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CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
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GEORGETOWN, DELAWARE 19947

Submitted: October 1, 2008
Decided: October 3, 2008

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Re: *Hillsboro Energy, LLC v. Secure Energy, Inc., et al.*
Civil Action No. 3789-CC

Dear Counsel:

This case exemplifies the old adage: If it walks like a duck, and quacks like duck, it's probably a duck. Despite plaintiff's ingenious arguments to the contrary, I conclude, for the reasons described briefly below, that even though plaintiff used the "magic words" to dress its complaint in the garb of equity, its claim's proper remedy lies at law. The issues in this case "are, beyond question, legal issues capable of resolution by the Superior Court, and declaratory relief is available there

to the same extent as it is [in the Court of Chancery]."[1] Therefore, I will grant defendants' motion to dismiss unless within 30 days plaintiff moves to transfer its claim to the Delaware Superior Court pursuant to 10 *Del. C.* § 1902.

The facts surrounding the issue before me in this case are largely undisputed. Hillsboro Energy LLC ("Hillsboro") began negotiating a contract with Secure Energy, Inc. ("Secure"), a startup company constructing its first coal gasification plant in Decatur, Illinois, to supply coal to Secure. After these negotiations, Secure provided what it believed was a formal coal supply agreement to Hillsboro on November 12, 2007, which Hillsboro rejected as a counteroffer containing "materially different terms."[2] Hillsboro then sent Secure a revised coal supply agreement on April 21, 2008, containing different provisions for price, term, and quantity of coal, which Secure promptly rejected. Secure then sent Hillsboro a demand for adequate assurance of future performance for its November 12, 2007 coal supply agreement. Continued negotiations over the material terms of the contract reached an impasse.

Unable to resolve the situation, Hillsboro sued Secure in this Court seeking a declaratory judgment from the Court that there "is no contract or other legal

[1] *Reed v. Brady*, C.A. No. 2156-S, 2002 WL 1402238, at *3 n.7 (Del. Ch. June 21, 2002), *aff'd*, 818 A.2d 150 (Del. 2003).
[2] Defs.' Br. Mot. Dismiss 2.

obligation between the parties."[3] Secure moved to dismiss for lack of subject matter jurisdiction pursuant to Court of Chancery Rule 12(b)(1). The thrust of Hillsboro's complaint seeks a declaration that there is no contract between the parties. One of Hillsboro's prayers for relief is an order preliminarily and permanently enjoining defendants from asserting to any third parties that a contractual relationship exists with Hillsboro.

The Court of Chancery does not possess jurisdiction over "any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction" of the State of Delaware.[4] In fact, this Court "can acquire subject matter jurisdiction over a case in only three ways: (1) the invocation of an equitable right; (2) the request for an equitable remedy when there is no adequate remedy at law; or (3) a statutory delegation of subject matter jurisdiction."[5] Thus, this Court's jurisdiction is inherently limited to the application of equitable rights.[6] The Court will dismiss an action pursuant to Rule 12(b)(1) for want of subject matter jurisdiction "if it appears from the record that the Court does not have

[3] Compl. ¶ 22.
[4] 10 *Del. C.* §§ 341, 342.
[5] *Medek v. Medek*, C.A. No. 2559-VCP, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008).
[6] *Christina Town Center, LLC v. New Castle Center*, C.A. No. 20215, 2003 WL 21314499, at *3 (Del. Ch. June 06, 2003) ("Equitable rights are rights that have traditionally not been recognized at common law. The most common example of equitable rights in this court are fiduciary rights and duties that arise in the context of trusts, corporations, other forms of business organizations, guardianships, and the administration of estates.").

jurisdiction over the claim."[7] When a party challenges this Court's subject matter jurisdiction over a particular case, the "[C]ourt must review the allegations of the complaint as a whole to determine the true nature of the claim."[8] Former Chancellor Allen has astutely observed:

> Chancery jurisdiction is not conferred by the incantation of magic words. Neither the artful use nor the wholesale invocation of familiar chancery terms in a complaint will excuse the court . . . from a realistic assessment of the nature of the wrong alleged and the remedy available in order to determine whether a legal remedy is available and fully adequate. If a realistic evaluation leads to the conclusion that an adequate remedy is available, this court, in conformity with the command of Section 342 of Title 10 of the Delaware Code, will not accept jurisdiction over the matter.[9]

In deciding proper subject matter jurisdiction before the Court, the burden lies "'with the party seeking the Court's intervention'. . . . The Court must look beyond the remedies nominally being sought, and focus upon the allegations of the complaint in light of what the plaintiff really seeks to gain by bringing his or her claim."[10] To express this standard somewhat differently, the court must address "the nature of the wrong alleged and the available remedy to determine whether a

