 CMS's request for attorney's fees is therefore appropriate here.

With regards to the interest fees charged, the total prejudgment interest charged as of July 2013, comprises 17% of the total amount requested by CMS, \$31,435.70.¹⁶ In consideration of equitable principles, the Court declines to allow CMS to collect such a substantial amount of prejudgment interest. The equitable factors considered include the difference between the contract rate of 12.00% and the standards set forth in 6 *Del. C.* § 2301, pursuant to which the 0.75% Federal Reserve discount rate would be the starting point in determining the rate of prejudgment interest, and the circumstances surrounding the contract, including the respective bargaining power of the parties.

Amberfield pled the affirmative defenses of unconscionability and duress. For a contract to be unconscionable, "there must be an absence of meaningful choice and contract terms unreasonably favorable to one of the parties.¹⁷

A mere disparity in the bargaining power of parties to a contract will not support a finding of unconscionability. Rather, to support such a finding, a court must find that the party with superior bargaining power used it to take unfair advantage of its weaker counterpart. For a contract clause to be unconscionable, its terms must be 'so one-sided as to be oppressive.' 18

¹⁶ Plaintiff's Exhibt 4, page 3.

¹⁵ Plaintiff's Exhibit 1, page 2.

¹⁷ Bettis v. Premier Pool & Prop. Mgmt., LLC, 2012 WL 4662225, note 37 (Del. Ch. Sept. 26, 2012) (quoting Tulowitzki v. Atl. Richfield Co., 396 A.2d 956, 960 (Del. 1978)).

¹⁸ Progressive Int'l Corp. v. E.I. du Pont de Nemours & Co., 2002 WL 1558382, AT *11 (Del. Ch. July 9, 2002) (quoting Tulowitzki, 396 A.2d at 960).

Amberfield alleges that the fees that were assessed to homeowners were unconscionable. However, all of the fees assessed were outlined in the contract signed by both parties, with the exception of the increase in price of demand letters from \$25 to \$40. With regards to this increase, Delaware law allows for the modification of a written contract by oral agreement so long as the changes are made with "such specificity and directness as to leave no doubt of the intention of the parties to change what they previously solemnized by formal document. Here, CMS asserts that Mr. Blanchies and Mr. Royer entered into an oral agreement regarding the increase in the cost of demand letters, and that because Amberfield paid the \$40 for some letters, they assented to the modification. However, Mr. Royer testified at trial that he does not recall entering into such an agreement. Mr. Royer's failure to recall the agreement leaves the Court with doubt as to the parties' intentions. Mr. Blanchies could not produce any other form of evidence to prove the existence of the agreement. The Court therefore finds that the increase in demand letter prices from \$25 to \$40 was not unconscionable, but improper in this situation.

Amberfield additionally points to the collection fee of \$100 assessed on each house where CMS recovered association fees, and states that this fee is unconscionable as it is too high of a charge, and was not known to Amberfield before it received invoices from CMS. Under the contract, however, the \$100 fee is outlined under the heading "Delinquent Assessment Collection Process," where the contract states that the \$100 is the minimum fee added to a homeowner's assessment, and the \$100 is payable only if CMS collects. This statement is in keeping with CMS's guarantee. In the invoices provided by CMS, CMS charged Amberfield for the \$100 with regards to houses that received a letter of demand, and afterwards paid their assessment

¹⁹ Reeder v. Sanford School, Inc., 397 A.2d 139, 141 (Del. Super. 1979); see also The Hartford Mutual Ins. Co. v. B&B Environmental Servs., 2001 WL 1555546, at *1 (Del. C. P. July 5, 2001), Reserves Development LLC v. Severn Sav. Bank, FSB, 2007 WL 4054231, at *8 (Del. Ch. Nov. 9, 2007).

fees. Amberfield cannot claim this fee is unconscionable if they explicitly agreed to it in the contract.²⁰

Amberfield alleges that CMS's flat fee of \$50 per lot is unconscionable. During trial, Mr. Blanchies testified that similar companies charge base fees of approximately \$100 or more per lot. Although this fee equals a total of \$14,000 per year payable to CMS, Mr. Blanchies and Mark Royer, President of Amberfield Association, agreed that Mr. Blanchies would reduce the flat fee by \$4,000 for the first two years of the contract. In comparing the CMS flat fee with other companies' flat fees, and taking into consideration the price reduction, the flat fee charged was not unconscionable.

