

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

CARGILL, INCORP., ET AL.,
Plaintiffs,

v.

LGX LLC, ET AL.,
Defendants.

CIVIL ACTION NO. 00-4252

MEMORANDUM AND ORDER

Tucker, J.

February 13, 2007

Presently before this Court is Plaintiff, Cargill Inc.'s Motion for Summary Judgment (Doc. 108), Defendant Lyle R. Nelson's ("the Trustee") Response (Doc. 114), and Defendant Donald R. Hall's Response (Doc. 119). For the reasons set forth below, this Court will deny Plaintiff's Motion.

BACKGROUND

From the evidence of record, taken in a light most favorable to the Plaintiff, the pertinent facts are as follows. On August 8, 2000, Cargill filed this action against LGX and its principal, Mr. Donald Hall ("Hall"), for patent infringement claiming that the Defendants infringed U.S Patent Nos. 5,282,732 and 5,739,364 ("Franke Patents" or "'732 and '364 patents").¹ LGX asserted counterclaims including misappropriation of trade secrets, unfair competition, and breach of contract.

The parties settled the case and executed a Memorandum of Understanding (the "MOU"), which set out the terms of their agreement. The MOU provided, *inter alia*, that Cargill would pay the Hilton Economic Development Authority ("HEDA")² \$1 million, plus up to an additional \$3

¹ The Franke Patents disclose and claim a process for using liquified gas extraction in food processing.

² Cargill identifies HEDA as the single largest investor in LGX. However, the Trustee disputes that HEDA is an owner of LGX. Instead the Trustee identifies Hinton Enterprises, Inc., owned by HEDA as an LGX investor. In his Motion to Enforce the Settlement Agreement, the Trustee explains that HEDA is a non-profit entity. By paying the settlement funds to HEDA Cargill would be able to obtain a tax benefit. HEDA later transferred all of its rights and interest in the MOU to the Trustee.

million in royalties on any revenues Cargill might generate from its future use of the two patented manufacturing processes at issue. The MOU also provided that Cargill would grant to LGX and Hall a covenant not to sue under the two patents. On September 5, 2001, as a result of the execution of the MOU, Judge Weiner entered an order dismissing the action without prejudice pending the execution of a final settlement agreement. The parties never executed the final settlement agreement.

On November 5, 2002, LGX filed a petition under Chapter 7 of the Bankruptcy Code in the Western District of Oklahoma (the “Chapter 7 Petition”). Lyle Nelson (the “Trustee”) was named Chapter 7 Trustee of the Bankruptcy Estate of LGX. HEDA was party in the Chapter 7 Petition, and agreed to settle its claims by assigning all of its rights under the MOU to LGX. The Bankruptcy Court approved the settlement and Cargill appealed to the Bankruptcy Appellate Panel of the Tenth Circuit.

Before the Tenth Circuit could rule on the appeal, the Trustee filed two motions in this Court: 1) a Motion to Substitute a Party and 2) a Motion to Enforce the Settlement and Reopen the Case. The Court granted the Trustee’s motion to substitute LGX and granted the motion to reopen the matter for the purpose of determining the enforceability of the MOU.

On October 31, 2005, the Tenth Circuit affirmed the Bankruptcy Court’s decision to approve the settlement. See In re LGX, LLC, et al., v. Lyle R. Nelson, et al., 2005 Bankr. LEXIS 2072. However, the Tenth Circuit remanded the case on an issue that has since been mooted by agreement of the parties. See In re LGX, LLC v. Lyle R. Nelson, et al., 2006 Bankr. LEXIS 635.

LEGAL STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any

material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis of its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant’s initial Celotex burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. After the moving party has met its initial burden, “the adverse party’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual 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, 477 U.S. at 322. “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against opponent, even if the quality of the movant’s evidence far outweighs that of its opponent.” Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 25.

DISCUSSION

A. Cargill's Motion for Summary Judgment

Plaintiff contends that it is entitled to Summary Judgment because: 1) all admissible evidence demonstrates that there was no meeting of the minds as to the MOU; 2) the MOU is unenforceable and should be rescinded because of mutual mistake; 3) the MOU is unenforceable because it was repudiated and then breached by Hall; and 4) even if the MOU is enforceable, LGX's breach of the MOU excuses Cargill from performance.

