IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

OPINION AND ORDER

Before this Honorable Court, is the Plaintiff's Motion to Reconsider, filed January 27, 2006. The Plaintiff contends that this Court erred in granting the Defendant's Pretrial Motion/Demurrer, filed November 15, 2005. For the following reasons, the Court AFFIRMS its January 18, 2006 Order and DENIES the Plaintiff's Motion to Reconsider.

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 September 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

The Plaintiff correctly states that, only when a pleading indicates on its face that a claim or defense cannot be maintained, is it proper for the Court to grant a demurrer pursuant to Pa.R.C.P. No. 1028(a)(4). *See,* Motion to Reconsider, ¶ 11, citing *County of Allegheny v. Commonwealth,* 507 Pa. 360; 490 A.2d 402 (1985). More specific to the instant matter, in order to maintain a claim for breach of contract, the Plaintiff's pleadings 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 do not establish the last two elements of a claim for breach of contract.

The parties' contract imposes, on the Defendant, a duty regarding the extension of the Plaintiff's services for subdivision Lots #1-11: "[t]he water main extension agreement covered by this Agreement is made for the express purpose of supplying lots numbered one (1) through eleven

(11) of the subdivision. . ." *See,* Plaintiff's Complaint, Exhibit 1, para. 7. That clause goes on to state that, different requirements are necessary in order to extend the Plaintiff's services to Lot #12; requirements not otherwise addressed in the remainder of the contract. Because the parties' contract is otherwise silent as to the Defendant's obligations with regard to Lot #12 and, paragraph 7 of the contract does not impose a duty on the Defendant, the Court affirms its January 17, 2006 Order in which it found that the parties' contract did not impose a contractual duty on the Defendant with regard to the matter at hand (i.e. extension of the Plaintiff's services to Lot #12).

The remainder of the clause in paragraph 7 states that, "it is understood that to supply lot numbered twelve (12) will require an eight (8) inch water main extension in the twenty-five (25) foot utility easement located at the northern end of your subdivision." *See,* Plaintiff's Complaint, Exhibit 1, para. 7. Although this clause mentions the matter of extending Plaintiff's services to Lot #12, the only obligation it imposes on the Defendant is that, if he does choose to extend the Plaintiff's services to Lot #12, he must adhere to the articulated requirements (i.e. the "eight (8) inch water main extension in the twenty-five (25) foot utility easement located at the northern end of your subdivision"). After receiving an estimate regarding installing said requirements, the Defendant choose to not utilize the Plaintiff's services and, because he was not obligated to utilize the Plaintiff's services as they applied to Lot #12, this decision does not constitute a breach of a contractual duty.

The purpose of damages in a breach of contract case is to return the parties to the position they would have been in but for the breach. *Pittsburgh Construction Co.,* 2003 PA Super at P13, 834 A.2d at 580, *alloc. denied,* 852 A.2d 313, 578 PA. 701 (2004); *Birth Center v. St. Paul Companies, Inc.*, 567 Pa. 386, 787 A.2d 376 (2001). In addition to failing to establish that the Defendant breached a contractual duty owed to the Plaintiff, the Plaintiff also fails to establish that it suffered any damages resulting from the alleged breach.

Paragraph 18 of the Plaintiff's Motion to Reconsider states that, ". . . [the Plaintiff] will be required to expend $28,775.00 [the amount of the estimate obtained by the Defendant] to perform work that should have been done by [the Defendant]." *See*, Motion to Reconsider, para. 18. The Court fails to find support for this statement. To date, the Court is unaware of any work being initiated to extend the Plaintiff's services to Lot #12; in fact, those services are unnecessary, as the Plaintiff has secured an alternate source of water for that land. Because no work was ever done and, the Plaintiff has never been billed for said work, the Plaintiff has not suffered any resultant losses/damages; i.e. the Plaintiff is in the same position it was in prior to the alleged breach.

ORDER

AND NOW, this _____ day of January 2006, the Court AFFIRMS its January 17, 2006 Order thereby DENYING the Plaintiff's Motion to Reconsider.

By the Court,

_____

cc: Benjamin E. Landon, Esq.
Marc F. Lovecchio, Esq.
Judges
Gary L. Weber, Esq.
Law Clerk