

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

GULF OIL, LIMITED PARTNERSHIP,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	No. 00-CV-4753
	:	
MAUGER & CO., INC. and	:	
CLYDE A. MAUGER, III,	:	
	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, J.

December 13, 2001

This is an action for breach of contract. Presently before this Court is Plaintiff Gulf Oil, Limited Partnership’s motion for summary judgment. For the reasons stated below, the motion is **GRANTED**.

**I. STATEMENT OF FACTS**

During the summer of 1997, Plaintiff Gulf Oil, Limited Partnership (“Gulf Oil” or “Plaintiff”) entered into the two contracts at issue in this case – one with Defendant Mauger & Co., Inc. (“Mauger & Co.”), a corporation engaged in leasing and managing the fuel service station White Glove Car Wash (the “facility”), and one with Defendant Clyde A. Mauger, III (“Mr. Mauger”) (Mauger & Co. and Mr. Mauger, collectively, “Defendants”).

Plaintiff and Mauger & Co. entered into a Pre-Paid Rebate Disbursement Agreement (the “Rebate Agreement”), which required, inter alia, that Mauger & Co. purchase certain quantities of Gulf Oil gasoline as per a separate franchise agreement between the two

entities. The Rebate Agreement also required that Plaintiff prepay an aggregate rebate of \$144,000 (the “rebate payment”) that, pursuant to its Gulf Oil new business program, Mauger & Co. would be entitled to “for the Gulf branded facility White Glove Car Wash” based upon its anticipated attainment of certain levels of gasoline sales. The Rebate Agreement also provides that:

It is understood that if any of the aforementioned facilities is debranded withing the first 24 months of the Program period, [Mauger & Co.] will reimburse to Gulf Oil 100% of any and all rebate payments made to [Mauger & Co.], including the \$144,000.00 prepaid rebate payment.

Plaintiff and Mr. Mauger also entered into a contract, the Guaranty. The Guaranty reads, in pertinent part:

[Mr. Mauger] hereby jointly and severally guarantee(s) the payment of any and all amounts due for petroleum products heretofore and/or hereafter sold and delivered by [Gulf Oil] ...

as well as the payment or discharge of any and all other indebtedness or obligations whether now or at anytime hereafter owing or unpaid from [Mauger & Co.] to [Gulf Oil].

The facility was branded as a Gulf Oil service station. Gulf Oil prepaid Mauger & Co. the rebate payment. Subsequently, during the relevant 24 month period, the White Glove Car Wash was debranded as a Gulf Oil service station.<sup>1</sup> Plaintiff learned of the debranding on or about December 1, 1998. Since then, Plaintiff has repeatedly requested, but Mauger & Co. has failed

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1. The debranding was apparently the result of White Glove Car Wash’s (Mauger & Co.’s lessors’) filing for bankruptcy at some point. Mauger & Co. assert that it nonetheless intended to brand the White Glove Car Wash as a Gulf Oil service station. However, without its knowledge, a superior lien was asserted in connection with the bankruptcy proceeding that terminated its control over the branding of the facility.

to repay, the rebate payment. Plaintiff brings this action for \$144,000, plus 6% simple interest since December 1, 1998, and costs.

## **II. LEGAL STANDARD**

A motion for summary judgment shall be granted where all of the evidence demonstrates “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when “a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Id.

If the moving party establishes the absence of the genuine issue of material fact, the burden shifts to the nonmoving party to “do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). The nonmoving party, however, cannot “rely merely upon bare assertions, conclusory allegations or suspicions” to support its claim. Fireman’s Ins. Co. v. Du Fresne, 676 F.2d 965, 969 (3d Cir. 1982). To the contrary, a mere scintilla of evidence in support of the nonmoving party’s position will not suffice; there must be evidence on which a jury could reasonably find for the nonmovant. Liberty Lobby, 477 U.S. at 252. Therefore, it is

plain that “Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In such a situation, “[t]he moving party is ‘entitled to a judgment as a matter of law’ because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.” Id. at 323 (quoting Fed. R. Civ. P. 56(c)).

### **III. DISCUSSION**

#### **A. Mauger & Co.’s Liability Under the Rebate Agreement**

In general, “the intent of the parties to a written contract is deemed to be in the writing itself, and when the words are clear and unambiguous the intent is to be gleaned exclusively from the express language of the agreement.... [T]he focus of interpretation is upon the terms of the agreement as *manifestly expressed*, rather than as, perhaps, silently intended.” Delaware County v. Delaware County Prison Employees Indep. Union, 713 A.2d 1135, 1137 (Pa. 1998)(emphasis in original)(citations omitted). In this case, the terms of the Rebate Agreement are clear that “if any of the aforementioned facilities is debranded withing the first 24 months of the Program period, [Mauger & Co.] will reimburse to Gulf Oil 100% of ... the \$144,000.00 prepaid rebate payment.” There is no dispute that the facility in question was debranded during the relevant period. Therefore, under the express terms of the Rebate Agreement, Mauger & Co is liable to Plaintiff for reimbursement of the rebate payment.

Defendants attempt to set forth three factual arguments as to why Mauger & Co. should be excused from reimbursing the rebate payment to Plaintiff despite the express terms of the contract. The legal basis for these arguments is not clearly defined by Defendants and Defendants cite no case law or authority to buttress them.

