IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NEEDVILLE LITTLE LEAGUE, INC. and TULSA NATIONAL LL, INC., Plaintiffs	:	No. 21-00801
vs.	:	CIVIL ACTION – LAW
LITTLE LEAGUE BASEBALL, INC., Defendant	:	

OPINION AND ORDER

AND NOW, following argument on Defendant's Preliminary Objections to Plaintiffs' Amended Complaint, filed January 4, 2022, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiffs commenced this matter on August 12, 2021 with the filing of a Complaint containing three counts: Count I, seeking emergency, preliminary, and permanent injunctive relief; Count II, alleging breach of contract; and Count III, asserting equitable estoppel. Plaintiffs' claims arose out of Defendant's refusal to allow them to participate in the 2021 Little League World Series for reasons relating to the COVID-19 pandemic. The background of this case, and the Court's decisions regarding injunctive relief and equitable estoppel, are discussed in detail in this Court's August 17, 2021 Order. Defendant filed a Motion for Reconsideration of the August 17, 2021 Order, but withdrew that Motion following argument and a discussion on the record on December 14, 2021. On that date, the parties agreed that, inasmuch as Counts I and III of the August 12, 2021 Complaint sought

emergency relief that the Court denied in its August 17, 2021 Order, the only remaining operative claim was for breach of contract.

On January 4, 2022, Defendant filed Preliminary Objections to the original Complaint. On January 24, 2022, Plaintiffs filed an Amended Complaint, containing a single count for breach of contract.[1]

PRELIMINARY OBJECTIONS

Plaintiffs' Amended Complaint alleges that they entered into a contract with Defendant regarding participation in Little League Baseball and the Little League Baseball World Series, but that Defendant unilaterally breached that contract, resulting in Plaintiffs' wrongful exclusion from the Little League World Series and causing them damages.

On February 10, 2022, Defendant filed Preliminary Objections to the Amended Complaint. Defendant's first preliminary objection is premised on Pennsylvania Rules of Civil Procedure 1028(a)(3)[2] and 1019(i),[3] alleging that Plaintiffs' failure to attach the purported contract or otherwise highlight the portion of the contract that provides them standing renders the Amended Complaint deficient. Defendant's second preliminary objection is a demurrer[4] for failure to cite the essential terms of

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[1] Pa R.C.P. 1028(c)(1) permits a party to "file an amended pleading as of course within twenty days after service of a copy of preliminary objections."
[2] Pa R.C.P. 1028(a)(3) allows a preliminary objection for "insufficient specificity in a pleading."
[3] Pa R.C.P. 1019(i) states that "[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing."
[4] Pa R.C.P. 1028 (a)(4) allows a preliminary objection for "legal insufficiency of a pleading (demurrer)."

the purported contract; Defendant contends that due to this failure Plaintiffs are unable to plead the "breach" element of a "breach of contract" claim. Defendant also raised a third preliminary objection for failure to appropriately verify the Complaint in accordance with Pa. R.C.P. 1024.[5] On March 18, 2022, Plaintiffs filed a praecipe to attach the substitute verification of each Plaintiff's corporate president, which satisfies Rule 1024 and renders Defendant's third preliminary objection moot.[6] That same day, the Court held argument on Defendant's preliminary objections, which are now ripe for disposition.

A. First Preliminary Objection – Insufficient Specificity and Failure to Attach Contract

Defendant's first preliminary objection generally contends that Plaintiffs, despite bringing a sole claim of breach of contract, have failed to attach the contract to their Amended Complaint or otherwise specify the portions of the contract which establish their right to relief. Defendant rejects Plaintiffs' contention that "a contract could not be furnished because 'it is only available for purchase, not available for public dissemination, and may not be attached to this pleading,'" arguing that the mere fact Plaintiffs may need to pay to obtain the contract does not render it unavailable. Defendant further argues that Plaintiffs "do not set forth any language or substance of the 'contract,' such as consideration, duration, and specific terms and

[5] Pa. R.C.P. 1024(a) requires that "[e]very pleading containing an averment of fact not appearing of record... shall be verified." Rule 1024(c) states that this verification "shall be made by one or more of the parties filing the pleading" except in certain circumstances not present here.

