IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TRAVELERS CASUALTY AND SURETY COMPANY,	)	
Plaintiff,	)	
v.	)	*Civil Action No. 7055-VCG*
SEQUA CORPORATION and ATLANTIC RESEARCH CORPORATION,	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: April 4, 2012
Date Decided: May 29, 2012

Neal J. Levitsky and Seth A. Niederman, of FOX ROTHSCHILD LLP, Wilmington, Delaware; OF COUNSEL: Daren S. McNally, Barbara M. Almeida, Marianne May, and Meghan C. Goodwin, of CLYDE AND CO US LLP, Florham Park, New Jersey, Attorneys for Plaintiff.

M. Duncan Grant and James G. McMillan, III, of PEPPER HAMILTON LLP, Wilmington, Delaware, Attorneys for Defendants.

GLASSCOCK, Vice Chancellor

Travelers Casualty and Surety Company ("Travelers"), an insurer, is being sued for insurance benefits in a New Jersey court. The plaintiff there is a subsidiary of a defendant here, Sequa Corporation ("Sequa"). Travelers seeks specific performance of, and a declaratory judgment arising from, a release of claims by Sequa in favor of Travelers, made in connection with the settlement of coverage litigation in the Delaware Superior Court in 1997. The relief sought by Travelers here would relieve it from, or indemnify it for, liability in the coverage litigation now being undertaken in New Jersey.

Because the explicit language of the release excludes the sites for which the plaintiff in the New Jersey action seeks coverage, as a matter of contract law Travelers is not entitled to the specific performance or declaratory judgment it seeks here, and this matter must be dismissed.

I. BACKGROUND

This matter is before me on a motion to dismiss. The facts below are taken from the Plaintiff's Verified Complaint ("Complaint") and a 1997 Settlement Agreement and Release (the "Settlement Agreement"), which is referenced by and integral to the Complaint.[1]

[1] When ruling on a motion to dismiss, this Court may consider documents referenced in the complaint that are integral to the plaintiff's claims. *Forsythe v. ESC Fund Mgmt. Co. (U.S.)*, 2007 WL 2982247, at *2 n.5 (Del. Ch. Oct. 9, 2007).

A. The Parties

Plaintiff Travelers,[2] Defendant Sequa, and Chromalloy American Corporation ("Chromalloy"), a Sequa subsidiary, are parties to the Settlement Agreement, which releases Travelers from insurance coverage claims under policies it issued arising out of certain environmental sites identified in the Agreement.

Atlantic Research Corporation ("ARC") is, and was at the execution of the Settlement Agreement, a subsidiary of Sequa. In ongoing litigation in New Jersey, ARC has requested a declaratory judgment for insurance coverage under policies issued by Travelers. Travelers brought this action seeking, among other forms of relief, specific performance of the releases in the Settlement Agreement and a determination that the Agreement released the claims brought by ARC in the New Jersey litigation.[3]

B. Lawsuit and Settlement Agreement

On April 3, 1989, Sequa and Chromalloy filed suit in Delaware Superior Court seeking a declaration of their rights under insurance policies issued by the Plaintiff and other insurers with respect to coverage for alleged liability arising out

[2] Travelers acquired Aetna Casualty and Surety Company ("Aetna"), the party actually named in the Settlement Agreement, in April 1996. For simplicity, I will refer to Aetna as "Travelers."

[3] By letter on March 15, 2012, I asked the parties to submit letter memoranda addressing whether this Court has subject matter jurisdiction over this action. The parties submitted informative memoranda, both arguing that jurisdiction is appropriate. Upon reviewing those submissions, I find that the Plaintiff's claims properly invoke this Court's equity jurisdiction.

of a number of environmental sites. On June 16, 1997, Sequa, Chromalloy, and Travelers executed the Settlement Agreement.

The Settlement Agreement resolved certain claims against Travelers involving 127 environmental sites under 21 insurance policies issued by Travelers to Chromalloy and two Sequa predecessors, Sun Chemical Corp. ("Sun") and Standard Kollsman Co. or Kollsman Instrument Division of Square D Co. (collectively, "Kollsman"). The Agreement's release language states, in relevant part:

> Chromalloy and Sequa (on behalf of themselves, as well as Kollsman and Sun) do hereby . . . release and discharge [Travelers] from the following:
>
> A. Any and all past, present and future payment obligations . . . whether known or unknown by Chromalloy, Kollsman, Sun or Sequa as of the date of this Agreement . . . which Chromalloy, Kollsman, Sun or Sequa ever had, now has, or hereafter may have arising out of or relating to *the Environmental Claims*.[4]

The Settlement Agreement also creates certain indemnity and defense obligations owed to Travelers by Chromalloy and Sequa:

> Chromalloy and Sequa agree to indemnify, and hold [Travelers] harmless from and against, and agree to reimburse [Travelers] for the full amount of, any [expenses[5]] incurred by [Travelers] after the date of this Agreement . . . arising out of, resulting from or in any way connected with *any of the Environmental Claims*. . . . Chromalloy and Sequa shall defend diligently, and at their own cost . . . any such claim

[4] Settlement Agreement and Release ¶ 3, Compl. Ex. A, at ARC TRAV CON 000044-46 [hereinafter "SAR ___"] (emphasis added).

