

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

NORRIS SALES COMPANY, INC.

v.

TARGET DIVISION OF
DIAMANT BOART, INC

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CIVIL No. 01-6793

O'Neill, J.

December , 2002

MEMORANDUM

I. INTRODUCTION.

Plaintiff Norris Sales Company, Inc. has sued defendant Target Division of Diamant Boart, Inc. for breach of contract, unjust enrichment, and promissory estoppel. Defendant has moved for summary judgment on all claims. For the reasons stated below, I will grant the motion.

II. BACKGROUND

Plaintiff Norris Sales is a corporation in southeastern Pennsylvania that rents and sells construction equipment and supplies. Defendant Diamant Boart ("DB") is the manufacturer of the Target brand asphalt cutting and coring equipment. Prior to 1999, plaintiff did not carry Target products. However, in the Fall of 1999 Norris Sales hired David Spedding, who had previously worked for a distributor of Target products. Thereafter, Spedding contacted James Morgan, DB's main representative in the region to determine if plaintiff could become an

authorized distributor of Target products. In September of 1999 Morgan met with Norris Sales' president, Donald Zajick, to discuss the possibility of conducting business together. At this meeting, Morgan stated that he would consult with others at DB and contact Norris Sales with the company's decision.

The parties met again in October of 1999 to solidify their relationship. In an affidavit Zajick contends that DB orally offered Norris Sales a distributorship of the Target products during the meeting, which plaintiff accepted. Later in the meeting, Zajick asserts that he and Morgan negotiated various terms of the distributorship contract. Some aspects of the contract remained part of an oral agreement while others were written down in a document entitled "Confidential Distributor Discounts." The margins of confidential document contain hand-written discounts that exceed the normal distributor discounts printed on the page.¹ The Zajick affidavit makes more assertions pertaining to the October meeting:

Among other things, we agreed upon discount pricing for all purchases by Norris Sales, we agreed upon shipping arrangements and discounts and we agreed that Norris Sales would participate in the co-op advertising program sponsored by DB which was a rebate provided by Target to Norris Sales based upon the prior year's sales to be used by Norris Sales to promote and advertise Target products during the following year. We also discussed and agreed upon things such as the establishment of inventory by Norris Sales, the marketing and advertising efforts Norris Sales would undertake and the training that Norris Sales employees would undergo. In sum, I and Mr. Morgan agreed that Norris Sales would use its best efforts to sell and promote DB's Target line of Products in the selling region by setting up a complete and integrated distribution system and in return DB would sell and supply the DB line of products to Norris Sales at the stated discounts.

(Zajick Aff. ¶ 10). In his affidavit, Zajick also asserts, "During this October meeting I stated that

¹ Another document, entitled "Request for Terms Deviation" and dated November 17, 1999, also contains hand-written discounts for various Target products. The bottom of this page provides "To be reviewed annually in December."

Norris Sales wanted this to be a long term relationship and Mr. Morgan confirmed that DB shared that goal by confirming that DB was excited by the long term prospects of having Norris Sales as a distributor.” (Zajick Aff. ¶ 11).

Several weeks after the October meeting, plaintiff contends that Morgan contacted Zajick and confirmed that Norris Sales was free to begin placing order for Target products. In mid-November Norris Sales placed its first order for Target products. In early December, representatives of both parties met to begin the process of training plaintiff’s staff to sell Target products and scheduled further training sessions for future dates. During the December meeting plaintiff asserts that the parties discussed business and marketing plans for the Target product line. Additionally, in his affidavit, Zajick states that at this point plaintiff had begun substantial performance under the oral distribution contract by stocking large amounts of inventory, rearranging its showrooms to prominently display Target products, updating its computer system to include Target products, and marketing Target products to current and potential customers.

