UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CLB PROPERTIES, INC.	:	DOCKET NO. 3:16-cv-1271
VERSUS NO.	:	JUDGE ELIZABETH FOOTE
MRD OPERATING, LLC AND HUNTER TEMPLE	:	MAGISTRATE KAREN HAYES

OPPOSITION TO DEFENDANT'S 12(b) MOTION TO DISMISS

MAY IT PLEASE THE COURT:

Defendant, Hunter Temple ("TEMPLE") has filed a FRCP 12(b)(6) Motion to dismiss alleging Plaintiff, CLB PROPERTIES ("CLB") failed to state a cause of action in its suit against TEMPLE. **FACTS**

Below are the facts that have been ignored by MRD, but they have not and cannot be disputed.

1. In the past, CLB has engaged in the sale of water to MRD's predecessor via contract.

2. On behalf of CLB, Bowman signed a new water contract on May 26, 2016, as requested by MRD through its non-employee, contract field man, Hunter Temple.

3. On May 26, 2016, MRD's non-employee, contract field man, Hunter Temple, told Bowman not to push for the royalty payments (to which CLB was contractually entitled) because the water contract was sitting on the desk of Thomas Landry, MRD's Senior Landman waiting to be signed. Bowman asked Hunter Temple if this was an attempt to extort him.

4. Until May 26, 2016, Bowman had never discussed or dealt with the non-payment of royalties with Hunter Temple, as Hunter Temple's only involvement with CLB had been the water contract.

5. MRD had not signed the water contract on that date.

6. On June 24, counsel or MRD inexplicably contacted Bob Baldwin, the law partner of the undersigned, to discuss this case. Although Mr. Baldwin is not involved with this litigation in any manner, counsel for MRD informed Mr. Baldwin that the water contract had not been signed by MRD. Curiously, the alleged date MRD signed the water contract was June 3, 2016, three (3) weeks before this conversation occurred.

7. MRD never notified CLB that it had executed the water contract.

8. MRD never mailed CLB an executed copy of the water contract.

9. MRD never e-mailed CLB notifying it that the water contract had been executed.

10. MRD never sent its non-employee, contract field man, Hunter Temple, to CLB with any notification that the water contract had been signed.

11. MRD, in complete derogation of its normal practice, never filed with the Clerk of Court, a copy of the executed water contract.

12. MRD never purchased any water from CLB pursuant to the water contract.

13. MRD purchased water from a neighbor of CLB and pumped it several miles further than CLB's water for an MRD hydraulic fracturing job.

14. CLB first discovered that the water contract had been executed by MRD from seeing it attached to the Motion to Dismiss.

The facts above are not and cannot be denied by TEMPLE.

I. LAW AND ARGUMENT

Pursuant to FRRCP 12(b)(6), TEMPLE has asked the Court to dismiss each and every one of CLB's claims for failure to state a cause of action. In so doing, TEMPLE attempts to disprove CLB's claims by asserting CLB has the water contract. CLB is not required to "prove" its claims in defense of MRD's motion. But, CLB was never notified it had a contract and even if it does, that does not change the actions of TEMPLE and MRD in attempting to leverage the contract to get CLB to give up its attempts to get its royalties. For the following reasons, MRD's

motion must be denied as a matter of law.

a. Federal Rule of Civil Procedure 12(b)(6) Motion to Dismiss Standard

The standard for dismissing a claim for failure to state a cause of action was aptly set forth by the U.S. Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554–56, 127 S. Ct. 1955, 1964–65, 167 L. Ed. 2d 929 (2007). Therein, the Court held:

> Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests," *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, ibid.; *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (C.A.7 1994), a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235–236 (3d ed.2004) (hereinafter Wright & Miller) ("[T]he pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"), on the assumption that all the allegations in the complaint are true (even if doubtful in fact), see, e.g., *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974) (a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely").

In this matter, the question is whether CLB pled enough "facts" to show that it is entitled to relief pursuant to the law. Again, in it's motion, TEMPLE attempted to disprove some of the facts alleged by CLB. That is not proper procedure for a FRCP 12(b)(6) motion because the facts pled are taken as true. While the recitation of facts in the Complaint does not need to be

"detailed", they must be more than merely legal conclusion couched as a factual allegation. As seen in the **FACTS** section above and in Plaintiff's Petition, the pled facts are not legal conclusions, rather they are very detailed facts with dates, actions of the parties and the substance of conversations. If the facts alleged are taken as true by the Court, the question then becomes, "given the facts alleged, is there relief available under the law". Contrary to MRD's allegations, CLB does not have to prove the above facts are true in this opposition (that is what discovery and trial is for), just that there is a right to recovery if they are true. *Id*., at 1966. If MRD is confident in the law and facts, summary judgment would be its appropriate remedy, not a 12(b)(6) motion.

b. Louisiana Unfair Trade Practices Act (LUTPA)

In its Rule 12(b)(6) Motion to Dismiss, TEMPLE has stated that CLB has the water contract. Again, this is dubious at best and misses the mark. The cause of action is based in TEMPLE and MRD's efforts to oppressively and unethically get CLB to give up its six (6) month attempt to get its royalties paid. The facts are stated in paragraphs 14 and 23 and the cause of action in 24 of CLB's Petition as:

14.