[6] At argument, Defendant agreed that its third preliminary objection is moot.

provisions" in the Amended Complaint, and as such Plaintiffs have not set forth their right to relief with any specificity.

Plaintiffs respond by pointing out portions of the Amended Complaint they contend contain the relevant contract terms they allege Defendant breached. Specifically, they cite Paragraphs 93 through 99 of the Amended Complaint, which refer to the charter agreement between Plaintiffs and Defendant (the "Charter"), allege the parties agreed to be bound by these terms, and reproduce the specific COVID-19 protocols they contend were incorporated into the Charter. This Charter as amended to incorporate COVID-19 protocols, Plaintiffs aver, is the contract between the parties, and is thus both included in the Amended Complaint and stated with specificity.

At argument, Defendant disagreed with Plaintiffs' contention that the Charter could form the basis for a breach of contract claim between the parties, and reiterated its position that Plaintiffs certainly had not pled facts sufficient to establish such. First, they argued that Plaintiffs asserted that the COVID-19 protocols were incorporated into or otherwise modified the Charter, but did not explain the legal mechanism that resulted in this incorporation or modification. Thus, Defendant argues, because a court "need not accept as true conclusions of law, unwarranted inferences from facts... or expressions of opinion" when ruling on preliminary objections, this Court need not take as true Plaintiffs' averment that the Charter is a "contract" or that the COVID-19 protocols became part of this contract. Next, Defendant argued that if Plaintiffs wish to establish a breach of contract, they must at

a minimum specify the particular provision of the contract they alleged Defendant breached; they have not done so, Defendant contends, and therefore the Complaint is insufficiently specific. Finally, Defendant reiterated its position that Rule 1019 requires Plaintiffs to attach a copy of the contract.

Plaintiffs responded that they have pled with sufficient specificity that the charter, as modified by the COVID-19 protocols, constitutes the contract between the parties. Plaintiffs cited *Bauer v. Pottsville Area Emergency Medical Services, Inc.*[7] for the proposition that a set of rules and regulations, such as an employee or student handbook, can constitute an implied contract if it evinces an intent of the promulgating party to be bound by its terms. Plaintiffs argued that, inasmuch as the Charter and the COVID-19 protocols establish both procedures that teams must follow to reap the benefits of Little League participation as well as procedures that Defendant promises the teams it will follow, the Charter is indeed a contract. Regarding the failure to attach the contract to the Complaint, Plaintiffs averred that

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[7] *Bauer v. Pottsville Area Emergency Medical Services, Inc.*, 758 A.2d 1265 (Pa. Super. 2000). In *Bauer*, the plaintiff argued that the defendant, his employer, "breached the terms of the employee handbook, which were enforceable as provisions of an implied contract," by failing to provide full-time benefits even though he satisfied the parameters for full-time classification as described in the handbook. The trial court granted the defendant's preliminary objection in the nature of a demurrer, agreeing that the employee handbook was not a contract that altered the at-will nature of the plaintiff's employment. The Superior Court reversed. Noting first that "[a] handbook is enforceable against an employer if a reasonable person would interpret its provisions as evidencing the employer's intent to supplant the at-will rule and be bound legally by its representations in the handbook," the Court found that the handbook constituted an implied contract because "a reasonable person in [the plaintiff's] position would understand that his continued performance would bear the fruits of his employer's policies."

their explanation of why it is not in their position satisfies Rule 1019, but stated that they were willing to further amend their complaint to attach the Charter if required.

B. Second Preliminary Objection – Demurrer

Defendant's second preliminary objection alleges that the Amended Complaint fails to establish Plaintiffs' right to recovery for breach of contract. Defendants note that the elements of a breach of contract claim are "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages."[8] Defendant argues that because Plaintiffs have not pled with sufficient specificity the existence of a contract, its essential terms, or the breach of a particular contractual duty, they cannot recover for breach of contract as a matter of law. Defendant notes that Plaintiffs allege that Defendant "breached an allegedly implied duty of good faith and fair dealing," but argues that this is insufficient to state a claim in the absence of any "specific contractual language that [Defendant] has violated." To the extent that Plaintiffs premise the alleged contractual violation on "its promulgated rules, including those regarding their COVID-19 protocols," Defendant argues that "the information contained on a publicly accessible website does not constitute a meeting of the minds between the parties" and thus does not form a contract that Defendant could have breached.[9]

Plaintiffs responded generally that although it did not attach the Charter or COVID-19 protocols for reasons previously discussed, it identified and quoted "the

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[8] Defendant cites *CoreStates Bank, Nat'l Assn. v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. 1999).

