

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BRADLEY RINKER,	:	CV-22-00570
Plaintiff	:	
vs.	:	
	:	
FELIX APONTE; CLEM PA., LLC,	:	
Defendants	:	<i>Preliminary Objections</i>

**OPINION AND ORDER**

AND NOW, this 19<sup>th</sup> day of December 2022, the Court hereby issues the following OPINION and ORDER regarding Defendants' Preliminary Objections to Plaintiff's Complaint.

***BACKGROUND***

Plaintiff commenced this action by filing a Complaint on June 10, 2022, containing a sole count of breach of contract against both Defendants. Plaintiff alleges that from 2016 to 2019, he contracted with Defendant CLEM Pa., LLC ("CLEM") via its agent Defendant Felix Aponte ("Aponte") to distribute and sell products made by CLEM. Plaintiff contends that Defendants terminated his contract on August 27, 2019, purporting to do so under Paragraph 15.1(b) of the contract, which allows early termination of the contract "in the event that the DISTRIBUTOR or SHAREHOLDER has been involved in the sole opinion of CLEM in any criminal activity..." Plaintiff acknowledges that he was charged with a crime in Lycoming County, but avers that he was found not guilty of all charges. Plaintiff contends the provision of the contract allowing early termination for criminal activity did not justify Defendants' termination of Plaintiff's contract, and therefore Defendants' termination was a breach.

## **PRELIMINARY OBJECTIONS**

On July 15, 2022, Defendants filed Preliminary Objections to Plaintiff's Complaint. Defendants' first preliminary objection is a demurrer to all claims against Aponte, and their second preliminary objection is a demurrer to all claims against CLEM.<sup>1</sup>

The essence of Defendants' first preliminary objection is that Plaintiff cannot bring a breach of contract claim against Aponte because the only parties to the contract at issue are Plaintiff and CLEM. The fact that Aponte was the agent of CLEM that signed the contract, Defendants argue, renders a breach of contract claim against him invalid. At argument, Plaintiff conceded that Aponte was not a party to the contract and indicated that he did not object to Aponte's dismissal from the case. Therefore, the Court will sustain Defendants' first preliminary objection.

Defendants' second preliminary objection asserts that Plaintiff has failed to plead a breach of the duty imposed by the contract, and has thus failed to satisfy the elements for a breach of contract claim. Specifically, Defendant argues that Plaintiff's acknowledgment that he was involved in a criminal proceeding is sufficient to satisfy the terms of Paragraph 15.1(b).

At argument, counsel for CLEM elaborated on this position, highlighting that the contract allows for termination for a distributor who has "been involved *in the sole opinion of CLEM* in any criminal activity..." CLEM contends that this language

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<sup>1</sup> Pennsylvania Rule of Civil Procedure 1028(a)(4) permits preliminary objections for "legal insufficiency of a pleading (demurrer)."



means the relevant determination of criminal activity is not whether formal criminal proceedings terminated in a conviction, but rather whether CLEM believes that Plaintiff was involved in criminal activity regardless of how the case concluded. CLEM added that this is not a contract of adhesion or otherwise unconscionable, but is rather a contract signed by two parties in relatively similar positions.

In response, counsel for Plaintiff first noted that the criminal case arose out of an encounter between Plaintiff and Aponte, though this fact is not in the Complaint.<sup>2</sup> Ultimately Plaintiff characterizes the standard for determining whether Paragraph 15.1(b) permits termination – the “sole opinion of CLEM” – as extremely vague. Plaintiff argues that in light of his complete acquittal, and the vagueness of the relevant contractual provisions, whether the facts here satisfy the standard for termination is a question for the factfinder rather than a matter of law on which the Court should grant a demurrer.

### **ANALYSIS**

In ruling on preliminary objections in the nature of a demurrer, the Court must determine whether “on the facts averred, the law says with certainty that no recovery is possible.... Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.”<sup>3</sup> In deciding a demurrer, the Court must “accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts.”<sup>4</sup>

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<sup>2</sup> Therefore, the Court will not consider it in its determination of the issues at hand.

<sup>3</sup> *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208-09 (Pa. Super. 2012).

<sup>4</sup> *Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020).

A party asserting breach of contract must plead “(1) the existence of a contract, including its essential terms; (2) a breach of the contract; and, (3) resultant damages.”<sup>5</sup> The only element at issue here is the second. Thus, the question before the Court is whether the allegations in the Complaint, even if accepted as true along with all reasonable inferences arising from those allegations, are insufficient as a matter of law to constitute breach of contract.<sup>6</sup>

Plaintiff essentially argues that his acquittal means that he was not involved in criminal activity as a matter of law, and therefore CLEM could not validly reach the opinion that he was. Defendant argues that the existence of a criminal case against Plaintiff, regardless of its outcome, means that as a matter of law CLEM was justified in concluding that Plaintiff was involved in criminal activity. These arguments are the parties’ versions of the application of Paragraph 15.1(b) of the contract to the facts at hand. Neither party, however, explicitly addresses the necessary antecedent question: what does Paragraph 15.1(b) actually mean?

