Frank Krammes Timber Harvesting, Inc. v. Letourneau Enterprises, LLC

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1 IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA FRANK KRAMMES TIMBER : Civil No. 3:18-CV-01914 HARVESTING, INC., : : Plaintiff, : v. : (Judge Mariani) : LETOURNEAU ENTERPRISES, LLC, : (Magistrate Judge Carlson) : Defendant. :

REPORT AND RECOMMENDATION I. Introduction This case comes before us on a motion for summary judgment filed by the defendant, Letourneau Enterprises, LLC ("Letourneau"). (Doc. 33). The plaintiff, Frank Krammes Timber Harvesting, Inc. ("Kr ammes") filed this action in state court asserting declaratory relief based on breach of contract, as well as claims of promissory estoppel and unjust enrichment. (Doc. 1-1). These claims arose from an alleged agreement between the parties for the disposal of woody materials that Letourneau was removing in connection with the Atlantic Sunrise Project (the "Pipeline Project") in 2017. The defendant has now moved for summary judgment on the plaintiff's amended complaint, arguing that there are no genuine issues of material fact with

2 respect to Krammes' claims. After consideration, we agree, and we will recommend that the defendant's motion be granted. II. Factual Background

Letourneau is a North Carolina-based company that specializes in right-of- way clearing for a variety of construction projects, including natural gas and oil pipelines. (Doc. 24, ¶¶ 2, 4). In 2017, Letourneau contracted to clear land through parts of Northeastern Pennsylvania, including Schuylkill County, for the Atlantic Sunrise Project (the "Pipeline Project") . (Doc. 35, ¶ 1). A representative from Letourneau, T.J. Garber, travelled to Schuylkill County to get information about disposal sites for the woody materials it removed for the Pipeline Project. (Doc. 24, ¶ 9).

At some time in either July or August of 2017, Garber spoke with Krammes' president, Frank Krammes, regarding Krammes' ability to handle the disposal of the woody materials. (Doc. 35, ¶ 5). After speaking with Garber about Letourneau's needs, Mr. Krammes told Garber, "I'm your guy," and as ked what steps he needed to take to be able to meet Letourneau's needs. (Id., ¶ 6). Garber informed him that he would be in touch with contracts and about getting approval for his disposal site from the Federal Energy Regulatory Commission ("FERC"). (Id., ¶¶ 7-8). One of Krammes' disposal locations was ultim ately FERC-approved in October of 2017. (Id., ¶ 14).

3 Prior to this FERC approval, Krammes sent a letter to Letourneau on September 11, 2017, stating its intent to accept woody materials from the Pipeline Project. (Doc. 24-1). Two days later, the parties

signed a Timber/Mulch Disposal Service Agreement on September 13, 2017. (Doc. 24-2). The Agreement provided that Krammes "agrees to accept any and a ll loads of timber, wood chips and stump grindings" delivered by Letour neau, and set forth the prices for each load delivered. (Id.) The Agreement further stated: "T here will be no minimum/maximum number of loads as part of this agreement." (Id.) Notably, Letourneau had received several letters of intent from multiple companies willing to accept the woody materials to be disposed, some of which were sent prior to Krammes' letter. (See Doc. 34-1, at 33, 35, 37, 39, 41). In addition, Letourneau signed similar Timber/Mulch Disposal Service Agreements with King's Sawmill on September 13, 2017, and with Natural Soil Products on September 22, 2017. (Id., at 43, 45). The Agreement with Natural Soil Products contained the same pricing figures as the Agreement with Krammes. (See Doc. 24-2, Doc. 34-1, at 43).

According to Krammes, in order to ensure it was in the best position to be able to accept the volume of materials Letourneau would be disposing, Mr. Krammes took additional steps to meet the requirements allegedly explained to him by Garber. (Doc. 24, ¶ 23). For example, Krammes asserts that it renegotiated terms it had with existing customers; turned down services requested by third parties; attended

4 trainings and safety meetings that Garber told Mr. Krammes were mandatory for a party receiving disposal from Letourneau; and made modifications to its yard in order to obtain FERC approval. (Id., ¶¶ 24a-d). Krammes asserts that it took these steps in reliance on Garber's oral promise that once the site was approved, it would begin making deliveries of "as much as 50 to 100 trailer loads per day" of the woody materials. 1

(Id., ¶¶ 12, 25). Ultimately, Letourneau never delivered any loads of woody materials to Krammes' dis posal site. (Doc. 35, ¶ 15).

