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IN THE COURT OF APPEALS OF INDIANA

CW Farms, LLC,
Appellant-Plaintiff,

v.

Egg Innovations, LLC,
Appellee-Defendant.

May 7, 2021

Court of Appeals Case No. 20A-PL-2051

Appeal from the Kosciusko Superior Court

The Honorable Christopher D. Kehler, Judge

Trial Court Cause No. 43D04-1908-PL-71

Najam, Judge.

Statement of the Case

[1] CW Farms, LLC ("CW") appeals the trial court's dismissal of its complaint against Egg Innovations, LLC ("E.I."). CW presents a single issue for our review, namely, whether the trial court erred when it dismissed CW's

complaint for failure to state a claim upon which relief can be granted under Trial Rule 12(B)(6).

[2] We affirm in part, reverse in part, and remand for further proceedings.

Facts and Procedural History

[3] In 2010, E.I. hired CW to raise chickens for egg production. The parties executed two agreements, each applicable to a different barn managed by CW, whereby E.I. would provide the chickens and the feed, and CW would provide the facilities, care for the chickens, and oversee egg production. E.I. agreed to pay CW per each dozen eggs produced. The agreements were to remain "in effect for a period of 8 flocks." Appellant's App. Vol. 2 at 21. The agreements did not define the duration of a "flock."

[4] After CW had raised several flocks under the agreements, "differences arose [between] the parties," and they agreed to modify the agreements. *Id.* at 15. In particular, in June 2018, after five and six flocks had been raised in the two barns, respectively, E.I. and CW executed two addenda to the 2010 agreements, whereby the parties agreed that CW would raise only one more flock in each barn, for a total of six and seven flocks, respectively. The final flocks were delivered to CW in September. Approximately forty-eight weeks later, E.I. suddenly and without explanation removed the chickens from the barns prior to the end of the production cycle.

[5] On August 15, 2019, CW filed a complaint against E.I. alleging breach of contract, promissory estoppel, breach of good faith and fair dealing, and

negligence. In particular, CW alleged that: a flock typically has a duration of ninety-five to one hundred weeks; E.I.'s removal of the chickens after only forty-eight weeks violated the terms of the parties agreements and addenda; E.I. breached the agreements when it failed to provide "suitable feed"; and E.I. was negligent when it "provided poor quality and/or insufficient feed for the flock[s] and failed to provide necessary supplies." *Id.* at 15. E.I. moved to dismiss the complaint for failure to state a claim upon which relief can be granted under Trial Rule 12(B)(6). Following a hearing, the trial court dismissed CW's complaint. This appeal ensued.

Discussion and Decision

[6] CW contends that the trial court erred when it dismissed its complaint under Indiana Trial Rule 12(B)(6). Our standard of review is well settled:

> A motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of a complaint: that is, whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief. *See Kitco, Inc. v. Corp. for Gen. Trade*, 706 N.E.2d 581 (Ind. Ct. App. 1999). Thus, while we do not test the sufficiency of the facts alleged with regards to their adequacy to provide recovery, we do test their sufficiency with regards to whether or not they have stated some factual scenario in which a legally actionable injury has occurred.
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> A court should "accept[ ] as true the facts alleged in the complaint," *Minks v. Pina*, 709 N.E.2d 379, 381 (Ind. Ct. App. 1999), and should not only "consider the pleadings in the light most favorable to the plaintiff," but also "draw every reasonable inference in favor of [the non-moving] party." *Newman v. Deiter*, 702 N.E.2d 1093, 1097 (Ind. Ct. App. 1998). However, a court

> need not accept as true "allegations that are contradicted by other allegations or exhibits attached to or incorporated in the pleading." *Morgan Asset Holding Corp. v. CoBank, ACB*, 736 N.E.2d 1268, 1271 (Ind. Ct. App. 2000) (citations omitted).
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> Indiana Trial Rule 8(A), this state's notice pleading provision, requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Although the plaintiff need not set out in precise detail the facts upon which the claim is based, she must still plead the operative facts necessary to set forth an actionable claim. *Miller v. Mem. Hosp. of South Bend, Inc.*, 679 N.E.2d 1329 (Ind. 1997). Under notice pleading, we review the granting of a motion to dismiss for failure to state a claim under a stringent standard, and affirm the trial court's grant of the motion only when it is "apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances." *McQueen v. Fayette County Sch. Corp.*, 711 N.E.2d 62, 65 (Ind. Ct. App. 1999).

