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BRIGHT HOPE BAPTIST CHURCH,

Plaintiff,

v.

PHILADELPHIA SUBURBAN
DEVELOPMENT CORPORATION, 1600
NORTH 11th STREET CRCP LLC, and MATZ
LAND TRANSFER SERVICES, INC.,

Defendants.

: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
: TRIAL DIVISION -CIVIL
: Commerce Program

: No. 220200734

: Control Nos.: 23100606
: 23100638
: 23100683

DOCKETED

MAR 15 2024

R. POSTELL
COMMERCE PROGRAM

PHILADELPHIA SUBURBAN
DEVELOPMENT CORPORATION,

Plaintiff,

v.

BRIGHT HOPE BAPTIST CHURCH, 1600 N
11th STREET CRCP LLC, and MATZ LAND
TRANSER SERVICES, INC.,

Defendants.

: No. 220101796

: Control No.: 23100500

ORDER

AND NOW, this 15th day of March, 2024, upon consideration of the Motion of Bright Hope Baptist Church (“Bright Hope”) for Partial Summary Judgment (control no. 23100683 in case no. 220200734 and control no. 23100500 in case no. 220101796), the Motion of Philadelphia Suburban Development Corporation (“PSDC”) for Partial Summary Judgment (control no. 23100638) and the Motion of 11th Street CRCP LLC (“CRCP”) for Partial Summary Judgment (control no. 23100606), it is hereby ORDERED and DECREED that the Motions are GRANTED in part and DENIED in part, as follows, for the reasons set forth in the court’s Opinion attached hereto and filed herewith:

220200734-Bright Hope Baptist Church Vs Philadelphia Suburba



22020073400122

1. The court GRANTS Bright Hope Partial Summary Judgment on its claim in Count I for Breach of Contract against PSDC as to its entitlement of the Escrowed Funds;
2. The court DENIES Bright Hope's motion as to Count I to the extent it seeks damages beyond the return of the Escrowed Funds due the factual insufficiency to support summary judgment;
3. The court GRANTS Bright Hope Partial Summary Judgment against PSDC, CRCP and nominal defendant Matz Land Transfer Services on its claim in Count V for Declaratory Judgment and determines that the Escrow Agreement requires payment of the Escrowed Funds to Bright Hope;
4. The court DENIES Bright Hope's Motion for Partial Summary Judgment as to its Breach of Contract Claim against CRCP related to the Escrow Agreement in Count I and grants CRCP's Motion for Partial Summary Judgment to Dismiss Bright Hope's claim in Count I against it;
5. The court GRANTS Bright Hope's Motion for Partial Summary Judgment as to its claims for Breach of Contract related to the PRA under Count III as to CRCP's obligation to pay attorneys' fees in connection with the drafting of the PRA and as a prevailing party entitled to fees limited to the costs incurred to collect the legal fees related to of the drafting of the PRA and denies Bright Hope's motion in part as to the amount of its recovery, leaving such matter for the factfinder at trial;
6. The court DENIES CRCP's Motion for Partial Summary Judgment as to Count III;
7. The court GRANTS Defendants' Motions seeking a determination as to whether the prevailing party language of the PRA requires them to pay the entirety of Bright Hope's costs of this litigation, finding that the prevailing party language is limited to

the costs of collecting the contract drafting expenses related to the PRA and related documents ONLY, which determination would require Bright Hope to obtain detailed records related to the services provided in this litigation and excluding any charges than cannot be exclusively attributed to the efforts to obtain recovery on its claim for the \$50,000 fee;

8. The court GRANTS PSDC's Motion for Partial Summary Judgment as to Count IV consisting of Bright Hope's claim for Tortious Interference with Contract and its attendant claim for punitive damages; and
9. The court GRANTS CRCP's Motion for Partial Summary Judgment seeking dismissal of Bright Hope's claim under Count II for Breach of the Easement Agreement.

It is further ORDERED that the parties shall determine the issues that remain for trial and submit a bench memo within thirty (30) days of the court's Order outlining the issue(s) remaining for trial.

BY THE COURT:



Crumlish, III, J.

Agreement) and against all Defendants for a Declaratory Judgment as to Count V. Bright Hope has filed the identical motion in PSDC's case (no. 220101795, control no. 23100500) but its proposed order seeks rulings only as to Bright Hope's affirmative claims in its own case (no. 220200734) and, thus, only impliedly addresses PSDC's affirmative claims in its Motion in Bright Hope's case. CRCP moves in case no. 220200734 for Partial Summary Judgment as to Counts I, II and III of Bright Hope's Complaint. PSDC moves for Partial Summary Judgment against Bright Hope's Complaint to Dismiss Counts I and IV and to dismiss claims for punitive damages under these count IV. The court conducted oral argument on the motions, and now addresses the parties' competing arguments.