Thus, Krammes filed the instant suit against Letourneau in the Schuylkill County Court of Common Pleas, alleging claims for declaratory judgment, promissory estoppel, and unjust enrichment. (Doc. 1-1). Letourneau removed the action to this court and subsequently filed a motion to dismiss. (Docs. 1, 2). We recommended that the District Court dismiss the complaint, and the District Court adopted our recommendation but permitted Krammes leave to amend its promissory estoppel and unjust enrichment claims. (Docs. 17, 22, 23). Krammes then filed an amended complaint asserting claims of promissory estoppel and unjust enrichment, which is now the operative pleading in this matter. (Doc. 24).

1 As the District Court noted, Krammes' in itial claim for declaratory relief based on a contract was dismissed with prejudice, as the written agreement between the parties did not require Letourneau to delivery any woody materials to Krammes or to maintain an exclusive relationship with Krammes, and instead constituted a unilateral contract under which Letourneau never performed. (See Doc. 28, at 3 n.1).

5 The defendants filed a motion to dismiss the complaint, or alternatively for summary judgment. (Doc. 25). The District Court denied this motion, recognizing that the parties had not yet completed discovery, and at that juncture, the complaint plausibly stated claims for promissory estoppel and unjust enrichment. (Doc. 28). Notably, the District Court recognized that, with respect to the promissory estoppel claim, the only point of contention that allowed this claim to move forward was the claim that Krammes had made modifications to its yard after Garber's alleged oral promise was made but before the Agreement was signed. (Id., at 12-13). As the Court noted at that time, "the current pleadings do not provide clarity as to whether these costs were incurred before or after the parties signed the Timber Services Agreement." (Id., at 13). As to the unjus t enrichment claim, the Court expressed skepticism regarding whether the plaintiff's claim—that Letourneau received the "benefit" of information provided by Kramme s in order to negotiate more favorable terms with other companies—"would rise to the level of unconscionability" to succeed on an unjust enrichment claim. (Id., at 15). Indeed, the Court opined:

This argument instead equates to little more than a conclusory claim that a party should not be able to obtain information from various sources before making a final determination as to what path forward would be best, which is not what the doctrine of unjust enrichment was meant to govern. Id. Nonetheless, the Court permitted the parties to proceed with discovery on this claim.

6 Discovery has since closed, and the defendant has filed the instant motion for summary judgment. (Doc. 33). In its motion, Letourneau contends that Krammes has not established the existence of an express promise in support of its promissory estoppel claim, nor has it provided evidence providing clarity as to the timing of the improvements made at the disposal site. It further argues that Krammes has not provided evidence in support of its unjust enrichment claim. For its part, Krammes appears to rely on the allegations in the amended complaint, as well as an affidavit of Mr. Krammes, in support of its claims, arguing that "[t]he Amended complaint passed muster in this Court's Rule 56 an alysis previously and nothing since then warrants a change in that decision." (Doc. 36, at 8). After consideration, we agree with Letourneau that Krammes' reliance on the allegations in the Amended Complaint is not sufficient at this stage to overcome the motion for summary judgment. Accordingly, for the reasons set forth below, we will recommend that the motion be granted. III. Discussion

A. Motion for Summary Judgment – Standard of Review The defendant has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, which provides that the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

7 Through summary adjudication, a court is empowered to dispose of those claims that do not present a "genuine dispute as to any ma terial fact," Fed. R. Civ. P. 56(a), and for which a trial would be "an empty and unnecessary formality." Univac Dental Co. v. Dentsply Int'l, Inc., 702 F.Supp.2d 4 65, 468 (M.D. Pa. 2010). The substantive law identifies which facts are material, and "[o] nly disputes

over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Libert y Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine only if there is a sufficient evidentiary basis that would allow a reasonable fact finder to return a verdict for the non-moving party. Id., at 248-49.

