

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

SUNGARD RECOVERY SERVICES, INC., : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
FLORISTS TRANSWORLD DELIVERY, INC., :
Defendant. : NO. 98-CV-4815

MEMORANDUM AND ORDER

J. M. KELLY, J.

JANUARY 21, 1999

Presently before the Court is Defendant Florists Transworld Delivery, Inc.'s ("FTD") Motion to Dismiss (Document No. 6), in which FTD argues its contract ("Contract" or "Agreement") with Plaintiff Sungard Recovery Services, Inc. ("Sungard") specifically prohibits the recovery Sungard seeks. The Court, however, takes a different view of the contractual provision on which FTD relies, and finds that the provision is ambiguous, and therefore the possibility exists that Sungard may recover for breach of contract. Accordingly, the Court will deny FTD's motion to dismiss.

I. FACTUAL BACKGROUND

In August 1994 Sungard and Floral Network, a division of FTD, entered into an agreement by which Sungard would provide computer services in the event Floral Network's own computers failed. The parties agreed Floral Network would make monthly payments to Sungard for this service, and that the Agreement would last until December 1, 1997.

(Superseding Schedule A, at 1.)¹ The parties further agreed the Contract would renew

¹Sungard attached the Contract to its complaint, and therefore the Court properly may examine it directly when resolving the merits of this motion. See Fed. R. Civ. P. 10(c); Ala, Inc. v. Ccair, Inc., 29 F.3d 855, 859 (3d Cir. 1994).

automatically for additional three year terms unless one party gave the other notice within six months of the term's expiration. (Contract ¶ D.1; Addendum to Contract dated 12/5/94.) There is one limited exception to this provision: FTD may terminate the Agreement on thirty days notice if Floral Network is sold or merges with another company. (Addendum to Contract dated 08/02/94.) Neither of these two events occurred, and FTD does not allege it gave Sungard notice of termination of the Agreement by or before May 31, 1997, six months before the end of the Agreement's term.

Sungard alleges FTD has failed to make its monthly payments since October 1997 and has not acknowledged the Agreement automatically renewed for an additional three year term. Sungard therefore has sued both for compensatory damages and declaratory relief, seeking to recover the monthly payments and a declaration from the Court that FTD is bound under the Contract until November 30, 2000. FTD claims it cannot be liable for the damages Sungard demands under one part of a provision in the Contract that limits each party's liabilities, and has moved to dismiss the complaint in reliance on its interpretation of this provision. Sungard points to another area of the liability limiting provision as supporting its right to recover. The relevant portions of the provision are as follows:

LIABILITY AND INDEMNIFICATION. Each party shall be fully liable for all direct damages caused by its own breach of contract and other negligent and willful acts and omissions, and those of its employees and agents, in connection with the use of the Recovery Resources and any other matters relating to this Agreement. . . . Under no circumstances shall either party be liable to the other or any third party for lost revenues, lost profits, loss of business, or consequential or special damages of any nature, whether or not foreseeable.

(Contract ¶ D.4.)

II. DISCUSSION

A. The Rule 12(b)(6) Standard

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, the court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low: a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). As would be expected in light of these standards, motions to dismiss rarely are granted. 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 321 (2d ed. 1990).

The Court will address one preliminary matter first. Sungard argues that a defense like the one FTD advances cannot be the basis for a Rule 12(b)(6) motion. Rather, Sungard claims, motions to dismiss appropriately are granted only when the complaint contains a “built-in” defense, like a statute of limitations, that renders the complaint self-defeating. In support of this proposition Sungard relies, in part, on Wright & Miller’s Federal Practice and Procedure. (Pl.’s Mem. Supp. Resp. To Def.’s Mot. To Dismiss, at 17 (citing 5A Wright & Miller, supra, at 348-56). This argument easily is rejected in light of the discussion that occurs in the same paragraph as Sungard cites, but one page earlier. When a contract is attached to a complaint, a defendant may move to dismiss the complaint where the contract clearly prohibits recovery. 5A Wright & Miller, supra, at 347;cf. Flight Sys., Inc. v. Electronic Data Sys., 112 F.3d 124, 127 (3d Cir.

