

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

TRIGEN-PHILADELPHIA ENERGY CORPORATION : DECEMBER TERM, 2001
v. : No. 2160
DREXEL UNIVERSITY : Commerce Program
: Superior Court Docket
: No. 3420 EDA 2002

O P I N I O N

Albert W. Sheppard, Jr., J. February 4, 2003

This Opinion is filed relative to the appeal by plaintiff of this court’s Order of October 8, 2002, which granted defendant’s Motion for Summary Judgment. For purposes of this Appeal, this court respectfully relies upon its Opinion, dated October 8, 2002, which is attached as Appendix “A”.

For the reasons discussed in that Opinion, it is submitted that this court’s Order should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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: Control No. 062593

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O P I N I O N

Albert W. Sheppard, Jr., J. October 8, 2002

Defendant, Drexel University (“Drexel”), has filed the instant Motion for Summary Judgment. For the reasons discussed, the Motion is **granted** and the plaintiff’s case is **dismissed**.

BACKGROUND

Plaintiff, Trigen-Philadelphia Energy Corporation (“Trigen”) owns and operates a direct steam system that provides steam energy to customers in Philadelphia. Trigen’s system utilizes a series of underground pipes, commonly referred to as the “Loop,” which distribute steam to Trigen customers for use in heating, cooling, humidification, sterilization and other processes. Trigen has provided steam energy to Drexel’s campus for many years.

APPENDIX “A”

The instant case arises out of a dispute over Drexel's long term requirements contract with Trigen. Beginning as early as July 1, 1993, Drexel and Trigen began negotiations to enter into a long term steam supply agreement. On January 1, 1996, the negotiations culminated with the parties signing a twenty-year long term requirements contract which provided inter alia, that Trigen would be the exclusive supplier of Drexel's steam energy needs (the "Steam Contract"). Subsequent to entering into the Steam Contract, Drexel began constructing or renovating buildings that use alternatives to steam energy. Trigen has petitioned this Court to determine whether Drexel is in breach of the Steam Contract by its construction of new buildings or renovation of acquired buildings that use alternative energy sources. Drexel has filed the instant Motion for Summary Judgment requesting that this Court dismiss Trigen's Complaint because, as a matter of law, the Steam Contract is a requirements contract, the plain meaning of which, does not obligate Drexel to use steam energy in newly constructed buildings or in renovated buildings which were configured to use other than steam energy when required.

DISCUSSION

In accordance with Rule 1035.2 of the Pennsylvania Rules of Civil Procedure, this court may grant summary judgment where the evidentiary record shows either that the material facts are undisputed, or the facts are insufficient to make out a prima facie cause of action or defense. McCarthy v. Dan Lepore & Sons Co., Inc., 724 A.2d 938, 940 (Pa. Super. Ct. 1998). To succeed, a defendant moving for summary judgment must make a showing that the plaintiff is unable to satisfy an element in his cause of action. Basile v. H&R Block, 777 A.2d 95, 100 (Pa. Super. Ct. 2001). To avoid summary judgment, the plaintiff, as the non-moving party, must adduce sufficient evidence on the issues essential to its case and on which it bears the burden of proof such that a reasonable jury could find in favor of the Plaintiff. McCarthy, 724 A.2d

at 940.

In addressing the issue, this court is bound to review the facts in a light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Manzetti v. Mercy Hospital of Pittsburgh, 565 Pa. 471, 776 A.2d 938, 945 (2001). The plaintiff, must be given the benefit of all reasonable inferences. Samarin v. GAF Corp., 391 Pa. Super. 340, 350, 571 A.2d 398, 403 (1989).

As a matter of law, this court may determine the construction of a contract. Osiat v. Cook, 803 A.2d 209, 214 (Pa. Super. Ct. 2002). It is settled that “the intent of the parties to a written contract is contained in the writing itself.” Tuthill v. Tuthill, 763 A.2d 417, 420 (Pa. Super. Ct. 2000) As a threshold inquiry, the court must determine whether the language of the contract is ambiguous. Hutchison v. Sunbeam Coal Corp., 513 Pa. 192, 200-01, 519 A.2d 385, 390 (1986). A contract is ambiguous when the contract language is indefinite and reasonably susceptible to more than one meaning. Commonwealth of Pa. v. Brozzetti, 684 A.2d 658, 663 (Pa. Commw. Ct. 1996). However, the “ambiguity” must appear on the face of the contract itself, and not be “created” by evidence offered by the parties. Id. A contract is not “ambiguous” simply because the parties present different interpretations of the language. Riccio v. American Republic Ins. Co., 453 Pa. Super. 364, 377, 683 A.2d 1226 (1996).

Where the contract language is clear, the court is limited to a review of the expressed terms and may not consider extrinsic or parol evidence. Steuart v. McChesney, 498 Pa. 45, 49, 444 A.2d 659, 661 (1982). Following the “plain meaning” rule, the court is bound to interpret the terms as manifestly expressed in the contract, rather than as silently intended by a party. Id. at 49. Therefore, this court may as a matter of law, determine whether the contract at issue is ambiguous by reviewing the terms of the

Steam Contract.¹

It is undisputed that Drexel entered into a long term exclusive requirements contract for its steam energy with Trigen as the supplier. The contract provides in pertinent part that:

During the term of this Agreement, Customer will purchase all of its current and future steam requirements from the Company and the Company agrees to sell steam to Customer for its steam requirements. Steam uses shall include heating, hot water, humidification, and process. A summary of all existing accounts governed under this agreement can be found in Appendix A.