[5] The Settlement Agreement lists "judgment, payment, award, loss, claim, damage, penalty, liability, out-of-pocket expense and/or cost." *See* SAR ¶ 6.

> or suit with counsel to be appointed by Chromalloy and Sequa, subject to the approval of [Travelers] . . . .
>
> Chromalloy and Sequa shall control and direct any such defense . . . .[6]

The term "Environmental Claims" is central to the dispute in this action and is a defined term in the Settlement Agreement:

> "Environmental Claim(s)" shall mean any claim . . . made . . . or which may be made . . . (whether now known or unknown) against Chromalloy, Kollsman, Sun or Sequa by the United States Environmental Protection Agency, other federal, state or local governmental agencies and/or private parties for environmental liabilities . . . .
>
> For purposes of this Agreement only, "Environmental Claims" *shall not include*: (i) claims of any kind . . . at or in connection with sites *other than the Sites identified in Exhibit A* . . . .[7]

Exhibit A lists the 127 environmental sites that constitute potential sources of "Environmental Claims," as that term is defined in the Settlement Agreement. The Agreement also contains an express warranty in which Chromalloy and Sequa affirm that the list of sites in Exhibit A is exhaustive:

> Chromalloy and Sequa hereby represent and warrant that as of the date of the execution of this Agreement they are not aware of any other site at which any person or entity has alleged that either Chromalloy, Kollsman, Sun or Sequa are responsible for environmental liabilities, including, but not limited to, bodily injury, property damage, personal injury, cleanup, remediation, or ongoing

[6] *Id.* ¶ 6 (emphasis added).
[7] *Id.* ¶ 1.A (emphasis added).

> maintenance responsibilities, other than the Sites which are identified in Exhibit A.[8]

As mentioned above, Travelers seeks a determination that the Settlement Agreement releases claims brought against it by *ARC*, a Sequa subsidiary not named in the Agreement. Though it does not explicitly refer to ARC, the Agreement does include Sequa's subsidiaries within the definition of "Sequa":

> "Sequa" shall mean Sequa Corporation, including but not limited to its status as successor-in-interest to Sun and Kollsman, its parents, subsidiaries, affiliates, successors, assigns, directors, officers, agents, employees, attorneys and any other entity that was in the past or is now affiliated with, related to or associated with Sequa, and their past and present subsidiaries, affiliates, successors, assigns, directors, officers, agents and employees, including but not limited to Chromalloy, Kollsman and/or Sun.[9]

Travelers thus argues that the release and warranty provisions in the Settlement Agreement bind ARC just as they bind Sequa. The Defendants assert that despite the boilerplate reference to Sequa's "subsidiaries" in the "Definitions" section of the Settlement Agreement, the parties did not intend to reference the above definition with every use of "Sequa" in the Agreement. Rather, the Defendants contend, the inclusion of "subsidiaries" was simply meant to bar the listed categories of individuals and entities from asserting, in Sequa's stead, claims arising out of the environmental sites identified in Exhibit A. The Defendants argue that the Settlement Agreement, when read as a whole, does not indicate an

[8] *Id.* ¶ 9.
[9] *Id.* ¶ 1.E.

intent to bar ARC from asserting its own claims with respect to its own liabilities for its own sites under its own policies.

C. The New Jersey Litigation

On January 7, 2007, ARC filed suit against Travelers in New Jersey seeking insurance coverage for costs associated with alleged environmental contamination at certain sites (the "New Jersey Action"). Travelers claims that the Settlement Agreement released its coverage obligations with respect to at least five of the sites at issue in the New Jersey Action: Gainesville, CM Shop, Camden, Industrial Solvents, and Aqua-Tech (the "ARC Sites"). None of these sites are listed in Exhibit A to the Settlement Agreement.