1997); Ala, Inc., 29 F.3d at 859 n.9. The Court therefore may grant FTD's motion if the Agreement states an insuperable barrier to Sungard's recovery.

B. The Contract And Its Limitation On Liability

A federal court exercising diversity jurisdiction must apply the forum state's choice of law rules, and Pennsylvania courts generally respect the contracting parties' wishes and enforce choice of law provisions. Kruzits v. Okuma Mach. Tool, Inc., 40 F.3d 52, 55 (3d Cir. 1994). Sungard and FTD intended that Pennsylvania law would apply to any dispute arising out of the Contract. (Contract ¶ D.10.) The Court accordingly will look to Pennsylvania law to determine whether the Contract clearly absolves FTD of liability.

Pennsylvania law requires that a court, when interpreting a contract, determine the parties' intent and give effect all of the contract's provisions. Department of Transp. v. Manor Mines, Inc., 565 A.2d 428, 432 (Pa. 1989); see also Western United Life Assurance Co. v. Hayden, 64 F.3d 833, 837 (3d Cir. 1995). A court should interpret the contract as a whole, and should interpret provisions of the same contract together. Atlantic Richfield Co. v. Razumic, 390 A.2d 736, 739 (Pa. 1978); see also Williams v. Metzler, 132 F.3d 937, 947 (3d Cir. 1997); Restatement (Second) of Contracts § 202(2) (1981). If a court should recognize that ambiguities exist or a portion of the contract conflicts with another, the court should attempt to construe the ambiguous or conflicting sections so that the main purpose of the contract is preserved. See In re Binstock's Trust, 190 A.2d 288, 293 (Pa. 1963); Fogel Refrigerator Co. v. Oteri, 137 A.2d 225, 233 (Pa. 1958) ("[O]ne part of a contract cannot be so interpreted as to annul another part."); see also Keystone Fabric Laminates, Inc. v. Federal Ins. Co., 407 F.2d 1353, 1356 (3d Cir. 1969); Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1131 (3d Cir. 1969).

In view of these principles, the Court finds that the two allegedly competing clauses in the liability limitation provision may be reconcilable: under the Contract, a breaching party might be liable for “direct” but not consequential damages. Further, the Court finds the language the parties adopted might have intended “direct damages” to encompass the monthly payments FTD made to Sungard.² The ambiguity of the phrase “direct damages” raises the possibility that Sungard might recover damages for breach of contract, and therefore FTD has failed to show a motion to dismiss is appropriate here. Accordingly, FTD’s motion is denied.

An Order follows.

²FTD argues that the “direct damages” provision would not prohibit Sungard from recovering damages if FTD negligently or intentionally damages Sungard’s equipment. (Def.’s Reply Mem. Supp. Mot. To Dismiss at 3.) Sungard’s ability to recover these damages, however, appears to be provided for separately in the provision: “Each party shall be fully liable for all direct damages caused by its own breach of contract *and other negligent and willful acts and omissions*, and those of its employees and agents, in connection with the use of the Recovery Resources and any other matters relating to this Agreement.” (Contract ¶ D.4) (emphasis added). FTD’s reading does not address damages for breach of contract, and therefore does not present an insuperable barrier to recovery.

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SUNGARD RECOVERY SERVICES, INC.,	:	CIVIL ACTION
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v.	:	
	:	
FLORISTS TRANSWORLD DELIVERY, INC.,	:	
Defendant.	:	NO. 98-CV-4816

ORDER

AND NOW, this 21st day of January, 1999, in consideration of Defendant Florists Transworld Delivery, Inc.'s Motion to Dismiss (Document No. 6), and Plaintiff Sungard Recovery Services, Inc.'s response thereto, it is hereby **ORDERED** that Defendant's motion is **DENIED**.

BY THE COURT:

JAMES McGIRR KELLY, J.