Trail v. Boys & Girls Clubs of Nw. Ind., 845 N.E.2d 130, 134-35 (Ind. 2006). "We view 12(B)(6) motions 'with disfavor because such motions undermine the policy of deciding causes of action on their merits.'" *Jacob v. Vigh*, 147 N.E.3d 358, 360 (Ind. Ct. App. 2020) (quoting *McQueen v. Fayette Cnty. Sch. Corp.*, 711 N.E.2d 62, 65 (Ind. Ct. App. 1999), *trans. denied*).

[7] CW asserts on appeal that the allegations in its complaint support claims for breach of contract, breach of E.I.'s duty of good faith and fair dealing, and negligence. We address each claim in turn.

Breach of Contract

[8] We are asked to interpret the parties' agreement[1] in the context of Trial Rule 12(B)(6), and, again, our standard of review requires that we accept as true the facts alleged in the complaint and to "draw every reasonable inference in favor of" CW. *Trail*, 845 N.E.2d at 134. However, "where allegations of a pleading are inconsistent with terms of a written contract attached as an exhibit, the terms of the contract, *fairly construed*, must prevail over an averment differing therefrom." *Celadon Trucking Servs., Inc. v. Wilmoth*, 70 N.E.3d 833, 840 (Ind. Ct. App. 2017) (emphasis added), *trans. denied*. A contract's clear and unambiguous language is given its ordinary meaning. *Ryan v. TCI Architects/Engineers/Contractors, Inc.*, 72 N.E.3d 908, 914 (Ind. 2017). If, however, a contract is ambiguous, the parties may introduce extrinsic evidence of its meaning, and the interpretation becomes a question of fact. *Celadon Trucking Servs., Inc.*, 70 N.E.3d at 839.

[9] In its complaint, CW alleged that a "flock" corresponds to a production cycle that typically lasts ninety-five to one hundred weeks. CW further alleged that, when E.I. removed the flocks only forty-eight weeks into the production cycle, E.I. breached the parties' agreement. And CW alleged that E.I. breached the agreement when it failed to provide "suitable feed," which resulted in "a drop

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[1] There were two agreements (one for each barn) and two corresponding addenda executed by the parties, but they had identical provisions. For ease of discussion, from this point forward, we refer to a single agreement.

in egg production." Appellant's App. Vol. 2 at 14. E.I. responds that CW's allegations are inconsistent with the terms of the parties' agreement, which was attached to the complaint. Thus, E.I. asserts that the trial court did not err when it dismissed CW's breach of contract claims.

[10] In particular, E.I. contends that the agreement expressly gave E.I. full discretion to remove the chickens at any time during a flock's production cycle. In support of that contention, E.I. relies on paragraph 4 of the agreement, which states as follows:

> [E.I.] will decide when ready-to-lay [hens] should be housed using breeder recommendation. [E.I.] may at its own discretion *sell* the birds prior to the end of the normal production cycle or extend the normal production cycle depending on [the] economic condition and the breed of the bird, with some birds having a longer lay cycle than others. The cycle may be extended through molting.

Id. at 19 (emphasis added). E.I. asserts that, "[r]egardless of how long CW housed prior flocks, and even accepting as true CW's allegations that the 'normal production cycle' was 95-100 weeks, [E.I.] could not have breached the Agreements by *removing* the flocks after 48 weeks because this was expressly allowed by Paragraph 4 of the Agreements." Appellee's Br. at 18 (emphasis added). We cannot agree.