D. The Claims

Travelers seeks (1) a declaratory judgment finding that Travelers is released under the Settlement Agreement from ARC's insurance coverage claims for the ARC Sites; (2) a declaratory judgment finding that Sequa is obligated to indemnify, hold harmless, and defend Travelers in the New Jersey Action, per its alleged obligations under the Settlement Agreement;[10] (3) an order requiring Sequa to specifically perform its alleged contractual obligations under the Settlement Agreement, namely, the release of Travelers from its insurance obligations and the

[10] Notably, the Plaintiff does not argue that, just as the warranty and release provisions bind ARC as a subsidiary of Sequa, so do the indemnification provisions obligate ARC to indemnify and defend Travelers. The relief for such a claim presumably would entail an order requiring ARC to oppose itself in the New Jersey Action or, alternatively, indemnify Travelers in an amount equal to its recovery from Travelers.

indemnification and defense of Travelers in the New Jersey Action; (4) damages on the ground that Sequa breached the Settlement Agreement in refusing to indemnify, hold harmless, and defend Travelers in the New Jersey Action; and (5) attorneys' fees.

The Defendants have moved to dismiss the Complaint and have raised several bases for doing so. First, the Defendants contend that the Plaintiff's claims for declaratory relief are contrary to the plain terms of the Settlement Agreement because Sequa's release and indemnification obligations apply only to Environmental Claims arising out of the sites listed in Exhibit A to the Agreement, and the ARC Sites are not listed in Exhibit A. Second, the Defendant asserts that the Plaintiff in actuality does not seek an interpretation of the Settlement Agreement, but rather a reformation of that agreement. Per the Defendants' characterization, the Plaintiff has alleged that Sequa knew of the ARC Sites at the time of the Settlement Agreement yet expressly represented that Exhibit A, which does not include the ARC Sites, listed all "known" sites. Thus, in the Defendants' view, the Plaintiff's actual argument is that the release should be "reformed" to include the ARC Sites. The Defendants point out that the Plaintiff has not adequately pled grounds for reformation, such as mutual mistake, unilateral mistake and knowing silence, or fraud. Finally, the Defendants contend that the Complaint is barred by laches. The Defendants ask the Court to apply the statute of

limitations for an analogous action at law or, in the alternative, find that the Plaintiff has unreasonably delayed in bringing this action.

II. STANDARD OF REVIEW

In reviewing a defendant's motion to dismiss under Rule 12(b)(6), this Court accepts the plaintiff's well-pled allegations as true, accepts as "well-pled" even vague allegations so long as they put the defendant on notice of the claim, and draws all reasonable inferences in the plaintiff's favor.[11] A motion to dismiss will be denied unless, despite the foregoing, the plaintiff "would not be entitled to recover under any reasonably conceivable set of circumstances."[12]

In general, "matters beyond the complaint may . . . not be considered in ruling on a motion to dismiss."[13] Where a party presents matters outside of the pleading and the court does not exclude those matters, the court must treat the motion to dismiss as a motion for summary judgment under Court of Chancery Rule 56, and all parties must be given a "reasonable opportunity to present all material relevant to a summary judgment motion."[14] Where a document is integral to and incorporated within the complaint, however, as the Settlement Agreement is here, the court may properly consider the document in its ruling.[15]

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[11] *See Cent. Mortgage Co. v. Morgan Stanley Mortgage Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011)).
[12] *Id.* at 535.
[13] *Robotti & Co., LLC v. Liddell*, 2010 WL 157474, at *5 (Del. Ch. Jan. 14, 2010).
[14] *Id.* at *5; Ch. Ct. R. 12(b).
[15] *See Robotti*, 2010 WL 157474, at *5.

III. ANALYSIS

The parties' shared intent is the controlling factor behind the meaning of a contract, and that intent is evidenced firstly by the language of the contract, read as a whole.[16] If the language is "clear and unambiguous, the ordinary meaning of the language generally will establish the parties' intent."[17] The interpretation of contractual language is a question of law; thus, where the terms of a contract are unambiguous, the meaning thereof is suitable for determination on a motion to dismiss.[18]

I assume for purposes of this motion only that the Plaintiff's claims are not barred by laches as a matter of law. For the same limited purpose, I also assume that each time the parties used the term "Sequa" in the Settlement Agreement, they intended to reference Sequa as well as all of its subsidiaries, parents, affiliates, assigns, attorneys, and so on, *ad infinitum*, as suggested by the "Definitions" section of the Agreement.[19] Notwithstanding these assumptions, I find that the release and indemnification provisions in the Settlement Agreement are

[16] *Meso Scale Diagnostics, LLC v. Roche Diagnostics GMBH*, 2011 WL 1348438, at *8 (Del. Ch. Apr. 8, 2011).
[17] *Id.* at *8 (internal quotation marks omitted).
[18] *Id.*; *Allied Capital Corp. v. GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1030 (Del. Ch. 2006).
[19] I note, without deciding, however, that upon initial review, the broad definition of "Sequa" in Paragraph 1.E, to the extent it applies throughout the release, appears more consistent with inartful draftsmanship than with an intent to bind every entity and individual that has ever crossed paths or done business with Sequa Corporation.

unambiguous, and that a plain reading of those terms makes clear that the five ARC Sites at issue in the New Jersey Action are not covered.

