

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANADARKO PETROLEUM CORPORATION,	:	
Plaintiff	:	DOCKET NO. 11-01697
	:	
vs.	:	CIVIL ACTION – IN
	:	LAW AND IN EQUITY
ENERGY MIDSTREAM, LLC and CENTRAL NEW	:	
YORK OIL & GAS COMPANY, LLC,	:	
Defendants	:	

ORDER

AND NOW, this 13th day of December, 2011, following oral argument on Defendants’ Preliminary Objections, it is hereby ORDERED and DIRECTED that Defendants’ objections are DENIED.

Defendants filed preliminary objections pursuant to Pa. R.C.P. 1028(a)(4) and Pa. R.C.P. 1028(a)(2)-(3). Initially, this Court will address Defendants’ objection pursuant to Pa. R.C.P. 1028(a)(2)-(3). In Defendants’ Answer to Defendants’ Preliminary Objections pursuant to Pa. R.C.P. 1028(a)(2)-(3), Plaintiff asserts that its complaint contains only one cause of action – breach of contract. Therefore, Plaintiff complied with Pa. R.C.P. 1020, and thus Pa. R.C.P. 1028(a)(2), because Plaintiff is asserting only one cause of action. Also, Plaintiff complied with Pa. R.C.P. 1028(a)(3) because Plaintiff is asserting only one claim under breach of contract. Defendants’ objection pursuant to Pa. R.C.P. 1028(a)(2)-(3) is DENIED.

Next, this Court will address Defendants’ objection pursuant to Pa. R.C.P. 1028(a)(4), i.e. a demurrer. In deciding a demurrer, this Court must

resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer. In order to sustain a demurrer, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not

permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.

Melon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. Ct. 1994) (citations omitted).

Defendants allege that the June 23, 2010 document upon which Plaintiff bases its breach of contract claim is not an enforceable contract, and, therefore, that Plaintiff's claim cannot be sustained. In the alternative, Defendants allege that, if this Court finds the June 23, 2010 document to be an enforceable contract, certain conditions precedents were not performed, and, therefore, Plaintiff's claim cannot be sustained.

This Court must determine if Plaintiff's complaint indicates that its claim of breach of contract cannot be sustained. To allege a breach of contract, Plaintiff must plead "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages." *Corestates Bank v. Cutillo*, 723 A. 2d 1053, 1058 (Pa. Super. Ct. 1999). Every element of the claim must be specifically pleaded, even though every contract term does not need to be plead in sufficient detail. *Snaith v. Snaith*, 422 A.2d 1379, 1382 (Pa. Super. Ct. 1980); 723 A.2d at 1058.

This Court finds that Plaintiff sufficiently set forth a breach of contract claim. In deciding Defendants' objection, this Court must determine if Plaintiff plead the essential terms of the agreement. This Court concludes that Plaintiff plead the essential terms of the alleged contract by attaching the June 23, 2011 document to its complaint. Complaint Exhibit A. This Court will not address at this time whether the June 23, 2010 document is an enforceable contract because the parties' intentions to create a contract are a fact question

to be determined by the trier of fact.¹ Additionally, this Court finds that Plaintiff properly plead a breach of the duty and its resulting damages. Plaintiff alleges that Defendants' breached the June 23, 2010 agreement by failing to act or by the actions that were taken, and that Plaintiff has been damaged as a result of Defendants' misconduct. Complaint at 12-13. Therefore, Plaintiff sufficiently set forth a claim for breach of contract.

In the alternative, Defendants allege that, if this Court finds the June 23, 2010 document to be an enforceable contract, certain conditions precedents were not performed, and, therefore, Plaintiff's claim cannot be sustained. This Court notes again that it is not determining the enforceability of the June 23, 2010 document at this time; however, it will address Defendants' arguments concerning the performance of conditions precedent.

This Court agrees with Defendants' statement that "if a contract contains a condition precedent, the condition precedent must occur before a duty to perform under the contract arises." *Keystone Tech. Group, Inc. v. Kerr Group, Inc.*, 824 A.2d 1223, 1227 (Pa. Super. Ct. 2003), Defs. Brief at 12. However, in this case, as in *Keystone*, the record is devoid of evidence regarding the satisfaction of conditions precedent. In *Yellow Run Coal Co. v. Alma-Elly-Yv Mines, Ltd.*, 426 A.2d 1152 (Pa. Super. Ct. 1981), the Superior Court affirmed a lower court's ruling that the "question of whether the parties became *contractually bound* despite the existence of incomplete terms raised a *factual* issue for the jury." *Id.* at 1154 (emphasis in original)(citations omitted). Likewise, in this case, the Court holds that the occurrence or non-occurrence of a condition precedent is another factual issue that cannot be

¹ See *Yellow Run Coal Co. v. Alma-Elly-Yv Mines, Ltd.*, 426 A.2d 1152 (Pa. Super. Ct. 1981) (holding that "[w]hen the evidence is in conflict as to whether the parties intended that a particular writing should constitute an enforceable contract, it is a question of fact whether a contract exists."). See also *Johnston v. Johnston*, 499 A.2d 1074 (Pa. Super. Ct. 1985).

properly determined at the preliminary objection stage. Defendants' objection pursuant to Pa. R.C.P. 1028(a)(4) is DENIED.

Pursuant to Pa. R.C.P. 1022(d), Defendants shall file an answer to the complaint within twenty (20) days.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

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