

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

SURGICAL SALES CORPORATION	:	
d/b/a CONNELL NEUROSURGICAL,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-5813
v.	:	
	:	
HEYER-SCHULTE NEUROCARE, L.P.,	:	
RNTC CORPORATION, and JOHN	:	
REDMOND,	:	
	:	
Defendants.	:	

MEMORANDUM

Buckwalter, J.

July ____, 1999

Plaintiff, Surgical Sales Corporation, d/b/a Connell Neurosurgical (“Connell”), instituted this action against Defendant, Redmond Neurotechnologies Corporation, a/k/a RNTC Corporation (“RNTC”), for wrongful termination of an exclusive distributorship agreement; against Heyer-Schulte Neurocare, L.P. (“Heyer-Schulte”) for breach of the same agreement; and against John Redmond, the sole shareholder of RNTC, for fraudulent transfer of funds from RNTC to himself. In response, Defendant Heyer-Schulte filed a counterclaim for breach of a contract and for an accounting. Presently before the Court are the parties’ cross-motions for summary judgment. For the reasons discussed below, the motion by all defendants collectively will be DENIED, and Plaintiff’s motion will be GRANTED IN PART and DENIED IN PART.

I. Background

On September 21, 1992, Connell entered into a sales distribution agreement (“Agreement”) with RNTC, a manufacturer, producer, importer and seller of neurosurgical instruments. Under the Agreement, Connell was appointed the exclusive distributor of RNTC’s products under the trade name “Redmond” in a specifically defined geographical area for a period of three years. Moreover, this exclusive distributorship would automatically renew for successive three-year periods unless either party gave notice of termination not less than sixty days prior to the expiration of the three-year time period. See Agreement ¶ 4 (attached as Exhibit 7 to Defs.’ Mem.). The Agreement also provided that it was to be governed by Illinois law. See id. ¶ 21. On September 21, 1995, the Agreement automatically renewed for another three years.

As set forth in the Agreement, Connell’s right to distribute Redmond products in the designated territories could not be terminated during the three-year period except for cause. See id. ¶ 13. Specifically, RNTC had the option to terminate the Agreement without notice to Connell upon the occurrence of any of the following events:

[D]isagreement of any nature shall [a]rise between owners of [Connell] whereby [RNTC] deems its interest may be imperiled; [Connell] is insolvent; a petition is filed by [Connell] or an involuntary case is commenced against [Connell] by the filing of a petition under Title II of the United States Bankruptcy Code . . . ; a receiver or trustee is appointed for [Connell]; or in [RNTC’s] sole judgment reasonably exercised [Connell] is not actively promoting and selling [RNTC’s] product or is improperly representing [RNTC’s] interest.

Id. It further provided that in the case of termination or upon request of RNTC, “[Connell] shall discontinue use of such name [Redmond] in any sign or advertising and thereafter shall not use the name directly or indirectly in connection with his business. . . .” Id. at ¶ 12(b).

On January 2, 1997, Heyer-Schulte purchased certain assets of RNTC including the Redmond trade name for cash. Thereafter, John Redmond, former owner and sole shareholder of RNTC, entered into an employment agreement with Heyer-Schulte, at which point he purchased approximately one percent (1%) of the common units (most likely, shares) of Heyer-Schulte. Under the agreement, Mr. Redmond was made president of Heyer-Schulte's Redmond Neurocare division.

On the same day as the acquisition of RNTC, Mr. Redmond wrote to Connell, stating that "Redmond Neurotechnologies Corp. has been acquired by Heyer-Schulte NeuroCare, L.P., . . ." Letter from Redmond to Connell (Jan. 2, 1997) (attached as Exhibit 10 to Defs.' Mem.). Mr. Redmond further stated that Heyer-Schulte intended to market Redmond products through its own sales force and to honor orders placed by Connell until February 28, 1997. See id. Mr. Redmond also called Mr. Connell, president of Connell, to tell him about the transaction.

Connell then began to do business with Heyer-Schulte through May 1997. By letter dated June 3, 1997, Heyer-Schulte advised Connell that, due to the acquisition of RNTC, Connell would be invoiced under the name Heyer-Schulte and that any existing balance owed to RNTC as of May 28, 1997 would be transferred to Heyer-Schulte. On June 8th, Heyer-Schulte, after several attempts to obtain payment from Connell for products purchased, sent a letter to Connell asking for \$13,000 in outstanding receivables.

