IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANADARKO MARCELLUS MIDSTREAM, LLC, Plaintiff	:	DOCKET NO. 12-00281
vs.	:	CIVIL ACTION
TODD W. HAFER and KATHRYN A. HAFER, Defendants	:	

O P I N I O N

AND NOW, this 1st day of March, 2012, after an order enjoining Defendants from prohibiting and/or interfering with Plaintiff's access to the right-of-way area over Defendants' property, it is ORDERED and DIRECTED that this opinion shall supplement that February 14, 2012 Order.

The issue in this case pertains to whether the parol evidence rule precludes this Court from considering extrinsic evidence, including oral discussions, not contained in the terms of the parties' right-of-way grant. In particular, Defendants claimed that the parties orally agreed that the pipeline would be drilled using the horizontal drilling method, as opposed to using the open cut method. This Court concluded that it cannot consider evidence outside of the parties' contract and it granted Plaintiff's request for a preliminary injunction.

Factual Background

Defendants Todd W. and Kathryn A. Hafer (Defendants) own a 27.11 acre parcel of real property that is immediately adjacent to State Route 184 in Cogan House Township, Lycoming County, Pennsylvania (further identified as Tax Parcel No. 08-246-108.D) (the "Hafer Parcel"). On December 1, 2010, Defendants entered into a pipeline right-of-way grant with Plaintiff Anadarko Marcellus Midstream, LLC (Plaintiff). Both Defendants signed this grant to Plaintiff.

Jane Anne Byroad executed the grant on behalf of Plaintiff. That agreement provided that: "[t]his grant cannot be modified, except in writing signed by Grantor and Grantee." Right-of-Way Grant, 2. This Court notes that the grant does not state the method by which Plaintiff should drill the pipeline. However, the grant does state that the pipeline should be laid at a depth of at least thirty-six (36) inches. *Id*. at 1.

On July 14, 2011, Defendants signed an easement plat prepared by Plaintiff. This plat was entered into evidence during the preliminary injunction hearing and was marked as Exhibit A of Plaintiff's Exhibit A. Defendants alleged (and Plaintiff admitted) that the placement of the proposed right-of-way on the July 14, 2011 easement plat is different than the placement of the proposed right-of-way on the December 1, 2010 easement plat. This Court notes that Defendants signed and dated the July 14, 2011 easement plat under the heading "GRANTOR APPROVAL" and that a surveyor signed the plat as well. Easement Plat, 7/14/2011. Additionally, this Court notes that neither plat contains either restrictions or agreements on the method by which the pipeline should be drilled.

On July 29, 2011, a memorandum of pipeline right-of-way grant was recorded in Lycoming County. That memorandum referenced the December 1, 2010 grant that the parties entered into. That memorandum stated that:

> [t]he proposed route and location of the right-of-way and easement conveyed hereby ("Right-of-Way Lands") is more particularly described on Exhibit "A" attached hereto and made a part hereof. It is understood and agreed by the parties hereto that if the route and location of the Right-of-Way Lands vary from what is described on Exhibit "A" that this Memorandum of Pipeline Right-of-Way Grant may be supplemented by the recording of a supplemental document and an as-built survey showing the new location of the Right-of-Way Lands. It is understood and expressly agreed by the parties hereto that Grantor and Grantee each shall execute the supplemental document.

Memorandum of Pipeline Right-of-Way Grant, 1. The July 14, 2011 easement plat is attached to that memorandum as Exhibit "A". *See id*. at 3.

On February 10, 2012, Plaintiff filed a Complaint for Declaratory and Injunctive Relief. Plaintiff sought to prevent Defendants from prohibiting and/or interfering with Plaintiff's access to the right-of-way area over Defendants' property; particularly, Defendants would not allow Plaintiff's access to the property to place a pipeline using the open cut method. On February 14, 2012, this Court held a hearing on Plaintiff's request for a preliminary injunction. Plaintiff and Defendants appeared at that hearing. During the hearing, Defendants testified that they were interfering with Plaintiff's access because Plaintiff was planning to drill the pipeline using the open cut method as opposed to the horizontal directional drilling method that the parties orally agreed to.

Discussion

This Court preliminary enjoined Defendants from prohibiting and/or interfering with Plaintiff's access to the right-of-way area over Defendants' property because Plaintiff satisfied the prerequisites for the grant of a preliminary injunction. In *Allegheny Anesthesiology Assocs. v. Allegheny Gen. Hosp.*, 826 A.2d 886 (Pa. Super. Ct. 2003), our Superior Court held that:

> [a] preliminary injunction should be granted only if all of the following four "essential prerequisites" are proven: (i) a strong likelihood of success on the merits; (ii) a showing of immediate and irreparable harm that cannot be compensated by money damages; (iii) a showing that greater injury will result if preliminary injunctive relief is denied than if such injunctive relief is granted; and (iv) a showing that a preliminary injunction would restore the status quo.

