COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

KAREN L. ENGEL, et al.,	:	NO. 2022-00979
Plaintiffs,	:	
vs.	:	
	:	CIVIL ACTION
P. STONE, INC.,	:	
Defendant.	:	Motion for Summary Judgment

ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came before the Court for oral argument on Plaintiffs' Motion for Partial Summary Judgment, filed May 24, 2024. For the reasons more fully set forth below, that Motion is denied.

BACKGROUND:

On October 4, 2022, Plaintiffs filed a Complaint to the caption set forth above seeking money damages for an alleged breach of the terms of an attached Agreement of Lease, as modified by a First Addendum and Second Addendum, both also attached. On November 4, 2022, Defendant filed an Answer with Counterclaim, asserting Unjust Enrichment. The Answer admits that the parties (and their predecessors) have been parties to the alleged agreement for nearly fifty (50) years. Thus, it is fairly obvious that the Counterclaim is not properly labeled unjust enrichment. Because the Counterclaim asserts that Defendant has mistakenly overpaid Plaintiffs under the written agreement over a period of many years, it appears that Defendant is actually asserting a setoff for Equitable Recoupment.

On May 24, 2024, Plaintiffs filed a Motion for Partial Summary Judgment. Plaintiffs claim that Defendant's admission that it did not provide monthly weigh slips and its admission that it did not make monthly royalty payments, provide a basis for partial summary judgment. With regard to the weight slip issue, Plaintiffs invite the Court to ignore the fact that neither the First Addendum nor the Second Addendum to the Lease of November 9, 1976, make any mention of weigh slips. With regard to the monthly royalty issue, Plaintiffs invite the Court to ignore the Counterclaim. The Court declines both invitations, and denies the Motion.

FINDINGS OF FACT

Rule 1035.5 of the Pennsylvania Rules of Civil Procedure requires that the Court "shall thereupon make an order specifying the facts that are without controversy." It appears to this Court that the uncontested facts include the following, which are set forth herein as Findings of Fact:

1. Karen L. Engel, Suzanne K. Welshans, Eric A. Welshans, Stephanie J. Wolfanger, Danette McPherson, Melinda Kershner, Shaun Welshans, and Lyle Welshans, Jr., (hereinafter collectively "Plaintiffs") are the current owners of the subsurface of land situate in Limestone Township, Lycoming County, Pennsylvania, bounded and described in the Deed attached to the Complaint as Exhibit "B" (hereinafter the "Premises").
2. P. Stone, Inc. (hereinafter "Defendant") is a Pennsylvania corporation having offices at 1430, Route 880 Highway, Jersey Shore, Pennsylvania 17740. Defendant, P. Stone, Inc., is in the business of mining for and selling crushed limestone.
3. On November 9th, 1976, Harold H. Welshans and Florence L. Welshans, as Lessors, entered into an "Agreement of Lease" with Defendant, a copy which is attached to the Complaint as Exhibit "A" (hereinafter the "Original Lease").
4. The Original Lease provides that Lessee may enter upon the Premises for the purpose of mining limestone, and permits the Lessee to operate a quarry business.
5. The Original Lease provides that Lessee is required to pay Lessors monthly rental payments in the form of a royalty to be paid to the Lessors, calculated on each ton of rock mined and removed from the leased premises.
6. Section 2 of the Original Lease provides for a ten (10) year initial term, and provides Lessee with the option for one ten (10) year extension period.
7. Section 3 of the Original Lease provides terms regarding the timing of royalty payment that payment will be made "no later than the tenth (10th) day of the second following month for all rock removed from the leased premises during the preceding calendar month." The Section also requires that each royalty payment shall be accompanied by "copies of said weigh slips or an itemized list of the weights indicated thereby."

