UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

NARRAGANSETT INDIAN TRIBE OF RHODE ISLAND and NARRAGANSETT INDIAN WETUOMUCK HOUSING AUTHORITY, Plaintiffs v. THE NARRAGANSETT ELECTRIC COMPANY, Defendant and THE STATE OF RHODE ISLAND and THE TOWN OF CHARLESTOWN, Defendant-Intervenors	C.A. No. 93-667T

MEMORANDUM AND ORDER

ERNEST C. TORRES, District Judge

This case is before the Court for consideration of Narragansett Electric Company's motion to dismiss Count III pursuant to Fed.R.Civ.P. 12(b)(6) on the ground that it fails to state a claim upon which relief may be granted.

The gravamen of Count III is that the Electric Company failed to extend electric service to a housing project being constructed by the Narragansett Indian Tribe on tribal land located in Charlestown, Rhode Island, and that such failure has caused the United States Department of Housing and Urban Development (HUD) to

suspend construction for the project thereby tortiously interfering with the contractual relations between the Tribe and HUD.

Rule 12(b)(6)

In evaluating a motion to dismiss under Rule 12(b)(6), the Court must take the allegations in the complaint as true and draw all reasonable inferences in favor of plaintiff. Dismissal can only be granted if the plaintiff cannot prove any set of facts entitling him to relief. Rockwell v. Cape Cod Hospital, 26 F.3d 254 (1st Cir. 1994). The Court, however, "need not credit bald assertions, periphrastic circumlocutions, unsubstantiated conclusions, or outright vituperations." Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 52 (1st Cir. 1990). Moreover, Plaintiff may not rest on subjective characterizations or conclusory descriptions of a general scenario which could be dominated by unpleaded facts. Id.

Tortious Interference

Under Rhode Island law the elements of the tort of intentional interference with a contract are "1) the existence of a contract; 2) knowledge by the interferor of the contract; 3) an intentional act of interference, 4) proof that the interference caused the harm sustained, and 5) damages to the plaintiff." Mesolella v. City of Providence, 508 A.2d 661, 669 (R.I. 1986). "An intent to do harm without justification is also required, but the defendant has the burden of showing justification." Mortgage Guarantee & Title

v. Commonwealth Mortgage, 730 F.Supp. 469, 471 (D.R.I. 1990)(citing Mesolella, 508 A.2d at 669-70). See, Restatement(Second) of the Law of Torts § 767, Comment d. When a defendant engages in otherwise lawful conduct for the purpose of advancing his own legitimate interests, such conduct does not constitute tortious interference even though it may have an incidentally adverse effect on a plaintiff's contractual relations. See, Restatement, § 766, Comment j.

Since the burden is on the defendant to establish justification, "a cause of action can be stated without negativing justification. It 'is enough to allege and prove the conduct and effect, leaving the defendant to justify it if he can.'" Ross v. Wright, 286 Mass. 269, 271-72 (1934)(quoting American Well Works Co. v. Layne & Bowler Co., 241 U.S. 257, 259). However, in this case, the Tribe's own verified complaint alleges that the reason for the Electric Company's refusal was the Town's threat to sue the Electric Company for violating State and local law if it provided service in the absence of a building permit issued by the Town. Since the Electric Company had a legitimate business interest in avoiding litigation of that kind and potential liability for violating State and local law, it clearly had legal justification for its refusal to provide electric service. Therefore, such refusal cannot be characterized as the kind of improper conduct necessary to support a claim of tortious interference.

Accordingly, Narragansett Electric's motion to dismiss Count III of the complaint is hereby GRANTED.

IT IS SO ORDERED:

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Ernest C. Torres
United States District Judge

Date: _____