Failure by Customer to use steam provided by the Company as the exclusive source of steam for such end uses shall terminate this Agreement and Customer shall pay the Company the Termination payment as described in Section 4.C. Compl., Ex. A (emphasis added)

Trigen contends that Drexel breached the Steam Contract by constructing or renovating buildings that do not use steam energy to “generate heat, hot water, humidification, or process.” Compl., ¶ 12. Drexel responds that the plain meaning of the Steam Contract provides that Trigen is the exclusive source for

¹ Plaintiff suggests that there is a “latent ambiguity” in the terms of the Steam Contract. A “latent ambiguity” arises “from extraneous or collateral facts which render the meaning of a written contract uncertain although the language, on its face, appears clear and unambiguous. Z & L Lumber Co. of Atlasburg v. Nordquist, 348 Pa. Super 580, 586, 502 A.2d 697, 700 (1985)(emphasis added). The usual instance of a “latent ambiguity” is found in a contract that appears to clearly reference a particular person or object, but upon examination of the external facts it is determined that the language references one or more persons or objects. Steuart v. McChesney, 498 Pa. 45, 53 (1982). Under Pennsylvania law, the court may look to the facts to determine whether there are objective indications that the terms of a contract give rise to a latent ambiguity. Z & L Lumber Co., 348 Pa. Super at 585-86.

Here, Trigen misapplies the law. Instead of presenting the Court with factual circumstances that illuminate a latent ambiguity, Trigen asks the Court to consider parol evidence of negotiations between Drexel and Trigen to determine the parties intent. Under basic contract law, a court may not consider parol evidence, until it is determined that the contract is ambiguous. Commonwealth v. Brozzetti, 684 A.2d 658, 663 (Pa. Commw. Ct. 1996). Once parties have reduced their agreement to writing, an unambiguous writing is taken as the final expression of the parties’ intent. Steuart, 498 Pa. at 51-53.

Drexel's steam requirements. Drexel further contends that the Steam Contract does not, as Trigen suggests, require Drexel to use steam energy in newly constructed buildings or in acquired buildings which did not previously use steam energy.

While the parties may have differing opinions on how they "read" the Steam Contract, the language of Steam Contract is clear. Trigen and Drexel entered into an "exclusive" long term requirements contract for steam energy to be supplied by Trigen. The first sentence of Section 3A. states ". . . [the] Customer will purchase all of its current and future steam requirements from the Company and the Company agrees to sell steam to Customer for its steam requirements." Compl., Ex. A. There can be little debate as to the plain meaning of the above quoted language. If Drexel has "steam requirements," then it must purchase steam from Trigen.

While Trigen agrees with the basic proposition that Drexel is obligated to use Trigen to fulfill its steam requirements, Trigen argues that the Steam Contract also requires Drexel to use steam energy in every new building Drexel constructs during the life of the Steam Contract. Trigen argues that the "steam uses" clause means that Drexel must use steam energy for the defined end uses. The "steam uses" clause in Section 3A states that "[s]team uses shall include heating, hot water, humidification and process." *Id.* The import of the "steam uses" clause is explained in the second paragraph of Section 3A which provides that, "[f]ailure by the Customer to use steam provided by the Company as the exclusive source of steam for such end uses shall terminate this Agreement." *Id.* (emphasis added). Again, there should be little debate as to the meaning of the referenced language. When read together, the plain meaning of the above quoted language requires that Trigen is to be the "exclusive source of steam" for Drexel's "steam uses." As drafted, the Steam Contract provides that should Drexel use steam energy in its new buildings it must

exclusively use Trigen steam.

Therefore, this Court finds that the relevant language of the Steam Contract is unambiguous on its face. Following the rules of contract construction, this Court need not consider parol evidence to determine the parties' intent. The Steam Contract provides that Drexel is required to purchase its current and future steam requirements from Trigen. It cannot be read to prohibit Drexel's use of alternative thermal energy sources in newly constructed buildings or in newly acquired buildings not then fitted-out to use steam energy. Based on the plain meaning of the Steam Contract, Trigen's breach of contract claim is without merit.

CONCLUSION

For the reasons discussed, this court finds that plaintiff has not alleged sufficient facts to establish a breach of contract claim against defendant. Accordingly, this court grants defendant's Motion for Summary Judgment and the plaintiff's Complaint will be dismissed. This court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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O R D E R

AND NOW, this 8th day of October 2002, upon consideration of the Motion for Summary Judgment of defendant, Drexel University, plaintiff, Trigen-Philadelphia Energy Corporation's response in opposition, the respective memoranda, all matters of record and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED** that the Motion is **Granted**. The plaintiff's case is **Dismissed**.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.