

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAMSPORT MUNICIPAL	:	
WATER AUTHORITY,	:	
Plaintiff	:	
	:	
v.	:	No. 05-02,014
	:	CIVIL ACTION
WILLIAM A. HODRICK, JR.,	:	
Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Defendant’s Pretrial Motion/Demurrer, filed November 15, 2005. The Defendant contends that, the Plaintiff’s Complaint is legally insufficient in that it fails to establish two of the three necessary elements of a claim for breach of contract. For the following reasons, the Court SUSTAINS the Defendant’s Demurrer thereby DISMISSING the Plaintiff’s Complaint.

I. Background

On March 15, 1989, the parties entered into a contract regarding the extension of water service by the Plaintiff to twelve (12) parcels of land owned by the Defendant. Prior to September 15, 2004, the Plaintiff had supplied all but one of the Defendant’s parcels with water service, Lot #12. On that date, the Defendant requested that the Plaintiff void the parties’ contract with regards to Lot #12; the Plaintiff, by way of a letter dated September 27, 2004, refused the Defendant’s request. The Septemeber 27, 2004 letter went on to request that, the Defendant provide the Plaintiff with a construction schedule for connecting their water service to Lot #12. On February 16, 2005, the Defendant obtained an estimate from Dave Gutelius, Inc. regarding extending the Plaintiff’s water service to Lot #12. The Defendant never contracted

with Dave Gutelius, Inc. to connect the Plaintiff's water service to Lot #12 and instead, opted to avoid using the Plaintiff's water services and dig a well himself in order to provide Lot #12 with water service.

The Plaintiff contends that, the Defendant, by virtue of the following contract provision, is obligated to pay them \$28,775.00 (the cost of the estimate, provided by Dave Gutelius, Inc., to extend the Plaintiff's water services to Lot #12): “[t]he water main extension covered by this agreement is made for the express purpose of supplying lots #1-11 of the subdivision, it is understood that to supply lot #12 will require an 8 inch water main extension in the 2 foot utility easement locates at the northern end of your subdivision.”

Conversely, the Defendant argues that, the above cited contract provision does not obligate the Defendant to pay the Plaintiff until and unless he contracts with a third party to extend the Plaintiff's water service to Lot #12. Furthermore, the Defendant argues, because Dave Gutelius, Inc. has not initiated any work on Lot #12 and has therefore not billed the Plaintiff for any work, the Plaintiff has not suffered any damages for which the Defendant can be held liable.

II. Discussion

A preliminary objection for legal insufficiency of a pleading, or demurrer, is properly sustained, and the pleading dismissed, where “it is clear on the face of the pleading that the law will not permit the recovery sought.” *Sayles v. Dept. of Pub. Welfare*, 41 Pa. D. & C.4th 172, 175 (1999) citing, *Morgan v. McPhail*, 449 Pa. Super. 71, 672 A.2d 1359 (1996); *MacGregor v. Mediq Inc.*, 395 Pa. Super. 221, 576 A.2d 1123 (1990).

In the current matter, the issue is, whether the law will allow the Plaintiff to recover damages for the Defendant's alleged breach of contract. In order to establish a claim for breach

of contract, the plaintiff must show (1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resulting damages. *Pittsburgh Construction Company v. Griffith*, 2003 PA Super 374, 834 A.2d 572 (2003), *alloc. denied*, 852 A.2d 313, 578 Pa. 701 (2004). Here, the Plaintiff's pleadings only establish the first element of a claim for breach of contract.

The Court finds that the parties' contract does not obligate the Defendant to utilize the Plaintiff's water service or pay for an estimate not yet accepted. Moreover, even if the Defendant was contractually obligated to utilize the Plaintiff's water service, the Plaintiff has failed to show it has suffered any damages resulting from the Defendant's decision to utilize an independent water source (i.e. the self-dug well). The estimate from Dave Gutelius, Inc. is *not* a bill; the Defendant has not employed the services of another contractor to connect Lot #12 with the Plaintiff's water service; and the Plaintiff has incurred no expense as a result of the Defendant's decision to utilize an independent water source. Therefore, the Plaintiff's breach of contract claim must fail for lack of proof of a breach and proof of damages.

ORDER

AND NOW, this _____ day of January, 2006, the Court SUSTAINS the Defendant's Demurrer thereby DISMISSING the Plaintiff's Complaint.

By the Court,

Nancy L. Butts, Judge

cc: Benjamin E. Landon, Esq.
Marc F. Lovecchio, Esq.
Judges
Gary L. Weber, Esq.
Eileen A. Dgien, Deputy Court Administrator
Deb Smith, Court Scheduling Technician
Law Clerk