II. Background

The two related cases before the court and the motions for summary judgment arise from a series of contracts related to the transfer of real property and plans to develop property. PSDC owned a lot occupying an entire block in North Philadelphia near the Temple University campus that was being used for parking. In 2019, PSDC and CRCP (collectively referred to hereafter as "Defendants") were discussing CRCP's idea to develop the PSDC lot into a 320-unit student housing apartment building. According to the documents before the court governing the relationships between the parties, and in particular a document entitled "Property Rights Agreement," CRCP and PSDC entered into an "Agreement for the Sale of Commercial Real Estate" on September 19, 2019, which appears to be well before negotiations with Bright Hope over portions of its adjoining property. (*See*, Recitals Clause of Property Rights Agreement).

The PSDC property conveyed under the September 2019 Agreement was zoned industrial/commercial and would have required a zoning change to residential-multiunit to allow construction of student apartment housing, a process presenting substantial obstacles if submitted

without councilmanic support, which apparently was not forthcoming. Defendants came up with another idea—to approach Bright Hope, located on the neighboring block to the south, with a proposal to annex a portion of its property to the PSDC parcel, a plan they believed would convert the zoning to the more favorable (and necessary for the proposed project) classification on Bright Hope’s property. (*See* Exhibit C to Plaintiff’s Motion for Summary Judgment).

CRCP began negotiating with Bright Hope on a plan for the development in order to secure its support for the project. The initial Memorandum of Understanding appeared to contemplate providing Bright Hope with retail space in the project, but does not mention any redrawing of lot lines, subdivision or transfer by Bright Hope of any of its property. (*See* Memorandum of Understanding of January 2020, attached as Exhibit H to Bright Hope’s Motion for Summary Judgment). At some point, it appears that this initial proposal was deemed insufficient. Thereafter, Defendants came up with another idea—to approach Bright Hope with a proposal to annex a portion of its property to the PSDC parcel, a plan they believed would convert the zoning to the more favorable (and necessary for the proposed project) classification on Bright Hope’s property. (*See* Exhibit C to Plaintiff’s Motion for Summary Judgment). By March 2020, the parties’ Memorandum of Understanding (“MOU”) mentioned “the parcels Bright Hope is agreeing to transfer” and outlines as apparent compensation for the transfer various renovations and payments CRCP would provide to Bright Hope. (Exhibit I). CRCP also committed to allowing Bright Hope access to the parking lot on the transferred parcels and to “transfer back the parcels ... after development is complete.” (*Id.*). To minimize the impact on Bright Hope’s ongoing operations, Defendants proposed to create a reverse “L” shaped carve out along the eastern and southern perimeters of Bright Hope’s property that were part of Bright

Hope's parking area, which, combined with a proposal to append a closed block of Marvine Street, would convert the parcel to residential zoning.

With the basic terms agreed upon in the March 2020 MOU, CRCP moved forward in May 2020 and filed its application for zoning for the project. (Exhibit 7 to PSDC Motion for Summary Judgment). PSDC makes much of the fact that CRCP's application was submitted during the height of the COVID-19 pandemic, at the time when the City had implemented a new, online application process, that produced significant delays and complications. (*Id.*, Exhibit 8). PSDC has even submitted its expert's analysis of the process and the delays, as if such information represents a basis for this court to reinterpret or ignore the contents of the applicable agreements (unless the parties negotiated for such contingencies). (*Id.*).

It appears that the parties continued to work toward formalizing the terms of the transactions necessary to secure the zoning approval once CRCP filed the zoning application. The parties, all sophisticated entities, each represented by well-chosen counsel, drafted and executed a series of agreements to effectuate the creation and transfer of the L-parcel to CRCP, in conjunction with CRCP's purchase of the PRDC lot and development of the adjoining parcels for the construction of 320 apartments. Three agreements are referenced in the parties' motions and represent the mechanisms to achieve the project. They included a Property Rights Agreement obligating Bright Hope to transfer the L parcel and providing for compensation to Bright Hope from CRCP; an Easement Agreement whereby CRCP agreed to Bright Hope's continued right to use the L parcel for parking; and an Escrow Agreement between PRDC and Bright Hope and an Escrow Agent, Matz Land Transfer Services. This three-pronged approach was believed to be necessary "for [CRCP's] zoning approvals to be granted." (Exhibit C to Plaintiff's Motion for Summary Judgment).

The factual record reveals that Bright Hope harbored considerable reservations on the idea of excising part of its property and the impact that a subdivision would have on the future ability to mortgage or sell the property. (See Exhibits N and S to Plaintiff's Motion for Summary Judgment). Both Bright Hope and CRCP were working under constraints² that impacted the negotiations and, ultimately, were reflected in the terms of the documents and the concessions both parties appeared to have made. (See Exhibits N, O, S and T to Plaintiff's Motion for Summary Judgment). While the court does not rely upon the parties' asserted concerns or the history of the negotiations to determine its interpretation of the plain language of integrated agreements, it does consider the submissions to the extent they confirm the court's independent interpretation of the language. However, the correspondence clearly suggests that CRCP conceded to provisions insisted upon by Bright Hope and those conditions were incorporated into the final drafts. (Exhibits N and O).

