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OF THE
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Re: *Bettis v. Premier Pool & Property Management, LLC*
C.A. No. 6858-VCN
Date Submitted: June 21, 2012

Dear Counsel:

This action involves the validity of a commercial lease agreement between Plaintiff James Bettis (the “Plaintiff” or “Bettis”) and Defendant Premier Pool & Property Management, LLC (the “Defendant” or “Premier”). Plaintiff’s daughter, Diane Torrey Watson, is Bettis’s agent by way of a power of attorney executed on September 23, 2010, and brings this action on his behalf.¹ Bettis alleges that because, first, he had diminished capacity at the time the lease was signed² and, second, the terms of the lease are unreasonable, the lease should be rescinded.³

¹ Petition to Rescind Lease Agreement (the “Complaint” or “Compl.”) at ¶ 2.

² *See id.* at ¶ 8.

³ *See id.* at ¶¶ 11-12.

Bettis also seeks reimbursement (under principles of unjust enrichment) for Premier's use of additional space not leased to it.⁴ Premier has moved to dismiss.⁵ For the following reasons, the Court will deny that motion.

I. BACKGROUND

On approximately May 26, 2010, Bettis entered into a lease agreement with Premier for office suites C and D at Bettis's commercial property located at 60 Clay Road, Lewes, Delaware 19958 (the "Lease Agreement").⁶ The lease term started on June 1, 2010 and will terminate on September 1, 2016, unless Premier extends the Lease Agreement for one additional two-year period.⁷ Rent is \$1,000 per month with no increases during the initial term.⁸ Although the Lease Agreement contemplates that Premier will pay a flat monthly rate for utility costs, it fails to specify what that amount is.⁹

⁴ *Id.* at ¶¶ 15-18.

⁵ Defendant's Motion to Dismiss and Motion for Costs and Expenses Pursuant to Rule 11 ("Mot. to Dismiss"). Premier has withdrawn its application under Court of Chancery Rule 11. Defendant's Reply in Support of its Motion to Dismiss and Motion for Costs and Expenses Pursuant to Rule 11 ("Def.'s Reply") at 3.

⁶ Compl. at ¶¶ 4-5.

⁷ *Id.* at ¶ 5, Ex. B.

⁸ *Id.*

⁹ *Id.* at ¶ 6, Ex. B. The rental amount for the previous lease is crossed out with the initials "J.B." (presumably Bettis's) written along side.

The Lease Agreement appears to be based upon a form used by Bettis and a prior tenant because the names on the Lease Agreement and certain terms (rent and term) have been crossed out and changed.¹⁰ Page 12 of the Lease Agreement (allegedly the signature page) is missing. Page 13 contains a lease addendum and, at the top of the page, the signatures of Bettis and a person named K. Rice, who is presumably associated with Premier. Written next to the signatures is the date of May 26, 2010.¹¹

II. CONTENTIONS

The Complaint consists of two counts. Bettis first claims that he began “having memory and cognitive problems” around the time that the Lease Agreement was signed.¹² Eventually, Bettis was placed in the assisted living center where he resides today.¹³ Bettis alleges that Premier took unfair advantage of him during the drafting of the agreement. As evidence, Bettis points out that he “had been a businessman and commercial property owner in Lewes for many years” and “[u]nder normal circumstances, his leases . . . were drawn up by his

¹⁰ *Id.* at ¶ 7.

¹¹ *Id.*

¹² *Id.* at ¶ 8.

¹³ *Id.*

attorney and the terms were clearly set forth in the lease with the appropriate signature page attached.”¹⁴ Bettis further contends that the “terms are entirely one sided” and “unconscionable” and that “no man in his full senses would have entered into this agreement.”¹⁵ Thus, Bettis seeks rescission of the Lease Agreement.

Bettis’s second count alleges that Premier has been using and occupying, and continues to use and occupy, additional office space not contracted for in the Lease Agreement.¹⁶ In connection with his rescission claim, Bettis seeks reimbursement in a reasonable amount for Premier’s use and enjoyment of the additional rental space and an order restricting Premier’s use of the rental property to office suites C and D.¹⁷

Premier has moved to dismiss under Court of Chancery Rule 12(b)(6). In addition to arguing that Bettis has failed to make even a *prima facie* showing of incapacity at the time of contracting, Premier contends that Bettis’s unconscionability argument boils down to a dispute over the monetary payments

¹⁴ *Id.* at ¶ 9.