On July 23, 1997, Connell wrote RNTC, stating that RNTC had prematurely terminated the Agreement. See Letter from Connell to RNTC (July 23, 1997) (attached as Exhibit 11 to Defs.' Mem.). Connell then wrote a second letter, stating that "I have supported my estimate of lost profits of \$447,854. . . . It is my position that Redmond Neurotechnologies

breached the contract January 1, 1997.” Letter from Connell to RNTC (Sept. 8, 1997) (attached as Exhibit 12 to Defs.’ Mem.). On November 2, 1997, Connell filed the instant action seeking damages of \$407,662. Heyer-Schulte counterclaimed, seeking damages of \$13,773.76 for the outstanding receivables.

II. Discussion

Both Plaintiff and all defendants have requested summary judgment. The standards by which a court decides a summary judgment motion do not change when the parties file cross-motions. See Southeastern Pa. Transp. Auth. v. Pennsylvania Pub. Util. Comm’n 826 F. Supp. 1506, 1512 (E.D. Pa. 1993). That is, when ruling on cross-motions for summary judgment, the court must consider the motions independently. See Williams v. Philadelphia Hous. Auth. 834 F. Supp. 794, 797 (E.D. Pa. 1993). Summary judgment may be granted only “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). The facts are viewed in the light most favorable to, and all inferences shall be taken in favor of, the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The court’s responsibility is not to resolve disputed issues of fact but to determine whether there are any factual issues to be tried. Id. at 247-49.

With regards to the applicable law, a federal court exercising diversity jurisdiction must apply the choice of law rules of the forum state. Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 497 (1941). Pennsylvania courts generally honor the intent of the contracting parties and enforce choice of law provisions in contracts executed by them. See Smith v.

Commonwealth Nat. Bank, 557 A.2d 775, 777 (1989), appeal denied, 569 A.2d 1369 (Pa. Super. 1990). Pennsylvania courts will only ignore a contractual choice of law provision if that provision conflicts with strong public policy interests. See, e.g., Soxman v. Goodge, 539 A.2d 826 (Pa. Super. 1988); Leidy v. Deseret Enterprises, Inc., 381 A.2d 164 (Pa. Super. 1977).

The Agreement between Connell and RNTC provides that it is to be governed by Illinois law. As Plaintiff has made no argument or provided supporting authority that the choice of law provision conflicts with strong public policy interests, the Court concludes that under Pennsylvania choice of law rules, the contractual choice of law provision is binding on the parties. Accordingly, Illinois law governs the Court's interpretation of the Agreement.

A. Count I - Breach of Contract Claim

For Plaintiff to prevail on a breach of contract claim, it must prove the following elements: (1) the existence of a valid and enforceable contract; (2) performance by Plaintiff; (3) breach of contract by Defendant; and (4) resultant injury to Plaintiff. See Elson v. State Farm Fire and Cas. Co., 691 N.E.2d 807, 811 (Ill. App. 1998). Here, the only element in dispute is the third element -- a breach of the Agreement.

Under Illinois law, distributorship agreements are generally held to be governed by the Illinois Uniform Commercial Code ("UCC") when the predominant purpose of the agreement is the sale of goods. See Echo, Inc. v. Whitson Co., 121 F.3d 1099, 1105 n.2 (7th Cir. 1997); see also Ryan v. Wersi Elec. GmbH and Co., 3 F.3d 174, 181 n.3 (7th Cir. 1993). Thus, to the extent that UCC provisions have displaced general principles of contract law, the Court must apply them to distributorship agreements. See Echo, 121 F.3d at 1005 n.2 (citing 810 Ill. Comp. Stat. 5/1-103 (West 1999)).

Plaintiff contends that RNTC is liable for breach of the Agreement as a result of its termination of the distributorship on January 2, 1997 when it notified Connell that the company had been acquired by Heyer-Schulte and that Heyer-Schulte planned to sell the Redmond line directly through its own sales force. Defendants refute liability, however, by arguing that RNTC properly terminated the Agreement, discharging any obligations it had under the Agreement.

Specifically, Defendants contend that RNTC terminated the Agreement pursuant to ¶ 12(b), which they maintain is a provision that gave RNTC the right to terminate the Agreement at any time. That paragraph of the Agreement states that “[i]n the case of termination of this Agreement, or upon request of [RNTC], [Connell] shall discontinue use of such name [Redmond] in any sign or advertising and thereafter shall not use the name” Agreement at ¶ 12(b). Defendants argue that, without a right to use the Redmond name, the Agreement has no effect.

