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IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CIVIL DIVISION

BRADLEY A. SIMON and AMY J. SIMON,)	
Husband and wife,)	
Plaintiff,)	
vs.)	No. 2015-3302
SUNOCO PIPELINE L.P., SUNOCO)	
LOGISTICS PARTNERS, L.P., EVAN)	
DESVERNINE, LORI ANDREWS,)	
PERCHERON FIELD SERVICES, LLC,)	
TOM KENNEY, and MICHAEL JONES,)	
Defendants,)	

MEMORANDUM AND ORDER

AND NOW, this 7th day of February 2025, the Court ORDERS, ADJUDGES, and DECREES that Plaintiffs’ Motions for Summary Judgment against Defendants Sunoco Pipeline, L.P. and Sunoco Logistics Partners, L.P. and Percheron Field Services, LLC are DENIED. Additionally, Defendants Percheron Field Services, LLC, Evan Desvernine, Lori Andrews, Tom Kenney, and Michael Jones’ as well as Defendants Sunoco Pipeline, L.P. and Sunoco Logistics Partners, L.P.’s Motions For Summary Judgment are also DENIED.

A Status Conference is scheduled for March 14th, 2025, at 1:45 p.m. before Judge Brandon Neuman. The parties shall provide their email addresses to court.crier.neuman@washingtoncourts.us, law.clerk.neuman@washingtoncourts.us and amber.ross@washingtoncourts.us at least 48 hours in advance to receive a link to participate. At the status, the parties shall be prepared to discuss mediation options.

FACTUAL BACKGROUND

This matter stems from the construction of the Mariner East pipelines on the Simon Property located in Nottingham Township, Washington County. In February 2013, Plaintiffs were contacted by Defendant Percheron Field Services, LLC (“Percheron”) on behalf of Defendants Sunoco Pipeline, L.P. and Sunoco Logistics Partners, L.P. (“Sunoco”) regarding easements for the installation of pipeline related to the Mariner East project. During negotiations, Plaintiffs inquired whether Sunoco had eminent domain authority and were provided with a letter setting forth the eminent domain authority of Sunoco Pipeline. Plaintiffs allege in their Second Amended Complaint that it is based on these representations and the belief that condemnation of their property was imminent that they signed the Right of Way Agreement on September 19th, 2013. Plaintiffs allege that in August 2014 “they learned that Defendant Sunoco Pipeline did not have eminent domain authority” in 2013 when the Right of Way was negotiated, and the Agreement was signed.¹

On June 8th, 2015, Plaintiffs filed their initial Complaint. An amended complaint was filed on December 2nd, 2016, and a second amended complaint was filed May 20th, 2019, alleging claims of Fraud (Count 1), Negligence (Counts II and IV), Negligent Misrepresentation (Count III), Breach of Contract (Counts V, VI, and VII) and Trespass (VIII and IX). Defendant Percheron filed an answer and new matter to Plaintiff’s Second Amended Complaint on June 12th, 2019. After the disposal of preliminary objections, Defendant Sunoco filed an answer and new matter on January 3rd, 2020.

On June 14th, 2024, in accordance with Court order, all motions for summary judgment were filed. Plaintiffs’ Motion for Summary Judgment against Defendant Sunoco requested

¹ Pl. Second Amended Complaint ¶ 58.

Summary Judgment be granted at Counts I-V and VII-VIII. Plaintiffs' Motion for Summary Judgment against Defendant Percheron requested Summary Judgment be granted at Counts I-III. Defendant Sunoco's Motion for Summary Judgment requested Summary Judgment at Counts I-III. Defendant Percheron's Motion for Summary Judgment requested Summary Judgment be granted in relation to all Counts regarding them. Replies were filed by all parties on July 15th, 2024, and accompanying briefs were filed on August 15th, 2024, and August 26th, 2024, in accordance with Court Orders. This Court heard Argument on September 4th, 2024. This memorandum and order follow.

DISCUSSION

“A trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”² The trial court “must accept as true all well-pleaded facts in the non-moving party's pleadings, and give to [them] the benefit of all reasonable inferences to be drawn therefrom.”³ “[T]he court may grant summary judgment only when the right to such a judgment is clear and free from doubt.”⁴ “If there is evidence that would allow a fact-finder to render a verdict in favor of the non-moving party, then summary judgment should be denied.”⁵

1. Preliminary Conclusions of Law

Central to this matter is the issue of whether Sunoco had eminent domain in 2013 when they began negotiations with the Plaintiffs and when the Right of Way Agreement was signed. As such, before addressing any of the Counts of Plaintiff's Complaint, this Court first addresses

² *Bourgeois v. Snow Time, Inc.*, 242 A.3d 637, 649-50 (Pa. 2020), citing *Summers v. Certainteed Corporation*, 997 A.2d 1152, 1159 (Pa. 2010).

³ *Jefferson v. State Farm Ins. Companies*, 551 A.2d 283, 284 (Pa. Super. 1988).

⁴ *Erie Insurance Exchange v. Moore*, 175 A.3d 999, 1008 (Pa. Super. 2017)(citations omitted).