8. Section 3 of the Original Lease requires payment of royalty "for each ton of material extracted from Lessors' land" and contains a schedule of payments, including the following:
    a. 7 cents per ton for the first year.
    b. 10 cents per ton for years two through five.
    c. 15 cents per ton for years six through ten.
    d. 20 cents per ton for years eleven through twenty.
9. After the death of Harold H. Welshans, his widow, Florence L. Welshans entered into a "First Addendum to Lease Agreement" (hereinafter the "First Addendum") with Defendant, dated January 16, 1986, a copy of which is attached to the Complaint as Exhibit "C."
10. The First Addendum materially modified some of the terms of the Original Lease.
11. The First Addendum provided at Section 1(a) regarding "Term and Extension of Lease" that Lessee will have the option to extend "for three ten-year period in addition to those already provided." Section 1 (b) states that the Lease as amended will be deemed to have commenced on November 15, 1976, and will terminate no later than November 14, 2026.
12. The First Addendum materially altered the timing and form of royalty payment. Royalties are to be paid per ton for "merchantable and mineable limestone on a raw material basis for all limestone mined, removed, sold and shipped" from the Premises.
13. Subsection 2(d) of the First Addendum provided that "[r]ental shall be computed monthly at the time when rentals are due by determining the number of tons shipped for the month. Limestone tonnages shall be ascertained by a system of weights and measures generally accepted in the limestone industry."
14. Section 2 of the First Addendum contains a schedule of payments, including the following:
    a. 15 cents per ton for the period up to and including November 14, 1986.
    b. 20 cents per ton for the period November 15, 1986 through November 14, 1996.

c. **After November 14, 1996, royalties are to be computed through application of a formula which the Court regards as totally inscrutable.** The language is as follows: "a percentage of the market price for each ton of limestone mined, quarried, removed, sold and shipped from the Leased Premises in each month. Said percentage for this period shall be equal to 20 cents divided by the selling price on November 14, 1996."

15. The First Addendum is silent on the issue of weigh slips or other documents on the issue of how to establish tonnages at the time of payment of royalties.
16. Subsection 2(e) of the First Addendum requires Lessee to pay a minimum rental of $15,000.00 each lease year, calculated at the end of each lease year. Oddly, any payment at the end of the lease year on account of the "minimum rental" provision is credited against monthly rentals due from Lessee during the following lease year. This "credit" expires at the termination of the lease, such that any uncredited portion "shall be the property of Lessor."
17. Section 4 of the First Addendum appears to incorporate any provision of the Original Lease "where not inconsistent herewith." It is not entirely clear which provisions of the Original Lease could reasonably be considered as "not inconsistent herewith." By way of example, it is not clear to the Court whether the deletion of Lessee's obligation under the Original Lease to provide "copies of said weigh slips or an itemized list of the weights indicated thereby" was intended as a termination of that obligation, or intended as a continuation of that requirement under the language of Section 4.
18. Florence L. Welshans entered into a "Second Addendum to Lease Agreement" (hereinafter the "Second Addendum") with Defendant, dated March 17, 1992, a copy of which is attached to the Complaint as Exhibit "D."
19. The Second Addendum materially modified some of the terms of the First Addendum.
20. Section 1(a) of the Second Addendum permits Lessee to "extend said lease period for an additional term of four (4) ten (10) year periods in addition to those already provided." Section 1(b) states that the Lease as amended will be deemed to have commenced on November 15, 1976, and will terminate no later than November 14, 2036.