[11] Paragraph 4 of the agreement does not give E.I. absolute discretion to remove chickens for any reason from CW's barns prior to the end of a normal production cycle. Rather, paragraph 4 unambiguously states that E.I. had

discretion to *sell* the chickens prior to the end of the normal production cycle. Had CW alleged in its complaint that E.I. had sold the chickens prior to the end of a normal production cycle, that allegation would not survive a Rule 12(B)(6) motion. But CW's complaint alleged that E.I. removed the chickens without explanation,[2] which could include removal for a reason other than to sell them, a plausible fact which we must accept as true for purposes of Rule 12(B)(6) analysis.

[12] Likewise, with regard to CW's allegation that E.I. did not provide suitable feed for the chickens, the agreement stated in relevant part that CW would "[u]se only the feed specified and delivered by [E.I.] and feed hens according to company feed requirements." Appellant's App. Vol. 2 at 18. The agreement does not define which "company" was to determine the feed requirements. Accordingly, that provision is ambiguous, and whether E.I. provided suitable feed under the contract is a question of fact. *Celadon Trucking Servs., Inc.*, 70 N.E.3d at 839. CW's allegation that E.I. did not provide suitable feed to sustain adequate egg-laying is not inconsistent with the plain language of the agreement. We hold that the trial court erred when it dismissed CW's breach of contract claims.

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[2] We note that, during argument on E.I.'s motion to dismiss, CW stated that E.I. had "gassed [the chickens] and removed them." Tr. at 13.

Duty of Good Faith and Fair Dealing

[13] CW also contends that its claim that E.I. breached the duty of good faith and fair dealing states a claim upon which relief can be granted. In its complaint, CW alleged that E.I. breached this duty when it removed the flocks at forty-eight weeks of the production cycle as "retaliation" for CW's role in seeking to modify the parties' original agreement. Appellant's App. Vol. 2 at 15. In its motion to dismiss, E.I. asserted that there is no duty of good faith and fair dealing under the parties' agreement.

[14] E.I. is correct that, in Indiana, the duty of good faith is implied in contract law "only under limited circumstances such as those involving insurance contracts[.]" *Lake Cty. Trust Co. v. Wine*, 704 N.E.2d 1035, 1039 (Ind. Ct. App. 1998) (citing *First Federal Sav. Bank of Indiana v. Key Markets, Inc.*, 559 N.E.2d 600, 605 (Ind. 1990)). However, a duty of good faith may apply to a contract where the terms of the contract expressly include such a duty. *See id.* Thus, we must determine whether the parties' agreement expressly imposes a duty of good faith and fair dealing.

[15] In its memoranda in opposition to the motion to dismiss, CW alleged that the parties' agreement expressly includes a duty of good faith and fair dealing provision. CW cites paragraph 6, which states in relevant part that "[t]his Agreement will be interpreted assuming all parties conduct themselves in a professional and honest manner, and uphold their respective obligations." Appellant's App. Vol. 2 at 19. Black's Law Dictionary defines "good faith" as "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness

to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage." *Good Faith*, Black's Law Dictionary (11th ed. 2019). And Black's defines "fair dealing" as "[t]he conduct of business with full disclosure[.]" *Fair Dealing*, *id.* These definitions of good faith and fair dealing correspond to the provision in paragraph 6 calling on the parties to "conduct themselves in a professional and honest manner, and uphold their respective obligations." Appellant's App. Vol. 2 at 19. Thus, we conclude the parties' agreement expressly includes a duty of good faith and fair dealing.

[16] Still, E.I. contends that the provision stating that "all parties conduct themselves in a professional and honest manner" is a mere "snippet" or "soundbite," which, when read in the context of paragraphs 6 and 7, does not impose a duty of good faith and fair dealing on E.I. Appellee's Br. at 24-25. In particular, E.I. maintains that the provision applies only to "the relationship between CW and a 'General Contractor' designated to build new barns." *Id.* at 25. And E.I. further contends that a provision in paragraph 7 stating that "[n]othing in this Agreement shall be deemed to . . . establish a fiduciary relationship of any kind between the parties" makes clear that the Agreement does not include a general duty of good faith and fair dealing. *Id.* at 20. We cannot agree.