[9] Defendant also avers that it has not in fact "violated any of its COVID-19 mitigation efforts."

applicable Rules, Regulations, and Policies that Little League violated" in its Amended Complaint. Plaintiffs aver that these reproduced provisions form the relevant portion of the contract between the parties, and thus they have pled a breach of contract claim with sufficient specificity.

At argument, Defendant first reiterated its contentions described above. Defendant then argued that, even assuming the COVID-19 protocols and other rules on their website did modify a contract between the parties, the rules are extremely deferential to Defendant. These COVID-19 protocols, Defendant highlights, were not a bargained-for exchange but were instead unilaterally promulgated by Defendant, and did not indicate in any way that they were unchangeable or that there was any process Defendant needed to follow or notice Defendant needed to provide in order to change them. Ultimately, Defendant argued that Plaintiffs' burden is to show a breach of a contractual duty, and that the demonstration of a deviation from a rule unilaterally published by Defendant is insufficient to do so; a conviction that a rule was misapplied, Defendant argues, is not a legally sufficient basis for a breach of contract claim.[10]

Plaintiffs responded that they specifically quoted the COVID-19 protocols promulgated by Defendant shortly before the alleged breaches, which stated, *inter alia*:

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[10] Defendant argues that this is especially true in the context of athletics. Generally, Defendant notes, sports leagues will promulgate rules for conduct on and off the field and then apply those rules; participants, however, are not entitled to sue for a breach of contract arising from a deviation from the rules in the form of an incorrect call.

"In the Event of a Positive Covid-19 Test

> Even with [the precautions described in other COVID-19 protocols] in place, through no one's fault, a player, coach, or manager may test positive for COVID-19. The health, safety and well-being of every participant is Little League International's paramount concern. In the event of a positive COVID-19 test within a team, Little League International staff, in consultation with its medical advisors, will work efficiently to communicate with the appropriate family members, team contacts, and state health officials, to initiate all appropriate quarantine, isolation, and contact tracing procedures. **The Little League International Tournament Committee will assess the team situation to identify if the team has enough players and coaches to proceed with competing in their respective tournament. If the team cannot field nine players, they will be removed from the tournament.**"[11]

Plaintiffs aver that inasmuch as they specifically contended that Defendant violated this procedure by ruling both Plaintiff teams ineligible after a single positive test, even though it would have been easy to "initiate all appropriate quarantine, isolation, and contact tracing procedures." This is among the provisions, Plaintiffs argue, that were part of the contract between Plaintiffs and Defendant, and is sufficient to state a claim for breach of contract arising both out of a failure to follow the specific terms of the COVID-19 protocol and a failure of Defendant to act in good faith when dealing with Plaintiffs' situations.

[11] Emphasis in original.

ANALYSIS

To bring a breach of contract, a party must plead "(1) the existence of a contract, including its essential terms; (2) a breach of the contract; and (3) resultant damages. Additionally, it is axiomatic that a contract may be manifest orally, in writing, or as an inference from the acts and conduct of the parties."[12] In relevant part, Plaintiffs plead, essentially, the following facts:

- Plaintiffs and other local Little League All-Star teams "received a charter from [Defendant] to participate in their nationwide tournament during 2021" and in return "paid [Defendant] all required registration fees to fully participate...."
- This 2021 tournament "was scheduled to proceed with strict COVID-19 management protocols."
- "[In] July 2021, [Defendant] emailed all the charter teams in the nation with a copy of their COVID-19 protocols."
- The protocols as provided in July 2021 explained the specific testing and mitigation procedure that would take place upon a team's arrival at a tournament, which included the following provisions:
    - "All players, managers, coaches and umpires" would be tested for COVID-19 upon their arrival at a tournament and would "have significantly limited contact from other individuals outside their team until negative tests can be confirmed."
    - Unvaccinated participants would have to continue to test every other day until the conclusion of the tournament.

