

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

GREAT LAKES REINSURANCE (UK) PLC, )  
as subrogee of SRI Monroe Street Venture, LLC, )  
and CERTAIN UNDERWRITERS OF )  
LLOYD'S as subrogee of SRI Monroe Street )  
Venture, LLC, )

Plaintiffs, )

v. )

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CROWN ENERGY SERVICES, INC., d/b/a )  
Able Engineering Services, )

Defendant. )

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LEXINGTON INSURANCE COMPANY, as )  
subrogee of SRI Monroe Street Venture, LLC, )

Intervenor-Plaintiff, )

v. )

CROWN ENERGY SERVICES, INC., d/b/a )  
Able Engineering Services, )

Defendant. )

MEMORANDUM OPINION AND ORDER ON DEFENDANT'S  
2-615 MOTIONS TO DISMISS FOURTH AMENDED COMPLAINT AND  
THIRD AMENDED INTERVENOR COMPLAINT

I. FACTUAL BACKGROUND

The Plaintiffs filed a single-count Fourth Amended Complaint, and Lexington Insurance Company as subrogee of SRI Monroe Street Venture, LLC , filed a single-count Third Amended Intervenor Complaint, both seeking recovery for property damage and losses resulting from a fire, on March 28, 2007. Both claims in both pleadings sound in

breach of contract.

In the Defendant's motion as to the Fourth Amended Complaint, it contends that the Plaintiffs again fail to state a cause of action for breach of contract as to the engineering services contract between SRI and Able. The Defendant maintains that the Plaintiff insurers are not contracting parties to the engineering services agreement and there are no allegations in the Fourth Amended Complaint which show that SRI assigned any rights to their insurers or show how their subrogation claim arises in this situation. Further, the Defendant contends that none of the exhibits attached and made part of the pleading show that SRI assigned the engineering services agreement to Fund Six. The Defendant further points out that there is no original SRI assignment attached to the pleading. The Defendant also contends that no such facts regarding a valid assignment can be pled because the agreement between SRI and Able allowed SRI to assign the agreement only to the successor owner, which was Broadway 500 West Monroe, to whom SRI sold the property, and not Fund Six. The agreement also provides that it shall not be deemed to confer any rights to any person or entity other than the parties to the agreement. In addition, the Defendant contends that the affidavit of Ronnie Ragoff attached to the pleading is improper. The Defendant maintains that it is conclusory and in violation of SCR 191. It maintains that it also is improper parole evidence, pointing out that there is no pleading that the original SRI assignment is ambiguous or that the Dissolution Undertaking is ambiguous. Furthermore, the Defendant points out that the Dissolution Undertaking is not signed by SRI. The Defendant makes similar arguments in its motion as to the Third Amended Intervenor Complaint, contending that the breach of contract claim still fails to state a cause of action as the Insurer is not a contracting

party to the engineering services agreement and its' policy with SRI, attached to the pleading, does not provide for subrogation on the enforcement of the engineering services agreement. Further, the Defendant contends that there are no allegations in the pleading which provide a factual basis for subrogation in this instance.

In the responses to the motions, the Plaintiffs and the Intervenor Plaintiff contend that the breach of contract counts in both pleadings are sufficiently pled. They point out that they have specifically followed the Court's instructions and have set forth the factual allegations necessary to show that SRI assigned any rights against Able to the Plaintiffs and the Intervenor Plaintiff and otherwise showed how the subrogation claims came about. They also point out that both pleadings have several documents attached thereto in order to provide proof for the allegations. Further, they maintain that, even without any assignment, as SRI's insurers have paid for the damages caused by the Defendant's breach of contract, the insurers are entitled to step into the shoes of their insured and enforce the claim under the law of subrogation.

The Court has read the motions, responses and reply.

## II. COURT'S DISCUSSION AND RULING

Despite the incorporation of various exhibits and the addition of factual allegations, the Plaintiffs still have failed to set forth the specific, relevant facts necessary to state a cause of action for breach of contract on behalf of the subrogees/insurers here either in the Fourth Amended Complaint or in the Third Amended Intervenor Complaint. The incorporated exhibits to the pleading fail to show that SRI assigned any rights against Able to the Plaintiffs or to the Intervenor Plaintiff, and fail to not show how the subrogation claims arose in this

situation. There is no document incorporated into the pleading which is an assignment, and the Dissolution Undertaking, which is incorporated into the pleading, does not contain any assignment of SRI's rights against Able. Further, the Engineering Services Agreement between SRI and Able, also made part of the pleading, appears to belie any assignment here by its very terms. In addition, the cases relied on by the Plaintiffs, Jewelers Mutual v. Firststar Bank, 213 Ill.2d 58 (2004), and Grunloh v. Effingham Equity, 174 Ill. App.3d 508 (4th Dist., 1988), are distinguishable. Jewelers Mutual dealt with the interpretation of an exculpatory clause, and the court in Grunloh found an assignment of a cause of action where the evidence clearly supported such a finding. It appears from the exhibits to the pleading that the Plaintiffs and Intervenor Plaintiff may not be able to properly state their breach of contract action as it may not be possible to properly allege an assignment and/or a basis for subrogation here. However, the Court will allow the Plaintiffs and Intervenor Plaintiff another opportunity to attempt to do so if possible. Accordingly, both the Fourth Amended Complaint and the Third Amended Intervenor Complaint are deficient and fail to state a cause of action and must be dismissed.

Based on the foregoing, Defendant's 2-615 Motions to Dismiss the Fourth Amended Complaint and the Third Amended Intervenor Complaint are granted. The Plaintiffs and Intervening Plaintiffs are given twenty-one (21) days, on or before May 14, 2012, to file a Fifth Amended Complaint and a Fourth Amended Intervenor Complaint. The Defendants are given twenty-one (21) days thereafter, on or before June 4, 2012, to answer or otherwise plead.

**ENTER**

ENTER: APR 23 2012 

**KATHY M. FLANAGAN #267**

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Judge Kathy M. Flanagan