III. The Agreements

The parties executed their three-way arrangement embodied in the above-referenced three documents on January 21, 2021. The operative document effectuating the property transfer is the Property Rights Agreement (the "PRA") which effectuated a simultaneous transfer of the L parcel to PSDC which PSDC then transferred to CRCP. CRCP assumed sole responsibility under the PRA to secure subdivision approvals (which were necessary to claim the benefit of Bright Hope's zoning). In exchange CRCP agreed to pay-off certain mortgages on Bright Hope's property as well as a \$1.2 million payment to Bright Hope for renovations and certain

² Bright Hope needed to obtain the approval of the Church's trustees and to convince them, on behalf of its congregation, that the subdivision, the attendant construction and the existence of adjacent student housing would not negatively affect the Church's mission or its use and enjoyment of its property. CRCP had lenders that were dictating the terms of the acquisition and the project.

costs in connection with the PRA. Furthermore, the PRA expressly references a separate Escrow Agreement which, as a condition of Bright Hope's transfer of the L parcel, required PSDC to deposit \$4 million in escrow, the release of which was subject to the terms of that separate agreement. Further relevant to this court's disposition of the motions, the PRA references a separate Easement Agreement whereby, under the terms of the PRA, CRCP was required to obtain from its lender an executed subordination agreement that made any mortgage subordinate to Bright Hope's easement (which allowed continued use of the parcel for parking for church events).

The subject Escrow Agreement is between PSDC and Bright Hope, but CRCP signed a Joinder wherein it joined in the execution and agreed to be legally bound by the terms including the provisions governing notice required in the agreement. The language of this agreement and its legal effect, as well as the extent to which the actions of the parties complied with its express requirements is the principal focus of the primary dispute between the parties in their motions. At the outset, the agreement states that the purpose of the agreement and the deposit of four million dollars was to “**induce** Bright Hope to enter the PRA” and that the money represented “sale proceeds under [PSDC's] Agreement for the Sale of Commercial Real Estate dated September 16, 2019” with CRCP.” (emphasis added). The agreement acknowledges that the funds are tied to efforts by CRCP to obtain Development Approvals and to the timing those approvals become final. The key provision states:

Escrow Agent shall hold the Escrowed Fund in escrow until the earlier of (a) the one year anniversary of the date of this Agreement (the “**Anniversary Date**”) or (b) five (5) business days after Escrow Agent's Receipt of the Release Notice (as defined below) from PSDC.

Escrow Agreement, §1. The language clearly sets an outside limit on the length of time that the funds would be held—one year, raising the issue as to what occurred when and whether it

complied with the stated requirements to release the funds, or specifically, did the Escrow Agent receive a Release Notice as defined in the Agreement, prior to January 21, 2022?

The agreement described a two-step process that would result in the issuance of a release notice: first CRCP must have obtained Development Approvals and the Development Approvals must “become final, unappealable and unappealed prior to the Anniversary Date.” When that occurs, CRCP sends what the agreement designates as an “Approval Notice” to Bright Hope and PSDC “certifying that the Development Approvals have been obtained and are final, unappealed and unappealable.” (emphasis added). Upon receipt, PSDC may then “promptly deliver written notice (the “*Release Notice*”) to the Escrow Agent and Bright Hope,” which notice would direct the funds to be released to PSDC. However, the agreement goes on to note as follows:

If Escrow Agent has not received the Release Notice on or before the Anniversary Date, on the business day next following the Anniversary Date, Escrow Agent **shall pay** the Escrowed Funds to Bright Hope

Escrow Agreement, §4 (emphasis added). The Escrow Agreement contains an integration clause which provides that it can only be modified by a writing signed by all parties. *Id.* §12. The date of signing has significance to the parties and the court to the extent that contractual obligations had assigned time limits (or not, depending on the applicability of other terms, or, as Defendants argue, provisions of the PRA).

Bright Hope contends that the language is clear and that the terms for disposition of the escrowed funds to PSDC were not met, which would have made the money payable to Bright Hope on the one-year anniversary. PSDC takes the position that all the necessary steps to obtain approval had been completed in advance of the anniversary and that the notice it received from CRCP so stated, supporting its representation that the terms had been met for it issuing a Release Notice. At oral argument, PSDC made a series of excusatory explanations to avoid addressing

the precise (and, in the court's view, direct and clear) language of the controlling document.

PSDC contended that the agreement "had no time of the essence clause," did not characterize the nature of the escrow, making the terms a forfeiture and an excessive penalty, and, finally, that any delay is excusable by virtue of the COVID pandemic and its impact on slowing the approval process (and ergo should be considered in light of circumstances out of Defendants' control).