In January of 2000, Morgan called Spedding and Zajick to inform them that defendant would no longer sell Target products to Norris Sales. Although the parties attempted to reach an agreement to sever their relationship amicably, negotiations were unsuccessful.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 56(c) provides that summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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.” The Supreme Court has recognized that the

moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions . . . which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). After the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The nonmoving party may not rest upon the mere allegations or denials of the party's pleading. See Celotex, 477 U.S. at 324.

I must determine whether any genuine issue of material fact exists. An issue is “material” only if the dispute over facts “might affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the record taken as a whole in a light most favorable to the nonmoving party “could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Matsushita Elec. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986) (citation omitted). If the evidence for the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249-50 (citations omitted).

IV. DISCUSSION

Defendant moves for summary judgment on the first claim, arguing that no distributorship contract existed and that even if one did it was terminable by either party at any time. Defendant contends that it agreed to sell its products to plaintiff on an as-ordered basis, but that DB made no agreement that required it to continue selling Target products to plaintiff. Plaintiff responds that a distributorship contract did exist and under Pennsylvania law had to

endure for a reasonable amount of time for plaintiff to recoup its investment of time and money. Plaintiff asserts that a jury could conclude that the two month sales relationship between plaintiff and defendant was an unreasonable amount of time for plaintiff to recoup its initial investment in developing the relationship.

Whether the parties actually formed a non-exclusive distributorship is immaterial because under Pennsylvania law² sales contracts that do not specify a definite duration are terminable at will by either party. See 13 Pa. Cons. Stat. Ann. § 2309(b) (West 1999); Weilersbacher v. Pittsburgh Brewing Co., 218 A.2d 806, 807 (Pa. 1966) (interpreting Pennsylvania’s Commercial Code). Section 2309(b) of Pennsylvania’s Commercial Code provides: “Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.” Thus the plain language of the statute provides that such contracts will endure for a reasonable amount of time unless one party wishes to terminate sooner. See 13 Pa. Cons. Stat. Ann. § 2309(b).

In Weilersbacher, the Supreme Court of Pennsylvania interpreted this section of the commercial code and held that an oral agreement between a beer distributor and brewer, which failed to specify contract duration, was terminable at will by either party. 218 A.2d at 808. There, the parties had maintained a sales relationship for many years, during which the distributor had invested much time and money in the furtherance of its business. Id. at 807. In 1963 plaintiffs and defendant entered into an oral contract in which defendant agreed to sell its products to the plaintiffs for cash at an agreed price schedule. Id. A year later, defendant arbitrarily terminated

² In exercising diversity jurisdiction, I am obliged to apply the substantive law of Pennsylvania. See Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

the contract and refused to sell any goods to plaintiffs. Id. Although the Weilersbacher Court recognized that sales contracts with successive performances such as distributorship agreements are valid for a reasonable amount of time when no party seeks to end the relationship, this determination did not undermine the Court’s ultimate conclusion that the agreement was nevertheless terminable at will. See id. at 808.

Plaintiff argues that Pennsylvania law requires that the contract endure for a reasonable amount of time and thereafter may be terminated by either party at any time. This, however, is a misinterpretation of the law. In a decision that pre-dated Weilersbacher, the Supreme Court of Pennsylvania stated in dicta that distributorship contracts that do not provide for a specific duration “would be effective for a reasonable time and *thereafter* terminable at will by either party” Utility Appliance Corp. v. Kuhns, 143 A.2d 35, 37 n.1 (Pa. 1958) (emphasis added), citing Nolle v. Mutual Union B. Co., 108 A. 23 (Pa. 1919);³ 4 Williston, Contracts § 1027A at 2852 (Rev. Ed. 1936). However, because the dicta in Utility Appliance conflicts with the holding of the more recent Supreme Court case that is directly on-point, which specifically interprets the applicable state statute, I will follow the latter decision. Therefore I will grant defendant’s motion for summary judgment on the breach of contract claim.

