IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LYCO BETTER HOMES INC. c/o CONFAIR COMPANY and CONFAIR COMPANY INC.	:	4:09-CV-00249
Plaintiffs,	:	(Judge McClure)
v.	:	
RANGE RESOURCES - APPALACHIA, LLC	:	
Defendant.	:	

M E M O R A N D U M

May 21, 2009

BACKGROUND:

On January 8, 2009, plaintiffs, Lyco Better Homes Inc. c/o Confair Company and Confair Company Inc. (hereinafter "Lyco Homes"), commenced this civil action against defendant, Range Resources-Appalachia (Hereinafter "Range Resources"), by filing a complaint in the Court of Common Pleas of Lycoming County. On February 6, 2009, Range Resources filed a Notice of Removal removing the action from the Court of Common Pleas to the Middle District of Pennsylvania. The basis for removal is diversity jurisdiction, which has not been challenged by plaintiffs. In its complaint, Lyco Homes alleges Range Resources should be subjected to specific performance (Count I) and alleges breach of

contract (Count II).

On February 12, 2009, Range Resources filed a Motion to Dismiss, along with its supporting brief.[1] (Rec. Doc. Nos. 7 and 8). Lyco Homes filed its opposing brief February 27, and Range Resources filed its reply brief March 13. (Rec. Doc. Nos. 12 and 13). The matter is ripe for disposition.

Now, for the following reasons, we will grant defendant's motion to dismiss.

DISCUSSION:

I. Motion to Dismiss Standard

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court must view all allegations stated in the complaint as true and construe all inferences in the light most favorable to plaintiff. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). "The tenet that a court must accept as true all of the [factual] allegations contained in the complaint is inapplicable to legal conclusions." Ashcroft v. Iqbal, __ U.S. __ , 2009 U.S. Lexis 3472, *29 (internal citations omitted). In ruling on such a motion, the court primarily considers the allegations of the pleading, but is not required to consider legal conclusions alleged in the

[1]Defendant is directed to Middle District Local Rule 5.1(c) and is advised to use 14 point font in future filings in the Middle District.

complaint. Kost, 1 F.3d at 183. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, __ U.S. at *29. At the motion to dismiss stage, the court considers whether plaintiff is entitled to offer evidence to support the allegations in the complaint. Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000).

A complaint should only be dismissed if, accepting as true all of the allegations in the complaint, plaintiff has not pled enough facts to state a claim to relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1960 (2007). "Determining wether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, __ U.S. at *30. In considering a Rule 12(b)(6) motion, we must be mindful that federal courts require notice pleading, as opposed to the heightened standard of fact pleading. Hellmann v. Kercher, 2008 U.S. Dist. LEXIS 54882, 4 (W.D. Pa. 2008). Federal Rule of Civil Procedure 8 "'requires only a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the…claim is and the grounds on which it rests,'" Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1964, (2007) (citing Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, (1957)). However, even under this lower notice pleading standard, a plaintiff

must do more than recite the elements of a cause of action, and then make a blanket assertion of an entitlement to relief under it. Hellmann, 2008 U.S. Dist. LEXIS at 4-5. Instead, a plaintiff must make a factual showing of his entitlement to relief by alleging sufficient facts that, when taken as true, suggest the required elements of a particular legal theory. Twombly, 127 S.Ct. at 1965. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - - but it has not "shown" - - "that the pleader is entitled to relief." Iqbal, __ U.S. at *29, citing Fed. R. Civ. P. 8(a). The failure-to-state-a-claim standard of Rule 12(b)(6) "streamlines litigation by dispensing with needless discovery and factfinding." Neitzke v. Williams, 490 U.S. 319, 326-27 (1989). A court may dismiss a claim under Rule 12(b)(6) where there is a "dispositive issue of law." Id. at 326. If it is beyond a doubt that the non-moving party can prove no set of facts in support of its allegations, then a claim must be dismissed "without regard to whether it is based on an outlandish legal theory or on a close but ultimately unavailing one." Id. at 327

II. Allegations in the Complaint

Taking as true all of the allegations in the complaint, the facts are as follows. Range Resources discussed with Lyco Homes an Oil and Gas Lease for several of plaintiffs' properties. On May 29, 2008, Lyco Homes signed a Lease,

Memorandum of Lease, and Approved Addendum. These documents are attached to the complaint as exhibits 1-6. Lyco Homes alleges that there was to be an up-front payment of $2,400.00 per acre. As a result of choosing to contract with Range Resources, Lyco Homes refused other gas lease offers.

