

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

HARTMAN PLASTICS, INC.,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 97-2679
	:	
STAR INTERNATIONAL LTD-USA,	:	
Defendant.	:	

STAR INTERNATIONAL LTD-USA,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	NO. 97-CV-2734
	:	
HARTMAN PLASTICS, INC.,	:	
Defendant.	:	

McGlynn, J.

January 21, 1998

MEMORANDUM OF DECISION

In these consolidated actions between Hartman Plastics, Inc. ("Hartman"), a manufacturer of foamboard, and Star International LTD-USA ("Star"), its exclusive dealer in the Middle East, each entity has sued the other for claims arising out of a written Settlement Agreement, General Release, and Distribution Agreement ("the Agreement") dated August 12, 1996. Pursuant to the Agreement, Star was required to order a specified number of Hartman foamboard containers, beginning with a minimum of ten containers between August 15, 1996 and April 14, 1997. On April 9 or 10, 1997, Star placed its only order during the specified period for ten containers which Hartman refused to fill in a letter dated April 10, 1997. Hartman then filed suit against Star claiming fraud in the inducement and breach of contract. Star countered

with a lawsuit against Hartman claiming breach of contract.¹

Before the court is Star's Motion for Partial Judgment on the Pleadings wherein Star seeks judgment in its favor with respect to Hartman's complaint and judgment on the pleadings as to all issues of liability under Star's complaint. For the following reasons, Star's motion will be denied.

I. Standard of Review

A motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure is treated under the same standard as a motion to dismiss pursuant to Rule 12(b)(6). DeBraun v. Meissner, 958 F. Supp. 227, 229 (E.D. Pa. 1997). In addressing a Rule 12(c) motion, the court must consider as true any well-pleaded factual allegations in the pleadings, draw any permissible inferences from those facts in favor of the non-moving party, and grant the motion only when the movant has alleged no set of facts which, if subsequently proved, would entitle it to relief. Pennsylvania Nurses Ass'n v. Pa. State Educ. Ass'n, 90 F.3d 797, 799-800 (3d Cir. 1996); DeFiore v. Vignola, 823 F. Supp. 315, 316 (E.D. Pa. 1993).

II. Discussion

A. Fraud in the Inducement

In Count I of its complaint, Hartman alleges that during

¹ On May 27, 1997, this court denied Star's request for a preliminary injunction to force Hartman to sell Star its product, finding Star had an adequate remedy at law. In addition, on July 29, 1997, this court dismissed Star's tortious interference with contract claim for failure to state a claim.

negotiations with Star, Aftab Ali Kahn, Star's authorized agent and officer, fraudulently induced Hartman to enter into the Agreement by misrepresenting that Star had pending orders from customers in its territory which "urgently needed to be filled." Hartman Compl.

¶ 6. According to Hartman, these material representations persuaded Hartman to enter into the Agreement because they "reflected Star's willingness and ability to conduct business successfully on Hartman's behalf."² Hartman insists that Star's conduct goes to the heart of the Agreement between the parties and requests the court to nullify the Agreement and declare it unenforceable.

Star, however, contends that Hartman's fraudulent inducement claim is barred by: (1) the integration clause in section 8 of the Agreement which indicates that the parties intended the writing to be final and complete, and (2) the parol evidence rule which prohibits Hartman from seeking the admission of evidence contradicting the integration clause in section 8.

Under Pennsylvania law,³ fraud in the inducement exists:

where the party proffering evidence of additional prior representations does not contend that the parties agreed that the additional representations would be in the written agreement, but rather claims that the representations were fraudulently made and

² Hartman's Sur-Reply Memo., at 4. Hartman also claims it was "reluctant" and "nervous" about entering into the Agreement because of prior "poor relations" with Star.

³ In paragraph six (6), the Agreement states that it shall be "governed by, construed under, and enforced pursuant to the laws of the Commonwealth of Pennsylvania."

that but for them, he or she would never have entered into the agreement.⁴

Specifically, fraud in the inducement "does not involve terms omitted from an agreement, but rather allegations of oral representations on which the other party relied in entering into the agreement but which are contrary to the express terms of the agreement." Dayhoff, Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1300 (3d Cir. 1996), cert. denied, --- U.S. ---, 117 S. Ct. 583 (1996); HCB Contractors v. Liberty Place Hotel Assoc., 652 A.2d 1278, 1279, 1280 (Pa. 1995); 1726 Cherry Street, 653 A.2d at 670.

