

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 23-CV-02158

The Sugarman of Vermont, LLC v. Black Bear Process Design LLC et al

ENTRY REGARDING MOTION

Title: Motion to Dismiss Defendant Black Bear Process Design LLC's Counterclaims in Part (Motion: 1)
Filer: Jonathan R. Brigati
Filed Date: August 08, 2023

The motion is GRANTED IN PART.

The present matter is a contract dispute. Plaintiff, the Sugarman of Vermont, LLC, entered into a contract with Defendant Black Bear Process Design, LLC (“Black Bear”) to develop a maple sugar production system in 2022.¹ The contract was not completed, and the parties have filed dueling breach of contract claims against each other concerning money transferred from Plaintiff to Defendant and disputed allegations over what work was done or expected to be done for these payments. For present purposes, Plaintiff seeks the dismissal of three of Defendant Black Bear’s counterclaims, namely fraud, fraud in the inducement, and punitive damages. Plaintiff’s motion is primarily based on the requirement under the law of fraud that requires a party to plead fraud with particularity, but it also challenges the right of Defendant Black Bear to seek punitive damages. Defendant Black Bear opposes this motion.

I. Factual Background

In a motion to dismiss, the Court is limited to the allegations and facts as established in Plaintiff’s complaint and attachments, which the Court must assume are true and from which the

¹ The individual defendants, Matthew Gallant and Stephanie Gallant are husband and wife. Matthew was and is the sole owner of Black Bear and Stephanie Gallant was the Chief Executive Officer of the Sugarman of Vermont, LLC at all relevant times during the events leading up to the present litigation. Neither of the Gallants are named as parties to the Counterclaims.

Court must make all reasonable inferences. *Montague v. Hundred Acre Homestead, LLC*, 2019 VT 16, ¶ 10.

With this limitation, the Court understands the following facts to be true for the purpose of the present motion. Plaintiff hired Defendant Black Bear on or about September 7, 2022 to design, purchase, and develop a sugaring system (the “Project”). As laid out in the document labeled “**Quote**,” the cost of the Project was \$4,143,250.00. The timeline for the project was 120 to 210 days “after all deposits have been received.” The document stated that the term of the **Quote** was “60% Down with PO, balance billed in progression.” This meant that Plaintiff needed to deposit \$2,485,950 for the Project to begin.

While Defendant Black Bear claims that Plaintiff hired Black Bear on September 7, 2022, in its Counterclaim, its filings back off of this contention. It appears based on the filings and representations of Defendant Black Bear that on or around September 7, 2022, was when Defendant delivered its quote and terms to Plaintiff. For purposes of the present motion, it appears that Plaintiff accepted this proposal at some subsequent juncture as shown by Defendant’s Exhibit B, which indicates that Plaintiff began soliciting investors for the project, as well as the fact that Plaintiff began making payments toward the initial deposit later in September of 2022.

At this time, Plaintiff did not have the full amount for the Project and did not have funding sources lined up for the Project. In fact, Plaintiff did not have the full amount for the 60% deposit that Defendant Black Bear had set out as a term for beginning the work. In paragraph 11 of the Counterclaim, Defendants allege that Plaintiff “pushed Black Bear to proceed with the Project by placing orders, but Defendant Stephanie Gallant pushed back on September 19, 2023, and advised Plaintiff’s board members that “no deposit has been received by Black Bear.” Ms. Gallant, at that time, suggested that Plaintiff allow Black Bear to charge out for its expenses to date and end the Project.

Nevertheless, Plaintiff sent Black Bear a series of payments through the month of September giving Black Bear \$423,045.27 by the end of the month. Defendant Black Bear complained to Plaintiff that the 60% deposit had not been met and that the entire project was at risk. On October 26, 2022, Plaintiff’s board chairman stated that Plaintiff still wanted to go forward with the project and indicated that the full amount of the deposit was available. It is not clear from Defendants’

Counterclaim that Matthew Gallant was present at the meeting or if the chair's statements were communicated to him or another representative of Black Bear.