The burden was on Amberfield to prove unconscionability by a preponderance of evidence. The Court finds that Amberfield failed to carry its burden and finds that there is not sufficient evidence of unconscionability. The Court, however, will adjust the damages to reflect its opinion on the price increase for the demand letters.

In order for the court to find duress to be sufficient to invalidate a contract, the conduct of the allegedly coercive party must first consist of a wrongful act, which includes, but is not limited to, the "use of or threat to inflict immediate physical harm." A wrongful act may also include acts constituting economic duress. Economic duress "exists where one is deprived of the free exercise of his will through wrongful threats or acts directed against a person's business interests." Second, the wrongful act must overcome the will of the aggrieved party. "The test for determining whether the duress produced the assent is a subjective one that focuses on the

²⁰ See Plaintiff's Exhibit 2.

²¹ Cianci v. Jem Enter., Inc., 2000 WL 1234647, at *9 (Del. Ch. Aug. 22, 2009).

 $^{^{22}}$ Id

²³ Hanna Sys. V. Capano Group, L.P., 1985 Del. Ch. LEXIS 528, at *8 (Del. Ch. Nov. 29, 1985).

state of mind of the 'victim' of the duress."²⁴ This does not mean that the individual has no other options, but "rather, that the threatened person is compelled to choose between regrettable alternatives."25 Finally, the aggrieved party must have no adequate legal remedy to protect himself.²⁶ The focus here is "whether the coercive conduct creates or takes advantage of an exigent circumstance such that the victim could not reasonably be expected to resist and seek legal relief to protect his interests."²⁷ However, there exists no duress if there is a reasonable alternative to assenting, of which the victim does not take advantage.²⁸

In this action, Amberfield alleges that it signed the contract with CMS under duress. However, the only testimony regarding duress related to the Amberfield board's struggles in attempting to establish the homeowner's association. Mr. Royster testified that the board was frustrated with the process of incorporation and also with the collection of assessment fees. Amberfield offered no evidence relating to any form of threats related to the signing of the contract with CMS, but focused its arguments on the lack of knowledge the board possessed at the signing of the contract. Amberfield failed to show that CMS used coercive tactics to prevent resistance from Amberfield. Instead, CMS proved that it assisted Amberfield by offering the lowest prices compared to other management services. Amberfield therefore failed to prove that it was threatened or coerced into entering into the contract with CMS. Without other evidence to the contrary, the Court finds that Amberfield was not under any duress when it entered into the contract with CMS.

CMS has proven each of the elements for a breach of contract claim by the preponderance of the evidence. Amberfield raised two affirmative defenses to prevent

 $[\]overline{^{24}}$ Id.

²⁵ *Id.*²⁶ See, e.g., *Cianci*, 2000 WL 1234647, at *9.
²⁷ *Id.*

enforcement of the contract, but failed to provide the Court with the necessary evidence to show that both unconscionability and duress existed in this situation. Accordingly, the Court finds for CMS. With regards to the amount of attorney's fees requested, CMS has not provided the court with a specific amount of attorney's fees to which it is entitled.²⁹ The Court therefore orders CMS to file an affidavit of attorney's fees within ten days. Amberfield may file a response on the reasonableness of the requested fees only. The Court will then review the filings and issue a written decision and order on the reasonableness of the fees requested.

CONCLUSION

For the reasons stated above, after trial, the Court finds for Plaintiff and enters judgment in favor of CMS for \$12,925.00,³⁰ along with collection fees, plus pre-and post-judgment interest at a rate of 5.75%. The Court further finds that CMS is entitled to reasonable attorney's fees, which will be determined following CMS's filing of an affidavit of attorney's fees.

IT IS SO ORDERED this 18th day of October, 2013.

Robert H. Surles,

Judge.

²⁹ CMS provided the Court with documentation for attorney's fees through July 2013, but the Court has not reviewed any documentation relating to the request for fees associated with the time from July 2013 to the present.

³⁰ Amount of invoices (calculated with the \$25 for each demand letter in 2010) due minus the payment Amberfield made in the amount of \$605.00.