Paragraph 3 of the Settlement Agreement contains the relevant release provisions. Subpart A of that paragraph describes a release of all claims "arising out of or relating to the Environmental Claims." This is the provision the Plaintiff relies on in seeking declaratory relief that the claims connected to the ARC Sites were released, a holding that is a predicate to all the relief requested. Paragraph 3, subpart A clearly limits the release to the "Environmental Claims," a defined term. Paragraph 1, subpart A, defines "Environmental Claims" and expressly excludes from that definition "claims of any kind . . . at or in connection with sites other than the Sites identified in Exhibit A." Simply put, the Settlement Agreement contemplates a release only of Environmental Claims connected with the sites listed in Exhibit A. As the Plaintiff admits, Exhibit A does not list any of the ARC Sites.[20]

With the plain meaning of the release provisions against it, the Plaintiff turns to a covenant appearing at Paragraph 9 of the Settlement Agreement, in which Sequa expressly warrants that, as of the date of the Settlement Agreement, it is "not aware of any other site at which any person or entity has alleged that either

[20] Pl.'s Answering Br. at 10 ("Sequa failed to list any of the [ARC Sites] on 'Exhibit A' to the 1997 Settlement Agreement . . . .").

Chromalloy, Kollsman, Sun or Sequa[21] are responsible for environmental liabilities . . . other than the Sites which are identified in Exhibit A."[22] The Plaintiff argues that Sequa breached this covenant because it knew of the ARC Sites when it signed the Settlement Agreement. The Plaintiff does not, however, assert a claim that it is entitled to damages or some other form of relief (for instance, reformation on account of fraud) on the basis of Sequa's breach of this covenant. Instead, the Plaintiff asks the Court to accept the following line of reasoning:

1. The Settlement Agreement releases all claims intended to be included in Exhibit A.

2. The warranty in Paragraph 9 demonstrates a clear intent to include in Exhibit A all environmental sites known to Sequa or ARC at the time of Agreement.

3. Sequa or ARC knew of the ARC Sites when Sequa signed the Settlement Agreement.

4. Therefore, claims arising from the ARC Sites are released, despite not being listed in Exhibit A.

The Plaintiff seems to be working backwards, essentially arguing that, because of the warranty in Paragraph 9, the Court should read the list of sites in Exhibit A as impliedly including "all known sites," in addition to the sites actually listed.

The language in the Settlement Agreement is unambiguous, however. Moreover, I note that the Plaintiff's argument that Sequa's warranty includes the

[21] Again, for purposes of this motion only, I assume that the reference to Sequa includes ARC. If this reference to Sequa is broadly inclusive, the listing of Chromalloy, Kollsman, and Sun is mere surplusage, however.
[22] SAR ¶ 9.

ARC Sites is not particularly persuasive.[23] However, assuming for purposes of this motion that Sequa contractually represented that Exhibit A included all known environmental sites of unnamed subsidiaries and that Sequa intentionally failed to list the ARC Sites, the Plaintiff might have grounds to assert a claim for reformation of the Settlement Agreement. Such a cause of action, if successfully pursued here, would have afforded the Plaintiff the relief it seeks. Yet the Plaintiff has not only failed to meet the pleading requirements for reformation,[24] it has actively and expressly eschewed that cause of action here.[25]

Just like the release provisions, the indemnification and defense provisions in Paragraph 6 of the Settlement Agreement apply only to Environmental Claims, and thus do not apply to claims arising out of sites not listed in Exhibit A. For the same reasons as discussed above, therefore, the Defendants' interpretation of those provisions is correct.

It follows from the above that Sequa has not breached the Settlement Agreement in refusing to indemnify Travelers and that Travelers is not entitled to attorneys' fees for bringing this action.

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[23] *See supra* note 21.

[24] "Reformation is appropriate only when the contract does not represent the parties' intent because of fraud, mutual mistake or, in exceptional cases, a unilateral mistake coupled with the other parties' knowing silence." *James River-Pennington Inc. v. CRSS Capital, Inc.*, 1995 WL 106554, at *7 (Del. Ch. Mar. 6, 1995). Allegations of fraud or mistake must be pled with particularity. Ch. Ct. R. 9(b).

[25] *See* Pl.'s Answering Br. at 17 ("In its Complaint, Travelers alleges five (5) causes of action. Importantly, however, not a single cause of action alleges (much less mentions) a claim of reformation.").

CONCLUSION

Travelers seeks a declaratory judgment upon and specific performance of a contract *as written*. The contract as written does not permit the relief sought. For reasons of its own, Travelers has elected not to pursue any reformation of the contract which might be available. Accordingly, and for the reasons stated above, Travelers is unable to prevail on its claims, and the Defendants' Motion to Dismiss is GRANTED as to all counts in the Complaint.

IT IS SO ORDERED.