

TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY

FILED

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LYNNEA A. FERRELLO
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Joanna Byrant and Bryan Rouse,

Plaintiffs,

vs.

Court File No. 580-07

Anderson Air, Inc.,

Defendant.

Memorandum Opinion and Order

Introduction

This case is before the Court on Defendant Anderson Air's motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim on which relief can be granted. Joanna Bryant and Bryan Rouse, who reside on lands held in trust by the United States for the Shakopee Mdewakanton Sioux (Dakota) Community, sued Anderson for breach of contract, breach of warranty, and negligence.¹ All three causes of action allegedly arose from Anderson's faulty installation of in-floor heating in plaintiffs' house under a contract between Anderson and the plaintiffs' general contractor, Performance Construction.

¹ Complaint at ¶ 1.

Anderson argues that this Court lacks jurisdiction over plaintiffs' claims because the underlying contract is between two non-Indian parties, Anderson and Performance. Anderson further asserts that because plaintiffs are neither parties to nor beneficiaries of the contract between Anderson and Performance, they have failed to state a claim on which relief can be granted. Finally, Anderson argues that because plaintiffs are engaged in arbitration against Performance over the same issues raised by their complaint here, they should be estopped from suing over those claims in this Court. For the reasons set forth below, the Court finds that it possesses subject-matter jurisdiction over the plaintiffs' claims, that Anderson has not met the standards for dismissal for failure to state a claim on which relief can be granted, and that this matter should be stayed pending the outcome of the plaintiffs' arbitration with Performance.

Subject Matter Jurisdiction

Under Tribal law, this Court has jurisdiction over "all civil causes of action arising on land subject to the jurisdiction of the [Community]."² And while Anderson may be correct that the contract between Anderson and Performance—under which Anderson performed work on plaintiffs' house—was between non-Indians and not executed on Community lands, the *causes of action* pleaded by plaintiffs—breach of that contract, breach of warranty, and negligence—did allegedly take place on

² SMS(D)C Resolution No. 11-14-95-003, § I. Lands subject to the jurisdiction of the Community include lands held in trust by the United States for the Community. *Id.*

Community lands.³ Thus, plaintiffs have pleaded causes of action that fall within this Court's subject-matter jurisdiction.⁴

Failure to State a Claim upon which Relief Can be Granted

Dismissals for failure to state a claim are "not favored"⁵ and are "appropriate only if there is no reasonable view of the facts alleged" that would support the plaintiffs' claims.⁶ In considering a motion to dismiss for failure to state a claim, "the Court assumes all the facts alleged in the complaint are true and views the allegations in the light most favorable to the plaintiff."⁷ Generally, in considering a motion to dismiss for failure to state a claim, the Court will look only at the plaintiffs' pleadings to determine whether they are sufficient to state a claim.⁸

Plaintiffs have alleged three causes of action against Anderson. First, they allege that they were third-party beneficiaries of a contract between Anderson and the

³ Complaint at ¶¶ 1, 3.

⁴ Anderson asserts that because the contract under which it performed the work at plaintiffs' home was between non-Indians, the Court lacks subject-matter jurisdiction under *Culver Security Systems, Inc. v. Little Six, Inc.*, 1 Shak. T.C. 156 (June 14, 1994). In *Culver*, the Court ruled that it lacked jurisdiction over a breach-of-contract dispute between two non-Indians that did not affect the Community or Community members. *Id.* at 164. But this Court's subject-matter jurisdiction was expanded after the *Culver* decision by Resolution 11-14-95-003, quoted above, and plaintiffs' claims fit within the Court's expanded jurisdictional mandate.

⁵ *Crooks v. Shakopee Mdewakanton Sioux (Dakota) Community*, 4 Shak. T.C. 92, 93 (Oct. 31, 2000) (internal citations omitted).

⁶ *Smith v. Shakopee Mdewakanton Sioux (Dakota) Community*, 1 Shak. A.C. 62, 64 (Aug. 7, 1997) (citing *Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc.*, 988 F.2d 1157 (Fed. Cir. 1993)).

⁷ *Crooks*, 4 Shak. T.C. at 93 (citing *Welch v. Shakopee Mdewakanton Sioux (Dakota) Community*, 2 Shak. T.C. 112 (Feb. 7, 1996), *aff'd*, 1 Shak. A.C. 42 (Oct. 14, 1996)).

⁸ 5B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 1357 (3d ed. 2004).

general contractor they hired, Performance Construction, and that Anderson breached that contract.⁹ Anderson argues that plaintiffs were not third-party beneficiaries of the contract because they can meet neither the “duty owed” nor the “intent-to-benefit” tests for determining when a party is a third-party beneficiary under Minnesota law.¹⁰

In Minnesota, one claiming to be a third-party beneficiary must show that the contract “express[es] some intent by the parties to benefit the third party through contractual performance” or “that the promisor’s performance under the contract [discharges] a duty otherwise owed the third party by the promisee.”¹¹ Anderson may be correct that plaintiffs cannot meet either of these tests. But the Court cannot determine that based on a review of the pleadings alone.

Anderson submitted a copy of the Anderson-Performance contract with its motion to dismiss. And while the Court could consider a contract whose authenticity was unquestioned if it were “integral to the complaint,”¹² as the Anderson-Performance contract is, Anderson itself alleges that the contract contains some terms

⁹ Complaint, ¶¶ 13-15.

¹⁰ Anderson’s Memorandum in Support of Motion to Dismiss at 5. The Community has no law on third-party beneficiaries, and the Court may look to common law in other jurisdictions, like Minnesota, for guidance. SMS(D)C Resolution No. 11-14-95-003, § V.

