

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

ROBERT BILLET PROMOTIONS, INC. : CIVIL ACTION  
 :  
 v. :  
 :  
 IMI CORNELIUS, INC., et al. : NO. 95-1376

**MEMORANDUM AND ORDER**

HUTTON, J.

December 30, 1997

Presently before the Court are Plaintiff Robert Billet Promotions, Inc.'s Motion for Reconsideration, Defendant IMI Cornelius, Inc.'s Answer, and the Plaintiff's additional Motion for Partial Reconsideration. For the foregoing reasons, the Plaintiff's Motions are denied.

**DISCUSSION**

The present flurry of motions arises from an ambiguity in the Third Circuit's February 13, 1997 Opinion, and in this Court's effort to interpret and apply the Opinion in this case.

Plaintiff Robert Billet Promotions, Inc. ("RBP") and IMI Cornelius, Inc. ("Cornelius") began negotiations with respect to the production and marketing of a portable beverage dispenser known as the Drink Tank in late 1993 and early 1994. On May 4, 1994, the parties reached an agreement-in-principle that Cornelius would be the exclusive manufacturer, distributor and seller of the Drink Tank, and that RBP would continue to promote the product. Thereafter, the parties exchanged a number of draft agreements,

including one dated July 21, 1994, and titled "Proposal (Revised 7/21/94)." The parties, however, never executed a written contract. Emerging difficulties with the cost and logistics of producing the Drink Tank forced the parties to restructure the transaction several times in an attempt to save the deal. Finally, Cornelius determined that it could not feasibly produce the Drink Tank at RBP's projected cost, and walked away from the table on February 25, 1995. RBP then brought suit.

In Count I of its Complaint, RBP claimed that "in or about May 1994, RBP, Inc. and Cornelius entered into a valid and enforceable oral contract pursuant to which Cornelius agreed to act as RBP, Inc.'s exclusive manufacturer, distributor [sic] and seller of the Drink Tank on behalf of RBP Inc." (Pl.'s Compl. at ¶ 81). In the course of the litigation, it developed that RBP considered the May 4 agreement-in-principle to be an enforceable oral contract. RBP claimed that as Cornelius breached the contract by subsequently refusing to manufacture the Drink Tank, Cornelius was liable for damages in excess of \$100,000.00. (Id. at ¶ 82-83).

Upon Cornelius' first Motion for Summary Judgment, this Court found that the May 4 agreement-in-principle was too indefinite to establish an enforceable obligation. See Robert Billet Productions, Inc. v. IMI Cornelius, Inc., No. 96-cv-1435, at 6 (E.D.Pa. April 18, 1996). The Court also rejected RBP's argument that the unexecuted July 21 draft demonstrated the terms of the alleged oral contract, stating:

[T]he Court does not understand the relevancy

of a letter written more than two months after the alleged oral agreement was made as to the issue of the terms orally agreed upon earlier. The letter does not reference the oral agreement. Therefore, the letter fails to memorialize any terms of the alleged oral agreement. Indeed, the interim proposals submitted by the defendants show otherwise.

Id. at 7. The Court viewed the question as whether the July 21 draft could be said to memorialize the terms of the May 4 agreement-in-principle. Finding that it did not, the Court granted summary judgment in favor of Cornelius.

Upon appeal, the Third Circuit agreed with this Court that the May 4 agreement-in-principle was unenforceably vague. See Robert Billet Productions, Inc. v. IMI Cornelius, Inc., No. 96-cv-1435, at 5 (3d Cir. February 13, 1997). However, it disagreed with this Court's finding that the terms of the alleged oral contract could not be drawn in part from the July 21 draft. See id. at 5. This Court reads the Third Circuit's Opinion as holding not that RBP has a claim for breach of a written contract, but that the July 21 draft may be used to demonstrate the existence of an enforceable oral agreement reached after May 4th. Although the Third Circuit's Opinion states that the parties may have agreed to the terms "contained in Cornelius' July 21 letter," id. at 6, the Opinion also clearly states the Third Circuit's finding that "No signed binding document was ever received," id. at 7. The Third Circuit can't have endorsed a breach of written contract theory where everything about the document indicated that it was a draft, and the Court itself specifically found that no written contract was

executed. The only sensible reading of its Opinion is that the July 21 draft may be used to demonstrate the terms of an existing and valid oral contract.

#### CONCLUSION

It should now be clear that while RBP may not argue that Cornelius breached a written contract (an argument doomed to fail in any case), it may still use documentary evidence such as the July 21 draft to prove the existence of an enforceable oral contract that the parties never memorialized. As this Court's prior Orders do not prejudice RBP in any way, RBP's Motions for Reconsideration and Partial Reconsideration are denied.

An appropriate Order follows.

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O R D E R

AND NOW, this        30th        day of December, 1997, upon  
consideration of the Plaintiff's Motion for Reconsideration, the  
Defendant's Answer, and the Plaintiff's Motion for Partial  
Reconsideration, IT IS HEREBY ORDERED that Plaintiff's Motions are  
**DENIED.**

BY THE COURT:

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HERBERT J. HUTTON, J.