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[12] *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.2d 1247, 1258 (Pa. 2016) (citations and internal quotations omitted).

- In the event of one of more positive tests, Defendant would "assess the team situation to identify if the team has enough players and coaches to proceed with competing in their respective tournament. If the team cannot field nine players, they will be removed from the tournament."

- After being provided with these protocols, Plaintiffs took affirmative actions, such as altering their travel plans and practice structure and instituting testing on their own, in an attempt to "reduce the threat of an athlete or coach contracting COVID-19." Some individual players and their families changed their living arrangements to further reduce this threat.

- On Saturday, July 31, 2021, four days before the Texas regional qualifying tournament, Plaintiff Needville Little League, Inc.'s ("Needville") manager emailed the Managing Operations Director for Defendant's southwest region asking for more specific protocols for the tournament in Waco, Texas, and was told that players and coaches would need to meet at 3:00 p.m. on Wednesday, August 4, 2021 for hotel check-in and COVID-19 testing.

- At a meeting on August 3, 2021, the day before the tournament, Defendant updated their COVID-19 protocols to indicate that "a positive COVID-19 test would result in the player's entire team being disqualified from the tournament," rather than just that player. This policy change was communicated verbally but "never formally adopted in the COVID-19 protocols available online."

- Upon receipt of this policy change, Needville immediately changed its travel plans to further reduce risk by "keep[ing] their players in a 'bubble.'"

- At the Waco, TX tournament, contrary to the procedure Defendant had posted, Defendant "did not maintain any separation between teams" or otherwise limit contact with people outside of each team.

- The teams were given tests to self-administer with no instruction on how to do so.

- Both Plaintiffs had a coach test positive in a self-administered test, and when Defendant learned of those results it immediately disqualified each team for this reason.

These facts, Plaintiffs claim, support their breach of contract claim in that Plaintiffs detrimentally relied upon Defendant's posted COVID-19 protocols when they "commit[ed] time, energy, and money" to advance to the Little League World Series, and would not have done so had they known Defendant would unilaterally alter these protocols shortly before the start of the regional tournaments in a manner that made disqualification far more likely. Further, Plaintiffs plead that Defendant acted in bad faith when they "selectively decide[d] to disqualify [Plaintiffs] in a regional tournament while failing [to] perform any contact tracing on the positive individual or implement[ing] any safety protocols at the tournament itself" despite "perform[ing] contact tracing for positive individuals for other teams in the same competition."

Defendant contends that Plaintiffs have not sufficiently pled the existence of a contract, its essential terms, or a breach of a duty imposed by the contract. This claim has three conceptually distinct components. First, Defendant contends that Plaintiffs' theory that the charter between the parties plus Defendant's promulgation of its protocols created a contract is not legally cognizable, and thus Plaintiffs have failed to plead a breach of contract regardless of the facts they plead and the specificity with which they plead them. Second, Defendant contends that even if Plaintiffs have pled the existence of some contract, they have not identified any legal mechanism by which the COVID-19 protocols became part of that contract. Finally,

Defendant argues that, even if Plaintiffs' theory of contract formation is legally cognizable, the facts they have pled are insufficient as a matter of law, as they have not identified the terms of the contract a breach of those terms with the requisite specificity.

Regarding the first of these grounds, the Court finds that Plaintiffs have pled the existence of a contract: the Charter as amended by the COVID-19 protocols. Plaintiffs essentially alleged that the Charter is an agreement between the parties, pursuant to which Plaintiffs paid registration fees and agreed to abide by Defendant's rules and regulations, and Defendant agreed to conduct a nationwide tournament in accordance to certain procedures.

