

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

CENTER FOR CONCEPT : CIVIL ACTION
DEVELOPMENT, LTD., a Delaware :
Corporation, and EUGENE :
CAFARELLI :
 :
 :
v. :
 :
 :
JOHN C. GODFREY and GODFREY :
SCIENCE & DESIGN, INC., a :
Pennsylvania Corporation, :
jointly, severally and in :
the alternative : NO. 97-7910

MEMORANDUM AND ORDER

HUTTON, J.

November 9, 1998

Presently before the Court are Defendants' Motion to Dismiss the Amended Complaint (Docket No. 7) and Plaintiff's response thereto (Docket No. 8). For the reasons that follow, the Defendants' motion is **DENIED**.

I. BACKGROUND

The Plaintiffs allege the following facts in their amended complaint. Plaintiff Center for Concepts Development ("CCD" or Plaintiff) entered into two written agreements with Defendants John Godfrey and Godfrey Science & Design, Inc. Plaintiff Eugene Cafarelli also entered into a written agreement with Defendants.

Pursuant to these agreements, Plaintiffs were to receive a percentage of royalties from the sale of products that resulted from licensing of Defendants' patents. In the two written

agreements between Plaintiff CCD and Defendants, the preamble states:

In view of the facts that John C. Godfrey, Ph.D., President of GODFREY SCIENCE & DESIGN, INC., (GS&D) wishes to have the help and in the development and implementation of a business plan relating to marketing certain formulations described in the documents under development, identified as "ZINCO BUSINESS PLAN", and that Gene Cafarelli, President of THE CENTER FOR CONCEPT DEVELOPMENT, LTD., has indicated a willingness to participate in this effort, the following agreement is proposed to more clearly define our relationship

Pls.' Am. Compl. at Exs. A & B. The written agreement between Plaintiff Cafarelli and Defendants stated that "[t]his agreement is in addition to and separate from any other agreement covering similar subject matter which is in force between GS&D and The Center for Concept Development" See id. at Ex. C.

Plaintiffs filed suit against the Defendants alleging breach of the three agreements. Defendants urge this Court to dismiss the amended complaint because it failed to adequately plead the performance of conditions precedent to the agreements. Plaintiffs argue that the amended complaint adequately states a cause of action for breach of contract.

II. MOTION TO DISMISS STANDARD

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint 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). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),¹ this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

III. DISCUSSION

Under Rule 8(a) of the Federal Rules of Civil Procedure, notice pleading is acceptable. See Fed. R. Civ. P. 8(a). Rule 8(a) requires only that the complaint set forth: (1) the grounds

¹ Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . 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: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

upon which jurisdiction depends; (2) "a short and plain statement of the claim showing that the pleader is entitled to relief"; and (3) a demand for judgment for the relief the pleader seeks. See id. In pleading the performance or occurrence of conditions precedent, Rule 9(c) of the Federal Rules of Civil Procedure permits the general averment that all conditions precedent have occurred. See Fed. R. Civ. P. 9(c).

"A condition precedent is a fact or event which the parties intend must exist or take place before there is a right to performance If the condition is not fulfilled, the right to enforce the contract does not come into existence." 5 S. Williston, A Treatise on the Law of Contracts § 663 (3d ed. 1961) (quoting Lach v. Cahill, 138 Conn. 418, 85 A.2d 481 (1951)). Whether a provision is a condition precedent depends on the intention of the parties, manifested by the language of the contract and the circumstances surrounding its execution. See Burger King Co. v. Family Dining Inc., 426 F. Supp. 485, 492 (E.D. Pa.), aff'd mem., 566 F.2d 1168 (3d Cir.1977); 5 S. Williston, supra, § 663.

Assuming that the Zinco Business Plan is indeed a condition precedent to the three agreements, the failure of this condition is an issue of fact not properly resolved on a motion to dismiss.² At

² The parties contest whether the Zinco Business Plan is a condition precedent to the three agreements between Plaintiffs and Defendants. Because the Court denies Defendants' motion even assuming that the Zinco Business Plan is a condition precedent, the Court expresses no opinion on that issue at this

present, the Court must accept as true all of Plaintiffs' allegations, including the allegation that all obligations to their recovery under the agreements have occurred. Defendants will have the opportunity to prove, through supporting evidentiary materials, the failure or non-existence of a condition precedent. However, that issue is more appropriately addressed by way of a motion for summary judgment. See Smith v. Nationwide Mut. Fire Ins. Co., 935 F. Supp. 616, 619 (E.D. Pa. 1996) (denying motion to dismiss breach of contract claim because general allegation that conditions precedent were performed was sufficient under notice pleading).

Therefore, the Court finds that Plaintiffs' amended complaint comports with the requirements of Rules 8(a) and 9(c). With respect to Rule 8(a), Plaintiff alleges the existence of the agreements, performance by Plaintiffs or waiver by Defendants, breach of the agreements by the Defendants, and damages to the Plaintiffs. These allegations are sufficient to put Defendants on notice of Plaintiffs' breach of contract claims.

Moreover, with respect to Rule 9(c), Plaintiffs allege that: "Any of the obligations of Plaintiff CCD to be performed by it pursuant to the . . . Agreements as of the date hereof have been performed by it or have been waived or excused by Defendants." Pls.' Am. Compl. at ¶ 17. Plaintiffs also allege that: "Any of the obligations of Plaintiff Cafarelli to be performed by him pursuant

junction.

to the . . . Agreement as of the date hereof have been performed by him or have been waived or excused by Defendants." See id. at ¶ 22. These allegations of performance of the condition precedent are sufficient and there is no additional requirement that Plaintiffs specifically aver the existence of the Zinco Business Plan as a condition precedent. The Court will therefore deny Defendants' Motion to Dismiss.

An appropriate Order follows.

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O R D E R

AND NOW, this 9th day of November, 1998, upon consideration of the Defendants' Motion to Dismiss the Amended Complaint (Docket No. 7) and Plaintiff's response thereto (Docket No. 8), IT IS HEREBY ORDERED THAT the Defendants' Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.