The court finds significant certain actions of the parties after the execution of the Escrow Agreement and pertinent to the question of whether the PSDC's excuse arguments have any bearing on the interpretation of the key agreed-upon provisions. Specifically, on January 12, 2022, and with no apparent prior discussion, no current explanation and no negotiation, PSDC sent Bright Hope's Pastor a document entitled "First Amendment to Escrow Agreement," which proposed to extend the time for holding the Escrowed Funds an additional 90 days. (Exhibit AA to Plaintiff's Motion for Summary Judgment). The cover email simply stated that PSDC "need[ed the extension agreement] signed this week." There is no evidence as to what response PSDC received to this email, and, based upon subsequent events, it appears that no signed document by Bright Hope was returned. Accordingly, PSDC, on January 17, 2022, wrote to CRCP's principal and requested confirmation that "the Development Approvals under the Escrow Agreement have been obtained and are final, unappealed and unappealable," and suggesting that a courier would be sent by PSDC with the language confirmed in CRCP's email, which would satisfy "the notice required by the Escrow Agreement." (Exhibit AB to Plaintiff's Motion for Summary Judgment). CRCP declined to adopt PSDC's proposed language and replied that "**final unappealable I have to take out as anything is appealable.**" (emphasis added). CRCP also indicated that it would "add the permits I have in place." (*Id.*).

The Defendants suggest some relevance to the execution date in that they assumed that the extreme shutdowns occasioned by the pandemic were ending at the time the agreement was executed, and the approval process would move at a reasonable pace. Defendants argue the agreements, and particularly the Escrow Agreement, do not contain a “time of the essence” clause, rendering any deadlines non-binding and merely immaterial. PSDC also argues that, in its mind, CRCP had provided Bright Hope with more than adequate compensation for its participation and the property transfer under the PRA, such that the Escrow was a trivial, if not secondary, assurance that the Defendants would complete the project. The court looks to the written documents to determine whether the Defendants negotiated, drafted and obtained agreement to express terms that would reflect their expectations or protect them in the event of delays, which their able counsel was clearly competent to raise with Bright Hope and draft into the Agreements. Alternatively, PSDC takes the position that it was not a party to the land transfer under the PRA and not involved in the promises made by CRCP to Bright Hope or inducements CRCP offered and cannot be considered to have breached any obligations that would justify the award of the disputed funds to Bright Hope.³

At oral argument, CRCP denied any interest in the issues related to the disputed escrow funds, curiously describing itself as “the third wheel on a blind date.” Presumably, CRCP suggests that it is merely a “disinterested party” in the dispute over who is entitled to the Escrowed Funds since it makes no claim to the funds themselves. However, given the

³ Whether CRCP fulfilled its obligations to PSDC or somehow failed to move expeditiously to secure the required Development Approvals or PSDC’s attorneys did not adequately protect its interests in the Escrow Agreement is not before the court and is certainly not a basis to ignore the language of the agreements. The court must assume that any express provisions related to COVID delays were known or knowable and PSDC was capable of insisting on provisions to protect itself given the uncertainty at the time.

interrelated nature of the agreements before the court, the fact that CRCP signed a joinder to the Escrow Agreement and issued the document at PSDC's explicit request that precipitated this dispute (and apparently made the concession of the four million dollar escrow to "induce" Bright Hope to enter into the agreements), such a description is incongruous and disingenuous. Additionally, CRCP is moving for summary judgment and seeking an affirmative ruling that it did not breach or contribute to the breach of the Escrow Agreement.

IV. ANALYSIS – ESCROW AGREEMENT CLAIMS

The fundamental rule in interpreting the meaning of a contract is to ascertain and give effect to the intent of the contracting parties. The intent of the parties to a written agreement is to be regarded as being embodied in the writing itself. The whole instrument must be taken together in arriving at contractual intent. *Mitch v. XTO Energy, Inc.*, 212 A.3d 1135, 1138-39 (Pa. Super. 2019). "[W]hen the language of a contract is clear and unequivocal, courts interpret its meaning by its content alone, within the four corners of the document;" the court "must construe the contract only as written and may not modify the plain meaning under the guise of interpretation." *Stephan v. Waldron Elec. Heating & Cooling LLC*, 100 A.3d 660, 665 (Pa. Super. 2014).

Defendants suggest that the Escrow Agreement is either not as clear and simple as it appears or that the court should stretch its interpretation of what constitutes an Approval Notice and a Release Notice to encompass the documents that PRDC issued. Presumably, under Defendants' view the terms are either broad or ambiguous or, under the general intent of all of the agreements making up the transaction, "close should be good enough." Arguably, under Defendants' assertions at best, the escrow represents an unjust windfall to Bright Hope and a

penalty imposed on PSDC, and the court should not interpret the written agreement (drafted by and with the advice of sophisticated and experienced counsel) to reach such an absurd result.

The appellate courts have counseled courts against straining the language of a contract in the guise of “interpretation.” In *Mitch*, the court instructed:

[a] contract is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. The “reasonably” qualifier is important: there is no ambiguity if one of the two proffered meanings is unreasonable. Furthermore, reviewing courts will not distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity. ...

