

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

INSULATION CORPORATION OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION No. 98-6336
)	
HUNTSMAN CORPORATION,)	
)	
Defendant.)	

MEMORANDUM

Padova, J. January , 2000

This matter arises on Defendant's Motion for Summary Judgment, and Attorneys' Fees, filed August 27, 1999; Plaintiff's Motion for Leave to Amend, filed October 4, 1999; and Plaintiff's Motion for Continuance or Other Relief Pursuant to Fed.R. Civ. P. 56(f), filed October 5, 1999. These motions are all fully briefed. Additionally, on January 6, 2000, the Court held oral argument on these motions. For the reasons that follow, the Court will grant Defendant's Motion for Summary Judgment, deny Plaintiff's Motion for Continuance, and deny Plaintiff's Motion for Leave to Amend.

I. BACKGROUND

Defendant manufactures and supplies to its customers various grades of expandable polystyrene ("EPS") including a product known as "Geofoam," a soil substitute used in construction. On August 1, 1997, Defendant and Plaintiff entered into a Product Sales and Promotion Agreement ("Agreement") for the sale of EPS and Geofoam. [Def. Ex. A]. Plaintiff agreed to purchase at least 50% of its total annual requirements of EPS, and 100% of its total annual requirements of Geofoam from Defendant. The Agreement established an initial price of \$0.63 per pound. In addition, Defendant at its discretion could increase or decrease the price with thirty days

notice to Plaintiff. [Agreement ¶4]. The Agreement further contained a “meet or release clause” which provided that

if [Plaintiff] provides satisfactory evidence that it can purchase a Product of like quantity and quality, produced in the United States..., at a lower price and on terms and conditions substantially the same as those contained herein, and if [Defendant] elects not to meet such lower price, then all quantities of such Product actually purchased by [Plaintiff] at a lower price will be deducted from the remaining quantity obligation for such like Products required hereunder. If [Defendant] elects not to meet such lower price, then [Defendant] may withdraw its lower price at any time on at least thirty (30) days notice thereof to [Plaintiff] or immediately upon termination of the competitive lower price.

[Agreement ¶5].

Additionally, the parties agreed to fund a research center (“Research Center”) at Syracuse University for research and development of Geofoam and EPS products. Specifically, Defendant agreed to pay Plaintiff the annual sum of \$40,000.00, which Plaintiff would in turn donate to Syracuse University for the Research Center. [Agreement ¶1]. All data, research information, developments and inventions of the Research Center was to be available to all members of the “world-wide EPS block community” for a subscriber fee. [Agreement ¶1(c)].

Finally, the Agreement contained an integration clause which states:

[t]his Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no other oral representations, stipulations, warranties, agreements, or understandings between the parties with respect to the subject matter hereof. All prior negotiations correspondence, understandings or agreements with respect to the subject matter hereof shall be deemed to be merged into and shall be superseded by this Agreement and shall be of no further force or effect.

[Agreement ¶19]. William J. Dean, Plaintiff’s President and Chief Executive Officer, signed the Agreement. The Agreement is governed by the laws of the State of Utah. [Agreement ¶19].

At his deposition, Mr. Dean testified that sometime prior to the execution of the Agreement, he discussed prices with Richard Maires, Defendant’s Director of Expandable Resins. Mr. Dean

testified that they “talked about the fact that [Defendant's] market price was not reasonable as consideration for [Plaintiff] signing this agreement.” [Pl. Ex. 1, Dean Deposition at 91-92]. Mr. Dean further testified as follows:

Q. Did you talk about the fact that you expected you would get the lowest price paid by any of their customers?

A. As low as; not the lowest, as low as, which would be the lowest. I would get the same price as the lowest.

Q. . . . So you are saying in your discussions prior to the signing of the August 1, 1997, agreement Maires told you that [Plaintiff] would receive pursuant to this written agreement the lowest price that it charged any of your competitors in your marketing area?

A. They would give me the competitive market price, which was defined in our discussion as, as low as anyone trading in our area.

Q. Or as you just said, the lowest.

A. Which is the lowest by definition.

Q. And it's your sworn testimony that Rick Maires explicitly told you that you, pursuant to this written agreement, would receive the lowest price it gave any competitor in your marketing -- any of your competitors--

A. He specifically told me that he would give me the competitive market price as I had defined it in our discussions.

Q. And exactly how did you define it? In as close to the words you used as possible.

A. As low--the same price as the lowest or as low as the lowest priced competitor trading in my area, selling EPS in my area--

Q. All right.

A. -- in my market as I defined it.

[Pl. Ex. 1, Dean Depo. at 92-93].

Based on this understanding, Plaintiff claims that Defendant was required to give Plaintiff a price for EPS “as low as” that given to any of Plaintiff's competitors. On or about May 18, 1998, Defendant delivered a truckload of EPS to Plaintiff at the price of \$0.59 per pound. At the same time, Plaintiff discovered that Defendant had sold a truckload of EPS to one of Plaintiff's competitors, Falcon Manufacturing, at the price of \$0.51 per pound. Plaintiff claims that this lower price to Falcon breached the Agreement.

Plaintiff filed this breach of contract action on November 16, 1998, in the Court of Common Pleas of Lehigh County, Pennsylvania. On December 7, 1998, Defendant removed the matter to this Court invoking the Court's diversity jurisdiction. See 28 U.S.C. §1332(a)(1).