Next, defendant moves for summary judgment on plaintiff’s claim of unjust enrichment. Unjust enrichment, also known as *quantum meruit*, is essentially an equitable doctrine. Mitchell v. Moore, 729 A.2d 1200, 1203 (Pa. Super. 1999). It is applicable when one party has a reasonable expectation of payment from the other party and it would be unconscionable for the

³ Notably, the Weilersbacher Court described Nolle (upon which the decision in Utility Appliance was based) as “an exceptional case which was decided on its own particular facts and was not intended to change the general rule of law.” 218 A.2d at 807.

second party to receive the benefit of the first party's services without payment. King of Prussia Power Equipment Corp. v. Power Curbers, Inc., 158 F. Supp. 2d 463, 467 (E.D. Pa. 2001) (Pollak, J.). When a court finds unjust enrichment, it implies a contract which requires defendant to pay to plaintiff the value of the benefit conferred. Mitchell, 729 A.2d at 1203. "In order to recover, there must be both (1) an enrichment, and (2) an injustice resulting if recovery for the enrichment is denied." Meehan v. Cheltenham Township, 189 A.2d 593, 595 (Pa. 1963). Moreover, the mere fact that one party benefits from the act of another is not itself sufficient to justify restitution. Id. at 596. Courts will not find unjust enrichment where plaintiff has rendered services to advance his own interest. See King of Prussia Power Equipment Corp., 158 F. Supp. 2d at 467; New Tech Voting Sys., Inc. v. Danaher Corp., Civ. A. No. 95-727, 1996 WL 711272, at *3 (E.D. Pa. Dec. 6, 1996) (Gawthrop, J.), citing In re Stendaro, 991 F.2d 1089, 1101 (3d Cir. 1993).

In the present case, defendant accepted no benefit that did not also directly benefit plaintiff. See King of Prussia Power Equipment Corp., 158 F. Supp. 2d at 467 (denying unjust enrichment claim where plaintiff's marketing of defendant's products benefitted both parties). Norris Sales claims that defendant received a distribution system in southeastern Pennsylvania worth over \$60,000, which plaintiff built. Although defendant may have received some benefit from plaintiff's newly developed distributorship, admittedly plaintiff also profited from creating this distributorship and selling Target products. Moreover, by later refusing to continue to sell Target products to Norris Sales, defendant also stopped receiving any benefit. Therefore, I will grant defendant's motion for summary judgment on the claim of unjust enrichment.

Finally, defendant moves for summary judgment on plaintiff's claim of promissory

estoppel. “The doctrine of promissory estoppel is the law in Pennsylvania.” Thatcher's Drug Store of West Goshen, Inc. v. Consolidated Supermarkets, Inc., 636 A.2d 156, 160 (Pa. 1994). Under promissory estoppel, a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. Id., citing Restatement (Second) Contracts § 90(1). To establish promissory estoppel, a party must prove that: (1) the promisor made a promise that he should have reasonably expected would induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise. Shoemaker v. Commonwealth Bank, 700 A.2d 1003, 1006 (Pa. Super. 1997).

Here, Norris Sales has failed to demonstrate the first element of promissory estoppel. Plaintiff does not assert that defendant promised to grant a distributorship for any specific length of time. Rather, plaintiff points out that following the completion of negotiations defendant's representatives, Mr. McGrady and Mr. Morgan, “both congratulated Mr. Zajick and stated that they were looking forward to a long and mutually beneficial relationship.” (Zajick Aff. ¶ 17). Similarly, plaintiff notes “that DB was excited by the long term prospects of having Norris Sales as a distributor.” (Zajick Aff. ¶ 11). At most, these comments are aspirational in nature and do not constitute promises upon which a reasonable person could rely. Therefore, I will grant summary judgment against plaintiff's claim of promissory estoppel.

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ORDER

AND NOW, this day of December, 2002, after consideration of defendant's motion for summary judgment and plaintiff's response thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that defendant's motion for summary judgment is GRANTED and judgment is entered in favor of defendant and against plaintiff.

THOMAS N. O'NEILL, JR., J.