However, the Court reads ¶ 12(b) as merely affording RNTC the right to stop Plaintiff’s use of the Redmond name on any signs or advertising. The Court does not interpret this provision as giving RNTC an affirmative right to terminate the Agreement at any time. Indeed, the Agreement provides RNTC several affirmative means by which it could terminate the Agreement -- none of which are implicated under the facts here.

For example, ¶ 13 of the Agreement, labeled “Right of Manufacturer to Cancel,” provides that “[RNTC] may at its option cancel this Agreement without any notice to [Connell] upon the occurrence of any of the following events:” and then lists five events that would trigger termination of the Agreement. In addition, ¶ 4, labeled “Term,” provides that the Agreement

shall automatically renew for a term of three years “unless either of the parties hereto has given the other party written notice of its election to terminate the Agreement at sixty (60) days prior to the end of any three year period. . . .” Thus, through ¶¶ 4 and 13 of the Agreement, RNTC had specifically reserved itself the right to terminate the distributorship and discharge its obligations to Plaintiff. As Plaintiff did not act in a manner so as to trigger RNTC’s option to terminate the Agreement, and as RNTC did not terminate the Agreement in accordance with the notice requirements of ¶ 4, the Court concludes that RNTC breached the Agreement when it attempted to put an end to the distributorship through the sale of its assets to Heyer-Schulte.

As further support for this Court’s conclusion, the UCC makes a distinction between cancellation and termination of an agreement for the sale of goods. Under the UCC, “‘cancellation’ occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of ‘termination’ except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.” 810 Ill. Comp. Stat. 5/2-106(4) (West 1999). By contrast, termination occurs when “either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On ‘termination’ all obligations which are still executory on both sides are discharged. . . .” 810 Ill. Comp. Stat. 5/2-106(3)(West 1999). Thus in effect, a cancellation reserves all remedies, while a termination does not. See id.

What has occurred here, in effect, is a cancellation of the Agreement by Plaintiff. By filing suit against RNTC for breach of the Agreement, Plaintiff put an end to the parties’ distributorship contract. As Plaintiff has established that RNTC breached the agreement, the Court concludes that Plaintiff was justified in canceling the Agreement due to that breach. Thus,

as a result, Plaintiff is entitled to damages at least from RNTC. As Plaintiff has moved for summary judgment solely on the issue of liability, the amount of damages arising from the breach of the Agreement will be left for trial.

Accordingly, summary judgment is GRANTED in favor of Plaintiff and against RNTC solely on the issue of liability for breach of the Agreement.

B. Counts II and III

As for Plaintiff's remaining claims of breach of contract under a theory of successor liability against Heyer-Schulte and fraudulent transfer of funds against Mr. Redmond, summary judgment is not appropriate on these claims because there are genuine issues of material fact in dispute remaining for trial.

Accordingly, summary judgment on Counts II and III are DENIED.

III. Conclusion

Viewing each of the respective summary judgment motions in the light most favorable to the non-moving party, the Court concludes that the Agreement between RNTC and Connell was breached by RNTC. Whether and to what extent the other two defendants will share that liability and any ensuing damages must await factual development at trial.

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

SURGICAL SALES CORPORATION	:	
d/b/a CONNELL NEUROSURGICAL,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-5813
v.	:	
	:	
HEYER-SCHULTE NEUROCARE, L.P.,	:	
RNTC CORPORATION, and JOHN	:	
REDMOND,	:	
	:	
Defendants.	:	

ORDER

AND NOW this _____ day of July, 1999, upon consideration of Defendants' motion for summary judgment (Docket No. 12), Plaintiff's response (Docket No. 15), Plaintiff's cross-motion for summary judgment (Docket No. 13), and Defendants' response (Docket No. 14), it is hereby **ORDERED** that Defendants' motion is **DENIED** in its entirety, and Plaintiff's cross-motion is **GRANTED IN PART** and **DENIED IN PART**:

1. a breach of the distribution agreement between Plaintiff, Surgical Sales Corporation, d/b/a Connell Neurosurgical, and Defendant, Redmond Neurotechnologies Corporation, a/k/a RNTC Corporation, has been established on the record;

2. trial will be limited solely to the issues of:

- a. successor liability;
- b. fraudulent transfer of funds; and
- c. damages.

BY THE COURT:

RONALD L. BUCKWALTER, J.