¹⁵ *Id.* at ¶¶ 10-12.

¹⁶ *Id.* at ¶ 15.

¹⁷ *Id.* at ¶¶ 17-18.

due Bettis.¹⁸ As such, Premier asserts that courts typically do not entertain questions of fairness or inequality of consideration under a contract. With respect to Bettis's second count, Premier argues that it is without merit, especially considering that Premier has used the space since June 2010 without complaint.¹⁹

III. ANALYSIS

“Pursuant to [Court of Chancery] Rule 12(b)(6), this Court may grant a motion to dismiss for failure to state a claim if a complaint does not assert sufficient facts that, if proven, would entitle the plaintiff to relief.”²⁰ “[T]he governing pleading standard in Delaware to survive a motion to dismiss is reasonable conceivability.”²¹

When considering a defendant's motion to dismiss, a trial court should accept all well-pleaded factual allegations in the Complaint as true, accept even vague allegations in the Complaint as “well-pleaded” if they provide the defendant notice of the claim, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.²²

¹⁸ Mot. to Dismiss at 1-2.

¹⁹ *Id.* at 2-3.

²⁰ *In re Alloy, Inc. S'holder Litig.*, 2011 WL 4863716, at *6 (Del. Ch. Oct. 13, 2011).

²¹ *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC*, 27 A.3d 531, 537 (Del. 2011).

²² *Id.* at 536 (citation omitted).

Although the Court “need not ‘accept conclusory allegations unsupported by specific facts or . . . draw unreasonable inferences in favor of the non-moving party,’”²³ a motion to dismiss will be denied “as long as there is a reasonable possibility that a plaintiff could recover.”²⁴

A. *Contractual Capacity*

To survive a motion to dismiss, Bettis must plead that it is reasonably conceivable that he was not competent at the time he entered into the Lease Agreement. Under Delaware law, “[a]dults are presumed to have contractual capacity and the burden of proving otherwise rests with the party alleging incapacity.”²⁵ If such burden is met, the contract may be declared voidable.²⁶

²³ *In re Alloy, Inc. S’holder Litig.*, 2011 WL 4863716, at *6 (quoting *Price v. E.I. DuPont de Nemours & Co., Inc.*, 26 A.3d 162, 166 (Del. 2011)).

²⁴ *Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P.*, 2012 WL 2053329, at *2 (Del. Ch. May 25, 2012); see *In re Alloy, Inc. S’holder Litig.*, 2011 WL 4863716, at *6 (citing *Cent. Mortg.*, 27 A.3d at 537 n. 13) (“Delaware’s reasonable ‘conceivability’ standard asks whether there is a ‘possibility’ of recovery.”).

²⁵ *McAllister v. Schettler*, 521 A.2d 617, 621 (Del. Ch. 1986).

²⁶ Even if this burden is met, a Court may still refuse to declare the contract voidable. “Where a contract has been entered into with a person mentally incompetent, in good faith, without fraud or imposition, for a fair consideration, without notice of the incompetency, and has been executed in whole or in part, the contract will not be set aside unless the parties can be restored to their original position.” *Poole v. Hudson*, 83 A.2d 703, 704 (Del. Super. 1951). The Complaint alleges that Premier took unfair advantage of Bettis’ reduced mental state. At oral argument, Bettis’s counsel maintained that Premier had notice of this incompetency. Tr. Oral Argument (“Tr.”) at 16.

Bettis must be able to show that he was “incapable of understanding the nature and effect of the transaction” or his mental faculties were so impaired that he was “unable to properly, intelligently and fairly protect and preserve his property rights.”²⁷ The Restatement of Contracts provides a similar standard: Bettis must be able to prove that “he is unable to understand in a reasonable manner the nature and consequences of the transaction.”²⁸ However, “[a] gradual weakening of mental capacity, even when accompanying extreme old age and serious illness, will not alone disable someone from making a contract.”²⁹

The Court concludes that Bettis has pled facts that raise a reasonable conceivability that Bettis was mentally incompetent at the time he entered the Lease Agreement. Although the Complaint suggests, but does not expressly aver, mental incapacity at the time the Lease Agreement was executed,³⁰ Bettis has pled additional facts sufficient to support his claim of contractual incapacity.³¹

²⁷ *McAllister*, 521 A.2d at 621 (quoting *G.A.S. v. S.I.S.*, 407 A.2d 253, 257 (Del. Fam. 1978)).

