

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

PACK LAB, INC.	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	No. 98-5834
PAK-RAPID, INC.	:	
Defendants.	:	
	:	
<b>GREEN, S.J.</b>		<b>November 1, 1999</b>

**Memorandum and Order**

Presently before the Court is Defendant, Pack-Rapid, Inc.'s Motion for Summary Judgment, pursuant to Fed.R.Civ. P. 56, and Plaintiff, Pack Lab Inc.'s response thereto. For the following reasons the Motion will be denied.

**I.    FACTUAL AND PROCEDURAL HISTORY**

Plaintiff, Pack Lab, Inc., ("Pack Lab"), is in the business of providing packaging for nutritional supplements and vitamins. On or about August 5, 1996, Pack Lab entered into a purchase contract with Defendant, Pak-Rapid, Inc., ("Pak-Rapid"), to purchase an HC-3 Triple Lane Packaging Machine which was to be used for the packaging of vitamins.

After Pak-Rapid delivered the machine in December 1996, Plaintiff allegedly experienced problems with its nonconforming operation and design. Specifically, Plaintiff claims that the machine it received from Pak-Rapid was defective and could not, among other things, produce 100 pouches of vitamins per lane per minute, as required by the contract. (Pl.'s Compl. at ¶¶'s 3-5). After attempting to allow Pak-Rapid

to remedy the alleged problems, Pack Lab removed the HC-3 packaging machine from its production line and purchased a replacement machine from another company. (Aff. of Karse Simon at ¶ 37). Pack Lab then instituted this diversity action for breach of contract, breach of implied warranty of merchantability and breach of implied warranty of fitness for a particular purpose. In this action, Plaintiff seeks damages for lost profits, loss of goodwill, lost man hours, and the costs of the replacement machine.

Defendant, Pak-Rapid now moves for summary judgment, arguing that the Warranty, Liability and Disclaimer section of the parties' contract precludes the Plaintiff's recovery of consequential damages in this case. The relevant portion of the warranty section of the contract reads:

WARRANTY LIABILITY, AND DISCLAIMER

Pak-Rapid warrants the equipment furnished hereunder substantially conforms to description and specifications set forth herein. Seller warrants to the extent of the purchase price of parts that it will repair or, at its option, replace, F.O.B. Sellers factory, equipment or parts of its own manufacture which fail in normal use because of defects in workmanship or materials. Seller's liability hereunder shall extend only to defects of which Seller has had notice within ninety (90) days from the date of initial operation and is contingent on Buyer's

returning, at Seller's request, the defective items to Seller's factory, freight prepaid. No warranty is made with respect to:

- b) Failure not reported to Seller within the Warranty period.
- c) Failure or damage due to misapplication, lack of proper maintenance, abuse, improper installation or abnormal conditions of temperature, moisture, dirt, or corrosive matter, etc.
- d) Failure due to operation, either intentional or otherwise, above the rated capacities or in an otherwise improper manner.
- e) Failure through normal usage or otherwise of heater elements, switches, warranty responsibility is limited to that which the manufacturer thereof makes to Seller. Seller shall not be liable for any losses, costs, forfeitures or other consequential damages (including loss of profits, liabilities on the Buyer to its customers or third persons) whether direct or indirect, whether or not resulting from or contributed to by the default or negligence of Seller, its agents, employees and sub-contractors, which might be claimed as the result of the use or failure of the product. From and after the

date of delivery all liability for injuries sustained by any person or damages caused by any property through the maintenance or operation of the machinery and equipment, whether said injuries be caused by defects in said machinery or equipment or otherwise.

WITH THE EXCEPTION OF THE NINETY DAY WARRANTY SET FORTH ABOVE, THE SELLER MAKES NO EXPRESS WARRANTIES, NO WARRANTIES OF MERCHANTABILITY AND NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THE PROPOSAL.

Pursuant to the language of the warranty, Defendant, Pak-Rapid concludes that the Plaintiff's claims for damages of:

- 1) \$204,847.00 for the cost of purchasing a replacement machine;
- 2) \$30,000.00 for film costs;
- 3) \$65,000.00 for lost man hours;
- 4) \$279,000.00 for lost profits; and
- 5) \$125,000.00 for lost goodwill

are barred by the parties' agreement.

In response to the Defendant's Motion, Plaintiff argues, among other things, that pursuant to the warranty and liability disclaimer, Pak-Rapid warranted that the equipment would "substantially conform" to the description and specifications set forth

in the purchase agreement. (Pl.'s Mem. in Opp. to M. for Summ. J. at 1-2). Since Pak Lab alleges that Pak-Rapid did not provide a substantially conforming piece of equipment, as described in the agreement, it concludes that the disclaimers contained in the Warranty, Liability and Disclaimer section of the purchase agreement are ineffective as a matter of law. Therefore, Pak-Lab argues that summary judgment in favor of Defendant is not appropriate in this case.

