

fees, costs and interest. Lititz and Susquehanna filed preliminary objections to SSN's complaint, as Optimum did separately. SSN responded to these preliminary objections; Lititz and Susquehanna replied to their response.

I. Defendants' preliminary objections to SSN's breach of contract claim are sustained as to all Defendants.

The parties' fundamental disagreement is whether or not a valid contract existed between SSN and Lititz for sale of the Property. SSN states that it has alleged facts to support the existence of a valid contract; however, based on its allegations in the Complaint and the exhibits attached to it, the court does not agree.

"It is hornbook law that in order to form a contract, there must be an offer, an acceptance, and consideration."¹ The facts, as alleged in the complaint, are as follows: SSN transmitted a Letter of Intent to Lititz containing an offer of \$1.25 million for the Property; Lititz, through Optimum, emailed to SSN the email attached to the complaint and the "Purchase and Sale Agreement"; SSN signed this document and returned it; Lititz did not sign it and allegedly sold the Property to another buyer for \$1.15 million. SSN states that it believed its signature and return of the document formed the basis of a binding contract; however, it must allege facts sufficient to indicate a contract had been formed, not merely its belief. "In determining whether there has been a meeting of the minds, the inquiry should focus not on the subjective intent of the parties, but on their outward manifestations of assent."² The fact that the email from Optimum asks SSN to "enter the final and best price for the fee simple interest in the property" strongly

¹ Yoder v. Am. Travellers Life Ins. Co., 814 A.2d 229,233 (Pa. Super. 2002).

² GM Holdings, LLC v. mCom Fin. Solution, Inc., 2009 Phila. Ct. Com. Pl. LEXIS 272, *26 (internal citations omitted).

suggests that this document was not intended to be a final contract; a reasonable party would not intend to be bound by the other party's unilaterally-chosen price.

Further, it is well-settled in Pennsylvania that a contract for the sale of real property is unenforceable unless it is in writing and signed by all the parties.³ “The Statute of Frauds generally renders an oral agreement for the sale of land unenforceable and bars the remedy of specific performance.”⁴ Specifically, the contract must be signed by the party against whom it is being asserted.⁵ Such is not the case here. It is true that a contract for real estate may be taken out of the Statute of Frauds by part performance; however, a significant degree of performance must be alleged in order to enforce an agreement.⁶ SSN does not allege that it has performed, only that it was “ready, willing and able to comply with the terms of the Agreement.”

SSN argues that preliminary objections are not the appropriate vehicle for fact-based defenses. While this is technically true, the Pennsylvania Supreme Court has held that “a complaint...which does not establish that the contract sued upon meets the requirements of the statute of frauds does not ‘state a claim upon which relief can be granted’ and is therefore demurrable.”⁷ Defendants have preliminarily objected in the nature of a demurrer; these demurrers are proper and are accordingly sustained.

II. Defendants' Preliminary Objections as to SSN's claim for breach of the duty of fair dealing and good faith are sustained as to all Defendants.

³ 33 P.S. §1; see, e.g., Trowbridge v. McCaigue, 992 A.2d 199, 201 (Pa. Super. 2010); Hostetter v. Hoover, 378 Pa. Super. 1, 7, 547 A.2d 1247, 1250 (1988); Rosen v. Rittenhouse Towers, 334 Pa. Super. 124,130-1, 482 A.2d 1113, 1116-7 (1984).

⁴ Mill Run Assocs. v. Locke Prop. Co., 2003 U.S. Dist. LEXIS 18096 (internal citations omitted).

⁵ In re Estate of Pentrack, 486 Pa. 237, 240, 405 A.2d 879, 880 (1979).

⁶ Axe v. Potts, 349 Pa. 345, 349, 37 A.2d 572, 574 (1944).

⁷ Leonard v. Martling, 378 Pa. 339, 343, 1067 A. 2d. 585, 586 (1954) (internal citations omitted).

The duty of good faith and fair dealing is one that is imposed on parties to a contract.⁸ As discussed above, no valid contract can be reasonably argued to have existed. We have previously held that the claim for breach of duty of fair dealing and good faith duplicates the breach of contract claim, and must be stricken as well. “The implied covenant of good faith does not allow for a claim separate and distinct from a breach of contract claim. Rather, a claim arising from a breach of the covenant of good faith must be prosecuted as a breach of contract claim, as the covenant does nothing more than imply certain obligations into the contract itself.”⁹ Accordingly, no duty of good faith and fair dealing existed in this case, and Defendants’ preliminary objections are sustained.