First, Defendants argue that White Glove Car Wash's bankruptcy and the assertion of the superior lien were events unforeseen by the parties. The Court understands Defendants to argue that, since the contract does not provide for such an unforeseen scenario, the Court should supply a contract term that permits it to retain the rebate payment. However, "[a] party's failure to anticipate all possible repercussions of a bargained-for contract, is insufficient to render the contract invalid." Ardrey Ins. Agency v. Insurance Co. of Decatur, 656 A.2d 936, 940 (Pa. Super. 1995). More specifically, "[t]he courts are not generally available to rewrite agreements or make up special provisions for parties who fail to anticipate foreseeable problems.... [W]hen a contract does not provide for a contingency, it is not ambiguous; rather, it is silent, and the court may not read into the contract something it does not contain and thus make a new contract for the parties." Banks Eng'g Co. v. Polons, 697 A.2d 1020, 1023-1024 (Pa. Super. 1997)(citations omitted).

In this case, the debranding of the facility was foreseeable – in fact, it was so foreseeable that it was specifically provided for in the contract. That the exact chain of events through which the debranding took place was not memorialized in the contract is not relevant under these circumstances. Furthermore, Defendants point to no case law suggesting that such a chain of events – a lessor's bankruptcy and another party's assertion of a superior lien against the

property – is itself unforeseeable. In the context of an arms-length transaction between two businesses, such events strike this Court as reasonably foreseeable.<sup>2</sup>

Second, Defendants argue that they do not owe the rebate payment to Plaintiff because such a reimbursement is not consistent with the alleged intent of the parties that the payment be repaid over time through the operation of a Gulf Oil service station. In effect, Defendants argue, the contract contemplates that the parties should share any risk going forward as if joint venturers. Such may well have been the general expectation of the parties as to Mauger & Co.’s reimbursement of the rebate payment. However, since the facility has been debranded, there is a specific contractual provision applicable that allocates risk between the parties by requiring that the rebate payment be immediately reimbursed in full to Plaintiff. Under the circumstances, the Court cannot alter that provision. See Banks Eng’g, 697 A.2d at 1023-1024.

Defendants may in fact be asserting that such an ongoing business relationship is a condition precedent for refund of the rebate payment to Plaintiff. However, “an act or event designated in a contract will not be construed as a condition unless that clearly appears to be the intention of the parties.” Shovel Transfer & Storage, Inc. v. Pennsylvania Liquor Control Bd., 739 A.2d 133, 139 (Pa. 1999)(citations omitted). There is no reason, contractual or otherwise, to believe that such a ongoing relationship is in fact what the parties intended as a condition precedent to the repayment obligation on the part of Mauger & Co. In fact, construing such as a condition precedent under these circumstances makes no logical sense, since the contractual

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2. Defendants note that they are suing their former attorneys for failure to disclose the superior lien. Of course, if the bankruptcy proceeding and superior lien were known to Defendants’ attorneys at the time the Rebate Agreement was negotiated, the foreseeability of this scenario would be all the more apparent.

clause regarding the debranding of the facility and reimbursement of the rebate payment obviously contemplates the *termination* of the facility as a Gulf Oil service station and therefore the end of an ongoing business relationship.

Third, Defendants point to the fact that Mauger & Co. had no intention of debranding the facility when the bankruptcy proceeding and superior lien terminated Mauger & Co.'s control over its branding. Defendants therefore hint at a contractual defense of impossibility or frustration of purpose. The Restatement has defined these defenses as operational "[w]here, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate to the contrary." Restatement (Second) of Contracts § 261 (1981). In this case, these doctrines might be applicable if Plaintiff sought to re-brand the facility as a Gulf Oil service station. However, Plaintiff seeks only to be reimbursed the rebate payment pursuant to the express terms of the contract. In this case, "the [contract] language [and] the circumstances" clearly indicate that Mauger & Co.'s duty to repay the rebate is not excused.

In summary, Defendants have cited no case law or authority, and ultimately no recognizable argument as to why, in light of the express provisions of the Rebate Agreement between the parties, the rebate payment is not due and owing to Plaintiff. As such, Plaintiff is entitled to summary judgment as a matter of law against Mauger & Co.

## **B. Mr. Mauger's Liability Under the Guaranty**

As noted above, in general, courts consider the clear and unambiguous written terms of an agreement to reflect the enforceable intent of the contracting parties. In this case, the Guaranty calls for Mr. Mauger to “jointly and severally guarantee(s) the payment of any and all amounts due for petroleum products heretofore and/or hereafter sold and delivered by [Gulf Oil] ... as well as the payment or discharge of any and all other indebtedness or obligations whether now or at anytime hereafter owing or unpaid from [Mauger & Co.] to [Gulf Oil].”

Defendants would have the Court ignore or read out of the Guaranty its second paragraph, which on its face requires Mr. Mauger to jointly and severally guarantee “the payment or discharge of any and all other indebtedness or obligations whether now or at anytime hereafter owing or unpaid from [Mauger & Co.] to [Gulf Oil].” The Court declines to do so. As a result, the Court finds that as a matter of law Mr. Mauger is jointly and severally liable to Plaintiff for the rebate payment owed by Mauger & Co. to Plaintiff. Therefore, Plaintiff is entitled to summary judgment against Mr. Mauger as well.

## **IV. CONCLUSION**

The Court finds that under the express provisions of the Rebate Agreement and Guaranty, Defendants Mauger & Co. and Mr. Mauger are jointly and severally liable to Plaintiff for the rebate payment in the amount of \$144,000 plus interest at the statutory rate of interest.

This memorandum is written in explanation of the court's order signed on December 10, 2001, granting Plaintiff's summary judgment motion.