Mitch, 212 A.3d at 1139 (citation omitted). Even if this court were to accept Defendants’ arguments and determine that it was not unreasonably stretching the written language to find an ambiguity, its determination would not further Defendants’ explanations, as such a conclusion would lead to the consideration of the course of the negotiations and the parties’ statements related to the terms as well as conduct in furtherance of the contract terms. As the court in *Dressler Family, L.P. v. PennEnergy Resources, LLC*, 2022 PA Super. 77, 276 A.3d 729, 736-37 (Pa. Super. 2019) instructed:

“When ... an ambiguity exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances.” *Kripp v. Kripp*, 578 Pa. 82, 849 A.2d 1159, 1163 (2004) (citation omitted). “While unambiguous contracts are interpreted by the court as a matter of law, ambiguous writings are interpreted by the finder of fact.” *Id.*

The parties, having filed cross-motions for summary judgment, suggest that the court can resolve their dispute on the face of the agreements, applying the plain meaning of the terms of the contract. Yet, the parties have provided the court with lengthy averments related to the history of negotiations, documentary exhibits confirming and purporting to dispute terms in the agreements

and reams of deposition testimony, seemingly begging the court to go outside the agreements and consider an extra-contractual factual record to guide its interpretation.

This court concludes that the terms of the Escrow Agreement are not ambiguous. The language is clear – the Agreement is in effect for a maximum of one year. The agreement provides only two options for the release of the escrowed funds – either to PSDC upon satisfaction of required notices or to Bright Hope on the anniversary date. While the agreement mentions the obligations of CRCP to use good faith, diligent efforts to obtain the Development Approvals, it does not provide that any failure on CRCP’s part nullifies the Escrow Agreement or provides PSDC with a basis for relief from the terms.

Defendants seem to suggest that the terms “final, unappealed and unappealable” are either ambiguous or narrow and hypertechnical so as not to encompass the required, but allegedly non-binding step of obtaining approval from the community group. PSDC’s conduct in seeking a written amendment to the Escrow Agreement to provide for an “extended release date,” and its acknowledgment that CRCP was continuing to seek “Development Approvals” clearly confirms that PSDC understood the existing language and the clear implication of reaching the one-year anniversary without CRCP having finalized the zoning application. PSDC clearly realized its dilemma when it unilaterally offered the proposed amendment with only the comment “need this signed;” and, under the integration clause in the Escrow Agreement, it could not extend the timing without written consent. PSDC might draw attention to the request by seeking a written modification through an honest re-negotiation and by offering compensation to Bright Hope. Certainly, PSDC would surely highlight the upcoming deadline by making such a request, and could not hope to “fly under the radar” and attain signed consent. At a minimum, its

transmission of the document represents an acknowledgement that PSDC could not meet the terms for return of the Escrowed Funds.

Nothing in the submitted factual record requires the court to divert from the express terms of the contract language. As the court reads the agreement, at the Anniversary Date there needed to be final, unappealed, unappealable zoning approval or by operation of the alternate provision, the funds were payable to Bright Hope. PSDC suggests that it met the requirement by submitting the Release Notice.

While PSDC's counsel wrote to the Escrow Agent (as provided in the Agreement) requesting that it "accept" counsel's letter "as PSDC's Release Notice required by Section 2 of the Escrow Agreement," claiming that it had received an "Approval Notice" from CRCP (having labelled the email as an "Approval Notice"), the validity of PSDC's claim (and of Bright Hope's claim under the Agreement) depends upon more than terminology. Counsel uses the term "Approval Notice" in referring to the attachment. However, the court looks to the contents of the attachment, not the gratuitously attached cover sheet or counsel's characterizations in the cover letter, and the operative effect of the language to determine whether the email certifies the conditions required to constitute an Approval Notice.

First, the attachment is preceded by a cover page entitled "Exhibit A, Approval Notice." It is clear to the court that this attempt to characterize the document with an "official" title is a creation of PSDC's counsel and not a term that the required certifying party is adopting to describe the attachment. Secondly, CRCP's principal does not reference his email as an "Approval Notice," invoking the official imprimatur of the Escrow Agreement. Rather, the subject line indicates that the email concerns "Permits, Plans and paid Invoices AIA for 1600 N. 11th st." The communication does refer to "Development Approvals under the Escrow

Agreement,” as having been obtained, but indicates that they are “subject to completion of CDR.” Nowhere does the document state that the Approvals have “become final, unappealed and unappealable,” and the caveat of “subject to completion ...” implies otherwise. At best, measured by the contract language, the statement is ambiguous. Reference to the circumstances leading up to the notice and the timing of what occurred thereafter--i.e., that final zoning approval was not issued until May, 2022, at which time an appeal of it was taken--clearly demonstrates that PSDC hoped to “evade” the requirement. In the absence of a written contract modification, the court concludes that PSDC did not meet the conditions for release of the Escrowed Funds to it and by operation of the contract language, Bright Hope was and is entitled to the Escrowed Funds and is entitled to partial summary judgment on its claim for Breach of Contract of the Escrow Agreement and for a Declaratory Judgment as to the meaning of the contract requiring payment of the escrowed funds to it. Defendants’ Motions for Partial Summary Judgment for Judgment in their favor as to Count I of Bright Hope’s complaint lack any basis in the contract language, are without merit and must be denied.

