IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMY SILVIS, on behalf of herself and all others similarly situated	:	CIVIL ACTION NO. 14-5005
v.	:	
AMBIT ENERGY L.P, et al.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J. MARCH 18, 2016

Presently before the Court is the motion for summary judgment filed by Defendant, Ambit Northeast, LLC ("Ambit"), regarding Counts IX, XI, and XII of the amended complaint filed by Plaintiff, Amy Silvis ("Silvis"). In these counts, Silvis alleges breach of contract, unjust enrichment, and entitlement to declaratory relief. For the reasons that follow, the Court will grant Ambit's motion.

I. FACTS AND PROCEDURAL HISTORY

Silvis contracted with Ambit to supply her with electricity based on a variable rate plan under which she paid a "teaser" rate for the first month and thereafter the rate fluctuated. Silvis asserts that Ambit enticed her to switch her electricity supplier from Penelec with its marketing materials promising savings over other energy suppliers and competitive variable rates. Silvis quickly became disappointed with her

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decision when it became apparent that Ambit's variable rate plan was not saving her money, but was in fact causing her electricity bill to swell, at times, to nearly double what she would have paid under Penelec. Specifically, she alleges that: (1) in April and May 2014, Ambit charged her $.1369 per kilowatt hour ("kWh") while Penelec charged $.0771/kWh; (2) in June 2014, Ambit charged her $.1489/kWh while Penelec charged $.0823/kWh; (3) in July and August 2014, Ambit charged her $.1489/kWh while Penelec charged $.0925/kWh; (4) in September 2014, Ambit charged her $.1489/kWh while Penelec charged $.0849/kWh; and (5) in October 2014, Ambit charged her $.1489/kWh while Penelec charged $.0703/kWh.

In response, Silvis filed a class action complaint on August 27, 2014 alleging, inter alia, breach of contract. She asserted that Ambit "breached its agreements with Plaintiff and the Proposed Class Members by charging rates that did not meet the contractual obligation to provide a competitive rate based on market factors." Am. Compl., ¶ 105 (ECF No. 16). On December 23, 2014, Ambit filed a motion to dismiss and, on January 6, 2015, filed a motion to transfer venue. (ECF Nos. 19 & 21). On March 13, 2015, after a March 6, 2015 hearing on the motions, see (ECF No. 38), the Court denied the motion to transfer venue, (ECF Nos. 30 & 31), and granted in part and denied in part Ambit's motion to dismiss. (ECF No. 32). Specifically, the Court

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dismissed all defendants except for Ambit and dismissed all counts except for Count IX for breach of contract, Count XI for unjust enrichment[1], and Count XII seeking declaratory relief regarding future services.

On May 6, 2015, the Court entered a scheduling order setting a briefing schedule for Ambit's motion for summary judgment and for attendant discovery. (ECF No. 43).[2] On May 13, 2015, Ambit filed the pending motion for summary judgment regarding the remaining claims. (ECF No. 45). On October 9, 2015, Silvis responded to the motion after having conducted four months of discovery on the issues relevant to the motion. (ECF Nos. 51 & 52). Ambit filed its reply on October 26, 2015. (ECF Nos. 54 & 55).[3]

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[1] Pennsylvania law precludes a plaintiff from claiming unjust enrichment if she also pleads the existence of a valid, express contract. Wilson Area Sch. Dist. v. Skepton, 895 A.2d 1250, 1254 (Pa. 2006). When the Court entered its order on the motion to dismiss, the parties disputed which documents were included in the contract. Concluding that the contract's validity was at issue, and recognizing that a plaintiff may plead unjust enrichment as an alternative to an invalid contract, the Court refused to dismiss this claim. (ECF No. 32, p.4 n.5). As discussed below, the parties now agree on which documents formed the valid contract. Thus, Silvis may no longer maintain her claim for unjust enrichment and the claim will be dismissed.

[2] At the parties' request, the time for discovery related to the motion was extended on August 24, 2015. (ECF No. 50).

[3] The response and reply were filed partially under seal to protect allegedly confidential personal and business information. See August 11, 2015 Protective Order (ECF No. 49).

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II. STANDARD

Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986)). A fact is "material" if proof of its existence or nonexistence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Liberty Lobby, 477 U.S. at 248.

The Court will view the facts in the light most favorable to the nonmoving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." Pignataro v. Port Auth., 593 F.3d 265, 268 (3d Cir. 2010). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the nonmoving party who

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The Court finds that direct discussion of the sealed information is unnecessary to decide the motion and consequently, there will be no need to file this memorandum under seal.

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must "set forth specific facts showing that there is a genuine issue for trial." Liberty Lobby, 477 U.S. at 250 (quoting First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288 (1968)) (internal quotation marks omitted).

III. DISCUSSION

A. Contractual Ambiguity

"The court can grant summary judgment on an issue of contract interpretation if the contractual language being interpreted 'is subject to only one reasonable interpretation.'" Atkinson v. LaFayette Coll., 460 F.3d 447, 452 (3d Cir. 2006) (quoting Arnold M. Diamond, Inc. v. Gulf Coast Trailing Co., 180 F.3d 518, 521 (3d Cir. 1999)). "Where the language is clear and unambiguous, the express terms of the contract will control" and there is no need to consult extrinsic evidence to interpret the contract. Id.; Bohler-Uddeholm Am., Inc. v. Ellwood Grp., Inc., 247 F.3d 79, 92 (3d Cir. 2001). However, when the contractual language at issue is ambiguous in that "it is reasonably or fairly susceptible of different constructions and is capable of being understood in more senses than one and is obscure in meaning through indefiniteness of expression or has a double meaning," "a court may look to extrinsic evidence to resolve the ambiguity and determine the intent of the parties." In re Diet Drugs(Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab.

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