The moving party has the initial burden of identifying evidence that it believes shows an absence of a genuine issue of material fact. Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 145-46 (3d Cir. 2004). Once the moving party has shown that there is an absence of evidence to support the non-moving party's claims, "the non-moving party must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." Berckeley Inv. Group. Ltd. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2006), accord Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). If the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party w ill bear the burden at trial," summary

8 judgment is appropriate. Celotex, 477 U.S. at 322. Summary judgment is also appropriate if the non-moving party provides merely colorable, conclusory, or speculative evidence. Anderson, 477 U.S. at 249. There must be more than a scintilla of evidence supporting the non-moving party and more than some metaphysical doubt as to the material facts. Id., at 252; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In making this determination, the Court must "consider all evidence in the light most favorable to the party opposing the motion." A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 794 (3d Cir. 2007).

Moreover, a party who seeks to resist a summary judgment motion by citing to disputed material issues of fact must show by competent evidence that such factual disputes exist. Further, "only evidence whic h is admissible at trial may be considered in ruling on a motion for summary judgment." Countryside Oil Co., Inc. v. Travelers Ins. Co., 928 F. Supp. 474, 482 (D.N.J. 1995). Similarly, it is well-settled that: "[o]ne cannot create an issue of fact merely by . . . denying averments . . . without producing any supporting evidence of the denials." Thimons v. PNC Bank, NA, 254 F. App'x 896, 899 (3d Cir. 2007) (citation omitted). Thus, "[w]hen a motion for summary judgment is made and supported . . ., an adverse party may not rest upon mere allegations or denial." Fireman's Ins. Co . of Newark New Jersey v. DuFresne, 676 F.2d 965, 968 (3d Cir. 1982); see Sunshine Books, Ltd. v. Temple University, 697 F.2d 90, 96 (3d Cir. 1982). "[A] mere denial is insufficient to raise a disputed issue

9 of fact, and an unsubstantiated doubt as to the veracity of the opposing affidavit is also not sufficient." Lockhart v. Ho enstine, 411 F.2d 455, 458 (3d Cir. 1969). Furthermore, "a party resisting a [Rule 56] motion cannot expect to rely merely upon bare assertions, conclusory allegations or suspicions." Gans v. Mundy, 762 F.2d 338, 341 (3d Cir. 1985) (citing Ness v. Marshall, 660 F.2d 517, 519 (3d Cir. 1981)).

Finally, it is emphatically not the province of the court to weigh evidence or assess credibility when passing upon a motion for summary judgment. Rather, in adjudicating the motion, the court must view the evidence presented in the light most favorable to the opposing party, Anderson, 477 U.S. at 255, and draw all reasonable inferences in the light most favorable to the non-moving party. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Where the non-moving party's evidence contradi cts the movant's, then the non-movant's must be taken as true. Id. Additionally, the court is not to decide whether the evidence unquestionably favors one side or the other, or to make credibility determinations, but instead must decide whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. Anderson, 477 U.S. at 252; see also Big Apple BMW, 974 F.2d at 1363. In reaching this determination, the Third Circuit has instructed that:

To raise a genuine issue of material fact . . . the opponent need not match, item for item, each piece of evidence proffered by the movant. In practical terms, if the opponent has exceeded the "mere scintilla" threshold and has offered a genuine issue of material fact, then the court

10 cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. It thus remains the province of the fact finder to ascertain the believability and weight of the evidence. Id. In contrast, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal quotation marks omitted); NAACP v. North Hudson Reg'l Fire & Rescue, 665 F.3d 464, 476 (3d Cir. 2011).

B. This Motion for Summary Judgment Should be Granted. As we have noted, Letourneau asserts that there are no genuine disputes of material fact with respect to Krammes' promissory estoppel and unjust enrichment claims. After consideration, we agree, and we will recommend that this motion for summary judgment be granted.

1. Promissory Estoppel In order to establish a claim for promissory estoppel under Pennsylvania law, a party must show:

1) the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee; 2) the promisee actually took action or refrained from taking action in reliance on the promise; and 3) injustice can be avoided only by enforcing the promise. I.K. ex rel. B.K. v. Haverford Sch. Dist., 567 F. App'x 135, 137 (3d Cir. 2014) (quoting Crouse v. Cyclops Indus., 745 A.2d 606, 610 (Pa. 2000)).