> On May 26, 2016, Bowman, received a call from Hunter Temple, MRD's land manager, who requested Mr. Bowman to come by his office in Ruston, Louisiana. Upon arriving at the office of Hunter Temple with the expectation of receiving a copy of the signed water contract, Bowman was informed by Hunter Temple that he had better back off his demands to MRD for the royalty payments to CLB because the water contract was sitting on the desk of Thomas Landry (MRD Senior Landman), waiting to be signed. Bowman asked Hunter Temple if this was an attempt to extort him.

23.

> In connection with all of the above, Hunter Temple and MRD held good to their

> word. Because of the attempts by CLB, and Bowman on its behalf, to obtain the royalty payments to which CLB was rightfully and legally entitled, Defendants did not give CLB the water contract which it had been promised, resulting in substantial losses to CLB.

24.

> This coercive and unfair conduct of the Defendants set forth above violates the Louisiana Unfair Trade Practices Act, and, for this reason alone, Petitioner is entitled to receive damages reasonable in the premises, together with attorney's fees and all costs of these proceedings.

Simply put, the claim under LUTPA is that MRD used the water contract with CLB as oppressive leverage and conspired with its non-employee, contract field man to stop CLB from pursuing royalty payments to which it was lawfully, contractually and rightfully owed. Put even simpler, it was a conspiracy between defendants in attempt to hold CLB's money hostage. That is an unfair trade practice and it has nothing to do with a mineral lease. Acts which constitute unfair or deceptive practices are not specifically defined in the statute that creates a private cause of action under the Louisiana Unfair Trade Practices Act for any person who suffers any ascertainable loss of money or movable property as a result of the use or employment by another person of an unfair or deceptive method, act, or practice, and are instead determined by courts on a case-by-case basis. *Newton v. Brenan,* App. 5 Cir.2014, 166 So.3d 285, 14-423 (La.App. 5 Cir. 12/16/14).

While citing the Louisiana Supreme Court, *Roustabouts, Inc. v. Hamer*, 447 So. 2d 543 (La. Ct. App. 1984), the Court held:

> Although the existence of a conspiracy to economically injure another company is often a difficult charge to substantiate, especially where the different parts in the plan are played by several people, in the case sub judice the trial judge had "no doubt" after weighing the credibility of the witnesses that the appellants conspired to do harm to the plaintiff. We think the actions of the appellants exhibited a clear intent to decimate the plaintiff's business for their own gain, and that the

> appellants engaged in basic business dishonesty of an unscrupulous and underhanded nature. The lower court felt the facts of the conspiracy were proven by a preponderance of the evidence and we see no manifest error in his conclusion. *Arceneaux v. Domingue*, 365 So.2d 1330 (La.1978).

The holding in *Roustabouts, Inc*., above, is applicable to the facts of this matter. MRD attempted to gain an economic advantage over CLB by refusing to purchase water from CLB if CLB demanded the money (royalty payments) it was contractually owed. Clearly a cause of action has been stated.

For further analysis on oppressive use of economic advantage, see *Monroe Med. Clinic, Inc. v. Hosp. Corp. of Am.*, 522 So. 2d 1362, 1365 (La. Ct. App. 1988), where in the Court held:

> Considering the pronouncements of the law and the interpretative jurisprudence, we are of the view that the allegations of plaintiffs' petition, to include those we have noticed herein, are sufficient to state a cause of action. Broadly interpreted, these allegations assert that defendant is influencing patients' choices and the decisions of "favored" health care providers through the unethical and oppressive use of economic advantage to the detriment of the plaintiffs.

Although MRD has not argued that LUTPA does not apply to the coercive and conspiratorial actions of both defendants, as shown above, it easily applies to the facts as alleged. As such, MRD's Motion to Dismiss for failure to state a cause of action should be denied.

II. CONCLUSION

Given the above law and facts, it is clear that Plaintiff, CLB, alleged specific facts in its Petition and if taken as true, proper causes of action have been stated. As such, it is respectfully submitted that TEMPLE's Motion to Dismiss for failure to state a cause of action must be denied.

Respectfully submitted by:

*/S/Johnny R. Huckabay II*_____
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2016, I caused to be electronically served through the Court's electronic filing system the foregoing Notice of Dismissal on

Russell A. Woodard, Jr.
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/s/ Johnny R. Huckabay II
Johnny R. Huckabay II