²⁸ Restatement (Second) of Contracts § 15(a)(1) (1981).

²⁹ *McAllister*, 521 A.2d at 621 (citing *Sims v. Slovin*, 207 A.2d 597, 602 (Del. Ch. 1965), *aff'd*, 213 A.2d 903 (Del. 1965)).

³⁰ To be sure, the claim that he had “begun having memory and cognitive problems” does not, by itself, allege that he was incapable of understanding the nature and effect of the transaction.

³¹ At oral argument, counsel for Bettis expressly confirmed that he is alleging that he lacked capacity at the time he signed the Lease Agreement. Tr. at 9.

First, the Complaint alleges that Bettis “had been a businessman and commercial property owner” for many years. With the execution of the Lease Agreement, Bettis had randomly departed from his customary practice as a prudent business person to have his attorney draft up the terms of the Lease Agreement. Instead, Bettis used an old lease agreement—without the aid of his attorney—from September 2000 to form the new Lease Agreement. Although perhaps not an unusual practice in the general community, the parties had handwritten the new terms and crossed out the old terms. Furthermore, the Lease Agreement form was missing at least one page, and the parties’ signatures were written at the top of an addendum to the Lease Agreement. The extent to which Bettis departed from his customary and prudent practices would constitute at least some evidence that he suffered from a mental defect when he signed the Lease Agreement.

Second, the Complaint alleges that Premier “took unfair advantage” of Bettis’s “reduced mental state.”³² Bettis alleges that the terms of the Lease Agreement are unconscionable and oppressive, and that “no man in his full senses would have entered into this agreement.”³³ Although these conclusory allegations

³² Compl. at ¶ 9.

³³ *Id.* at ¶ 11.

are largely unsupported by any factual allegations in the Complaint, they do raise a question as to why a landlord would enter into a six-year agreement, with a two-year tenant option to renew, and not provide for any rental increase. The Lease Agreement also does not specify a fee or means of apportionment for utility costs, even though the contract contemplates such a charge. This ambiguity may have merely been an oversight by the parties to the Lease Agreement or a conscious decision by Bettis to waive the utility costs. But it is just as possible that this ambiguity, coupled with Bettis's strange behavior, is an indication that Premier took advantage of Bettis in his mentally impaired state.

Finally, Bettis's memory and cognitive decline occurred around the time that the Lease Agreement was signed. Just a few months later, Bettis executed a durable power of attorney in favor of his daughter,³⁴ raising a reasonable inference that Bettis was having trouble managing his own affairs. The Court acknowledges that, for the power of attorney to be valid, Bettis must have been competent at the time of its execution. But having the capacity to appoint an attorney-in-fact at a later point in time does not necessarily establish that a person was competent to

³⁴ The power of attorney was executed on September 23, 2010 and is Exhibit A to the Complaint.

contract at a prior instance. The precise question is whether Bettis has pled facts showing that it is reasonably conceivable that he was unable to understand in a reasonable manner the nature and consequences of the transaction *at the time* the Lease Agreement was executed.

Premier argues that courts typically do not assess the unfairness of consideration. While that general statement is true in certain circumstances,³⁵ courts have considered the adequacy of consideration as one indicium of mental incompetence.³⁶ Here, the Court does not consider the adequacy of the \$1,000 monthly rental fee. The Complaint provides no basis—such as comparable rental properties—upon which the Court could infer the reasonableness of the monthly fee. Moreover, as the Court understands the Complaint, Bettis seeks to void the Lease Agreement solely on grounds of incompetency. The allegedly unfavorable contract is, according to Bettis, evidence of that incompetency. The Court notes,

³⁵ See generally *Carriage Realty P'ship v. All-Tech Auto Auto., Inc.*, 2001 WL 1526301, at *7 n.29 (Del. Ch. Nov. 27, 2001); *Ryan v. Weiner*, 610 A.2d 1377, 1381 (Del. Ch. 1992); *Affiliated Enterprises, Inc. v. Waller*, 5 A.2d 257, 260 (Del. Super. 1939).