On the second ground, Defendant asserts that even if Plaintiffs have appropriately pled the existence of a contract, they have not proposed a legal method by which the COVID-19 protocols, which postdated the Charter, were incorporated into any contract between the parties. Plaintiffs responded that, to the extent Defendant imposed the COVID-19 protocols upon teams and implied that if teams followed the protocols' provisions then the teams would be entitled to certain benefits, the protocols are akin to an employee or student handbook. The analogy of an employee handbook is not exactly congruous with the situation presented here, as the employment context raises unique concerns (such as at-will employment), but the principle is sound that unilateral representations about rules, regulations, and the benefits of following them may create a contractual duty if the party receiving those rules and regulations would reasonably understand them as evidencing the intent of

the promulgating party to be bound by them. Thus, if Defendant informed teams that they would need to abide by certain rules and regulations in order to participate in a tournament, and in exchange Defendant would act in a certain manner, Plaintiffs' continued participation in Defendant's program could constitute acceptance of Defendant's unilateral offer to alter the terms of the relationship between the parties as well as reasonable reliance on Defendant's representations concerning those terms. Whether this is what occurred is at least partially a question of fact, and for that reason the Court will not grant a demurrer on the basis of failure to plead the existence of a contract or the contention that the COVID-19 protocols were not part of a contract between the parties as a matter of law.

Defendant's third ground for demurrer is its contention that Plaintiffs have not pled the required element of breach because they have failed to specifically identify the terms of the contract or how Defendant breached them. The Court agrees with Defendant. The failure to attach the entirety of the Charter and COVID-19 protocols prevents the Court from elucidating the nature of the relationship between the parties. This is especially important in light of the fact that Plaintiffs seem to be arguing not only that Defendant failed to follow their own rules but that Defendant's *changing* those rules immediately before the tournaments, after Plaintiffs relied on the previous rules to their detriment, constitutes a breach of the implied covenant of good faith and fair dealing. Plaintiffs have not specified the extent to which Defendant did or did not reserve the right to alter the terms of the agreement between the parties. Conversely, Defendant has pointed to a provision of the

COVID-19 protocols reproduced in Plaintiffs' Complaint that states Defendant "will work efficiently to communicate with the appropriate family members, team contacts, and state health officials, to initiate all appropriate quarantine, isolation, and contact tracing procedures." Defendant argues that this provision reflects broad discretion to amend its response to the COVID-19 pandemic given the uncertainty and risk of running tournaments in the summer of 2021.

Ultimately, while the Complaint lists in detail many of the acts of Defendant that Plaintiffs consider wrongful, it does not state with specificity which provisions of the contract Plaintiffs contend Defendant breached, in what manner those breaches occurred, or which of Defendant's actions breached the implied covenant of good faith and fair dealing. The failure to attach the contract hinders the Court's analysis of these questions.

ORDER

For the foregoing reasons, the Court hereby ORDERS as follows:

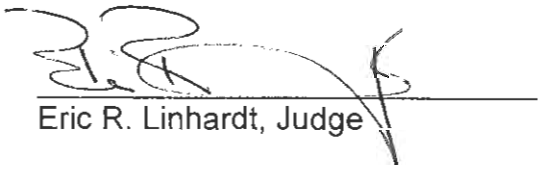
- Defendant's first preliminary objection is GRANTED. Plaintiffs shall have twenty (20) days from the date of this Order to file a Second Amended Complaint that states with specificity 1) which contractual terms Plaintiffs allege Defendant breached, 2) how Defendant breached them, and 3) which of Defendant's actions violated the implied covenant of good faith and fair dealing. Plaintiffs must attach a full copy of the alleged contract to the Second Amended Complaint.

- Defendant's second preliminary objection is GRANTED IN PART and DENIED IN PART. Plaintiffs have pled the existence of a contract, and that the COVID-19 protocols are part of that contract, in a manner sufficient to survive the pleading phase; to the extent Defendant's demurrer rests on these grounds, it is DENIED. However, Plaintiffs have not pled the element of breach of contract with sufficient specificity, and therefore

Defendant's second preliminary objection in the nature of a demurrer is GRANTED IN PART. Plaintiffs shall have twenty (20) days from the date of this Order to file a Second Amended Complaint 1) which contractual terms Plaintiffs allege Defendant breached, 2) how Defendant breached them, and 3) which of Defendant's actions violated the implied covenant of good faith and fair dealing.

IT IS SO ORDERED this 24th day of June 2022.

By the Court,



Eric R. Linhardt, Judge

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