The Defendants’ motions seeking judgment in their favor on Count I also implicate Bright Hope’s claim for damages for breach of contract, over and above the claim for entitlement to the Escrowed Funds. The Complaint alleges that CRCP is liable for Breach of Contract for submitting a “false notice” to the Escrow Agent that “helped PSDC divert the escrowed funds away from Bright Hope.” The court has analyzed the letter from PSDC’s counsel and its attachment in detail. The court cannot conclude that CRCP ever called the document an “Approval Notice” or made any representation in its email that was “false.” CRCP’s language was careful and qualified. While it remained silent while PSDC represented its email as an Approval Notice, it had provided Bright Hope with sufficient information for its counsel to

determine the legal effect of the communication, which Bright Hope did when objecting to PSDC's notice. Accordingly, CRCP is entitled to summary judgment as to Bright Hope's claim that it breached the Escrow Agreement.

PSDC seeks dismissal of Plaintiff's claim for breach of contract, arguing that the Escrow Agreement only required it to perform two obligations: deposit the escrow (which it is undisputed that it performed) and issue a Release Notice (which it also provided). PSDC claims that it fulfilled both of these obligations. It deposited the funds and before seeking release of the funds, it provided notice. It did not obtain release of the funds because Bright Hope invoked its right to object and to lay claim to the funds itself. Presumably no breach occurred since the Agreement prevented it. PSDC disputes that Bright Hope suffered any damages under the Escrow Agreement because the document clearly sets forth a process for the parties to assert competing claims to the funds and contemplates that a court action will be required to resolve these claims. The submissions to the court do not demonstrate what, if any, additional damages Bright Hope suffered as a result of the dispute over the disposition of the escrowed funds other than the costs of the suit to adjudicate its rights. Under the terms of the Escrow Agreement, there is no prevailing party provision, and the agreement does not contemplate an allowance for damages in the event of a dispute. At this stage, Plaintiff has not met the burden to show damages under this count, but, likewise, PSDC has not provided the court with a sufficient record to rule out any claim either.

In determining that PSDC failed to meet the requirements for an effective Release Notice, the court has necessarily determined that PSDC breached its implied duties of good faith and fair dealing under the Escrow Agreement. Bright Hope's expectancy under the contract was to obtain the escrowed funds, which the court, herein has ordered. Whether it is entitled to

recovery of additional damages and can prove that it suffered damages for a specific breach determined by the court is beyond the scope of disposition on summary judgment, since the factual record is insufficient to resolve the matter. Accordingly, PSDC's motion for judgment in its favor on Count I must be denied as to the specific issue that Bright Hope has not established a foundation for the award of damages.

V. ADDITIONAL ARGUMENTS

Bright Hope also moves for summary judgment against CRCP under the PRA for CRCP's failure to pay its attorneys' fees incurred in preparing and negotiating the PRA and for a judgment against both Defendants for its attorneys' fees in this proceeding. Bright Hope invites the court to treat the three agreements as a single undertaking such that a prevailing party in one document gives rise to a right to recover under any agreement. PSDC moves for summary judgment on Bright Hope's claim for tortious interference and punitive damages, and CRCP has affirmatively moved for partial summary judgment on the breach of contract/failure to pay fees claims in Count III and additionally moves for summary judgment of Bright Hope's claim under the Easement Agreement in Count II and on Bright Hope's claim for attorneys' fees against it under the PRA.

A. Claims Against CRCP under the PRA

CRCP opposes Bright Hope's claim for \$50,000 in legal fees based upon the insufficiency of a foundation for Bright Hope's claim. Specifically, CRCP references the contract language of the PRA that limits the relevant amount to "legal fees incurred in connection [sic] this PRA ..." (PRA §F.10). CRCP claims that it is Bright Hope's burden to show that the claimed amount was actually and reasonably related to the parties' negotiation, drafting and execution of the PRA and that it requested documentation from Bright Hope, which

it refused to provide or which documentation was insufficient to support the requirement of “incurred in connection with.”

The contract language suggests that this obligation arose “on the date hereof,” meaning the date of execution of the Agreement (although the document does not say how quickly CRCP was required to “cut the check”). Bright Hope had the amount claimed included on the settlement sheet and argues that the funds were due at settlement. Regardless of whether an assertion of a claim on a settlement sheet created an immediately enforceable obligation, it is clear that Bright Hope had promptly asserted its right to payment and the agreement does support the existence of a claim, in some undetermined amount.

Bright Hope repeatedly requested that CRCP compensate it for these fees, and CRCP did not immediately dispute Bright Hope’s entitlement under the PRA. It initially dodged the requests, and then, in October, 2021, it simultaneously sought documentation for the amount by requesting Bright Hope’s counsel’s invoices (Exhibit 1 to CRCP’s opposition to Bright Hope’s Motion for Summary Judgment) and, through its principal, stated: **“I’m not paying it and don’t need anything from bright Hope moving ahead as they got 1.7m and change at close which was supposed to be 1.2m until they realized they had debt and agreed to pay that off.”**

(Exhibit R to Bright Hope’s Opposition to Motion for Summary Judgment on control no. 23100638) (emphasis added). Based on this record, the court concludes that the contract imposes an obligation to pay the fees, although the amount is a matter of factual dispute between the parties that cannot be resolved at this stage. Bright Hope has moved on this claim, and CRCP seeks its dismissal. The court has determined that an obligation to pay fees exists and thus grants Bright Hope’s motion in part and therefore cannot grant judgment dismissing Count

III for CRCP. The matter of the amount of fees due raises issues of fact and is a matter for trial, preventing the court from fully granting summary judgment to Bright Hope in a specific amount.