On November 8, 2022, Plaintiff sent \$150,000 to Black Bear, which brought the total amount received to \$573,045.27, well below the total amount and the 60% deposit term. At that point, Plaintiff's President, Kevin Begin, wrote to Defendant Matthew Gallant on November 16, 2022 explaining that Plaintiff's board had not committed beyond \$1,000,000 for the Project at this point due to other internal issues and needs to develop long-term plans. He also stated that Plaintiff saw the Project as being composed of phases, rather than a single project. Mr. Begin writes,

If any fault is to be doled out it is on us. We knew they had no intention of giving us more than the 1m up front. Should we have pushed back and clearly stated that first meeting that the project was actually 4.5m and nothing less?? I think we should have ignored their instruction for 1m and said it has to be this. Again, I was in week three. I had blind trust in both you and Stephanie based on your past reputation, so I went along with whatever you presented. I believe it is the exact right thing to do. I did then, I do now. I trust your judgement and capabilities. We (Stephanie, and I) could have approached this differently. I think we should have waited until we got the money, despite knowing the limitations and lunacy of doing half the work. We needed to build trust between us all. They needed to see sustained results, not just a couple of months and to be completely honest they needed to see everyone gel as a team.

Def. Counterclaim, Ex. F (email from Kevin Begin to Matthew Gallant, Nov. 16, 2022). After Mr. Begin's letter Black Bear received no additional payments, and to date, it appears no further work on the Project has followed.

II. Legal Analysis

A. Rule 12(b)(6) Standard

Plaintiff moves to dismiss Defendant's counterclaims for fraud, fraud in the inducement, and punitive damages on the basis that they claim Plaintiff has failed to plead with particularity a claim upon which relief can be granted. V.R.C.P. 12(b)(6). To determine whether a complaint survives a motion to dismiss, the court assumes the factual allegations in the complaint are true. *Colby v. Umbrella Inc.*, 2008 VT 20, ¶ 5. The court will only grant the motion if there are no facts or circumstances that would grant plaintiff relief. *Id.* This is because the purpose of a motion to dismiss for failure to state a claim is "to test the law of the claim, not the facts which support it."

Brigham v. State of Vermont, 2005 VT 105, ¶ 11 (quoting *Powers v. Office of Child Support*, 173 Vt. 390,

395 (2002)). Courts rarely grant motions to dismiss for failure to state a claim. *Colby*, 2008 VT 20, at ¶ 5; see also *Kaplan v. Morgan Stanley & Co., Inc.*, 2009 VT 78, ¶ 7.

Courts generally disfavor these motions. *Bock v. Gold*, 2008 VT 81, ¶ 4 (“Motions to dismiss for failure to state a claim are disfavored and should be rarely granted.”). For these reasons, a party seeking dismissal has a high burden to show that they are entitled to such an initial ruling. *Bock*, 2008 VT 81 at ¶ 4. Nevertheless, unlike the issues in *Bock* the specific claims at issue do carry a heightened pleading standard. *Silva v. Stevens*, 156 Vt. 94, 105 (1991) (requiring the facts and circumstances to satisfy all of the elements of fraud to be pled).

In this respect, the Court’s task is to examine the sufficiency of Defendant’s current Counterclaim in light of each element of fraud and fraud in the inducement.²

B. Fraud in the Inducement

A claim of fraud-in-the-inducement arises when a party is induced to enter into a contract by fraud or misrepresentation. *Sarvis v. Vermont State Colleges*, 172 Vt. 76, 80 (2001). The problem with Defendant’s filing for this claim is three-fold.

First, it is not clear what the contract was between the parties. From Defendant’s pleading and subsequent filings, the Court is hard pressed to understand when the contract was formed and what the terms of the contract were incorporated. By the plain language of the “**Quote**,” the contract would not begin until the 60% deposit was received. There are also conflicting allegations as to when or even if Plaintiff signed or subscribed to the “**Quote**” or otherwise agreed to be bound by its terms. Assuming for the moment that assent was manifested by either the text messages from a board member on September 9th or by the first payments toward the deposit made in late September, the terms of the agreement, as Defendant purports to have understood them, still required a deposit of 60% down before the obligation to perform would be triggered.

Second, it is not evident what statements are alleged to have induced Black Bear to the contract. As the Vermont Supreme Court has noted, a statement triggering fraud-in-the-inducement must be one of fact that is known to be false at the time it is made or a statement where the party making the statement does not intend to follow. *Winey v. William E. Dailey, Inc.*, 161 Vt. 129, 132–33

² Plaintiff’s arguments surrounding punitive damages will be addressed separately under the conventional Motion to Dismiss analysis at the end of this decision.