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[7] *Medek v. Medek*, C.A. No. 2559-VCP, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008) (citing *AFSCME Locals 1102 & 320 v. City of Wilmington*, 858 A.2d 962, 965 (Del. Ch. 2004)).
[8] *Christina Town Center, LLC v. New Castle Center*, C.A. No. 20215 2003 WL 21314499 (Del. Ch. June 06, 2003).
[9] *McMahon v. New Castle Assocs*., 532 A.2d 601, 603 (Del. Ch. 1987) (citation omitted); *see also Zeneca, Inc. v. Monsanto Co.*, C.A. No. 14683, 1996 WL 104254, at *4 (discussing how the Court should examine the parties' pleadings to determine the "true substance" of the sought for relief).
[10] *Medek v. Medek*, C.A. No. 2559-VCP, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008) (citing *AFSCME Locals 1102 & 320 v. City of Wilmington*, 858 A.2d 962, 965 (Del. Ch. 2004)).

legal, as opposed to an equitable remedy, is available and sufficiently adequate."[11] To be clear, this Court will not permit a party to bring a claim in equity when a sufficient legal remedy exists, and "where the plaintiff has prayed for some type of traditional equitable relief as a kind of formulaic 'open sesame' to the Court of Chancery."[12]

Hillsboro's complaint asks this Court to declare that no contract exists between it and Secure when its claim appears to be nothing more than a straightforward contractual dispute. Looking at the nature of Hillsboro's claim, one can readily see that the true dispute in this case is that Secure believes a contract exists between the parties while Hillsboro believes that a contract does not exist. Such a claim is inherently legal in nature. A simple contract claim lacking the requisite equitable hooks will not swing open the doors of equity. Hillsboro does not provide sufficient reason for me to believe that a legal remedy will not be "sufficiently adequate."[13] In other words, one cannot parade a duck around and call it a swan.

Hillsboro argues that its ability to properly service its current and potential customers will be significantly hindered if the Court does not clarify its contractual

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[11] *Id.*
[12] *Int'l. Bus. Machs. Corp. v. Comdisco, Inc.*, 602 A.2d 74, 79 (Del. Ch. 1991).
[13] *Medek v. Medek*, C.A. No. 2559-VCP, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008) (citing *AFSCME Locals 1102 & 320 v. City of Wilmington*, 858 A.2d 962, 965 (Del. Ch. 2004)).

obligations to Secure. Hillsboro's complaint, however, offers no allegations as to how a potential contract with Secure would render it unable to service its other customers. Even if the foregoing were true, I fail to see how a legal remedy affirming Hillsboro's legal contention that no contract exists would be insufficient to protect Hillsboro from these potential losses. A declaration by the Superior Court that no contract exists would bind Secure just as much as a similar declaration by this Court. Hillsboro seems to assume that Secure will ignore such a declaration and continue to assert its rights under a purported contract, thus potentially interfering with Hillsboro's other customer relationships. But this contention assumes that Secure will ignore a Court order, which is not a basis for equitable relief. There are adequate legal remedies available to Hillsboro in the event Secure refuses to obey a Superior Court judgment.

In addition, Hillsboro assumes that specific performance is the only adequate remedy in this case, and argues that if a contract is found to exist, or not to exist, the parties will nonetheless be forced to pursue equitable remedies to enforce the contract. But I again fail to see how the Delaware Superior Court would be unable to provide an adequate remedy by defining the parties' rights and obligations. In addition to its ability to provide the parties with a legal remedy, the Superior Court

also has power to "declare rights" as they relate to contractual interpretation.[14] The Superior Court is authorized to grant declaratory relief, and to enforce its orders via its contempt power, or to award compensatory damages for violation of a judgment order—all sufficient remedies to address the type of potential harm that Hillsboro anticipates.

Finally, Hillsboro contends that since Secure is a startup company it inevitably lacks the financial resources to pay any potential money judgment to Hillsboro. Therefore, Hillsboro argues, any relief at law would be inadequate. Although this Court may consider insolvency as a factor in determining equitable jurisdiction,[15] Hillsboro has not alleged any particular details as to the financial strength of Secure or shown that any monetary judgment would exceed the assets of Secure or render Secure unable to pay the judgment. Secure maintains that it is not insolvent and Hillsboro obviously believed that Secure was sufficiently capitalized to enter into contract negotiations to supply coal several years into the future. Accordingly, the complaint fails to support the premise that Secure's

[14] *See* 10 *Del. C.* § 6502 ("Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations ar affected by a state, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument state, ordinance, contract or franchise and obtain a declaration of rights, status relations thereunder.").

[15] *See E.I. DuPont du Nemours & Co. v. HEM Research, Inc.*, 576 A.2d 635 (Del. Ch. 1989).

financial condition will render it unable to meet a potential money judgment in this case.

For the reasons set forth above, I will grant defendants' motion to dismiss unless plaintiff within 30 days moves to transfer this action to the Superior Court pursuant to 10 *Del. C.* § 1902. In the event plaintiff elects not to transfer this action, I will enter an order dismissing the complaint without prejudice, each party to bear its own costs.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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