³⁶ See e.g., *Barrows v. Bowen*, 1994 WL 198724, at *5 (Del. Ch. May 10, 1994) (“[T]he most powerful evidence [of mental incapacity] is the . . . contract itself.”); 17A C.J.S. *Contracts* § 178.

however, that there is very little evidence on the face of the Lease Agreement (or in the Complaint) that its terms are unfair, let alone unconscionable.³⁷

Nonetheless, Bettis's unusual behavior during the drafting and execution of the Lease Agreement, his decline in memory and cognition, the sliver of evidence suggesting that the terms of the Lease Agreement were unfair, and the ambiguity in the Lease Agreement raise a reasonable conceivability that he was mentally incompetent at the execution of the Lease Agreement. Therefore, Defendant's motion to dismiss Plaintiff's rescission claim is denied.³⁸

B. *Unjust Enrichment*

Bettis also seeks an order restricting Premier's use of the rental property to office suites C and D and a reasonable reimbursement for Premier's use and enjoyment of the additional rental space. Although he describes this claim as one for unjust enrichment, both parties concede, and the Court concurs, that there is an

³⁷ To determine whether a contract is unconscionable, "there must be an absence of meaningful choice and contract terms unreasonably favorable to one of the parties." *Tulowitzki v. Atl. Richfield Co.*, 396 A.2d 956, 960 (Del. 1978). "[A] contract is unconscionable if it is 'such as no man in his senses and not under delusion would make on the one hand, and as no honest or fair man would accept, on the other.'" *Id.* (quoting *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 450 n.12 (D.C. Cir. 1965)).

³⁸ Bettis' has pled just enough facts such that it is reasonably conceivable that he was mentally incompetent at the time he signed the Lease Agreement. Going forward, however, the Plaintiff will need to provide more concrete evidence of his mental limitations (such as medical testimony) in order to prevail.

adequate remedy at law for this claim.³⁹ However, this Court has discretion to exercise jurisdiction over Bettis's legal claim based on the equitable "clean-up" doctrine.⁴⁰ In the event that Bettis's rescission action is not pursued, this Court, in its discretion, may decline to hear Bettis's unjust enrichment claim because, despite the label he has given it, he has an adequate remedy at law.⁴¹

Premier's motion to dismiss Bettis's unjust enrichment claim is denied because he has pled facts that show it is reasonably conceivable that Premier has wrongfully benefited from occupying additional rental space not granted in the Lease Agreement. Bettis has alleged that Premier occupies not only office suites C and D, as provided for in the Lease Agreement, but also suites A, B, G, and I. Bettis further alleges that Premier has refused Bettis's demand to vacate the additional office suites. These facts provide sufficient notice to Premier of the

³⁹ Def.'s Reply at 3. During oral argument, counsel for Bettis stated that "if we don't have the Chancery Court issue [the rescission claim], I would agree there is a legal remedy at law." Tr. at 19.

⁴⁰ See *Getty Refining & Marketing Co. v. Park Oil, Inc.*, 385 A.2d 147, 150 (Del. Ch. 1978), *aff'd*, 407 A.2d 533 (Del. 1979).

⁴¹ See also *KL Golf, LLC v. Frog Hollow, LLC*, 2004 WL 828377, at *2 n.11 (Del. Ch. Apr. 8, 2004) (noting that the Justice of the Peace Court has exclusive jurisdiction over claims for possession); *Carriage Realty P'ship v. All-Tech Automotives, Inc.*, 2001 WL 1526301, at *7 n.30 (Del. Ch. Nov. 27, 2001) (observing, that under 25 *Del. C. Ch. 57*, commercial landlords seeking to recover possession of property must bring a summary proceeding in the Justice of the Peace Court).

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basis of Bettis's claim, and are sufficient to withstand a motion to dismiss. Accordingly, Premier's motion to dismiss Bettis's "unjust enrichment" claim is also denied.

IV. CONCLUSION

For the foregoing reasons, Premier's motion to dismiss is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K