(1993). Defendants point to the text messages of Sugarman board member Kerry Sedutto made on September 8, 2022, one day after the “Quote” had been sent. These texts are somewhat problematic in that it is unclear who Ms. Sedutto was addressing. It does not appear from the surrounding conversation that the texts were sent to Matthew Gallant or Black Bear. If it was Ms. Gallant, this communication raises the question of whether it was an internal corporate communication. If it was shared by Ms. Gallant with Mr. Gallant, it raises certain fiduciary questions. In that Ms. Gallant would effectively be manufacturing the inducement that Black Bear is now claiming brought him into the contract.³

Setting this issue aside, there is another problem with context. Ms. Sedutto makes two statements: (1) “There’s money for capex” and (2) “I can re assure [sic] you there will be funds.” In both cases, it is unclear what type of representation she is making. Is she representing that Plaintiff on September 8th had the funds available or is she suggesting that Plaintiff could secure such funds? Is she making a representation of fact or an expression of opinion? Either understanding is both possible but it would appear that it is more opinion than fact from the immediate written context. More importantly Defendant’s pleading does not indicate how these statements were communicated to Black Bear or how Black Bear reasonably understood these statements. It is also not clear what actions Black Bear was induced to take as a result of these statements. Such information is not readily apparent from the context of facts in Defendants’ pleadings. These statements were made after Black Bear had drafted and submitted its proposal. They are not alleged to have generated an acceptance or even modification of the agreement. The statements also appear to be isolated and removed from any formal action of Plaintiff’s board.

Third, it is ultimately not clear how any of these statements induced Defendant Black Bear to enter into or substantially modify the contract. The contract itself does not state any condition or assurance of funding. Instead, it states that it had a trigger of 60% deposit down before Black Bear was obligated to act. Presumably such a high deposit was protection for Black Bear to have a substantial portion of the Project’s costs on-hand before it began to act in reliance on the agreement. It is undisputed that this trigger amount was never paid over to Defendant. Defendant, in its filings,

³ This mirrors a similar issue that flows from Kevin Begins’ letter that appears to put responsibility for communication or lack of communication with Black Bear on his and Stephanie Gallant’s shoulders. Mr. Begin appears to represent that he and Ms. Gallant were aware of the Board’s reluctance to fund the project over \$1,000,000 and lack of available funds from the beginning.

suggests that it was induced to go ahead, nevertheless, and begin the contract. This may be true, but the basic facts laying out these inducements and subsequent actions are not clear from the pleadings to a level that would be sufficient to put Plaintiff on notice of what inducements were or what specific inducement is at issue. The theory articulated here is different than a straightforward claim of fraud-in-the-inducement. It is a theory that posits Plaintiff induced Defendant to abandon its deposit term based on assurances that funding was in place. Again, the Court's reasoning in *Winey* illustrates why this detail is important to establish that this is a statement of fact ("there's money [in hand] for capex") and not merely a statement of opinion ("there's money [we can seek] for capex").

Based on this lack of specificity, Defendant's fraud-in-the-inducement claims lack the necessary and basic specificity to establish a claim as a matter of law.

C. *Fraud*

Defendants' fraud claim appears to be premised on similar facts but is pitched somewhat broader. In effect, Defendants allege that Plaintiff did not have the money necessary for the contract and never revealed it to Defendant. This allegation is sufficiently specific to meet the elements of fraud. *Silva v. Stevens*, 156 Vt. 94, 102 (1991) (quoting *Union Bank v. Jones*, 138 Vt. 115, 121 (1980)). As *Silva* states:

An action for fraud and deceit will lie upon an intentional misrepresentation of existing fact, affecting the essence of the transaction, so long as the misrepresentation was false when made and known to be false by the maker, was not open to the defrauded party's knowledge, and was relied on by the defrauded party to his damage.

Id.

In this case, the allegation is that Plaintiff made an intentional misrepresentation of whether it was willing or able to fund the Project in its entirety. Defendant has largely alleged that this misrepresentation was in the affirmative through the statement of various officers and board members stating that the funding was there and would happen. Under Vermont law, however, a misrepresentation may also occur when a party is silent when there is a duty to disclose. *Sugarline Associates v. Alpen Associates*, 155 Vt. 437, 444 (1990) (finding an affirmative duty to disclose information where a purchaser asked about the property's septic system).