In the present case, Star contends that the purported representations illustrate negotiations regarding an accelerated order schedule which were integrated into the Agreement. As a result, Star claims the parol evidence rule bars Hartman's fraudulent inducement claim. Hartman claims, to the contrary, that Star's representations concerned pending orders not specifically addressed or included in the written contract, and therefore, the parol evidence rule does not bar the introduction of evidence of these representations.

The problem with Hartman's argument is that Hartman does not claim that Star's representations were contrary to the express terms of the Agreement as required under Dayhoff to sustain the cause of action. As a result, Hartman has not sufficiently alleged a claim for fraud in the inducement. It appears, however, that

⁴ 1726 Cherry Street Partnership v. Bell Atlantic Properties, 653 A.2d 663, 666 (Pa. Super.), appeal denied, 664 A.2d 976 (Pa. 1995).

Hartman has alleged sufficient factual support for a fraudulent misrepresentation claim. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957)(stating dismissal is appropriate if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."). Accordingly, Star's Motion for Judgment on the Pleadings will be denied.

B. Breach of Contract

In Count II of its Complaint, Hartman asserts a breach of contract action against Star based on: (1) Star's purported breach of duty to use its best efforts to sell Hartman foamboard in accordance with paragraph 5 of the Agreement⁵ and U.C.C. § 2-306(2), and (2) Star's purported breach of good faith under 13 Pa. Stat. Cons. Ann. § 1203.⁶ Hartman alleges Star breached these provisions by: (1) placing phantom orders without acquiring actual customers to purchase the foamboard; (2) failing to respond to customer inquiries; (3) attempting to secure a competing product line of foamboard in the Territory; and (4) failing to promote, market and sell Hartman's foamboard. Hartman also claims that Star's representations that orders were pending from customers constitutes bad faith abuse of the Agreement's provisions as well as independent violations of the duty of good faith and fair

⁵ Paragraph 5 of the Agreement states: "Star will use its best efforts to sell Hartman foamboard in all of the countries in the Territory and to exceed the minimum purchase price requirements"

⁶ Section 1203 states, in relevant part: "[e]very contract or duty within this title imposes an obligation of good faith in its performance or enforcement." 13 Pa. Stat. Cons. Ann. § 1203.

dealing during the course of the Agreement's performance. Hartman claims these representations resulted in damage to Hartman through loss of goodwill, brand name recognition and exposure, and sales. Hartman Compl. ¶ 18.

In Count I of its Complaint, Star alleges that despite its compliance with the Agreement, Hartman breached the Agreement when it failed to fill Star's written purchase order submitted to Hartman on April 9 or 10, 1997.⁷ Moreover, Star claims that unconsummated efforts to secure a competing supplier of foamboard does not demonstrate a lack of "best efforts." In addition, Star contends that there is nothing in the Agreement, particularly in paragraph 1(c)(2), that required Star to have obtained actual customer orders prior to submitting its purchase order to Hartman.

When a party materially breaches a contract, the non-breaching party is not required to fulfill its duties under the contract. Oak Ridge Const. Co. v. Tolley, 504 A.2d 1343, 1348 (1985) ("If the breach constitutes a material failure of performance, the non-breaching party is discharged from all liability under the contract."). Whether a breach of contract constitutes a material

⁷ Star alleges that Hartman violated U.C.C. § 2-306(2), requiring a "seller to use its best efforts to supply the goods", when it refused to supply Star with the foamboard. Star's Motion, at 8.

Notably, Star claims that Hartman may not rely on this same code provision in its breach of contract claim because the parties agreed in paragraph 1(c)(5) of the Agreement that the "best efforts" covenant "shall not be grounds for termination." According to Star, this agreement triggers the language "unless otherwise agreed upon" in U.C.C. § 2-306 which precludes Hartman from claiming that it was entitled to terminate the Agreement. Id. at 17.

breach is a question of fact. Forest City Grant Liberty Associates v. Genro II, Inc., 652 A.2d 948, 951 (1995). Accordingly, whether Hartman engaged in improper conduct by failing to fill Star's order or whether Star breached the Agreement by placing phantom orders, failing to respond to customer inquiries, attempting to secure a competing product line, or failing to market Hartman's product, are factual questions for the trier of fact to determine. Therefore, Star's Motion for Judgment on the Pleadings as to Count II of Hartman's Complaint is denied.

C. Liability

Star requests judgment on the pleadings with regard to Hartman's liability under Star's Complaint. Because disputed factual issues remain, Star's motion will be denied.

IV. Conclusion

Star's Motion for Partial Judgment on the Pleadings is denied. An appropriate order follows.