21. Despite the contrary language in Section 1(a) of the Second Addendum, it appears from Section 1(b) that the intended additional extension was only one additional ten-year period, extending the terms through November 14, 2036.
22. Section 2 of the Second Addendum regarding "Rentals" is materially different than the corresponding Section in the First Addendum, and much clearer. Section 2 repeats the language that royalties are to be paid per ton for "merchantable and mineable limestone on a raw material basis for all limestone mined, removed, sold and shipped" from the Premises.
23. The Second Addendum does not contain the provision from the First Addendum requiring payment of minimum royalty.
24. Section 2 of the Second Addendum contains a clear schedule of payments, including the following:
    a. 20 cents per ton for the period November 15, 1986 through November 14, 1996.
    b. 25 cents per ton for the period November 15, 1996 through November 14, 2006.
    c. 30 cents per ton for the period November 15, 2006 through November 14, 2016.
    d. 35 cents per ton for the period November 15, 2016 through November 14, 2026.
    e. 40 cents per ton for the period November 15, 2026 through November 14, 2036.
25. Section 3 of the Second Addendum appears to incorporate any provision of the Original Lease and the First Addendum "where not inconsistent herewith." It is not entirely clear which provisions of the Original Lease could reasonably be considered as "not inconsistent herewith." To the extent that the First Addendum had the effect of terminating Lessee's obligation under the Original Lease to provide "copies of said weigh slips or an itemized list of the weights indicated thereby," that obligation was not resurrected in the Second Addendum.

26. Florence L. Welshans passed away on January 25, 2005. Her interest in the Premises and in the Original Lease, as amended, was transferred, in equal parts, to Plaintiffs. Thus, Plaintiffs are now the "Lessors."
27. Defendant regularly exercised its option to renew the Original Lease, as amended, for each renewal period. As a result, the current term of the Lease is in effect until March 17, 2026.
28. Defendant continues to occupy and mine the Premises for its limestone quarry business, and maintains operational control of its limestone quarry and mining operation located on the Premises. In that operation, Defendant mines limestone from the Premises and either sells the limestone or stores it in stockpiles.
29. In connection with its quarry operation, Defendant weighs each truck load of stone leaving the Premises on certified scales situate at the Premise, and sells that stone to its customers for a price determined by the scale weight.
30. As a result of its process of weighing the stones leaving the Premises, Defendant generates a weigh slip that indicates the customer's name, the type of stone sold, the sales price, the date of the sale, and the total weight of the stone sold.
31. Defendant paid monthly royalties and provided monthly weigh slips to either Plaintiffs processor, or Plaintiffs, without interruption until May 17, 2021.
32. On May 17th, 2021, Attorney Scott T. Williams, as counsel to Defendant, sent a letter bearing that date to Plaintiffs (hereinafter the "Notice Letter"). In the Notice Letter, Williams advised Plaintiffs that Defendant intended to withhold future payments on the Original Lease, as amended, based upon Defendant's contention that Defendant had already overpaid Plaintiffs.
33. After the Notice letter, Defendant made two (2) payments to Plaintiffs in the amount of $15,000 each (totaling $30,000), under the mistaken belief that minimum royalty payments were required. In fact, Defendant's obligation to make such payments terminated effective with the Second Addendum on March 17, 1992.
34. Since the date of the Notice letter, Defendant has not made monthly royalty payments and has not provided Plaintiffs with weigh slips.

QUESTIONS PRESENTED:

A. Whether Plaintiffs are entitled to Partial Summary Judgment on their claim that Defendant breached the terms of the Original Lease as amended, where there is an ambiguity as to whether the requirement of delivery of weigh slips survived the First Addendum, and where Defendant asserts a claim of setoff.

B. Whether Plaintiffs are entitled to Partial Summary Judgment on Defendant's claim of setoff, mistakenly labeled as "Unjust Enrichment."

BRIEF ANSWERS:

A. Plaintiffs are not entitled to Partial Summary Judgment on their claim that Defendant breached the terms of the Original Lease as amended, both because there is an ambiguity as to whether the requirement of delivery of weigh slips survived the First Addendum, and because Defendant asserts a claim of setoff (which appears to the Court to be a claim for Equitable Recoupment).

B. Plaintiffs are not entitled to Partial Summary Judgment on Defendant's claim of setoff, mistakenly labeled as "Unjust Enrichment," because there are multiple material issues of fact regarding whether Defendant is entitled to any such setoff.