B. Claims for Attorneys' Fees for this Litigation

Defendants further seek an order as to Bright Hope's "prevailing party" claim of entitlement to attorneys' fees, based upon section F.7 of the PRA. It appears that Bright Hope claims that any and all fees of this litigation regardless of whether they involve the Escrow Agreement or the other counts of its complaint are subject to an award of attorneys' fees for the costs of this litigation.

PSDC contends that it was not a party to the PRA and the language related to fee recovery is limited to the enforcement of rights under the PRA. The court is compelled to agree. The Escrow Agreement is a wholly separate agreement, and the parties were certainly free to include a fee recovery provision in the agreement. However, the only provision it contains is the allowance of reasonable attorneys' fees to the Escrow Agent for the cost of making a deposit of the escrowed funds into court. It is clear the parties contemplated what fees they regarded as encompassed by and payable in a court action and declined to include prevailing party language. Accordingly, Bright Hope cannot recover its fees and costs related to the collection of the escrowed funds and any attorney time devoted to such matter must be identified and excluded from any claim that the court has determined can be asserted under the PRA related to the fees incurred for drafting of the agreement. Further, the court has found in favor of CRCP on the issue of its alleged breach of the Escrow Agreement, so Bright Hope cannot claim prevailing party status or obtain recovery of attorneys' fees against CRCP using the PRA and claiming an interrelationship of CRCP's obligations under the two agreements.

C. Tortious Interference Claim

PSDC moves for judgment dismissing the claim for tortious interference. It points to the dearth of facts to support such a claim. It references two possible disputes that Bright Hope references – the failure to pay the \$50,000 bill for Bright Hope’s contract preparations and the asserted “false notice claim.” As to the first, Bright Hope does not point to a single exhibit or any testimony suggesting that PSDC weighed in on this issue, much less induced CRCP to refuse payment. Bright Hope’s own submissions include CRCP’s October 10, 2021 internal communication in which its principal stated that he wasn’t paying the bill because Bright Hope had already received more than the agreed-upon compensation. (Exhibit Z). Clearly, Bright Hope has nothing to suggest that PSDC is the source of that belief or somehow facilitated CRCP’s refusal to pay. Moreover, CRCP expressed this belief months before the controversy over entitlement to the escrowed funds occurred, making any inference of a motive on PSDC’s part dubious. As to the second possibility, it does appear that PSDC requested some type of certification as to approval status from CRCP and even suggested the language, but CRCP was not induced to adopt PSDC’s language. The court has determined that the email (particularly separated from the language of the cover page) was not false (although possibly ambiguous or misleading) and therefore not a breach of any obligation.

Bright Hope’s allegations on this count of its Complaint are vague and unspecific. It appears to claim PSDC somehow “intentionally induced CRCP to breach the PRA and the Escrow Agreement ... by unlawful means” without saying what actions related to this count or what breaches were induced. In its opposition brief, Bright Hope identifies an alleged inducement to send the false Approval Notice, and thereafter “play along” with the characterization of the notice. Additionally, Bright Hope argues it was “induced” to enter into

the business arrangements with the defendants, how the contracts are interrelated and somehow how the alleged breach of the Escrow Agreement implicated the PRA. Its arguments are unpersuasive. In addition, the court has determined that there is no underlying breach on the part of CRCP in connection with the Escrow Agreement – its email did not falsely represent itself as an “Approval Notice” or falsely represent the status of the approval.

Pennsylvania law follows the Restatement (Second) of Torts § 766's standard for intentional interference with contractual relations:

One who intentionally and improperly interferes with the performance of a contract ... between another and a third person by inducing or otherwise causing the third person not to perform the contract is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Sears, Roebuck & Co. v. 69th St. Retail Mall, LP, 126 A.3d 959 (Pa. Super. 2015), quoting Restatement 2d §766; see *Daniel Adams Assocs., Inc. v. Rimbach Pub., Inc.*, 360 Pa.Super. 72, 519 A.2d 997, 1000 (1987).

Bright Hope complains about PSDC's actions in relation to the Escrow Agreement, a contract to which PSDC is a party. The expected performance relates to Bright Hope's claim to the Escrowed Funds and the act which prevented Bright Hope from realizing its asserted contract rights was PSDC's assertion of a claim to the escrowed funds in its Release Notice, not the underlying effort to secure a status on the Development Approvals from CRCP. Even if PSDC induced CRCP to write an email, that claim to the funds was PSDC's and PSDC's alone. It was PSDC's alleged improper performance that prevented the Escrow Agent from issuing the funds to Bright Hope.