[17] First, the exclusion of a fiduciary relationship does not in itself preclude a duty of good faith and fair dealing. The two concepts are not coextensive. Second, paragraph 6 begins with the words "this Agreement." The term "this

Agreement" appears throughout the contract and in every instance refers to the contract between E.I. and CW.[3] And finally, by its terms, the "professional and honest manner" provision applies to "all parties," which, of course, includes E.I. and CW. The terms "this Agreement" and "all parties" are unambiguous. Thus, again, we agree with CW that the contract expressly includes a duty of good faith and fair dealing in paragraph 6. Accordingly, we hold that the trial court erred when it dismissed CW's claim that E.I. breached this duty under Trial Rule 12(B)(6).[4]

Negligence

[18] Finally, CW contends that it has stated a claim of negligence for which relief can be granted. In its complaint, CW alleged that E.I. "was negligent in providing poor quality and/or insufficient feed to CW as well as failing to timely provide the necessary supplies," which resulted in a "drop in egg production." Appellant's App. Vol. 2 at 15. In its motion to dismiss, E.I asserted that "a party to a contract . . . may be liable in tort to the other party for damages from negligence that would be actionable if there were no contract, but not otherwise," citing *Koehlinger v. State Lottery Commission Of Indiana*, 933 N.E.2d 534, 542 (Ind. Ct. App. 2010), *trans. denied*. This is known as the

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[3] Paragraph 6 does not make any reference to a contract or agreement between CW and the General Contractor other than a vague reference to CW's "payment obligation" to the General Contractor. Appellant's App. Vol. 2 at 19.

[4] In light of this holding, we need not address CW's contention that the UCC applies to the parties' agreement to support a duty of good faith and fair dealing.

economic loss rule. *Indianapolis-Marion County Public Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 729 (Ind. 2010).

[19] As our Supreme Court has explained, where parties have a contractual relationship,

> the economic loss rule reflects that the resolution of liability for purely economic loss caused by negligence is more appropriately determined by commercial rather than tort law. [In other words,] the economic loss rule provides that a defendant is not liable under a tort theory for any purely economic loss caused by its negligence[.]

Id. While there are exceptions to this rule, CW's complaint clearly alleges a purely economic loss as a result of E.I.'s negligence "under the contract," and none of the limited exceptions applies here.[5] Appellant's App. Vol. 2 at 15. Thus, we conclude that CW has not stated a freestanding negligence claim and that the trial court did not err when it dismissed CW's negligence claim under Trial Rule 12(B)(6).

Conclusion

[20] Again, in our review of this Trial Rule 12(B)(6) dismissal, while we do not test the sufficiency of the facts alleged, we do test whether the operative facts are sufficient to state "some factual scenario in which a legally actionable injury has

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[5] For instance, "a defendant is liable under a tort theory for a plaintiff's losses if a defective product or service causes personal injury or damage to property other than the product or service itself." *Indianapolis-Marion County Public Library*, 929 N.E.2d at 729.

occurred." *Trail*, 845 N.E.2d at 134. And because the parties' agreement was attached to the complaint, we are required to determine whether CW's allegations were consistent with the "fairly construed" terms of the agreement. *See Celadon Trucking Servs., Inc.*, 70 N.E.3d at 840. We hold that CW has stated claims upon which relief can be granted for breach of contract and breach of duty of good faith and fair dealing, and the trial court erred when it dismissed those claims. CW has not, however, stated a claim upon which relief can be granted for negligence, and the trial court did not err when it dismissed that claim.

[21] Affirmed in part, reversed in part, and remanded for further proceedings.

Pyle, J., and Tavitas, J., concur.