THE TEST FOR SUMMARY JUDGMENT:

In Pennsylvania, a party may move for summary judgement "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…." Pa.R.C.P. Rule 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. Rule 1035.3(a). The non-moving party can avoid an adverse ruling by identifying "one or more issues of fact arising from evidence in the record…." Pa.R.C.P. Rule 1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court's function to decide issues of fact. Rather, it is our function to decide whether an issue of fact exists. *Fine v. Checcio,* 870 A.2d 850, 862 (Pa. 2005).

> Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to

> the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.

Hovis v. Sunoco, Inc., 64 A.3d 1078, 1081 (Pa. Super. Ct. 2013)(quoting *Cassel-Hess v. Hoffer*, 44 A.3d 80, 84-85 (Pa. Super. Ct. 2012)).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 644 A.2d 1251 (Pa. Super. Ct. 1994), the Court described the proper test for a grant of summary judgment as follows:

> First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass,* 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club,* 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied,* 536 Pa. 630, 637 A.2d 290 (1993) (citing *Kerns v. Methodist Hosp.,* 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation,* 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.,* 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes,* 427 Pa.Super. 542, 547, 629 A.2d 1002, 1004 (1993) (citing *Carns v. Yingling,* 406 Pa.Super. 279, 594 A.2d 337 (1991)).

DISCUSSION:

A. Plaintiffs are not entitled to Partial Summary Judgment on their claim that Defendant breached the terms of the Original Lease as amended, both because there is an ambiguity as to whether the requirement of delivery of weigh slips survived the First

Addendum, and because Defendant asserts a claim of setoff (which appears to the Court to be a claim for Equitable Recoupment).

It is undisputed that Defendant has failed to provide weigh slips since the date of the Notice letter. Defendant claims that Defendant was not required to do so, since weigh slips were not mentioned in either the First Addendum or the Second Addendum. Defendant claims that the two (2) Addenda terminated that obligation, while Plaintiffs claim that the obligation remained under the "incorporation" section of each Addendum. The proper interpretation of an unambiguous contract is a question of law, for the Court. *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004). The fundamental rule in interpreting the meaning of a contract is to ascertain and give effect to the intent of the parties. *Binswanger of Pennsylvania, Inc. v. TSG Real Estate LLC,* 217 A.3d 256, 262 (Pa. 2019)(citing *Murphy v. Duquesne University of the Holy Ghost*, 777 A.2d 418, 429 (Pa. 2001)). The intent of the parties is embodied in the four corners of the writing; the court must assume that the contractual language is chosen carefully. *Id.* To the greatest extent possible, provisions within a single contract are interpreted in harmony. *Lesko v. Frankford Hosp.-Bucks Cnty.*, 15 A.3d 337, 342 (Pa. 2011). Contract provisions are not interpreted by Pennsylvania courts in a way that would nullify another provision of the same contract. *Lesko v. Frankford Hosp.-Bucks Cnty.*, 15 A.3d 337, 342 (Pa. 2011). A contract is deemed ambiguous if it can reasonably be constructed or understood in more than one sense. *Trizechahn Gateway LLC v. Titus*, 976 A.2d 474, 483 (Pa. 2009); *Murphy v. Duquesne University of The Holy Ghost*, 777 A.2d 418, 430 (Pa. 2001).

In the view of the Court, the question of whether Defendant's obligation to provide weigh slips survived the First Addendum is susceptible of two (2) interpretations. The fact that Defendant continued to provide them under both the First Addendum and Second Addendum is very strong evidence that the parties believed that the obligation remained. Nevertheless, that issue is a question of fact, for the fact finder.

B. Plaintiffs are not entitled to Partial Summary Judgment on Defendant's claim of setoff, mistakenly labeled as "Unjust Enrichment," because there are multiple material issues of fact regarding whether Defendant is entitled to any such setoff.

Although the facts of this matter have not yet been fully developed, Defendant's Counterclaim alleges that, on some date in the distant past, Defendant began to acquire land

near the Premises. The Counterclaim further alleges that, on some date after the year 2000, Defendant began to quarry that land, and to stockpile the products on the Premises. Defendant claims that the stockpiles were co-mingled with products quarried from the Premises, and that Defendant paid Plaintiffs (or their predecessors) royalties on stone quarried from other land. Since these alleged activities appear to span many years, and since the language in the Counterclaim lacks significant detail, the proof problems associated with establishing the Counterclaim may be significant.

It is settled Pennsylvania law that a cause of action for unjust enrichment seeks relief where no contract can be established:

> It is long-settled that "the quasi-contractual doctrine of unjust enrichment is inapplicable when the relationship between parties is founded on a written agreement or express contract." *Schott v. Westinghouse Elec. Corp.*, 436 Pa. 279, 290, 259 A.2d 443, 448 (1969); *accord Sevast v. Kakouras*, 591 Pa. 44, 53 n. 7, 915 A.2d 1147, 1153 n. 7 (2007). "Quasi-contracts may be found in the absence of any expression of assent by the party to be charged and may indeed be found in spite of the party's contrary intention." *Schott*, 436 Pa. at 290–91, 259 A.2d at 449.

Braun v. Wal-Mart Stores, Inc., 24 A.3d 875, 896-97 (Pa. Super. Ct. 2011).

Here, the parties acknowledge their written contract, as modified. Plaintiffs contend that Defendant has underpaid royalties under the contract, while Defendant claims a setoff for overpayments. It appears to the Court that the Counterclaim actually asserts a claim in equitable recoupment, rather than unjust enrichment. *See Stulz v. Boswell*, 453 A.2d 1006, 1008 (Pa. Super. Ct. 1982)("The doctrine of equitable recoupment…provides for 'a transaction which is made the subject of a suit by a plaintiff to be examined in all its aspects and [a] judgment to be rendered that does justice in view of the one transaction as a whole.'")(citing *Provident National Bank v. United States*, 507 F.Supp. 1197 (E.D. Pa. 1981)). While Defendant should correct the mislabeling, the Court believes that it is not fatal to the claim: "What's in a name? That which we call a rose, by any other name would smell as sweet." WILLIAM SHAKESPEARE, ROMEO AND JULIET, act II, sc. 2., l. 43-44.

Naturally, Plaintiffs dispute the claim asserted in the Counterclaim. They rely upon the fact that the Original Lease as amended requires monthly payments. They seek summary

judgment on the basis of Defendant's admission that it has failed to make the required monthly payment for over three (3) years. Where the parties vigorously dispute the material facts of the case, the Court is reminded of the admonition of our Supreme Court that "doubtful cases should go to trial, especially those involving intricate relations demanding an inquiry into the facts of the controversy." *Gaul v. City of Philadelphia*, 121 A.2d 103, 112 (Pa. 1956)(citing *Helfenstein v. Line Mountain Coal Company*, 130 A. 301, 302 (Pa. 1925)).

A trial of this matter is inevitable. Plaintiffs will seek money damages based upon stone sales data secured from Defendant through discovery. If Defendant wishes to establish entitlement to a setoff, Defendant must prove what material was quarried from the Premises, what material was quarried from other land and comingled with material from the Premises, what royalties were due to Plaintiffs or their predecessors, and what royalties were paid. Since the Counterclaim alleges that Defendant has quarried other lands for over twenty (20) years, proof of the Counterclaim may prove problematic. The question currently presented to the Court is not whether Defendant will be able to marshal sufficient evidence to support its Counterclaim. The question presented is whether Defendant is entitled to try. The Court cannot state with certainty that the law does not permit Defendant that opportunity.

ORDER

AND NOW, this 11th day of September, 2024, for the foregoing reasons, Plaintiffs' Motion for Partial Summary Judgment, filed May 24, 2024, is denied.

By the Court,

William P. Carlucci, Judge

cc: Michael A. Dinges, Esquire
Blake Marks, Esquire
Court Administrator