Id. at 891 (citing *Temple Univ. of the Commonwealth System of Higher Education v. Allegheny Health Educ. and Research Found.*, 690 A.2d 712, 718 (Pa. Super. Ct. 1997)); *see also Valley Forge Historical Soc'y v. Washington Mem'l Chapel*, 426 A.2d 1123 (Pa. 1981); *Chambliss v. City of Philadelphia*, 535 A.2d 291 (Pa. Cmwlth. Ct. 1987). This Court will address each of these prerequisites in turn.

Plaintiff has a strong likelihood of success on the merits. The issue in this case pertains to whether the parol evidence rule precludes this Court from considering extrinsic evidence, including oral discussions, not contained in the terms of the parties' right-of-way grant. This Court holds that the parol evidence rule precludes it from considering any evidence other than the December 1, 2010 grant and the July 14, 2011 plat.

In *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425 (Pa. 2004), our Supreme Court has explained the parol evidence rule. In particular, the Court held that:

> [w]here the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract . . . and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.

Id. at 436 (citing *Gianni v. Russell & Co.*, 126 A. 791, 792 (Pa. 1924) (citations omitted)). Additionally, our Supreme Court has explained when the parol evidence rule should be applied.

> [F]or the parol evidence rule to apply, there must be a writing that represents the "entire contract between the parties." To determine whether or not a writing is the parties' entire contract, the writing must be looked at and "if it appears to be a contract complete within itself, couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the [parties'] engagement, it is conclusively presumed that [the writing represents] the whole engagement of the parties. . . ." . . .
>
> Once a writing is determined to be the parties' entire contract, the parol evidence rule applies and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the contract is almost always inadmissible to explain or vary the terms of the contract. One exception to this general rule is that parol evidence may be introduced to vary a writing meant to be the parties' entire contract where a party avers that a term was omitted from the contract because of fraud, accident, or mistake.

854 A.2d at 436-37 (citations omitted).

In this instance, the parties deliberately put the right-of-way grant into writing. Therefore, in the eyes of this Court, that writing is the best and only evidence concerning their agreement. In that grant, the only restriction on the construction of the pipeline is that the

pipeline should be laid at a depth of at least thirty-six (36) inches; the grant contains no other restrictions on the drilling method. *See* Right-of-Way Grant, 1.

However, the grant also provides that it can be modified by writing signed by the Grantor and Grantee. *See id*. at 2. This Court considers the July 14, 2011 easement plat to be a modification of the initial right-of-way agreement. This easement plat displays a different location for the right-of-way on Defendants' property than the location that was originally agreed upon by the parties. This plat was signed by both of Defendants and a professional surveyor, in conformance with the modification procedures stated in the original right-of-way grant. *See* Easement Plat, 7/14/2011. Furthermore, no other document executed by the parties requires a certain drilling method to be used for the pipeline. Therefore, this Court believes that Plaintiff has proved a strong likelihood of success on the merits in order to obtain a preliminary injunction.

Defendants' alleged that they were fraudulently induced into signing the July 14, 2011 easement plat. Defendants argued that the parties had an oral agreement that the pipeline to be drilled using the horizontal directional drilling method, and, because of this agreement, Defendants approved the modified easement plat. This Court notes that no evidence of this drilling arrangement exists in any of the documents received during the preliminary injunction hearing.

This Court believes it is unlikely that Defendants were fraudulently induced into entering into the modification of their original right-of-way grant. In *Bardwell v. Willis Co*., 100 A.2d 102 (Pa. 1953), our Supreme Court provided that "[f]raudulent misrepresentations may be proved to modify or avoid a written contract if it is averred and proved that *they were omitted*

from the (complete) written contract by fraud, accident or mistake." *Id*. at 104 (emphasis in original).

In this instance, Defendants testified that they entered into the modified easement plat because they believed the horizontal directional drilling method would be used. However, nothing indicating the type of drilling method to be used is evidenced on either the original right-of-way grant or the easement plat. This Court believes that if Defendants "relied on any understanding, promises, representations or agreements made prior to the execution of the written contract or lease, they should have protected themselves by incorporating into the written agreement the promises or representations upon which they now rely. . . ." *Id*. at 105. Therefore, this Court believes that Plaintiff has proved a strong likelihood of success on the merits in order to obtain a preliminary injunction.

Additionally, Plaintiff would have suffered immediate and irreparable harm if the preliminary injunction was not granted and greater injury would have resulted if the relief was denied to Plaintiff than if granted. If the relief was denied to Plaintiff, Plaintiff would be forced to halt construction on its pipeline. Lastly, the status quo was restored by granting the injunction. Since December 1, 2010, a right-of-way grant has existed between the parties. The existence of this agreement is the status quo of the parties. Therefore, this Court believes that Plaintiff proved all the requirements necessary for the grant of a preliminary injunction.

BY THE COURT,

_____ _____

Date Richard A. Gray, J.

RAG/abn

cc: Elizabeth A. Dupuis, Esquire
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