

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MACDERMID, INC., : 3:03cv2180(WWE)
Plaintiff, :
v. :
FLIGHT OPTIONS, LLC, :
Defendant. :

**RULING ON PLAINTIFF'S MOTION TO DISMISS
AND TO STRIKE DEFENDANT'S COUNTERCLAIMS**

This lawsuit arises out of the alleged failure by the defendant, Flight Options, to pay to the plaintiff, MacDermid, Inc., the amount designated pursuant to the terms of an agreement for repurchase of MacDermid's interest in an aircraft. Flight Options has asserted counterclaims of mutual mistake and unilateral mistake.

Plaintiff moves to dismiss and to strike defendant's two counterclaims alleging unilateral and mutual mistake. For the following reasons, plaintiff's motion to dismiss and to strike will be denied.

BACKGROUND

For purposes of this motion, the facts alleged in the defendant's counterclaim are taken as true.

Plaintiff MacDermid is a corporation organized and existing under the laws of Connecticut with its principal place of business in Connecticut.

Defendant Flight Options is a limited liability company organized and existing under the laws of Delaware with its principal place of business in Ohio.

In late January 25, 2001, MacDermid and Flight Options entered into a purchase agreement in which MacDermid purchased from Flight Options a 25% undivided interest in an aircraft for \$3,200,000. The purchase agreement gave MacDermid the option to require Flight Options to repurchase the 25% interest in the aircraft. The purchase agreement set forth an appraisal method to determine the repurchase price according to the "Average Aircraft Value" of the aircraft and certain "Companion Aircraft" as defined in the purchase agreement.

Schedule A to the purchase agreement set forth "Additional Terms and Conditions" as follows:

Notwithstanding anything to the contrary in this Agreement, Average Aircraft Value shall not be less than the amount determined by calculating the percentage which the fair market value of the Aircraft has increased or decreased, and applying the increase or decrease to the Interest owned. Such calculation shall be computed using the value of the Aircraft as determined by the average retail price published by The Aircraft Bluebook Price Digest in the Winter 2000/2001 edition compared to the same publication with a nearest prior issue date of the re-purchase and multiplying the percentage difference times the Purchase Price of the

Interest in the Aircraft. Such difference shall be added to or deducted from the original Purchase Price to determine the Average Aircraft Value. Such language is intended to make valuation apply only to the Aircraft and not to any Companion Aircraft referenced in this Agreement.

In a letter dated May 20, 2003, MacDermid provided notice of its intention to exercise the repurchase option, stating:

In calculating the repurchase price, MacDermid reminds Flight Options of the special provisions contained within the "Additional Terms and Conditions" section of Schedule A of the Purchase Agreement.

Accordingly, MacDermid intended and understood that the repurchase price was to be calculated according to the formula set forth in Schedule A.

In a letter dated June 5, 2003, MacDermid stated that the "floor for the value" of its interest in the aircraft was calculated in accordance with the method set forth in Schedule A. MacDermid based that figure on what it referred to as the "current Bluebook" value of the aircraft, which Bluebook was the Spring 2003 edition. The Spring 2003 Bluebook valued the aircraft at \$7,400,000.

MacDermid and Flight Options then executed a repurchase agreement dated June 18, 2003, which agreement set a repurchase price of \$2,112,000.

Paragraph 1 of the repurchase agreement provided that MacDermid agreed to sell and Flight Options agreed to repurchase MacDermid's interest in the aircraft "for the amount specified in the Purchase Agreement."

Schedule A to the Repurchase Agreement set forth a repurchase price calculated in accordance with the Spring 2003 value for the aircraft.

Before the closing of the aircraft repurchase, the Summer and Fall 2003 Bluebooks were issued. The Fall 2003 Bluebook stated that the value of the aircraft was \$5,900,000.

In a letter to MacDermid dated August 18, 2003, Flight Options indicated that the repurchase price should be revised to \$1,685,714.29, since the price should be calculated in accordance with the Fall 2003 Bluebook value. Flight Options alleges that the repurchase agreement "erroneously calculates the repurchase price using the Spring 2003 Bluebook rather than the Fall 2003 Bluebook, which is the Bluebook with the nearest prior issue date to the re-purchase." Flight Options seeks reformation of the contract so that repurchase price is calculated pursuant to the Fall 2003 Bluebook value.

DISCUSSION

The following principles dictate the court's consideration of the motion to dismiss and to strike the counterclaims. The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution v. Merrill Lynch Commodities, Inc., 748 F. 2d 774, 779 (2d Cir. 1984). When deciding a motion to dismiss, the Court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

The standard for the motion to strike the counterclaims is the "mirror image" of the standard for the consideration of a motion to dismiss. Canadian St. Regis Band of Mohawk Indians v. New York, 278 F. Supp. 2d 313, 332 (N.D.N.Y. 2003).

