

Superior Court  
of the  
State of Delaware

Jan R. Jurden  
Judge

New Castle County Courthouse  
500 North King Street, Suite 10400  
Wilmington, Delaware 19801-3733  
Telephone (302) 255-0665

Date Submitted: February 2, 2006

Date Decided: March 24, 2006

Thomas P. Preston, Esquire  
Blank Rome LLP  
Chase Manhattan Center, Suite 800  
1201 Market Street  
Wilmington, DE 19801-4226

Maryanne T. Conaghy, Esquire  
Stradley, Ronon, Stevens & Young  
300 Delaware Avenue  
Suite 800  
Wilmington, DE 19801

**RE: Sonitrol Corporation v. Signature Flight Support Corporation**  
**C.A. No. 05C-07-302**

Dear Counsel:

This lawsuit involves claims for breach of contract, promissory estoppel and unjust enrichment. The Plaintiff, Sonitrol Corporation (“Sonitrol”), provides electronic security services. The Defendant, Signature Flight Support Corporation (“Signature”), provides business aviation services. The complaint alleges that in April 2002, Signature entered into multiple contracts with Sonitrol, for Sonitrol to install electronic security equipment and provide electronic security services at various Signature locations throughout the United States. According to Sonitrol, it installed the equipment and provided the services in accordance with the contracts, Signature accepted the equipment and services, and Signature failed to pay approximately \$491,523.59 to Sonitrol for certain of the equipment and services provided pursuant to the contracts.

In response, Signature moved to dismiss the complaint, claiming that Sonitrol: (1) lacks standing to bring this suit, (2) failed to join indispensable parties, and (3) improperly joined claims in this action.

The Court heard oral argument on the motion and requested additional briefing following the argument. For the reasons that follow, the Defendant’s Motion to Dismiss is **DENIED**. Contrary to Sonitrol’s assertions, Signature

alleges that this lawsuit “involves multiple, independent disputes between Signature and at least eleven (11) separate operating entities, known as Sonitrol Independent Franchised Dealers (the “Dealers”).”<sup>a</sup> Signature further alleges that the basis of any claims by the Dealers “are factually distinct, do not arise out of the same ‘transaction or occurrence,’ and are not otherwise related.”<sup>b</sup> In support of Signature’s argument that Sonitrol lacks standing, Signature alleges: (1) Sonitrol is not a party to any of the Signature-Dealer contracts, (2) “nowhere in the Signature-Dealer contracts does it state or infer that Sonitrol is an intended beneficiary of the contracts,” and (3) the express language of each contract disclaims a parent-subsidary or principal-agent relationship between Sonitrol and the Dealers.<sup>c</sup> While Sonitrol admits that the “disputes arise from separate but related, contracts,” it alleges that all the contracts relate to the same transaction or occurrence because all the disputes relate to Sonitrol’s (not any Dealers’) installation of closed circuit television surveillance equipment at Signature facilities across the United States.<sup>d</sup>

In opposition to the Motion to Dismiss, Sonitrol submitted an Affidavit from Thomas C. Breslin, Senior Vice-President and Chief Financial Officer of Sonitrol, which provides factual allegations, not set forth in the complaint, supporting Sonitrol’s claims. Signature objects to Sonitrol’s submission of this Affidavit, arguing that a plaintiff may not “unilaterally” modify the existing record on a Motion to Dismiss. Had the factual allegations in the Breslin Affidavit been included in the complaint, the complaint would survive Signature’s attempt to dismiss it based on Sonitrol’s lack of standing. Consequently, rather than dismissing the complaint on this ground and permitting Sonitrol to amend to incorporate the allegations set forth in the Breslin Affidavit, in the interest of judicial economy and because the Court prefers to decide claims on their merit and not procedural technicalities,<sup>e</sup> the Court will consider the Affidavit.<sup>f</sup> Considering all well-pleaded facts in the Complaint and the Breslin Affidavit and accepting

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<sup>a</sup> Mot. to Dismiss at ¶ 1.

<sup>b</sup> Id. at ¶ 3.

<sup>c</sup> Mot. to Dismiss at ¶ 7 (emphasis added).

<sup>d</sup> Resp. to Mot. to Dismiss at ¶¶ 2, 3.

