

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

HULL COMPANY, a division of : CIVIL ACTION  
SP INDUSTRIES, INC., :  
Plaintiff, :  
 :  
v. :  
 :  
B & G MACHINE COMPANY and :  
HARTFORD STEAM BOILER :  
INSPECTION AND INSURANCE CO., :  
Defendants. : NO. 00-CV-3472

**MEMORANDUM & ORDER**

**J.M. KELLY, J.**

**APRIL , 2001**

Presently before the Court is the Motion to Dismiss of Defendant, Hartford Steam Boiler Inspection and Insurance Company ("Hartford"). Hartford argues that Plaintiff, Hull Company ("Hull"), has failed to state a claim: (1) as a third party beneficiary to a contract between Hartford and Co-defendant, B & G Machine Company ("B & G"); and (2) because Hull's negligence claim cannot be the basis to recover for a mere economic loss.

**BACKGROUND**

The following facts are alleged in Hull's Complaint. Hull, a manufacturer of pharmaceutical process equipment, received an order for a clean-in-place system which required construction of two condensers and a de-ionized water holding tank. Hull solicited bids for the condensers and the tank and selected B & G

based upon price, promised delivery date and the use of Hartford as an authorized inspector. In May and June of 1999, Hartford inspected the condensers and the tank and verified that they complied with ASME Code Rules. When Hull received the condensers and the tank, visual inspection revealed quality defects and nonconformities.

Hull had the condensers and tank radiographed. The radiographs confirmed that welds were undercut and did not have proper penetration. In addition, wall material was twenty per cent below the minimum thickness. Hartford performed a second inspection and affirmed that there were code violations. These code violations represent a safety hazard because the tank could rupture. Hull, B & G and Hartford discussed a remediation plan for the defective vessels, but the plan was never implemented. Hull then purchased replacement condensers and a tank from another vendor.

#### **STANDARD OF REVIEW**

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, a court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy

pleading requirements is exceedingly low: a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A complaint must, however, set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

### **DISCUSSION**

The parties agree that Connecticut substantive law applies to this case. Under Connecticut law, a third party beneficiary can maintain a cause of action for breach of contract where from reading the terms of the contract and in light of the circumstances when the contract was made, the parties must have intended that a promisor would assume a direct obligation to the third party. Andreo v. Friedlander, Gaines, Cohen, Rosenthal & Rosenberg, 660 F. Supp. 1362, 1373 (D. Conn. 1987). Taking the facts alleged in the Complaint in the light most favorable to Hull, it appears that a reasonable inference can be drawn that Hartford did assume responsibility for inspecting the condensers and tank to the benefit of Hull. At a minimum, Hull has alleged this in its Complaint and sets forth a factual issue. Accordingly, that portion of the Motion to Dismiss is denied.

B & G argues that as there was no privity between B & G and Hull. Further, the damage sustained by Hull was purely economic, rather than an injury to a person or property. Therefore,

recovery is barred under Hull's negligence claim. Connecticut does not apply the economic loss rule inflexibly, rather, the court should "examine the nature of the relationship between the parties to determine whether loss of the general nature alleged was reasonably foreseeable at the time of the transaction." RCD-Hudson, LLC v. T.A.T. Mason Enter., No. CV00598478S, 2001 W.L. 103986, at \*2 (Conn. Super. Jan. 17, 2001). Viewing the allegations of the Complaint in the light most favorable to Hull, it was reasonably foreseeable that Hartford's failure to adequately inspect defective condensers manufactured by B & G would result in Hull's need to replace the condensers. Accordingly, the Motion to Dismiss is denied.

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O R D E R

AND NOW, this 23<sup>rd</sup> day of April, 2001, upon consideration of the Motion to Dismiss (Doc. No. 4) of Defendant Hartford Steam Boiler Inspection and Insurance Co., the Response of Plaintiff, Hull Co., and the Reply thereto of Defendant Hartford Steam Boiler Inspection and Insurance Co., it is ORDERED that the Motion is DENIED.

BY THE COURT:

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JAMES MCGIRR KELLY, J.