

IN THE CHANCERY COURT, STATE OF WYOMING

2024 WYCH 1

Azimuth Holding LLC, a Wyoming limited liability company, and David N. Christenson,

Plaintiffs and Counterclaim-Defendants,

v.

Daniel Wiggins, Marine Asset Group LLC, a Wyoming limited liability company, Marine Asset Management LLC, a Wyoming limited liability company, and Sea Warrior LLC, a Wyoming limited liability company,

Defendants and Counterclaimants.

WY Chancery Court
Jan 16 2024 10:20AM
CH-2023-000015
71809887
N/A

Case No. CH-2023-000015

FILED

Order Granting Plaintiffs' Motion to Dismiss Counts I and II¹ of Defendants' Counterclaims for Failure to State Claims Upon Which Relief Can Be Granted

[¶ 1] Before the court is plaintiffs' motion to dismiss counterclaims one and two. (FSX No. 71123250). The motion was fully briefed, and for the reasons below, is now **GRANTED**.

FACTS

[¶ 2] The following facts are undisputed.

[¶ 3] Justin Smith (through his company, Azimuth Holdings), David Christenson, and Daniel Wiggins, joined together in certain maritime business ventures near the Olympic Peninsula in the State of Washington. *Answer and Counterclaim* filed October 2, 2023 (FSX No. 71006084) (“*Counterclaims*”) ¶ 9; *Amended Complaint* filed September 19, 2023 (FSX No. 70901954) (“*Complaint*”) ¶ 9.

[¶ 4] The counterclaimant companies were formed in 2019: Plaintiff Azimuth formed Marine Asset Group LLC (MAG), which in turn formed Marine Asset Management LLC (MAM) and Sea Warrior LLC. *Counterclaims* ¶¶ 10-12; *Complaint*, ¶¶ 10-12.

¹ In their briefing, the parties stipulate to dismissal of Count II without prejudice. The court directs the parties to file a stipulation of dismissal in accordance with W.R.C.P.Ch.C. 41(a)(1)(A)(ii). *See also* Rule 41(c) (“This rule applies to a dismissal of any counterclaim . . .”).

[¶ 5] In 2020, plaintiffs Azimuth and Christenson and defendant Wiggins “entered into a company operating agreement for MAG as its three members, each owning one-third (1/3) of the capital interest of the company, and managing the company directly as members.” *Countercl.*, ¶ 13; *Compl.*, ¶ 13.

[¶ 6] At the same time, “MAG entered into a company agreement for MAM as its sole member, but appointing the three members of MAG as the managers of MAM.” *Countercl.*, ¶ 15; *Compl.*, ¶ 16.

[¶ 7] “The members of MAG originally contemplated MAG, MAM, and Sea Warrior to function in a triangular structure to maximally but lawfully limit liability, such that MAG would own MAM and Sea Warrior, that Sea Warrior LLC would eventually in the future own a 98.5-foot commercial fishing vessel, the f/v sea warrior (U.S. Coast Guard official number 563829) (the “Vessel”), and that Marine Asset Management LLC would manage the maritime operations of the total enterprise, including the operations on the vessel.” *Countercl.*, ¶ 16; *Compl.*, ¶ 17.

[¶ 8] Also in 2020, the three members of MAG formally defined their job duties, which included plaintiff Christenson “managing the operation, maintenance, and repair of the Vessel” and being responsible for “winterizing the Vessel at the conclusion of the season.” *Countercl.*, ¶¶ 17-19; *Compl.*, ¶¶ 14-15.

[¶ 9] “At that time, the Vessel was owned by Silver Bay Seafoods, L.L.C. (“Silver Bay”), an Alaska limited liability company not subject to any of the claims in this complaint.” *Countercl.*, ¶ 20; *Compl.*, ¶ 18.

[¶ 10] “On April 30, 2020, in advance of the 2020 Alaska fishing season, MAM entered into two reciprocal agreements with Silver Bay, a Time Charter and Tender Service Agreement and a Bareboat Charterparty.” *Countercl.*, ¶ 21; *Compl.*, ¶ 19.

[¶ 11] “Under the Bareboat Charterparty between Silver Bay as vessel owner (“Owner” under the agreement) and MAM (bareboat “Charterer,” or “owner pro hac vice” under the agreement), MAM hired the Vessel from Silver Bay until December 31, 2021, or as might be extended by the parties.” *Countercl.*, ¶ 22; *Compl.*, ¶ 21.

[¶ 12] “During 2020 and 2021, Azimuth, Christenson and Wiggins owned and managed MAG as its members; MAG owned and managed MAM as its member; MAM operated the Vessel; Sea Warrior LLC was dormant.” *Countercl.*, ¶ 24; *Compl.*, ¶ 26.