<sup>e</sup> Cf. *Superwire.com, Inc. v. Hampton*, 805 A.2d 904, 908 (Del. Ch. 2002) (stating in the context of motions made pursuant to the analogous Ct. Ch. R. 12(b)(6) and 56 that “the interests of judicial economy dictate that, ‘[t]he form of the pleadings should not place a limitation upon the court’s ability to do justice.’”) (citing *Bank of Delaware v. Claymont Fire Co. No. 1*, 528 A.2d 1196, 1199 (Del. 1987)); see also *Criswell v. McFadden*, 2006 WL 435717 at \*4 (D. Del. 2006) (explaining with regard to Delaware’s Savings Statute that it is “‘liberally construed to enable controversies to be decided upon the merits of a dispute rather than upon procedural technicalities.’”), citing *Howmet Corp. v. City of Wilmington*, 285 A.2d 423, 427 (Del. Super. Ct. 1971).

<sup>f</sup> So the Court’s consideration of the Plaintiff Sonitrol’s Affidavit does not to preclude submission of any future dispositive motions in this case, the Court continues to treat the present Motion to Dismiss as subject to Super. Ct. Civ. R. 12, and not as a motion for summary judgment under Super. Ct. Civ. R. 56.

them as true,<sup>g</sup> the Court finds Sonitrol has standing to prosecute this action and thus denies the Motion to Dismiss on this ground.

With regard to Signature's argument that the Dealers are indispensable parties but cannot be properly joined in this action, the Court disagrees. The complaint alleges that it was Sonitrol, and not the various Dealers, who provided the equipment and performed the installation.<sup>h</sup> While the language in the written contracts and the lack of certain signatures on nine (9) of the eleven (11) contracts raise questions about the validity of certain of Sonitrol's claims, the Court cannot properly decide those issues on a Motion to Dismiss.

Last, with regard to Signature's argument that Sonitrol violated the Superior Court rules by joining all these claims in one action, the Court disagrees. The claims share material facts and arise out of the same transaction and occurrence – Sonitrol's provision of security equipment and services to Signature at various Signature locations throughout the United States. The Court does not agree with Signature that it will be prejudiced by having to defend these claims in one action. To the contrary, it will promote judicial economy and probably save the parties time and expense to adjudicate the claims in one forum and one trial.

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<sup>g</sup> In pertinent part, Super. Ct. Civ. R. 12(b) states: [e]very defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, ... (7) failure to join a party under Rule 19." When considering motions to dismiss under Rule 12(b)(6), the Court considers "all well-pleaded facts in the complaint and accepts them as true." *Nye v. Univ. of Delaware*, 2003 WL 22176412, at \*3 (Del. Super. 2003), citing *Crowhorn v. Nationwide Mut. Ins.*, 2001 WL 695542, at \*2 (Del. Super.). To that end, the Court must draw "all reasonable inferences in favor of the non-movant." *Nye*, at \*3, citing *Rinaldi v. Iomega Corp.*, 1999 WL 1442014, at \*2 (Del. Super.). Finally, "[w]hen evaluating the sufficiency of plaintiff's complaint the Court must determine 'whether [the] plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.'" *Nye*, at \*3, citing *Crowhorn*, at \*2. As to motions filed under Super. Ct. Civ. R. 12(b)(1), this Court "is a court of general common-law jurisdiction; however, as to matters embraced within a statute, it exercises jurisdiction, special, limited, and summary and not according to the course of common law." *Smith v. Dep't of Pub. Safety*, 1999 WL 1225250, at \*5 (Del. Super. 1999), citing *Stidham v. Brooks*, 5 A.2d 522 (Del. 1939). It "will dismiss a case pursuant to ... Rule 12(b)(1) when it lacks jurisdiction over the subject matter of a plaintiff's complaint." *Id.* Similarly, pursuant to Super. Ct. Civ. R. 12(b)(7), the Court may dismiss a claim for failure to join a party under Super. Ct. Civ. R. 19, "which provides for the joinder of persons needed for just adjudication of the claims." *Perry v. Dover Fed. Credit Union*, 2004 WL 838840, at \*1 (Del. Super. 2004). Rule 19 permits dismissal of the claim "if the party not joined is indispensable to the case but cannot be made a party." *Id.* The factors for the Court to consider in making this determination, "as stated in Rule 19, include: [1] to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; [2] the extent to which, by protective provisions in the judgment, by the shaping of relief or other measures, the prejudice can be lessened or avoided; [3] whether a judgment rendered in the person's absence will be adequate; [4] whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder." *Id.* at \*1-2. Finally, "if the party is subject to service of process and the joinder will not deprive the Court of subject matter jurisdiction, the Court may order that the person be made a party." *Id.* at \*2.

<sup>h</sup> Complaint ¶¶ 4, 5.

For all these reasons, Signature's Motion to Dismiss is **DENIED**. The parties shall contact judges' chambers to select a mutually convenient time for a scheduling conference.

**IT IS SO ORDERED.**

Very truly yours,

Jan R. Jurden  
Judge

JRJ:mls