

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

<b>COTTMAN TRANSMISSION SYSTEMS,</b>	<b>:</b>	<b>CIVIL ACTION</b>
<b>Plaintiff</b>	<b>:</b>	
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>KEVIN MCENEANY, ET AL.,</b>	<b>:</b>	<b>NO. 05-6768</b>
<b>Defendants</b>	<b>:</b>	

**MEMORANDUM AND ORDER**

**TIMOTHY R. RICE**  
**U.S. MAGISTRATE JUDGE**

**February 1, 2007**

Plaintiff Cottman Transmission Systems, LLC (“Cottman”) has filed a motion in limine to preclude defendants from offering any testimony, evidence, or argument at trial for the purpose of attempting to establish that Cottman breached any obligation under the agreement of sale and purchase entered into in April 2005. This motion is DENIED for the following reasons.

On February 21, 2005, Cottman sent defendant Kevin McEneany a copy of a license agreement for an existing Cottman franchise in Charlotte, North Carolina (“Center”). (McPeak Affidavit). Thereafter, Matthew Amici, a Cottman representative who led McEneany through the offer process, informed McEneany that Cottman would accept \$125,000 for the Center. (Pl. Pretrial Memo 2; Def. Pretrial Memo 2). On February 28, 2005, therefore, McEneany sent Cottman an offer to purchase the Center for \$125,000. (Id.) Negotiations for the franchise purchase continued between McEneany and various Cottman representatives. (Amici Dep. 115-118). The end result of the negotiations was the agreement of sale and purchase for the purchase of the Center at the price of \$125,000. (Amici Dep. 117; agreement of sale and purchase).

On April 19, 2005, Kate McPeak, Cottman’s licensing coordinator, sent McEneany a

closing package containing an agreement of sale and purchase, including an equipment list, a demand note, and a license agreement. (Pl. Br. 8; Def. Br. 11). The agreement of sale and purchase was signed by McPeak, Cottman's licensing coordinator, and Todd P. Leff, president of both Cottman and Cottman Transmission Centers, Inc. The agreement of sale and purchase was closely tied in with the purchase and licensing of the Center as a whole.

For the foregoing reasons, any testimony, evidence, or argument at trial for the purpose of establishing Cottman breached any obligation under the agreement of sale and purchase entered into in April 2005 is highly relevant to this case, and Cottman's motion is DENIED.

**ORDER**

And now, this 1<sup>st</sup> day of February, 2007, for the reasons set forth above, it is hereby ORDERED that:

1. Plaintiff's motion in limine No. 1 is DENIED.

BY THE COURT:

\s\ TIMOTHY R. RICE \_\_\_\_\_  
TIMOTHY R. RICE  
U.S. MAGISTRATE JUDGE