Bright Hope's allegations simply boil down to the assertion that PSDC breached a contract between it and PSDC. Bright Hope cannot meet the elements of a claim for tortious

interference with contract on this basis, and PSDC is entitled to summary judgment dismissing the claim in Count IV of Bright Hope's Complaint. Furthermore, Bright Hope's request for punitive damages is connected to its claim in Count IV. Having found that there is no factual basis for Bright Hope's claim and the facts do not satisfy the elements to make out such a claim, Bright Hope cannot pursue recovery for punitive damages.

The court further rejects Bright Hope's efforts under Count IV to convert a breach of contract into a tort claim under the "gist of the action" doctrine. As the Superior Court noted in *Bert Co. v. Turk*, 257 A.3d 93, 110 (Pa. Super. 2021), *aff'd* 298 A.3d 44 (Pa. 2023), the Supreme Court of Pennsylvania explained the gist of the action doctrine as follows:

If the facts of a particular claim establish that the duty breached is one created by the parties by the terms of their contract — *i.e.*, a specific promise to do something that a party would not ordinarily have been obligated to do but for the existence of the contract — then the claim is to be viewed as one for breach of contract. If, however, the facts establish that the claim involves the defendant's violation of a broader social duty owed to all individuals, which is imposed by the law of torts and, hence, exists regardless of the contract, then it must be regarded as a tort. *Bruno v. Erie Ins. Co.*, 630 Pa. 79, 106 A.3d 48, 60, 68 (2014). (citations omitted); *B.G. Balmer & Co.*, 148 A.3d at 469 (quoting *Bruno*).

See also, J.J. DeLuca Co. v. Toll Naval Associates, 56 A.3d 402, 413 (Pa. Super. 2012), (quoting *Reed v. Dupuis*, 920 A.2d 861 (Pa. Super. 2007)). In this case, the conduct complained of is subsumed within the parties' contractual obligations and cannot form the basis for an independent tort claim. PSDC is entitled to summary judgment on Count IV of Bright Hope's Complaint and the related claim for punitive damages.

e. Breach of the Easement Agreement

CRCP is seeking partial summary judgment in its favor on Bright Hope's breach of the easement claim. Bright Hope appears to equate the easement with exclusive possession in the nature of ownership, which it was not. In addition, the record reveals that any alleged

interference with Bright Hope's use of the easement for parking, as allowed, was de minimis. Bright Hope is not entitled to recover damages on this claim and judgment will be entered in favor of CRCP.

VI. CONCLUSION

For all the foregoing reasons, the court will dispose of the parties' Motions for Partial Summary Judgment as follows:

1. The court grants Bright Hope Partial Summary Judgment on its claim in Count I for Breach of Contract against PSDC as to its entitlement of the Escrowed Funds;
2. The court denies Bright Hope's motion as to Count I to the extent it seeks damages beyond the return of the Escrowed Funds due the factual insufficiency to support summary judgment;
3. The court grants Bright Hope Partial Summary Judgment against PSDC, CRCP and nominal defendant Matz Land Transfer Services on its claim in Count V for Declaratory Judgment and determines that the Escrow Agreement requires payment of the Escrowed Funds to Bright Hope;
4. The court denies Bright Hope's Motion for Partial Summary Judgment as to its Breach of Contract Claim against CRCP related to the Escrow Agreement in Count I and grants CRCP's Motion for Partial Summary Judgment to Dismiss Bright Hope's claim in Count I against it;
5. The court grants Bright Hope's Motion for Partial Summary Judgment as to its claims for Breach of Contract related to the PRA under Count III as to CRCP's obligation to pay attorneys' fees in connection with the drafting of the PRA and as a prevailing party entitled to fees limited to the costs incurred to collect the legal fees related to of

the drafting of the PRA and denies Bright Hope's motion in part as to the amount of its recovery, leaving such matter for the factfinder at trial;

6. The court denies CRCP's Motion for Partial Summary Judgment as to Count III;
7. The court grants Defendants' Motion seeking a determination as to whether the prevailing party language of the PRA requires them to pay the entirety of Bright Hope's costs of this litigation, finding that the prevailing party language is limited to the costs of collecting the contract drafting expenses related to the PRA and related documents ONLY, which determination would require Bright Hope to obtain detailed records related to the services provided in this litigation and excluding any charges than cannot be exclusively attributed to the efforts to obtain recovery on its claim for the \$50,000 fee;
8. The court grants PSDC's Motion for Partial Summary Judgment as to Count IV consisting of Bright Hope's claim for Tortious Interference with Contract and its attendant claim for punitive damages; and
9. The court grants CRCP's Motion for Partial Summary Judgment seeking dismissal of Bright Hope's claim under Count II for Breach of the Easement Agreement.

It is further ORDERED that the parties shall determine the issues that remain for trial and submit a bench memo within thirty (30) days of the court's Order outlining the issue(s) remaining for trial.

An order memorializing the court's rulings is being filed concurrent with and attached to this Opinion.