[¶ 13] “The Bareboat Charterparty also granted to MAM an option to purchase the Vessel.” *Countercl.*, ¶ 25; *Compl.*, ¶ 27.

[¶ 14] “Prior to the end of 2021 and the termination of the Bareboat Charterparty, MAM sent notice to Silver Bay to purchase the Vessel and the parties began conducting negotiations to effect that purchase.” *Countercl.*, ¶ 27; *Compl.*, ¶ 29.

[¶ 15] “On or about November 29, 2021, Azimuth and Christenson sent a term sheet to Wiggins offering to sell both of their one-third ($\frac{1}{3}$) membership interests in MAG and its subsidiaries.” *Countercl.*, ¶ 29; *Compl.*, ¶ 30.

[¶ 16] “On December 23, 2021, Azimuth, Christenson, Wiggins and MAG entered into a Membership Interest Purchase and Sale Agreement (the “PSA”) by which Azimuth and Christenson sold their membership interests in Marine Asset Group LLC to Wiggins.” *Countercl.*, ¶ 30; *Compl.*, ¶ 32.

[¶ 17] For the purposes of this motions practice, the court takes as true the following disputed facts.

[¶ 18] “At the conclusion of the 2021 season, Christenson was responsible for winterizing the Vessel.” *Countercl.*, ¶ 28.

[¶ 19] “MAM exercised navigational control and management of the Vessel along with the control of its employees and crew.” *Countercl.*, ¶ 23.

[¶ 20] Christenson failed to winterize the Vessel at the end of the 2021 season, causing extensive damages to the Vessel including multiple frozen pipes. *Countercl.*, ¶¶ 31-32.

[¶ 21] Azimuth or Christenson “removed the navigation system, computers, and other electrical components (“Equipment”) from the Vessel prior to or immediately after the Parties entered into the PSA.” *Countercl.*, ¶ 33.

[¶ 22] The “destruction of the Vessel and removal of the Equipment from the Vessel caused significant damage to the Vessel and a reduction in the value of the Vessel and MAM, MAG and Sea Warrior.” *Countercl.*, ¶ 34.

[¶ 23] “Wiggins took out a loan to make repairs to the Vessel as a result of the damages caused by Azimuth and Christenson.” *Countercl.*, ¶ 35.

[¶ 24] “Wiggins exercised the right to purchase the Vessel from Silver Bay.” *Countercl.*, ¶ 36.

REQUESTED RELIEF

[¶ 25] Counterclaimants’ first counterclaim for “Breach of Contract” is based upon a breach of the PSA and seeks recovery for damages caused by specific acts that Azimuth and Christenson allegedly failed to timely perform:

39. Wiggins and Plaintiffs entered into a contract wherein Wiggins agreed to purchase the Plaintiffs’ interest in MAG, MAM and Sea Warrior.
40. Plaintiffs unjustly failed to timely perform all or part of the contract as follows:
 - 40.1 Failing to winterize the Vessel causing extensive damage thereto;

- 40.2 Removing electrical components from the Vessel rendering it inoperative for its intended purpose; and,
- 40.3 Failing to disclose material alterations to the Vessel prior to and/or after the sale.

LEGAL STANDARDS

[¶ 26] A motion to dismiss is reviewed by accepting the “facts alleged . . . as true and view[ing] them in the light most favorable to the non-moving party. Dismissal is appropriate where it is certain from the face of [a pleading] that the [non-movant] cannot assert any fact that would entitle him to relief.” *Sweetwater Station, LLC v. Pedri*, 522 P.3d 617, 622 (Wyo. 2022). Such a motion “is the proper method for testing the legal sufficiency of the allegations and will be sustained when [a pleading] shows on its face that the [claimant] is not entitled to relief.” *Wyoming Guardianship Corp. v. Wyoming State Hosp.*, 428 P.3d 424, 432 (Wyo. 2018) (citations omitted).

[¶ 27] A successful breach-of-contract claim requires: “(1) ‘a lawfully enforceable contract,’ (2) ‘an unjustified failure to timely perform all or any part of what is promised therein,’ and (3) ‘entitlement of [the] injured party to damages.’” *Kappes v. Rhodes*, 512 P.3d 31, 36 (Wyo. 2022) (citations omitted). The “fundamental goal of contract interpretation is to determine the intent of the parties.” *James v. Taco John's Int'l, Inc.*, 425 P.3d 572, 577 (Wyo. 2018) (citations omitted). A contract’s words “are afforded the plain meaning that a reasonable person would give to them.” *Id.*

ANALYSIS

[¶ 28] Azimuth and Christenson argue that the counterclaimants “fail to state a counterclaim for breach of contract in Count I upon which relief can be granted because the subject contracts . . . are fully integrated within their four corners and do not contemplate the obligations that Defendants allege were breached.” *Memorandum of Points and Authority* (FSX No. 71123250), at pg. 3.