11 In the instant case, as the District Court noted, the only facts on which Krammes' claim for promissory estoppel su rvived the motion to dismiss stem from Garber's alleged promise to Mr. Krammes regarding the delivery of materials, and subsequently, Krammes' actions regarding m

odifications of its disposal yard. (Doc. 28, at 12-13). Indeed, as the District Court observed, the relevant inquiry on this score is whether Krammes undertook these modifications to the yard after speaking with Garber but before the Timber Services Agreement was signed. (Doc. 28, at 11- 13). On this score, the defendant argues that Krammes cannot show that Garber made an express promise on behalf of Letourneau, and further, that Krammes has not shown that the modifications took place before the signing of the written agreement. At the outset, while the defendant argues that a plaintiff must produce evidence of an express promise in order to succeed on a claim for promissory estoppel, the Pennsylvania Supreme Court has not expressly addressed the issue, and the Third Circuit has recently cast doubt on the contention that an express promise is required. See Dansko Holdings, Inc. v. Benefit Trust Co., 991 F.3d 494, 499 (3d Cir. 2021) (citations omitted) ("[I]n dicta, many lower Penns ylvania courts have said that '[m]isleading words, conduct, or sile nce' can amount to a 'promise' that will support promissory estoppel"). Accordingly, we do not view this issue as dispositive of Krammes' promissory estoppel claim.

12 However, we conclude that Krammes has failed to establish that it modified its disposal yard after the conversation with Garber but before the Agreement was signed. As the District Court noted, the Amended Complaint does not provide clarity as to the timing of the modifications, and Krammes has not provided any evidence at this juncture to further clarify this aspect of its claim. On this score, while the plaintiff has provided an affidavit of Mr. Krammes, this affidavit does not even allude to when the work was performed at the disposal site. Instead, Krammes merely points to an invoice dated September 8, 2017, from Frank Krammes Excavating, a company that Mr. Krammes owns, showing an amount of $29,201.90 for materials and labor. (Doc. 34-1, at 20). However, nothing about this invoice sheds light on when the modifications were actually made, or further, if these modifications were made in response to Mr. Krammes' convers ation with Garber. Moreover, Krammes' responses to interrogatories state simply that the timing of Mr. Krammes' conversation with Garber is unknown, but that it was prior to the September 11 letter and September 13 Agreement. (Doc. 34-1, at 13). As we have explained, in order to defeat a motion for summary judgment, "a party . . . cannot expect to rely merely upon bare assertions, conclusory allegations or suspicions." Gans, 762 F.2d at 341. "Nor can a summary judgment motion be defeated by speculation and conjecture, . . . or conclusory, self-serving affidavits." Bond v. State Farm Ins. Co., 837 F. App'x 138, 139 (3d Cir. 2021) (citing Wharton

13 v. Danberg, 854 F.3d 234, 244 (3d Cir. 2017) and Gonzalez v. Sec'y of Dep't of Homeland Sec., 678 F.3d 254, 263 (3d Cir. 2012)). In the instant case, we conclude that Krammes has not produced evidence to raise a genuine issue of material fact with respect to the promissory estoppel claim. Accordingly, this claim should be dismissed.

2. Unjust Enrichment The doctrine of unjust enrichment is an equitable doctrine; it implies a contract when a party is found to have been unjustly enriched. See Com. Ex rel. Pappert v. TAP Pharm. Prod., Inc., 885 A.2d 1127, 1137 (Pa. Commw. Ct. 2005). The elements of a claim for unjust enrichment are: (1) benefits conferred on the defendant by the plaintiff; (2) appreciation of such

benefits by the defendant; and (3) retention of such benefits under circumstances where it would be inequitable for the defendant to retain the benefit without payment of value. Global Ground Support, LLC v. Glazer Enterprises, Inc., 581 F. Supp. 2d 669, 675 (E.D. Pa. 2008); Powers v. Lycoming Engines, Case No. 06-2993, 06-4228, 2007 WL 2702705, at *3 (E.D. Pa. Sep. 12, 2007) (plaintiff sufficiently stated a claim for unjust enrichment, despite not having purchased products directly from defendant). Further, the doctrine of unjust enrichment does not require defendant to have intentionally appreciated such benefits, but rather the doctrine focuses on "whether the defendant has been unjustly enriched." Com. ex rel. Pappert v. TAP Pharmaceutical Products, Inc., 885 A.2d

14 1127, 1137 (Pa. Commw. Ct. 2005); see also Global Ground Support, 581 F. Supp. 2d at 676 ("The polestar of the unjust enrich ment inquiry is whether the defendant has been unjustly enriched; the intent of the parties is irrelevant"); Torchia v. Torchia, 499 A.2d 581, 583 (1985).