## **II. LEGAL STANDARD**

Summary judgment should be granted where the record reveals that no genuine issue of material fact exists for resolution at trial and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). On summary judgment, the moving party need not disprove the opposing party's claim, but does have the burden to show the absence of any genuine issues of material fact. Celotex Corp v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986). If the movant meets this burden, then the opponent may not rest on allegations made in the pleadings, but must counter with specific facts which demonstrate that there exists a genuine issue for trial. Id.

## **III DISCUSSION**

In its motion for summary judgment, Pak-Rapid asserts that it is entitled to judgment as a matter of law on Plaintiff's claims for consequential damages because the Warranty, Liability, and Disclaimer clause of the contract of sale, which, according to the Defendant is fully enforceable under Pennsylvania law, specifically prohibits the buyer from recovering consequential damages for alleged defects in the HC-3 Triple Lane Packaging Machine.

In opposition to the motion for summary judgment, Plaintiff argues that the operation of the Warranty, Liability and Disclaimer clause depended upon the existence of a condition precedent -- that the HC-3 packaging machine would substantially conform to the description and specifications set forth in the purchase agreement signed by the parties. Because Plaintiff contends that the HC-3 Triple Lane Packing Machine failed to substantially conform to the specifications set forth in the purchase agreement, it concludes that Defendant Pak-Rapid cannot preclude recovery of consequential damages in the instant action.

Based on the arguments presented by both parties, it is clear that the matters before the Court turn upon an interpretation of the language of the contract of sale. Under Pennsylvania law, it is well established that the purpose of contract interpretation is to ascertain and effectuate the objectively manifested intentions of the contracting parties. See American Flint Glass Workers Union, AFL-CIO v. Beaumont Glass Co., 62 F.3d 574, 581 (3rd Cir. 1995). In determining the meaning of the contract, the "initial resort should be to the 'four corners' of the agreement itself." Washington Hosp. v. White, 889 F.2d 1294, 1300 (3d Cir.1989). Thus, the initial question before me is whether the contract is reasonably capable of only one construction. Id. at 1301. This is a pure question of law for the court. Id.

In deciding whether a contract is capable of more than one construction, a court does not just ask whether the language is clear; instead it hears the proffer of the parties and determines if there are objective indicia that the terms of the contract are susceptible of different meanings. See USX Corp. v. Penn Cent. Corp., 130 F.3d 562, 566 (3rd Cir. 1997). If the contract as a whole is susceptible to more than one reading,

it is ambiguous, and matters of interpretation are left to the fact-finder to resolve. Id.

Here, the purchase agreement clearly states that “Pak Rapid warrants the equipment purchased hereunder substantially conforms to the description and specification set forth [in the purchase agreement].” Therefore, Plaintiff argues that the warranty disclaimer portion of the contract did not operate unless the equipment substantially conformed to the specifications of the purchase agreement. On the other hand, Defendant, Pak- Rapid asserts that Pack Lab accepted the terms of the contract with full knowledge that the Warranty, Liability and Disclaimer clause would operate to preclude the recovery of consequential damages. Therefore, Defendant concludes that summary judgment on the damages issue is required as a matter of law.

As stated above, if a contract can reasonably be interpreted in two different ways, neither contracting party is entitled to summary judgment. Id. The question here, therefore, is whether Pak Lab, Inc. has provided a reasonable alternative reading of the contract under which Pak-Rapid, Inc. would not be entitled to judgment as a matter of law. Applying general principles of contract interpretation, I preliminarily decide on summary judgment that Pak Lab, Inc.’s interpretation of the language contained in the purchase agreement is, at a minimum, a reasonable alternative to that asserted by Pak-Rapid, Inc. Therefore, summary judgment cannot be lawfully granted in favor of Pak-Rapid because a genuine issue of material fact exists as to whether the Warranty, Liability, and Disclaimer clause operated to bar the Plaintiff from recovering consequential damages in this matter. Consequently, Defendant Pak-Rapid’s motion for summary judgment will be denied. An appropriate Order follows.

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PAK-RAPID, INC.	:	
Defendants.	:	

:

**ORDER**

**AND NOW**, this 1st day of November 1999, upon consideration of Defendant Pak-Rapid Inc.'s Motion for Summary Judgment, and Plaintiff, Pack Lab Inc.'s response thereto, **IT IS HEREBY ORDERED** that the Motion for Summary Judgment is **DENIED**.

BY THE COURT,

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CLIFFORD SCOTT GREEN, S.J.