1. Meeting of the Minds

Plaintiff contends that since the releases were the only consideration to be received by Cargill under the MOU, they are a material term of the settlement and there was no meeting of the minds on that material term. Cargill maintains that when it executed the MOU it understood that it had achieved "complete peace" and release to the subject matter of the litigation. Thus, Cargill urges, since it believed that the releases would apply to not only Hall and LGX but also Michael Hall, L.V. Benningfield and NVF, while Hall believed that the releases were limited only to him and LGX, the parties failed to come to a meeting of the minds on a material term of the contract.

It is well established under Pennsylvania law that the enforceability of settlement agreements is governed according to the principles of contract law.³ See Mellish v. Hurlock Neck Duck Club, Inc., 886 A.2d 1151, 1158 (quoting McDonald v. Ford Motor Co., 643 A.2d 1102, 1105 (Pa. Super. Ct. 1994)); See also Century Inn, Inc. v. Century Inn Realty, Inc., 516 A.2d 765, 767 (1986). A settlement will not be considered enforceable unless all the material terms of the bargain are agreed

³ Although the MOU does not contain a choice of law provision, both parties advocate the application of Pennsylvania contract law.

upon. Mellish, 886 A.2d at 1158. As long as the parties have agreed to all essential terms of an agreement a contract has been formed. Id. This is true even where the parties intend to adopt a more formal agreement at a later date. Id. Apposite in determining whether there was a “meeting of the minds” is the outward and objective manifestations of assent of the parties rather than their undisclosed subjective intentions. Ingrassia Constr. Co., Inc., v. Walsh, 486 A. 2d 478, 482 (Pa. Super. Ct. 1984).

There remains a genuine issue of material fact regarding the parties outward manifestations of assent. Specifically a reasonable jury could find that the parties’ actions did objectively manifest assent to the material terms of the contract. Cargill urges this Court to limit its attention solely to the subjective intentions of Michael Chaloner and Harry Gwinnell, however the Court will neither limit its analysis to subjective considerations nor these two individuals. It is not uncommon for parties to designate individual representatives to facilitate communications. Cargill has not satisfied this Court that either Mr. Gwinnell or Mr. Chaloner has ultimate authority to enter an agreement at the mediation. Further, following the execution of the MOU the parties endeavored to further negotiate the final terms of the agreement. The Trustee has offered sufficient evidence to suggest that there exists a factual basis for a jury to determine that there was in fact a meeting of the minds. Specifically, the parties written agreement itself.

2. Mutual Mistake

Plaintiff claims that while Hall stated that he had not agreed to any settlement that called for the releases necessary to give Cargill “complete peace,” Cargill would have never agreed to pay money in settlement absent “complete peace.” Due to what Cargill terms mutual mistake on a material term of the agreement, namely the scope of the releases, Plaintiff contends that the MOU

is unenforceable. LGX contests Cargill's contention of mutual mistake, averring that it is not based on mistake of fact but rather mistake of law and only Cargill was mistaken as to the terms of the MOU. Thus, according to LGX, Cargill's mistake cannot permit it to avoid its obligations. Cargill claims to misread the MOU to require releases, from not only the parties, but any third parties necessary to give Cargill "complete peace." This, according to LGX, is a mistake of law.

A finding of mutual mistake requires that 1) "both parties to a contract [are] mistaken as to existing facts at the time of execution"; and 2) the moving party "show the existence of mutual mistake by evidence of the mutual mistake by evidence that is clear, precise, and convincing."

Vonada v. Long, 852 A.2d 331, 337 (Pa. Super. 2004).

'Clear , precise and convincing' evidence of mutual mistake will be found if witnesses [are] found to be credible, . . . that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty and convincing as to enable the [fact-finder] to come to a clear conviction, without hesitancy.

Cargill has not satisfied this Court that the parties labored under the same misconception about who would provide Cargill the releases. Reviewing the evidence presented thus far this Court cannot conclude the existence of mutual mistake by the presentation clear, precise and convincing evidence.