¹¹ *Cretex Cos., Inc. v. Constr. Leaders, Inc.*, 342 N.W.2d 135, 138 (Minn. 1984). (holding that third-party beneficiaries need only meet the duty-owed *or* the intent-to-benefit test to demonstrate third-party beneficiary status, but not both).

¹² *Streit v. Bushnell*, 424 F. Supp. 2d 633, 639 (S.D.N.Y. 2006) (discussing standards of review for Rule 12(b)(6) motions). See also *In re K-Tel Int’l, Inc. Sec. Litig.*, 300 F.3d 881, 889 (8th Cir. 2002) (“The court may consider, in addition to the pleadings, materials ‘embraced by the pleadings’ and materials that are part of the public record.”) (internal citations omitted).

that were unwritten, so its contents have yet to be determined.¹³ For the present, plaintiffs have pleaded that a contract exists, that they are third-party beneficiaries of the contract, and that the contract was breached, causing them damages. In short, they have properly pleaded their claim, and it cannot be dismissed for failure to state a claim.

Plaintiffs' second cause of action is for breach of warranty,¹⁴ a claim Anderson doesn't mention in its motion to dismiss. This Court has previously permitted a breach-of-warranty claim to go to trial,¹⁵ and Minnesota courts have recognized a common-law cause of action for breach of an implied warranty of fitness for a particular purpose. In *Robertson v. Stephen Farmer's Co-op*, a farmer's co-op hired a lumber company to build a storage facility, which subsequently collapsed due to "the selection of inappropriate material and faulty design."¹⁶ The Minnesota Supreme Court found:

This we believe to an appropriate case for extending to construction contracts the doctrine of implied warranty of fitness for the purpose, under circumstances where (1) the contractor holds himself out, expressly or by implication, as competent to undertake the contract; and the owner (2) has no particular expertise in the kind of work contemplated; (3) furnishes no plans, design, specifications, details, or blueprints; and (4) tacitly or specifically indicates his reliance on the

¹³ See Aff. of Don Anderson at ¶ 4. The Court makes no finding regarding the contents of the contract between Anderson and Performance.

¹⁴ Complaint at ¶¶ 10-12.

¹⁵ *Florez v. Jordan Constr. Co.*, 4 Shak. T.C. 124, 130 (Jan. 15, 2002) (denying contractor's motion for summary judgment on breach-of-warranties claim brought by homeowner).

¹⁶ 143 N.W.2d 622, 625 (Minn. 1966).

experience and skill of the contractor, after making known to him the specific purposes for which the building is intended.¹⁷

At least one Minnesota court has subsequently concluded this implied warranty extends to renovations in an existing house, such as those at issue here.¹⁸ Given this, and plaintiffs' allegations that Anderson made and breached warranties to them, Anderson has not shown that plaintiffs cannot prevail on a breach-of-warranty claim.

Plaintiffs' final cause of action is for negligence.¹⁹ Anderson doesn't address this cause of action in its motion to dismiss, either. But common-law negligence claims against builders are not unusual, and are not mutually exclusive of warranty claims.²⁰ To establish a claim for negligence, a plaintiff must demonstrate that the defendant (1) owed her a duty, (2) breached that duty, (3) that the defendant's breach was the proximate cause of the plaintiff's injury, and (4) that she suffered actual injury.²¹ In this case, the plaintiffs have alleged that Anderson Air owed them a duty to construct their home in a manner consistent with sound construction practices, and that Anderson breached that duty, causing them damages. They have properly pleaded the claim, and it therefore withstands the motion to dismiss.

¹⁷ *Id.* at 626.

¹⁸ *Northwood Log Homes v. Davles*, No. C7-91-1111, 1991 WL 238323 (Minn. Ct. App. Nov. 19, 1991).

¹⁹ Complaint at ¶¶16-18.

²⁰ See, e.g., *Marshall v. Marvin Anderson Constr.*, 167 N.W.2d 724, 727 (Minn. 1969).

²¹ See *Kostelnik v. Little Six, Inc.*, 1 Shak. A.C. 92 (Mar. 17, 1998); *Van Zeeland v. Little Six, Inc.*, 4 Shak. T.C. 153 (Nov. 25, 2002).

Conclusion

The Court has subject-matter jurisdiction to hear plaintiffs' claims because they allegedly arose on lands held in trust for the Community by the United States. The fact that one of the plaintiffs' causes of actions is based on a contract executed between non-Indians on lands outside the Court's jurisdiction is not relevant to the Court's analysis because Anderson's alleged breach of the contract took place within the Court's jurisdiction. Furthermore, dismissal for failure to state a claim upon which relief can be granted is not warranted in this instance because plaintiffs have properly pleaded their causes of action.

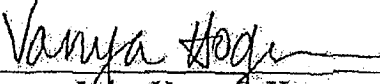
In addition to moving to dismiss for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted, Anderson also argued that plaintiffs should be estopped from bringing their causes of action because they are already seeking relief against the general contractor, Performance, on similar claims in arbitration. In response, plaintiffs agreed that it would be appropriate for the Court to stay this matter pending the outcome of the arbitration proceedings they initiated. The Court agrees.

Order

1. Anderson Air's motion to dismiss is denied.
2. Proceedings in this matter are stayed until plaintiffs obtain a final decision in or settle the arbitration proceedings they initiated against Performance Construction.

3. Plaintiffs must notify the Court and Anderson Air within five days of receiving an arbitration award or signing a settlement agreement in the arbitration proceedings between plaintiffs and Performance Construction. Upon receipt of the notice, the Court will schedule a status conference in this case.

November 6, 2007



Judge Vanya S. Hogen