In this case, Defendant has established that the parties were engaged in a multi-million-dollar agreement. The pleadings indicate that both sides felt there was a certain pressure in moving forward. The pleadings also indicate that Plaintiff never had and never was authorized to spend the full amount called for in the contract or even the full amount called for as a deposit. Defendant has alleged that it was not aware of this information until November 16, 2022 when Plaintiff's officer, Kevin Begin, admitted it. Defendant also claims that it acted in reliance on the prior statements and assurances.

What has not been shown is what actions Defendant took in reliance upon these representations. As discussed above, it is not clear from the pleadings if Defendant invested or purchased equipment or entered into other contracts. Without this information, Plaintiff is not on notice of what alleged reliance forms the basis of Defendant's claim.

D. A Motion to Dismiss

While Defendant's motion is not fully fleshed out, the Pleadings do illustrate some elements of the claim. The missing pieces appear to be missing simply because they were not pled, rather than a conclusion that the facts simply do not exist. While the Court could simply grant Plaintiff's Motion to Dismiss, at this early stage, a motion for a more definite statement under V.R.C.P. 12(e) appears to be the more appropriate remedy. Therefore, the Court grants Defendant 14 days to file a revised pleading. If Defendant does not file a revised pleading, or if the revised pleading does not address the defects listed, the Court shall dismiss the claims.

E. Punitive Damages

A claim of punitive damages is not a separate cause of action. For example, if Plaintiff prevailed on all of Defendant's other counterclaims, there would be no independent basis to go after punitive damages. *Murphy v. Stowe Club Highlands*, 171 Vt. 144, 155 (2000) (punitive damages require a showing malice in addition to the breach of contract). In the present case, Defendant has pled punitive damages as a separate count, but it is not. It is a damage and remedy that follows only if there is evidence of actual malice. *Monhan v. GMAC Mrtg. Corp* 2005 VT 110, ¶ 4.

In this case, Defendant has stated two bases for seeking punitive damages. The first states that bringing the present lawsuit is such an egregious act as to warrant punitive damages. Nothing in Plaintiff's complaint or Defendant's counterclaim suggests what would effectively be an abuse of

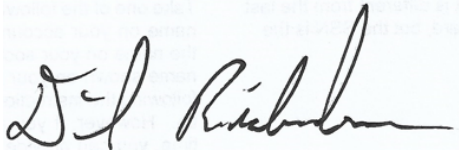
process claim, which Defendant has not made. Under the Vermont Constitution, a party has a right to seek redress from and access to the Vermont Court system. Vt. Const., Ch.I, Art. 4 There is also the right to immunity in litigation, which protects a party from liability for participating in the judicial process. *Pease v. Windsor Development Review Bd.*, 2011 VT 103, ¶ 28. For these reasons, Defendant cannot sustain a claim on the basis that Plaintiff filed a lawsuit.

The second basis cited by Defendant is that Plaintiff acted in bad faith and refused to negotiate and communicate. Whether Plaintiff's behavior actually was or was to a degree that would constitute actual malice is not an appropriate determination on a Motion to Dismiss. For this reason, Defendant's claim to punitive damages survives on this narrow ground, but only as a potential remedy that might follow if Defendant is able to establish any of its primary claims and sufficient evidence of actual malice.

ORDER

Based on the analysis above, Plaintiff's Motion is **Granted in Part**. Defendant's claims under its counts of fraud-in-the-inducement and fraud are insufficiently pled. Defendant shall re-file within 14 days under V.R.C.P. 12(e) to correct the issues noted in the present decision. If such a motion is not filed within 14 days or if such a corrective filing does not remediate the issues identified herein, then the claims shall be dismissed. Defendant's Motion to Dismiss the claim of punitive damages is **Granted in Part**. The claim for punitive damages based on the filing of the present lawsuit is dismissed. The remainder of the claim for punitive damages survives but not as a separate claim, but rather as a potential remedy if the underlying claims are established along with sufficient evidence of actual malice.

Electronically signed on 9/14/2023 7:21 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. The signature is fluid and cursive.

Daniel Richardson
Superior Court Judge