The interpretation of a contract is a question of law.<sup>7</sup> A court must interpret a contract by ascertaining the parties’ meaning from the language of the contract;

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<sup>5</sup> *Kelly v. Carman Corporation*, 229 A.3d 634 (Pa. Super. 2020).

<sup>6</sup> The resolution of this question is complicated by the lack of specific factual averments in the Complaint establishing the circumstances of Plaintiff’s criminal case. *See note 2, supra*. However, the sole argument in Defendants’ second preliminary objection is that the claim against CLEM, as pled, fails as a matter of law. Defendants have not made a preliminary objection for lack of specificity, and “it is clear that matters not raised in preliminary objections may not be considered by the court *sua sponte*.” *MacGregor v. Mediq Inc.*, 576 A.2d 1123, 1128 (Pa. Super. 1990).

<sup>7</sup> *Profit Wise Marketing v. Wiest*, 812 A.2d 1270, 1274



when that language contains “clear and unambiguous terms,” the court may not stray from the clear meaning of those terms.<sup>8</sup>

The meaning of Paragraph 15.1(b) is straightforward: one of the circumstances permitting termination of the contract is if CLEM reaches the opinion that Plaintiff was “involved in” criminal activity. One need not be convicted of a crime to be involved in criminal activity. Because Paragraph 15.1(b) fixes CLEM’s “sole opinion” as the determining factor, it is clear that CLEM need not wait for a conviction to reach a genuine opinion that a distributor has been “involved in” criminal activity.

The Court cannot construe Paragraph 15.1(b), however, to permit CLEM to cancel the contract at any time, simply by asserting without a factual basis that it has formulated the opinion that a distributor was “involved in” criminal activity. Implicit in every contract is a duty of good faith,<sup>9</sup> which “has been defined as ‘honesty in fact in the conduct or transaction concerned.’”<sup>10</sup> Under Paragraph 15.1(b), CLEM has unilateral discretion to cancel the contract if it reaches the opinion that its distributor was involved in criminal activity – but it must have some good faith basis to reach that conclusion. In the absence of such a good faith basis, CLEM’s bald assertions

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<sup>8</sup> *Id.*

<sup>9</sup> Restatement (Second) of Contracts § 205; see *Somers v. Somers*, 613 A.2d 1211, 1213 (Pa. Super. 1992) (“[t]he general duty of good faith and fair dealing in the performance of a contract as found in The Restatement (Second) of Contracts § 205, has been adopted in this Commonwealth...”).

<sup>10</sup> *Creeger Brick and Bldg. Supply Inc. v. Mid-State Bank and Trust Co.*, 560 A.2d 151, 153 (Pa. Super. 1989).

that it has reached such an opinion are not magic words that conjure a valid basis for termination out of thin air.

Under this standard, the Court cannot conclude that Plaintiff's Complaint is insufficient to state a claim for breach of contract as a matter of law. The mere fact of Plaintiff's acquittal does not *per se* establish that CLEM did not have a good faith basis to terminate the contract. Indeed, because criminal convictions must be found beyond a reasonable doubt, Plaintiff's acquittal may have very little relevance to the ultimate determination in this case. However, Plaintiff's acquittal is at least *consistent* with him not being "involved in" criminal activity. At this stage of proceedings, the record does not indicate the reason the criminal case was initiated, or whether the circumstances would permit CLEM to reach in good faith the opinion that Plaintiff was involved in criminal activity. For this reason, the Court will deny Defendants' second preliminary objection to the Complaint.

It is certain that discovery in this matter will place evidence of the circumstances of Plaintiff's criminal case in the record. Of course, CLEM may renew its contention that it did not breach the contract as a matter of law in a motion for summary judgment. Should the undisputed facts of record show that CLEM had a good faith basis for reaching the opinion that Plaintiff was involved in criminal activity, the mere fact of Plaintiff's acquittal will not by itself defeat that contention. Conversely, however, the mere existence of Plaintiff's criminal case does not render his claims legally insufficient at the present stage of proceedings.

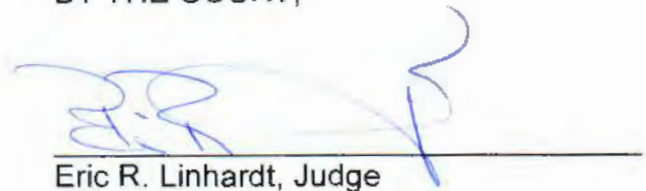
**ORDER**

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

- Without objection of the Plaintiff, Defendants' first preliminary objection is SUSTAINED. Defendant Felix Aponte is DISMISSED from this case.
- Defendants' second preliminary objection is OVERRULED.
- Defendant CLEM P.A., LLC shall file an ANSWER to Plaintiff's Complaint within twenty (20) days of the date of this Order.

IT IS SO ORDERED this 19<sup>th</sup> day of December 2022.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Christian Lovecchio, Esq.  
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