Plaintiff advances the following five arguments

in support of its motion to dismiss and to strike the counterclaims of mutual and unilateral mistake: (1) Flight Options lacks standing to assert its counterclaims; (2) unilateral mistake is not a proper basis for reformation under Ohio law; (3) a mistake as to future facts is not a proper basis for reformation; (4) "mistakes" as to price are not avoidable under the doctrine of mistake; and (5) Flight Options' conclusory allegations of mutual mistake cannot defeat the unambiguous language of the contract.

Standing

MacDermid argues that Flight Options has suffered no injury, and therefore cannot establish standing to bring its counterclaims.

To establish standing, Flight Options must show (1) an injury-in-fact that is actual or imminent; (2) a causal connection between the injury and the complained of conduct; and (3) redressability by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

Flight Options has paid only the amount that Flight Options asserts is the correct amount calculated pursuant to the Fall, 2003 Bluebook

value. Although MacDermid agreed to allow Flight Options to pay only what it deems is the "correct" price, MacDermid reserved the right to pursue a claim for the balance of the amount that it contends is owed by Flight Options.¹ By commencing this action seeking damages pursuant to breach of contract, fraud, breach of the implied covenant of good faith and fair dealing, and the Connecticut Unfair Trade Practices Act, MacDermid has acted on that reservation of right. Thus, MacDermid's lawsuit seeks a judgment to enforce its interpretation of the "correct" price so that it may collect an amount greater than what Flight Options interprets as the "correct" price. Accordingly, the Court finds that Flight Options has a threatened injury since it may be required to pay more than what it alleges is the "correct" price.

Unilateral Mistake

Flight Options alleges that in using the Spring 2003 Bluebook value, Flight Options made a unilateral mistake of fact. MacDermid argues that an alleged unilateral mistake cannot be the basis of reformation under Ohio law. Gen. Tire, Inc. v.

¹This fact is alleged in MacDermid's complaint.

Mehlfeldt, 691 N.E.2d 1132 (Ohio Ct. App. 1997).

Flight Options concedes that this is generally the rule of law in Ohio, but points to the exception to the rule "where the mistake occurred due to a drafting error by one party and the other party knew of the error and took advantage of it." Galehouse Construction Co. Inc. v. Winkler, 714 N.E.2d 954, 955 (Ohio Ct. App. 1998). Accordingly, Flight Options is entitled to make a showing that a drafting error occurred in calculating the repurchase price, which error was known to MacDermid at the time. The motion to dismiss will be denied on this basis.

Future Events

MacDermid asserts further that Flight Options' claim of "mutual mistake" is based on the publication of the Summer and Fall Bluebooks, which occurred after the execution of the repurchase agreement and therefore constitute future events that cannot justify reformation of the contract. MacDermid argues that the Spring Bluebook was the correct publication to use since it was the "nearest prior issue" at the time of the repurchase agreement's execution. According to MacDermid, it was not intended that the repurchase price be determined upon market conditions in effect at the repurchase closing.

Flight Options counters that the Summer and Fall Bluebook publications occurred prior to the closing date of the repurchase, and therefore, it was a mistake not to use the Fall Bluebook value to calculate the repurchase price.

At issue is the language "nearest prior issue date of the re-purchase..." of the calculation formula stated in Schedule A to the Purchase Agreement. If the "date of the re-purchase" is interpreted to mean the closing date of the

repurchase, then the publications of the Summer and Fall Bluebooks are not future events. In ruling on this motion to dismiss, the Court declines to determine the intent of such language. Accordingly, the motion to dismiss will be denied on this ground.

Reformation of Mistakes as to Price

MacDermid asserts that contracting parties risk mispricing their deals, and therefore, mistakes as to market conditions or financial ability do not justify avoidance under the rule governing mistake. See Restatement 2d of Contracts §152, Comment b. However, this controversy involves determination of which Bluebook is the "nearest prior issue date to the re-purchase" rather than a party's mistaken assumption as to the market or financial ability. Accordingly, the Court will deny the motion to dismiss on this ground.

Conclusory Allegations of Mutual Mistake

In its final argument, MacDermid argues that the facts alleged in the complaint and the documents incorporated therein evince an unambiguous intent of the parties that cannot be refuted by parol or extrinsic evidence. However, parol evidence may be

used to prove the existence of a mistake. Gen. Tire, 691 N.E.2d at 1135. The Court will not dismiss the claim of mutual mistake without review of evidentiary materials to determine whether a mutual mistake occurred.

CONCLUSION

Based on the foregoing, plaintiff's motion to dismiss and to strike [doc. #22] is DENIED.

So Ordered.

_____/s/_____

Warren W. Eginton
Senior United States

District Judge

Dated this 20th day of May, 2004 at Bridgeport, Connecticut.