

UNITED STATES DISTRICT COURT * WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLB PROPERTIES, INC.

DOCKET NO. 3:16-cv-1271

versus

JUDGE: _____

MRD OPERATING LLC
and HUNTER TEMPLE

MAGISTRATE: _____

MEMORANDUM IN SUPPORT OF TEMPLE's 12(b)(6) MOTION TO DISMISS

NOW INTO COURT comes Defendant, Hunter Temple ("TEMPLE"), who respectfully moves to dismiss all claims asserted against him by CLB Properties, Inc. ("CLB").

INTRODUCTION

For the third time in less than three (3) months, CLB has fraudulently joined TEMPLE in effort to keep its "claims" against MRD Operating LLC ("MRD") in state court.¹

In *CLB #1*, CLB alleged that TEMPLE engaged in a "conspiracy" to thwart CLB and a purported "class" from making demands against MRD for royalty payments. TEMPLE removed *CLB #1* under the Fraudulent Joinder Doctrine, citing a legion of cases holding that conclusory allegations of "conspiracy" are insufficient to state a claim or destroy diversity jurisdiction. CLB did not object. To the contrary, CLB voluntarily dismissed *CLB #1* days after the removal.

CLB has since resurfaced with another lawsuit.² CLB now – for the very first time – alleges that TEMPLE "conspired" with MRD to deprive CLB of a water contract ("Water Contract")³ which CLB would have otherwise obtained but-for TEMPLE's alleged interference. CLB contends these unspecified "bad" acts by TEMPLE constitute a "conspiracy" in violation of the Louisiana Unfair Trade Practices Act ("LUTPA").

¹ Exhibit 3 – *CLB #1*. The first two petitions were filed by CLB in the matter styled: *CLB Properties, Inc. v. MRD Operating LLC*; Case 3:16-cv-00901; W.D. La., Monroe Division. (hereinafter, "**CLB #1**").

² Exhibit 4 – *CLB #2*. The "Petition" was filed by CLB in the matter styled: *CLB Properties, Inc. v. MRD Operating LLC and Hunter Temple*; C-58413; Lincoln Parish, La. (hereinafter, "**CLB #2**").

³ Exhibit 2 – Water Contract.

MATERIAL MISREPRESENTATION

There is a fatal flaw with CLB's newest theory against TEMPLE, and this flaw exposes a very serious misrepresentation: **CLB already has the Water Contract**.⁴ Presumably, this explains why the Water Contract was not even mentioned in *CLB #1*.

Specifically, *CLB #1* was first filed on May 27, 2016. A second petition in *CLB #1* was also filed on June 24, 2016. Neither of the *CLB #1* petitions mentioned anything which could even possibly be construed as relating to the Water Contract. Nevertheless, CLB now claims in *CLB #2* that TEMPLE deprived CLB of the Water Contract when, in reality, CLB already has the Water Contract.

It gets worse. CLB – whose sole member is an attorney with decades of legal experience – executed the Water Contract mere *days* before *CLB #1* was filed.⁵ Accordingly, CLB did not “forget” about executing the Water Contract. Rather, CLB's misrepresentation regarding the Water Contract was knowing, deliberate, and intentional.

From CLB's perspective, TEMPLE's joinder is a scheme to possibly keep its “claims” against MRD in state court. However, the civil justice system is not a place to use an independent contractor/land-man as a pawn to forum shop against a publicly traded company.

There is a line between aggressive advocacy and unhinged attempts to manufacture a remedy which does not otherwise exist under the law. CLB's gamesmanship is an abuse of the civil justice system. And, for the purpose of this 12(b)(6) motion, it is insufficient to state a plausible claim for relief against TEMPLE.

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⁴ Exhibit 2 – Water Contract.

⁵ Chris Bowman executed the Water Contract on 5/17/16 and *CLB #1* was filed 5/27/16.

LAW & ANALYSIS

LUTPA only provides a remedy for those claimants who have suffered damages or, in LUTPA terminology, an “ascertainable loss.”⁶ Here, CLB’s only claim against TEMPLE is a vague allegation of “conspiracy” which allegedly deprived CLB of the Water Contract. However, as explained above, **CLB already has the Water Contract.** Therefore, CLB has no “ascertainable loss.”

Consider this issue through the lens of elementary school English class. Just like a properly constructed sentence, a properly alleged claim for relief has both a *subject* (e.g. what or whom) and a *predicate* (e.g. action regarding the subject). Without both a subject *and* a predicate, there is no sentence and, in the legal context, there is no claim for relief.

Here, the subject is “TEMPLE” and the purported predicate is “did not give CLB the Water Contract.”⁷ However, the predicate is a complete sham because CLB already has the Water Contract. Accordingly, there is no “ascertainable loss” under LUTPA and, consequently, no claim for relief against TEMPLE under 12(b)(6). *Fitch v. Wells Fargo Bank*, (E.D. La. 2010); 423 B.R. 630.

Of course, without underlying damages/ascertainable loss, CLB’s claims for “treble damages” and attorney fees likewise fail. *Abbyad v. Mathes Group*, 1995-1543 (La. App. 4 Cir. 1996); 671 So.2d 958.

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⁶ LSA-R.S. 51:1409(A).

⁷ Exhibit 4; “Petition” CLB #2; par. 23.

CONCLUSION

WHEREFORE, Defendant, Hunter Temple, respectfully prays that the claims alleged against it by CLB Properties, Inc. be dismissed with prejudice.

Respectfully submitted:

Russell A. Woodard, Jr. T/A

RUSSELL A. WOODARD, JR. (#34163)

BREITHAUPT, DUNN, DUBOS,

SHAFTO & WOLLESON, LLC

1811 Tower Dr., Suite D

Monroe, La. 71207

Telephone: (318) 322-1202

Facsimile: (318) 322-1984

E-mail: rwoodard@bddswlaw.com

Certificate of Service

I hereby certify that on the 8th day of September, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which sent notification to all counsel of record.

Russell A. Woodard, Jr.

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