

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

TOWN OF TOWNSEND,

Plaintiff,

v.

GRASSBUSTERS, INC., and
AEGIA SECURITY INSURANCE
COMPANY,

Defendants.

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C.A. No. K15C-12-023 RBY
In and For Kent County

Submitted: April 1, 2016

Decided: May 23, 2016

Upon Consideration of Defendants' Motion to Dismiss

DENIED

OPINION

Noel E. Primos, Esquire, Schmittinger & Rodriguez, Dover, Delaware for
Plaintiff.

Kevin A. Guerke, Esquire, Seitz, Van Ogtrop & Green, P.A., Wilmington,
Delaware for Defendants.

Young, J.

SUMMARY

The town of Townsend (“Plaintiff”) filed suit against Grassbusters, Inc. (“Grassbusters”) and Aegis Security Insurance Company (“Aegis,” together with Grassbusters, “Defendants”), claiming that each failed to fulfill its obligations under a contract and a performance/payment bond. Defendants move to dismiss in part. Because Plaintiff has alleged facts sufficient to support the relevant claims, Defendants’ Motion to Dismiss is **DENIED**.

FACTS AND PROCEDURE

Plaintiff asserts that it entered into two agreements relating to streetscape improvements in the town. First, Plaintiff claims that a contract for completion of the project exists between the town and Grassbusters. Second, Plaintiff claims that a performance bond for the project lists Grassbusters as principal and Aegis as surety. When problems arose with work on the project, both Grassbusters and Aegis denied responsibility.

Plaintiff filed a complaint on December 18, 2015. The complaint includes claims for breach of contract and breach of warranty against Grassbusters, and a claim for breach of contract against Aegis. Defendants move to dismiss the breach of contract claims against Grassbusters and Aegis.

Defendants argue that Plaintiff lacks standing to bring contract claims based upon the performance bond because it is neither party to nor an intended beneficiary of that agreement. As a result, Defendants request dismissal of Count I against Grassbusters for breach of contract, to the extent that the claim is based on the

performance bond. Defendants request complete dismissal of Count III against Aegis for breach of contract.

In response, Plaintiff reasserts that the town entered into a contract for the streetscaping project with Grassbusters, for which a performance bond was issued in favor of Townsend, with Grassbusters as principal and Aegis as surety. Therefore, Plaintiff argues, an express contract exists between the parties. Additionally, Plaintiff contends that even absent an express contract, the agreement between the parties constitutes an implied-in-fact contract.

APPLICABLE LAW

Under Delaware law, a legally enforceable contract may be either express or implied-in-fact. The two forms of contract “are legal equivalents - the first being arrived at by language and the second by actions that demonstrate a meeting of the minds.”¹ Where a valid contract exists, the rules governing enforcement of contract rights are clear.

...[O]nly parties to a contract and intended third-party beneficiaries may enforce an agreement’s provisions. Merely incidental beneficiaries have no legally enforceable rights under a contract. A third-party beneficiary is an incidental beneficiary unless the parties to the contract intended to confer a benefit upon it.²

¹ *Klehr, Harrison, Harvey, Bransburg & Ellers, LLP v. Mosaica Education, Inc.*, 2009 WL 5177144, at *2 (Del. Super. Dec. 14, 2009).

² *NAMA Holdings, LLC v. Related World Market Center, LLC*, 922 A.2d 417, 434 (Del. Ch. 2007).

STANDARD OF REVIEW

The Court’s standard of review on a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6) is well-settled. The Court accepts all well-pled allegations as true.³ Well-pled means that the complaint puts a party on notice of the claim being brought.⁴ If the complaint and facts alleged are sufficient to support a claim on which relief may be granted, the motion is not proper and should be denied.⁵ The test for sufficiency is a broad one.⁶ If any reasonably conceivable basis can be formulated to allow Plaintiff’s recovery, the motion to dismiss must be denied.⁷ Dismissal is warranted only when “under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.”⁸

DISCUSSION

Defendants move to dismiss in part on the ground that Plaintiff lacks standing to assert any claims for breach of contract arising out of the performance bond. In particular, Defendants point to language in the performance bond designating the “State” and the “Department of Transportation” as the relevant parties and intended

³ *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. Mar. 31, 2009).

⁴ *Savor, Inc. v. FMR Corp.*, 2001 WL 541484, at *2 (Del. Super. Apr. 24, 2001).

⁵ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁶ *Id.*

⁷ *Id.*

⁸ *Thompson v. Medimmune, Inc.*, 2009 WL 1482237, at *4 (Del. Super. May 19, 2009).

beneficiaries. Defendants take the position that Plaintiff is not a party to the performance bond. As a result, Defendants assert that Plaintiff has no enforceable rights under the agreement.

In support of its opposition to Defendants' motion, Plaintiff submitted exhibits including, among others, a copy of the performance bond. While the performance bond does list the "State" as an intended beneficiary of the agreement, asterisks above the term "State" clearly correspond to a key below, indicating that the "State" is "Town of Townsend, P.O. Box 223, Townsend, DE 19734."

The language of the performance bond could support finding an express agreement between the parties, or an agreement implied in fact. Thus, under a reasonable interpretation of the facts, Plaintiff could be shown to be an intended beneficiary of the performance bond. As a result, Plaintiff's complaint states a claim upon which relief may be granted.

CONCLUSION

For the foregoing reasons, the Defendants' motion to dismiss is **DENIED**.

/s/ Robert B. Young

J.

RBY/dsc