

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

NORFOLK DISTRICT ASSOCIATES, LCC,)
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 Plaintiff,)
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 v.)
)
 THE CITY OF NORFOLK, *et al.*,)
)
)
 Defendants.)
 _____)

Case No. CL21-2671

ORDER

On March 31, 2022, counsel for Norfolk District Associates, LLC (“Plaintiff”) and the City of Norfolk (“the City”), Norfolk Redevelopment and Housing Authority (“NRHA”), and Bernard A. Pishko, (“Pishko”) (collectively, “Defendants”) appeared before the Court on several motions: The City’s Demurrer; NRHA’s Demurrer; Pishko’s Demurrer; The City and NRHA’s Motion to Dismiss; and the City and NRHA’s Pleas in Bar.

The City and NRHA’s Demurrers to the Amended Complaint ask the Court to dismiss Count I, a Breach of Contract claim; Count IV, a Statutory Conspiracy claim; and Count V, a Common Law Conspiracy claim. Pishko’s Demurrer asks the Court to dismiss Counts II and III, Tortious Interference claims; and Counts IV and V, Statutory and Common Law Conspiracy claims, respectively, for failure to state a claim upon which relief may be granted. Upon consideration of the parties’ pleadings filed prior to the hearing and the arguments made during the hearing, the Court hereby **ORDERS**:

1. Defendant’s Demurrers are **SUSTAINED** with prejudice. In their arguments, Defendants asserted that the “heart of this case beats in the language of the contract.”


The Court agrees. Specifically, the language found in § 10.2.1 of the Lease Agreement is not a condition precedent, but a mere agreement to agree, which is unenforceable under Virginia law. *See Beazer Homes Corp. v. VMIF/Anden Southbridge Venture*, 235 F.Supp.2d 485, 490 (E.D. Va. 2002). The “essential elements of a valid contract” are “a complete agreement including acceptance of an offer as well as valuable consideration.” *LongView Int’l Tech. Sols., Inc. v. Lin*, No. 160228, 2017 WL 1396062, at *2 (Va. Apr. 13, 2017) (quoting *Snyder-Falkinham v. Stockburger*, 457 S.E.2d 36, 39 (Va. 1995)). However, an agreement may nevertheless be unenforceable if “a material term in the agreement ‘is too vague and indefinite to be enforced.’” *Id.* at *3 (quoting *Allen v. Aetna Cas. & Sur. Co.*, 281 S.E.2d 818, 819 (Va. 1981)). An agreement to agree fails to “provide a reasonably certain basis for determining an adequate remedy and therefore is unenforceable.” *Kay v. Prof’l Realty Corp.*, 222 Va. 348, 351 (1981). Such is the case here. Because the language in § 10.2.1 of the Lease Agreement creates no obligation on the part of the City and NRHA, there can be no conspiracy or tortious interference on the part of the City, NRHA, or Pishko. Accordingly, it is appropriate to sustain Defendants’ Demurrers in their entirety. The Plaintiff’s Amended Complaint is **DISMISSED**.

Pursuant to Rule 1:13 of the Supreme Court of Virginia, the Court dispenses with the parties’ endorsement of this Order.

The Clerk is directed to forward a certified copy of this Order to all counsel of record.

IT IS SO ORDERED.

ENTER: 4/7/2022



Bradley B. Cavedo, Judge