⁵ *Reinoso v. Heritage Warminster SPE LLC*, 108 A.3d 80, 85 (Pa. Super. 2015), quoting *Mull v. Ickes*, 994 A.2d 1137, 1139-40 (Pa. Super. 2010).

Sunoco's eminent domain status as it pertains to this case. Plaintiffs argue that Sunoco did not have the legal authority to exercise eminent domain powers in 2013 in Washington County, Pennsylvania. Sunoco argues that it had eminent domain powers as derived from 15 Pa. C.S. § 1511(a) as the Mariner East Project was subject to regulation by the Federal Energy Regulatory Commission ("FERC").

"[T]he power of eminent domain is an inherent one possessed by the Commonwealth, as sovereign, which permits it to take private property for a public use if the landowner receives just compensation for the taking."⁶ "Although the Commonwealth may choose to delegate such power to other entities, the Commonwealth's power of delegation is not plenary, as it is restrained by our federal and state Constitutions, and may be further limited by statute."⁷ "The primary federal and state constitutional limitation imposed on the exercise of this power by the Commonwealth, or by any entity to which the Commonwealth has delegated such power, is that private property may only be taken to serve a public purpose."⁸ "Further, because the exercise of eminent domain power is in derogation of private property rights, any statute that authorizes its use will be strictly construed in favor of landowners."⁹

Under 15 Pa. C.S. § 1511(a)(2), "[a] public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute, have the right to take, occupy and condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes: (2) The transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances for the public." A public utility corporation is defined as "[a]ny

⁶ *Robinson Twp. v. Commonwealth*, 637 Pa. 239, 321, 147 A.3d 536, 586 (2016).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 321-22, 586.

domestic or foreign corporation for profit that ... is subject to regulation *as a public utility* by the [PUC] or an officer or agency of the United States....”¹⁰ “FERC is an agency of the United States that may regulate an entity as a public utility under this section.”¹¹ This power of eminent domain is restricted, however, as under 15 Pa. C.S. § 1511(c),

[t]he powers conferred by subsection (a) may be exercised to condemn property outside the limits of any street, highway, water or other public way or place for the purpose of erecting poles or running wires or other aerial electric, intrastate aerial telephone or intrastate aerial telegraph facilities only after the Pennsylvania Public Utility Commission, upon application of the public utility corporation, has found and determined, after notice and opportunity for hearing, that the service to be furnished by the corporation through the exercise of those powers is necessary or proper for the service, accommodation, convenience or safety of the public.

In *In re Condemnation by Sunoco Pipeline L.P.*, the Pennsylvania Commonwealth Court confirmed that “the power of eminent domain is conferred on a public utility via a CPC” and that

[t]he procedure for a public utility to exercise the power of eminent domain is set forth under Section 1511(c) of the BCL...It provides, in pertinent part, that before a public utility can construct a pipeline for artificial or natural gas and/or petroleum or petroleum products, that “the service to be furnished by the corporation through the exercise of those powers is necessary or proper for the service, accommodation, convenience or safety of the public.”¹²

Here, it is undisputed that in 2013 the Mariner East pipeline was an interstate pipeline that provided no service in Pennsylvania. As such, Sunoco has admitted at numerous points in the record that they were regulated by FERC under the Interstate Commerce Act (“ICA”). The ICA applies to those engaged in the transportation of oil by means of pipeline and treats them as “common carriers.”¹³ Common carriers have no eminent domain authority federally through the ICA or FERC.

¹⁰ 15 Pa. C.S. § 1103 (emphasis added).

¹¹ *In re Sunoco Pipeline, L.P.*, 143 A.3d 1000, 1003 (Pa. Commw. Ct. 2016).

¹² 165 A.3d 1044, 1047 (Pa. Commw. Ct. 2017).

¹³ *Valvoline Oil Co. v. U.S.*, 308 U.S. 141, 145 (1939).

Sunoco argues that while it did not possess federal eminent domain powers, it had eminent domain under 15 Pa. C.S. § 1511(a)(2). However, 15 Pa. C.S. § 1103 requires that to be a “public utility corporation” under 15 Pa. C.S. § 1511(a)(2), the corporation must be subject to regulation “as a public utility.” This Court finds that in accordance with the law, Sunoco was a common carrier regarding the Mariner East project in 2013, not a public utility. As such, this Court finds that 15 Pa. C.S. § 1511(a)(2) is inapplicable and Sunoco possessed no eminent domain power under that Statute.

Further, even if Sunoco could be considered a public utility corporation granting them the ability to exercise eminent domain power, they would still lack eminent domain in this case as Defendant Sunoco was not in compliance with 15 Pa. C.S. § 1511(c) which requires approval of the Pennsylvania Public Utility Commission (“PUC”) prior to eminent domain being exercised. Here, it is not disputed that Sunoco had no Certificates of Public Convenience (“CPCs”) in relation to Washington County as granted by either FERC or the PUC.

After considering all relevant law and the undisputed facts of this case, this Court finds that Sunoco did not possess eminent domain in Washington County between February 2013 and September 2013.