III. Defendants’ Preliminary Objections to SSN’s claim for interference with contractual relations are sustained.

SSN claims that Susquehanna intentionally interfered with Lititz and Optimum to divert the sale of the Property to another buyer, thereby interfering with SSN’s contract with Lititz to buy the Property, or, in the alternative, with its prospective contract.

The elements of a claim for interference with contractual relations are:

- (1) the existence of a contractual relationship between the complainant and a third party;
- (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship;
- (3) the absence of privilege or justification on the part of the defendant; and
- (4) the occasioning of actual damage as a result of defendant’s conduct.¹⁰

⁸ Bethlehem Steel Corp. v. Litton Industries, Inc., 507 Pa. 88, 125, 488 A.2d 581, 600 (1985) (internal citations omitted).

⁹ JHE, Inc. v. SEPTA, 2002 Phila. Ct. Com. Pl. LEXIS 78, *13; see also LSI Title Agency, Inc. v. Evaluation Servs., 951 A.2d 384, 392 (Pa. Super. 2008) (determining that “that the claim for breach of the implied covenant of good faith and fair dealing is subsumed in a breach of contract claim.”)

¹⁰ Phillips v. Selig, 959 A.2d 420,429 (Pa. Super. 2008).

Interference with prospective contractual relations follows the same test, except that the first element refers to a prospective contract rather than an actual one.¹¹

As discussed above, the question of whether a contractual relationship existed between SSN and Lilitz has not been pled adequately to withstand preliminary objection. Nor has SSN pled facts to indicate that a prospective contractual relationship existed. A prospective contractual relation must be based on a "reasonable likelihood or probability. This must be something more than ... the innate optimism of the salesman."¹² A plaintiff must show that "but for the wrongful acts of the defendant it is *reasonably probable*" that the contract would have been formed.¹³ While SSN has pled facts indicating that it and Lilitz engaged in negotiation and that a contract was drafted, it has not indicated a reasonable probability that the contract would have been formed but for the unspecified actions of Susquehanna.

Second, a plaintiff must plead specific actions taken by the defendant to interfere with the contract. As mentioned above, SSN does not plead such actions, only that Susquehanna "exerted its authority" with Lilitz and "diverted the sale to another buyer." This is not a sufficiently detailed recitation of facts to make out a claim for interference with contractual relations.

Further, to maintain a claim for tortious interference, a plaintiff must plead the absence of privilege or justification - that the defendant acted for the purpose of causing harm to the plaintiff, and that the conduct was not permissible despite its harmful effect. A long list of factors are relevant to determining whether behavior is justified.¹⁴ However, SSN has not pled

¹¹ Id. at 428.

¹² Glenn v. Point Park College, 441 Pa. 474, 480, 272 A.2d 895, 898-9 (1971).

¹³ Id. at 480.

¹⁴ Restat 2d of Torts § 767.

the absence of privilege at all. Accordingly, the preliminary objection to SSN's claim of interference with contractual relations is sustained.

Because the claim for interference with prospective contractual relations falls due to insufficiency of facts alleged, the court will grant SSN 20 days in which to file an amended complaint to replead this claim.

IV. Defendants' preliminary objections to SSN's claim for concerted action to interfere with contractual rights are sustained.

Because SSN's claim for interference with contractual relations was stricken, the claim for conspiracy must fall as well. ¹⁵ "Absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act."¹⁶ Accordingly, this preliminary objection is sustained.

Finally, because all claims in the action are dismissed, no recovery is possible; accordingly, SSN's request for attorney's fees and punitive damages are stricken as well.

CONCLUSION

For the foregoing reasons, Defendants' preliminary objections are sustained and Plaintiff's complaint is dismissed.

BY THE COURT:


PATRICIA A. MACINERNEY, J.

¹⁵ Pelagatti v. Cohen, 370 Pa. Super. 422, 432, 536 A.2d 1337, 1342 (1987).

¹⁶ Id.