3. Repudiation and Breach By Hall

Cargill asserts that Defendant Hall repudiated and then breached the parties' agreement by: 1) sending an email to Michael Chaloner stating "I will never sign any formal agreement that is drafted under the guidelines of the so-called MOU"; and 2) claiming that he executed the MOU under duress and without "the proper advisement of counsel." (Pl. Mot. Summ. J. 4.) Because of

Defendant Hall's purported repudiation followed by his alleged material breach, Cargill claims that it is excused from performance.

The Trustee urges that Cargill's claim that Hall repudiated and breached the settlement agreement is irrelevant as against the Trustee, since the Trustee and LGX indisputably did not breach the agreement. Further the Trustee contends that since the email was not sent to Cargill, but only to Defendant Hall's counsel and HEDA personnel, it could not have constituted a repudiation of the agreement since a repudiation cannot occur if the statement is not communicated to the other party.

A party contending that there has been an anticipatory breach of a contract must establish that there has been a definite and unconditional repudiation of a contract by one party communicated to another. Oak Ridge Constr. Co. v. Tolley, 504 A.2d 1343,1346 (Pa. Super Ct. 1985). Such a breach is created by a party's statement that it will not or cannot perform in accordance with the agreement. Id. Cargill has not established the LGX communicated a clear and unmitigated repudiation of the contract. The emails upon which Cargill relies were sent to Hall's Counsel and HEDA personnel, not to Cargill, thus such an action would not suffice to constitute repudiaton. See Restatement (Second) of Contracts § 250, comm b. ("Mere expression of doubt as to his willingness or ability to perform is not enough to constitute a repudiation").

4. **LGX's Breach**

The Trustee failed to assume the agreement in its bankruptcy case, and Cargill avers, that failure amounted to a breach since the MOU was automatically deemed rejected as a matter of law, pursuant to 11 U.S.C. § 365(d)(1).⁴ The Trustee counters that since the Oklahoma bankruptcy court

⁴ 11 U.S.C. § 365(d)(1) states:

In a case under chapter 7 of this title [11 USCS §§ 701 et seq.], if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of

already rejected this argument, Cargill is barred from relitigating this issue based on the principles of collateral estoppel. In the alternative the Trustee argues that the MOU was not an executory contract requiring assumption under the Bankruptcy Code because the only obligations owed by LGX under the MOU were not material, only ministerial. Cargill maintains that the covenant not to sue, upon which Cargill relies as proof of the claimed executory contract, is an obligation owed by Cargill to LGX for which LGX has no reciprocal duty.

The doctrine of collateral estoppel precludes a party from relitigating an issue when: 1) the issue sought to be precluded is the same as the one involved in the prior action; 2) the issue was actually litigated; 3) the issue was determined by a valid and final judgment; and (4) the determination was essential to the prior judgment. In re Ross, 602 F.2d 604, 608 (3d Cir. 1979); accord Restatement (Second) Judgments § 27 (1982).

This specific issue was presented to the Bankruptcy Court. By Order dated January 11, 2005, Chief Bankruptcy Judge T.M. Weaver held that the Trustee's rejection of the MOU does not render the agreement necessarily unenforceable as a result of rejection. In re LGX, LLC, No. 02-21140 (Bankr. W.D. Ok. filed Jan. 11, 2005). Thus, the Trustee's rejection of the MOU was deemed to have no material effect on whether the Trustee is able to enforce the MOU. Since the issue presented here is identical to the issue thoroughly briefed and resolved by the bankruptcy court, Cargill is precluded from relitigating it before this Court.

personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

CONCLUSION

For the foregoing reasons, this Court will deny Plaintiff's Motion for Summary Judgment. An appropriate order follows.

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ORDER

AND NOW, this ____ day of February 2007, upon consideration of Plaintiff, Cargill Inc.'s Motion for Summary Judgment (Doc. 108), Defendant Lyle R. Nelson's ("the Trustee") Response (Doc. 114), and Defendant Donald R. Hall's Response (Doc. 119), **IT IS HEREBY ORDERED** and **DECREED** that Defendant's Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that:

1. Plaintiff's Motions for leave to file a reply (Docs. 122 & 123) are **DENIED**.
2. The Trustee's Motion for leave to file a reply (Doc. 121) is **DENIED**.
3. The Trustee's Motion to Strike (Doc. 129) is **DENIED**.

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.