With this determination in mind, the Court will proceed to consider all of the summary judgment motions.

2. Count I - Fraud Against Defendants Sunoco and Percheron

The elements of fraudulent misrepresentation are as follows: (1) A representation, (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and, (6) the resulting injury was proximately

caused by the reliance. This Court finds that there are genuine issues of material fact in regard to the claim against both Defendants. As such, summary judgment as requested by all parties is DENIED at this Court.

3. Count II - Negligence Against Defendants Sunoco and Percheron

To establish a cause of action for negligence, the party seeking recovery must demonstrate “(1) the defendant owed the plaintiff a duty or obligation recognized by law; (2) the defendant breached that duty; (3) a causal connection existed between the defendant's conduct and the resulting injury; and (4) actual damages occurred.”¹⁴ Here, this Court finds that there is a genuine issue of material fact which prohibits the granting of summary judgment. As such all motions are DENIED regarding Count II.

4. Count III - Negligent Misrepresentation against Defendants Sunoco and Percheron

A negligent misrepresentation requires: “(1) a misrepresentation of a material fact; (2) the representor must either know of the misrepresentation, must make the misrepresentation without knowledge as to its truth or falsity or must make the representation under circumstances in which he ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting in justifiable reliance on the misrepresentation.”¹⁵ Once again, upon reviewing the record, this Court finds that there are genuine issues of material fact. All requests for Summary Judgment at Count III are DENIED.

5. Count IV – Negligence against Defendant Sunoco

As set forth above, to establish a cause of action for negligence, the party seeking recovery must demonstrate “(1) the defendant owed the plaintiff a duty or obligation recognized by law; (2)

¹⁴ *Grove v. Port Auth. of Allegheny Cnty.*, 655 Pa. 535, 554, 218 A.3d 877, 889 (2019).

¹⁵ *Gibbs v. Ernst*, 647 A.2d 882, 890 (Pa. 1994).

the defendant breached that duty; (3) a causal connection existed between the defendant's conduct and the resulting injury; and (4) actual damages occurred.”¹⁶ When viewing the record in the light most favorable to the non-moving party, this Court finds that there is a genuine issue of material fact when it comes to Plaintiff’s wetlands claim. Summary Judgment at Count IV is DENIED.

6. Count V – Breach of Contract against Defendant Sunoco

“It is well-established that three elements are necessary to plead a cause of action for breach of contract: (1) the existence of a contract, including its essential terms, (2) a breach of the contract; and, (3) resultant damages.”¹⁷ This Court finds that there are genuine issues of material fact in regard to the breach of contract claim for the construction of the Mariner East 2 pipeline. As such, summary judgment as requested by Plaintiff is DENIED at this Count.

7. Count VII – Breach of Contract against Defendant Sunoco

As set forth above, actions in breach of contract require a contract, a breach, and damages.¹⁸ Here, this Court finds that there is a genuine issue of material fact as to the re-excavation of the Mariner East 2 pipeline which prohibits the granting of summary judgment. As such Plaintiff’s motion is DENIED regarding Count VII.

8. Count VIII – Trespass against Defendant Sunoco

“In Pennsylvania, a trespass occurs when a person who is not privileged to do so intrudes upon land in possession of another, whether willfully or by mistake.”¹⁹ When viewing the record in the light most favorable to the non-moving party, this Court finds that there is a genuine issue of material fact as to trespass. Summary Judgment at Count VIII is DENIED.

¹⁶ *Grove v. Port Auth. of Allegheny Cnty.*, 655 Pa. 535, 554, 218 A.3d 877, 889 (2019).

¹⁷ *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. L. Firm of Malone Middleman, P.C.*, 137 A.3d 1247, 1258 (Pa. 2016).

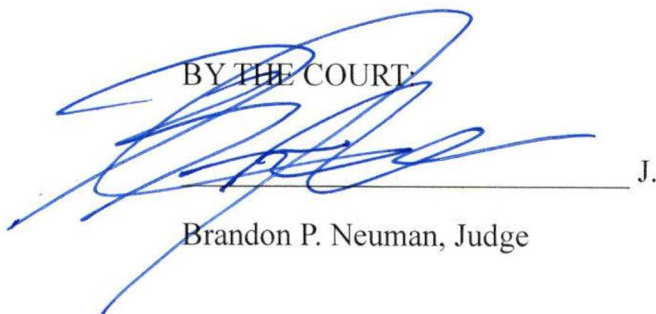
¹⁸ *See Id.*

¹⁹ *Briggs v. S.W. Energy Prod. Co.*, 224 A.3d 334, 346 (Pa. 2020).

CONCLUSION

For the reasons set forth above, this Court finds that Sunoco did not possess eminent domain powers between February 2013 and September 2013 when they entered into negotiations with Plaintiffs and a right of way agreement was signed. Further, this Court finds that there are genuine issues of material fact that must be determined by a finder of fact and therefore summary judgment as requested by all parties is DENIED.

BY THE COURT



_____ J.

Brandon P. Neuman, Judge