In the instant case, Krammes' unjust enri chment claim asserts that Letourneau received a benefit in that Letourneau was able to start work on the Pipeline Project once Krammes sent its September 11 commitment letter and signed the September 13 Agreement. It further contends that Letourneau was able to negotiate better prices at other disposal sites given the prices negotiated between Krammes and Letourneau on September 13.

On this score, the District Court expressed doubt as to the viability of this claim at the motion to dismiss stage, but out of an abundance of caution allowed the parties to proceed with discovery. Notably, with respect to Krammes' first contention, the District Court recognized that the allegation that Letourneau "realized time and cost savings by beginning work on the Pipeline Project" failed to explain how this would be a benefit that would be unconscionable to allow Letourneau to retain. (Doc. 28, at 14-15). The District Court further noted that this argument "fell flat" because Letourneau was able to commence the Pipeline Project and gain approval for other third-party sites with the FERC prior to Krammes receiving FERC approval. (Id. at 15). As to Krammes' second contention, the

15 District Court characterized Krammes' ar gument as amounting to "little more than a conclusory claim that a party should not be able to obtain information from various sources before making a final determination as to what path forward would be best." (Id. at 15-16). In making this finding, the Court noted that Letourneau had attached the other commitment letters it received, some dated prior to Krammes' letter, but noted that because it was allowing the claim to proceed through a motion to dismiss, it could not consider those documents at that time. (Id. at n.3).

In considering those documents now on the instant motion for summary judgment, it is apparent that these documents "undermin[e] Plaintiff's argument that it had provided Defendant with negotiating power." (Id.) Indeed, our review of the other commitment letters received by Letourneau indicate that three of these letters were dated several days prior to Krammes' September 11 letter. (See Doc. 34-1, at 33, 35, 37, 39, 41). Moreover, although Krammes contends that Letourneau negotiated more favorable prices with some of the other disposal sites, at least one of those sites

agreed to the same prices for some materials as agreed to in the September 13 Agreement between Letourneau and Krammes. On this score, the September 22 Agreement with Natural Soil Products indicated that it would accept $100 per load for tree top chips and $50 per load for stump grindings, numbers that were identical to those set forth in the September 13 Agreement with Krammes for the same materials. (Doc. 24-2; Doc. 34-1, at 43).

16 Thus, we cannot conclude that Krammes has shown that it conferred a benefit on the defendant by sending its September 11 commitment letter and signing the September 13 Agreement, and that such a benefit was so inequitable that it would be unjust to allow Letourneau to retain it. There is no evidence in the record that these two written documents allowed Letourneau to commence work on the Pipeline Project and thus "realized time and cost sa vings." Nor is there evidence that these writings allowed Letourneau to bargain with and receive more favorable prices from other companies such that it retained an inequitable benefit.

While Mr. Krammes' affidavit attempts to show that Letourneau's contract with King's Sawmill resulted in Letourneau being paid higher prices for timber than it would have been paid by Krammes, (see Doc. 37-1, at 8-10), in our view this still does not amount to evidence that Letourneau received a benefit that was so inequitable to support an unjust enrichment claim. Rather, we continue to agree with the District Court's initial evaluation of th is claim, in that it is no more than a "conclusory claim that a party should not be able to obtain information from various sources before making a final determination as to what path forward would be best." (Doc. 28, at 15-16) (citing Burton Imaging Group v. Toys "R" Us, Inc., 502 F.Supp.2d 434, 442 (E.D. Pa. 2007) (holding that the use of bids to pressure a competing party to lower its proposal did not amount to unjust enrichment)).

17 Accordingly, we conclude that the defendant is entitled to summary judgment on this claim. IV. Recommendation

For the foregoing reasons, IT IS RECOMMENDED THAT the defendants' motion for summary judgment (Doc. 33) be GRANTED.

The parties are further placed on notice that pursuant to Local Rule 72.3:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or

recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 9 th

day of June 2023.

/s/ Martin C. Carlson

Martin C. Carlson United States Magistrate Judge