[¶ 29] Counterclaimants agree with this argument’s legal framework. In their words: “Plaintiffs’ argument to dismiss Defendants’ Counterclaim #1 centers on the rules of contract interpretation and the Parol Evidence Rule. . . . Defendants do not dispute [the] legal analysis of the same” *Response* (FSX No. 71391543), at pg. 3.

[¶ 30] Counterclaimants propose, however, that their first claim is supported by the four corners of the PSA. Namely, they assert that their allegations establish a breach of PSA ¶ 11.1, which states in pertinent part:

The execution and delivery by Seller of this Agreement and the other agreements referenced herein to which it is a party does not, and the performance and consummation of the transactions contemplated by this Agreement and the other agreements referenced herein to which it is a party will not, result in any conflict with, breach or violation of or default, termination or forfeiture under (or upon the failure to give notice or the lapse of time, or both, result in any conflict with, breach or violation of or default, termination or forfeiture under) any terms or provisions of (i) any statute, rule, regulation, or any judicial, governmental, regulatory or administrative decree, order or judgment or (ii) any agreement, lease or other instrument to which it is a party or by which it or any of its assets may be bound.

The first counterclaim thus turns on whether PSA ¶ 11.1 includes promises (1) to winterize the Vessel, (2) to not remove electrical components from the Vessel, or (3) to disclose material alterations to the Vessel. *See Response*, at pg. 3, and Requested Relief, *supra*.

[¶ 31] A close reading of PSA ¶ 11.1 discloses no such promises. Although “Seller” is not defined in the PSA (or in any other agreement before the court), the representations made in PSA ¶ 11.1 are expressly limited to specific acts: “execution and delivery” of and “performance and consummation of the transactions contemplated by” the PSA and other agreements referenced therein to be signed at a future time (i.e., two promissory notes and two security agreements benefiting Azimuth and Christenson). In other words, the promises made in PSA ¶ 11.1 were that Azimuth and Christenson could lawfully (1) sign the PSA and (2) finance and transfer their membership interests. PSA ¶ 11.1 could be breached if either of those actions were to “**result in** any conflict with, breach or violation of or default, termination or forfeiture under” any law or any another agreement binding the parties or their assets. (emphasis added).

[¶ 32] PSA ¶ 11.1 was therefore not a wholesale ratification of all other agreements to which Azimuth and Christenson were parties. Rather, it was a representation that (1) they could formally agree to sell their membership interests and that (2) they were not lawfully or contractually prohibited from closing the sale. The breach-of-contract claim does not allege violations of either condition. Even if Azimuth and Christenson mistreated the Vessel—and failed to mention the mistreatment—they could still have signed the PSA and transferred their membership interests to Wiggins.

[¶ 33] Counterclaimants also overlook the causation required by PSA ¶ 11.1. In their response, they argue that improper treatment of the Vessel was “a specific breach of the *Bareboat Charterparty and Tender Service Agreement* to which MAM, as a wholly owned subsidiary of MAG was bound.” *Response*, at pg. 5. But in PSA ¶ 11.1, Azimuth and Christenson only promised that their signing and selling would not “result in” (cause) the breach of another agreement. Counterclaimants pleaded that the other agreements were breached independent of the PSA, meaning that PSA ¶ 11.1 does not apply to their claim.

[¶ 34] The counterclaimants’ response grounds their first claim solely in PSA ¶ 11.1. As the court need only consider those “legal theories or issues” raised by the parties and because PSA ¶ 11.1 does not support relief under the first counterclaim, the claim is due to be dismissed. *Daley v. Wenzel*, 30 P.3d 547, 553 (Wyo. 2001). *See also State v. Campbell Cnty. Sch. Dist.*, 32 P.3d 325, 333 (Wyo. 2001) (courts “will not frame the issues for the litigants and will not consider issues not raised by them . . .”).

CONCLUSION

[¶ 35] The PSA does not include a promise to do (or not to do) the acts alleged to have breached its terms. Taking counterclaimants’ allegations as true, then, it is certain that they are not entitled to relief under the PSA and the court therefore **GRANTS** Azimuth’s and Christenson’s motion. The counterclaimants’ first counterclaim for Breach of Contract is **DISMISSED**.

IT IS SO ORDERED.

DATED: January 16, 2024

/s/ Steven K. Sharpe
CHANCERY COURT JUDGE