The documents were executed in the presence of Range Resources "Landman," Randy Hoffman. At that May 29, 2008 meeting, Hoffman produced two "Dear Property Owner" letters (hereinafter "DPO" letters). These letters specified the allegedly previously negotiated and agreed-upon upfront payments for each of the two leases. These documents are attached to the complaint as exhibits 7 and 8. Hoffman took the executed documents. Both leases were signed by Mark A. Acree, Vice-President-Land, on behalf of Range Resources. One of the two leases, marked as exhibit 10 for the 192.24 acre parcel, was notarized as to Mark A. Acree's signature on September 22, 2008. The other lease, exhibit 9 for the 36.41 acre parcel, was not notarized as to Mark A. Acree's signature. On October 14, 2008, Lyco Homes was notified by telephone call of Range Resource's approval of the leases.

Lyco Homes asserts that both conditions in the DPO letters were met - the title searches found good title and management approved the leases, as evidenced by the signature of Mark A. Acree on the two leases.

On November 11, 2008, defendant notified plaintiff that the leases were not approved by Range Resource's senior management and were returned, marked "void," to Lyco Homes without payment.

III. Analysis

In its motion to dismiss, Range Resources argues that both counts of the complaint should be dismissed. As to the breach of contract claim, it argues the bonus payments sought are not part of the lease agreement between the parties, but even if the court finds the bonus payments are part of the agreement, Range Resources exercised its right to surrender the leases which cancelled all liabilities under the leases. Additionally, Range Resources argues that Count I should be dismissed because the complaint demands specific performance in the form of money damages.

As a preliminary matter, Lyco Homes concedes that specific performance is not appropriate, and is relying on the breach of contract claim only. Thus, Count I of the complaint is dismissed. Therefore, our analysis only focuses on the breach of contract claim in Count II.

In Pennsylvania, "a lease is in the nature of a contract and is controlled by principles of contract law. Amoco Oil Co. v. Snyder, 478 A.2d 795, 798 (Pa.

1984). "To support a claim for breach of contract, a plaintiff must allege: 1) the existence of a contract, including its essential terms; 2) a breach of a duty imposed by the contract; and 3) resultant damage." Church v. Tentarelli, 953 A.2d 804, 808 (Pa. Super. Ct. 2008).

There is no contract here. Plaintiffs, the land owners, each made an offer when they signed the documents. The offereree, defendant, could have accepted or rejected the offers. Defendant communicated a rejection of the offers by returning the documents to plaintiffs marked with the "void" stamp.

Although plaintiffs contend that defendant informed plaintiffs of the lease approval via a telephone call on October 14, 2008, in Pennsylvania, leases which will exceed three years must be in writing in order to be enforceable. See Blumer v. Dorfman, 289 A.2d 463, 466 (Pa. 1972). Both leases at issue here were intended to last for a term of five years.

Therefore, we will grant defendant's motion to dismiss, as no contract existed between the parties.

CONCLUSION:

Count I of the complaint seeking specific performance has been voluntarily dismissed by plaintiff.

Count II of the complaint alleging breach of contract will be dismissed.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge

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ORDER

May 21, 2009

In accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Defendant's Motion to Dismiss (Rec. Doc. No. 7) is GRANTED.

2. Count I of the complaint is voluntarily withdrawn.

3. Count II of the complaint is dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

4. Defendants request for oral argument is denied.

5. The clerk is directed to close the case file.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge