

Agreement to Hays Run, a Pennsylvania limited partnership. Id. ¶ 7.

On October 17, 1986, Hays Run and MP entered into a Development Agreement (the "1986 Agreement")¹ that "revised and superseded" the 1985 Agreement. Id. ¶ 8. In consideration for \$1,500,000, Hays Run acquired an undivided one-half fee simple interest in a 500-acre tract (the "Tract") of land on the Premises and secured the exclusive right to co-develop with MP, as joint venturers, waste-related "facilities"² on the remaining acreage on the Premises.³ Id.

On May 5, 1987, MP, Hays Run, and BFI, a Maryland corporation, entered into a Development and Option Agreement (the "1987 Agreement"), whereby BFI obtained an option to purchase the Tract to operate a solid waste landfill (the "Conestoga Landfill" or "Landfill"). Id. ¶ 13. The 1987 Agreement provided that once BFI obtained the required permits and approvals, and began

1. This Agreement was recorded with the Berks County Recorder of Deeds in 1989.

2. The 1986 Agreement defines "facilities" as "[r]ealty and/or structures for one or more solid or liquid waste processing or disposal areas or facilities including, but not limited to, a sanitary landfill, co-generation plant and associated waste facilities." Id. Ex. C ¶ 2(C).

3. The 1986 Agreement provides that "[t]he only FACILITIES which shall ever be constructed, developed or operated on the PREMISES shall be developed by Morgantown and [Hays Run] as joint venturers." Id. Ex. C. ¶ 6. The Agreement further provides that "[i]n the event the parties agree on a joint venture of any FACILITIES on the PREMISES, they shall share the profits and losses from same equally and [Hays Run] shall not be liable for any acquisition costs of the ground." Id. Ex. C ¶ 7. 3.

landfill operations, it was obligated to pay Hays Run and MP, jointly, a percentage of the net monthly revenue from the Conestoga Landfill.⁴ Id. During negotiations of the 1987 Agreement, BFI was aware of the terms of the 1986 Agreement between Hays Run and MP. Id. ¶ 14. BFI sought the required permits and approvals, including a permit from the Department of Environmental Resources ("DER"). Because of prior underground mining, DER required BFI to monitor subsidence on a portion of the Tract. This entailed placement of subsidence monuments outside the Tract, but within the Premises. Id. ¶ 18. In June 1992, DER issued BFI a solid waste permit for the Landfill. Id. ¶ 20.

BFI began negotiating with MP for the purchase or lease of additional acres within the Premises. Id. ¶ 22. Hays Run informed both parties that it considered these negotiations to be a breach of, and interference with, the 1986 Agreement. Hays Run also informed BFI that MP did not speak on Hays Run's behalf. Id. ¶ 24. BFI continued to negotiate with MP exclusively. Id. ¶ 26.

In September 1992, BFI sought to exercise its option to purchase the Tract. It also sought to negotiate with MP and Hays Run a contract for a subsidence easement and three additional

4. In July 1995, Hays Run filed suit in this court against BFI for breach of the 1987 Agreement, alleging that (1) BFI improperly deducted "host fees" paid to Berks County and New Morgan Borough from the royalty owed to Hays Run; and (2) BFI prohibited Hays Run from inspecting BFI's books and records. See Hays Run v. BFI, Civ. No. 95-4584 (E.D. Pa. 1995).

easements for an access road to the landfill, a water pipeline from the Landfill, and a spillway pipeline from the Landfill. Id. ¶ 27. However, because there was disagreement among the parties regarding the price and the division of the proceeds between Hays Run and MP, the closing date was postponed.

On November 15, 1992, Hays Run and MP attempted to resolve some of the problems by renegotiating and restructuring the 1986 Agreement. They agreed to

negotiate together in good faith for any waste related facilities on the PREMISES and . . . promptly disclose to each other any potential users for FACILITIES. In so doing, the parties agree to try to jointly obtain the maximum possible consideration, including sale or lease of land, for any proposed joint venture.

Id. ¶ 30. They also agreed to modify the profit-sharing provision of the 1986 Agreement to read:

In the event the parties agree on a joint venture of any FACILITIES on the PREMISES, they shall share the profits and losses equally, except that: (a) with respect to any land sold or leased in connection with such joint venture, Morgantown shall receive the first proceeds up to an amount equal to \$10,000 for each acre sold or leased, and the parties will divide equally the remaining consideration to be paid (for ground or otherwise) in respect of such joint venture; provided, however, that in no event shall [Hays Run] receive less than forty-five (45%) percent of the total consideration (including payment for land sold or leased) paid or to be paid to Morgantown and [Hays Run] in respect of such joint venture.

Id. Ex. I ¶ 1. BFI was aware of these amendments at all relevant times. Id. ¶¶ 31-33. On November 23, 1992, BFI purchased the

Tract for \$5,400,200. Id. Ex. J. MP and Hays Run also granted BFI a perpetual easement to go on, across, over, and under seven strips of land 150 feet wide. Id. Ex. M. Under that agreement (the "Subsidence Easement Agreement"), BFI was obligated to pay MP and Hays Run an easement fee of \$150,000 per year over the life of the subsidence monitoring program. The proceeds were to be divided between MP and Hays Run according to the terms of that agreement. Id. Operations at the landfill began in January 1994.

On May 15, 1995, MP, without Hays Run's knowledge or consent, sold twenty-nine acres of the Premises directly next to the Conestoga Landfill to BFI for \$290,000, allegedly to straighten the access road. Id. ¶ 37. On June 13, 1995, BFI submitted to DER a "Minor Permit Modification Application" to revise the subsidence monitoring program. In that application, it requested that DER allow it to place all of the subsidence monuments on its recently acquired land. Id. ¶¶ 39-41. DER granted the application. Id. ¶ 44. BFI then exercised its right to cancel the Subsidence Easement Agreement. Id. ¶ 45. The road has not been straightened.

On January 23, 1997, Hays Run filed a Complaint in this court, arguing that BFI tortiously interfered with the amended 1986 Agreement.⁵ Id. Specifically, Hays Run claims that BFI,

5. Hays Runs filed another complaint alleging that BFI tortiously interfered with the 1986 Agreement by inducing MP to enter into an option contract with respect to a 205-acre parcel
(continued...)

without privilege or justification, intentionally interfered with MP's performance of the contract. Id. As a result of BFI's intentional interference, Hays Run alleges it has suffered monetary damages. Id. ¶ 50.

On March 18, 1997, BFI moved to dismiss, arguing that because MP and Hays Run informed it that MP was the sole owner of the twenty-nine acres, had good title, and was authorized to grant BFI an easement to the land, BFI could not have intended to interfere with any contract between Hays Run and MP. (Def.'s Mem. Supp. Dismissal at 10.) BFI also argues that the Complaint fails to sufficiently allege that BFI intentionally interfered with the 1986 Agreement because BFI had an unconditional right to terminate the Subsidence Easement Agreement. Id. at 11. Finally, BFI argues that the Complaint fails to state a claim because it merely alleges that BFI entered into a contract with MP knowing that MP could not perform that contract and the existing contract with Hays Run. Id.

II. LEGAL STANDARD

The purpose of a Rule 12(b)(6) motion to dismiss is to test the legal sufficiency of a claim. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In reviewing a Rule 12(b)(6) motion,

5. (...continued)
of land within the premises without participation or payment of consideration to Hays Run. See Hays Run v. BFI, Civ. No. 96-1021 (E.D. Pa. 1996). That Civil Action as well as Civil Action Nos. 95-4584 and 97-2310 have been consolidated with this action.

the court must accept all allegations of fact in the plaintiff's complaint, "construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989) (quotation omitted). If "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," the complaint will be dismissed. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

A. Tortious Interference

Federal courts sitting in diversity must apply substantive state law. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). The Commonwealth of Pennsylvania has adopted the Restatement (Second) of Torts § 766 as the standard governing the law of tortious interference with contracts. Schulman v. J.P. Morgan Inv. Management, Inc., 35 F.3d 799, 809 (3d Cir. 1994).

That section provides:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Restatement (Second) of Torts § 766 (1979). To survive BFI's motion, Hays Run must allege four things: (1) there was an existing contractual relationship between Hays Run and MP; (2) BFI intended to interfere with that contract by inducing a breach or otherwise causing MP not to perform; (3) BFI's actions were not privileged or justified; and (4) Hays Run suffered pecuniary damages as a result of the breach of contract. See Al Hamilton Contracting Co. v. Cowder, 644 A.2d 188, 191 (Pa. Super. 1994).

1. Contractual Relationship

Hays Run alleges that MP and Henderson entered into a contract by which they became joint venturers in the development and/or sale of the Premises (the 1985 Agreement), and that on April 1, 1986, Henderson assigned all rights, title, and interest in the 1985 Agreement to Hays Run. (Compl. ¶¶ 6-7.) It also alleges that it entered into the superseding 1986 Agreement with MP, and became exclusive joint venturers. Id. ¶¶ 8-11, 49. That agreement, Hays Run contends, granted it the right to co-develop and operate landfills on the Premises and to be present and participate in any related negotiations. Hays Run also alleges that BFI was aware of the contract and its terms. Id. ¶ 50. Hays Run has sufficiently alleged that it has an existing contractual relationship with MP.

2. Intent to Interfere

Intentional inducement to breach a contract occurs "where the actor knows an injury is certain or substantially certain to occur as a result of his action." Restatement

(Second) of Torts § 766 cmt. j (1979); Total Care Sys., Inc. v. Coons, 860 F. Supp. 236, 241 (E.D. Pa. 1994).

Hays Run alleges that BFI, aware of the 1986 Agreement, intentionally induced MP to sell the twenty-nine acres so that BFI could use the land for waste-related facilities and avoid paying the \$150,000 year easement fee. Id. ¶ 37. Hays Run asserts that BFI and MP knew that their negotiations and agreement breached the 1986 Agreement. Id. ¶ 38.

BFI argues that it could not have intended to interfere with the 1986 Agreement because MP warranted that it was the sole owner of the twenty-nine acres, had good title, and was authorized to grant an easement, and Hays Run also warranted these facts when it signed the Subsidence Easement Agreement. (Def.'s Mem. Supp. Dismissal at 10.) It also argues that Hays Run merely contends that BFI contracted with MP knowing of the existing contract, and that, because BFI had the right to cancel the Subsidence Easement Agreement, it could not have intended to interfere with the contract. The court disagrees.

Hays Run alleges that BFI reviewed the 1986 Agreement prior to initiating discussions with MP for the purchase of the twenty-nine acres (Am. Compl ¶ 13, Hays Run v. BFI, Civ. No. 96-1021 (E.D. Pa. 1996)).⁶ Hays Run also alleges that BFI knew the terms of the November 15, 1992 Amendment. (Compl. ¶ 31.) Thus, BFI was aware of Hays Run's joint venture interest in the

6. In its motion, Hays Run incorporated by reference its filings in Civil Action No. 96-1021.

property and that any contract for the purpose of developing facilities on the land would constitute a breach of the agreement. It alleges that BFI then approached a vulnerable MP and induced it to breach its obligation to Hays Run under the 1986 Agreement, knowing that this would harm Hays Run's interest.

Tortious interference requires only "an interference that is incidental to the actor's independent purpose and desire but known to him to be a necessary consequence of his action." (Restatement (Second) of Torts cmt. j (1979)). Hays Run's allegations are more than sufficient to survive the motion.

3. Privilege and Justification

Hays Run alleges that BFI's actions were neither privileged nor justified. Id. ¶¶ 52-53. BFI argues that its actions were justified because Hays Run and MP warranted that MP was the sole owner and it had the right to grant an easement. (Def.'s Reply to Pl.'s Mot. Opp. Dismissal at 2.) The fact that MP was the record owner of the property does not mean that there were not other interests in the property. Further, the court does not agree with BFI's contention that MP's right to grant an easement is equivalent to the right to sell the land. Accepting Hays Run's allegations as true, the court must find that Hays Run has sufficiently alleged that BFI's actions were neither privileged nor justified.

4. Damages

Hays Run also alleges that it suffered damages as a result of BFI's actions. Hays Run and MP agreed "to negotiate together in good faith for any waste related facilities on the PREMISES and [to] promptly disclose to each other any potential users for FACILITIES." Id. Ex. I ¶ 3. In so doing, "[they agreed] to try to jointly obtain the maximum possible consideration, including sale or lease of land, for any proposed joint venture." Id. According to Hays Run, MP has breached their agreement as a result of BFI's intentional inducement, and Hays Run therefore will not receive its portion of the estimated \$1.5 million obligation under the Subsidence Easement Agreement. (Pl.'s Mem. Opp. Dismissal at 5-6.) The court finds that Hays Run has adequately pled the damages element of its claim.

Taking all of Hays Run's allegations as true, the court cannot conclude that Hays Run can prove no set of facts in support of its claim which would entitle it to relief. Hays Run has sufficiently pled a claim for tortious interference pursuant to Section 766 of the Restatement.

IV. CONCLUSION

For the above reasons the court will deny BFI's Motion to Dismiss. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HAYS RUN ASSOCIATES	:	CIVIL ACTION
	:	
v.	:	
	:	
BROWNING-FERRIS, INC.	:	No. 97-0508

ORDER

AND NOW, TO WIT, this th day of August, 1997, upon consideration of Defendant Browning-Ferris, Inc.'s Motion to Dismiss and Plaintiff Hays Run Associates' response thereto, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.