II. STANDARD

The Court may grant a motion for summary judgment if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The substantive law determines which facts are critical and which are irrelevant. Only disputes over facts that might affect the outcome of the litigation will properly preclude summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Summary judgment is not proper if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

A moving party always bears the burden of informing the Court of the basis of its motion. Celotex, 477 U.S. at 323. Once the moving party discharges this burden, the nonmoving party must set forth specific facts demonstrating that there is a dispute as to a genuine issue of material fact, not the “mere existence of some alleged factual dispute”. Fed. R. Civ. P. 56(e); Anderson, 477 U.S. at 247. The nonmoving party may not rest upon mere allegations or denials of his pleadings. Anderson,

477 U.S. at 256. Rather, the non-movant must “make a showing sufficient to establish the existence of every element essential to his case, based on the affidavits or by depositions and admissions on file.” Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992).

In passing on a motion for summary judgment, the Court must view the facts in the light most favorable to the nonmoving party, and all justifiable inferences are to be drawn in his favor. Id. at 255. The Court’s function is not to weigh the evidence, but to determine whether a genuine issue exists for trial. Id. at 249.

III. DISCUSSION

Defendant moves for summary judgment on five separate grounds: (1) the statute of frauds bars the alleged oral agreement; (2) the parol evidence rule precludes evidence of the prior oral representations; (3) under the Agreement's integration clause, the Agreement contains the full understanding between the parties; (4) the implied covenant of good faith and fair dealing cannot be used to create new rights; and (5) the open price provision of the UCC does not apply to this Agreement. Additionally, Defendant contests the relief Plaintiff seeks arguing that the Agreement's damages exclusion provision bars Plaintiff's consequential and incidental damages, and further that punitive damages are not available under either the Agreement or Utah law. Finally, Defendant seeks attorneys fees according to the Agreement.

In response, Plaintiff contends that the terms of the agreement are ambiguous, and therefore neither the statute of frauds nor the parol evidence rule bars evidence of the prior oral agreement. Plaintiff submits that the remaining issues are questions of fact for the jury. In addition, Plaintiff moves for a continuance under Fed.R. Civ. P. 56(f). Furthermore, Plaintiff asks the Court for leave to amend its Complaint. Plaintiff seeks leave to add five claims: (1) breach of covenant of good faith

and fair dealing; (2) fraud; (3) negligent misrepresentation; (4) promissory estoppel; and (5) unjust enrichment.

A. MOTION FOR SUMMARY JUDGMENT

Although Defendant advances a number of arguments in its attempt to defeat Plaintiff's breach of contract claim, the Court will only address those arguments that are necessary to decide Defendant's Motion for Summary Judgment.

Defendant argues that because the Agreement contains an integration clause, the alleged oral promises made by Mr. Maires to Mr. Dean prior to Mr. Dean's execution of the written agreement are barred by the parol evidence rule. In response, Plaintiff contends that the term "competitive price" is ambiguous, and parol evidence is admissible to determine the parties' intent.

Under Utah law, the parol evidence rule excludes evidence of terms that add to or vary those in a written integrated and unambiguous agreement. Colonial Leasing Company of New England, Inc. v. Larsen Brothers Construction Co., 731 P.2d 483, 486 (Utah 1986). The rule only applies if the contract was intended by the parties to represent the full and complete agreement of the parties. Id. The Court, therefore, first must determine whether the Agreement was intended to be an integrated contract. Id. "An integrated agreement is an agreement where the parties thereto adopt a writing or writings as the final and complete expression of the agreement." Hall v. Process Instruments and Control, Inc., 866 P.2d 604, 606 (Utah Ct. App. 1993)(internal citations and quotations omitted), aff'd, 890 P.2d 1024 (Utah 1995). The Court applies "a rebuttable presumption that a writing which appears to be complete and certain is integrated." Webb v. ROA General, Inc., 804 P.2d 547 (Utah Ct. App. 1991).

The Agreement contains an integration clause providing that:

[t]his Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and there are no other oral representations,

stipulations, warranties, agreements, or understandings between the parties with respect to the subject matter hereof. All prior negotiations correspondence, understandings or agreements with respect to the subject matter hereof shall be deemed to be merged into and shall be superseded by this Agreement and shall be of no further force or effect.

[Agreement ¶19]. This Integration Clause clearly states that the written agreement sets forth in full the terms of the parties undertaking. Moreover, Plaintiff is a sophisticated party that negotiated for some time with Defendant. Mr. Dean admitted that he read and understood the Integration Clause at the time he executed the contract. [Def. Ex. B, Dean Depo. at 116-117]. Accordingly, the Court finds that the Agreement is an integrated agreement.

Where the court finds the contract to be integrated, then the parol evidence rule excludes evidence of prior or contemporaneous conversations, representations or statements, offered for the purpose of varying or adding to the terms of the integrated contract. Hall, 866 P.2d at 1026. Parol evidence, however, is admissible to clarify ambiguous terms. Id. “Ambiguous in this context means that the terms of the contract are capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies.” Hall, 866 P.2d at 606. “[A] parties' assertion of a different meaning does not in itself render a contract ambiguous.” Sparrow v. Tayco Constr. Co., 846 P.2d 1323, 1327 (Utah Ct. App. 1993). Whether a contractual term is ambiguous is a question of law. Hall, 866 P.3d at 1026.

Plaintiff asserts that the term “competitive price” is ambiguous. Plaintiff contends that this phrase meant a price “as low as” the price that any of Plaintiff's competitors received from Defendant. The phrase “competitive price” only appears once in the Agreement, as a heading for Paragraph Five, which states:

5. Competitive Prices. If Buyer provides satisfactory evidence that it can purchase a Product of like quantity and quality, produced in the United States..., at a lower price and on terms and condition substantially the same as those contained herein, and if Seller elects not to meet such lower price, then all quantities of such

Product actually purchased by Buyer at a lower price will be deducted from the remaining quantity obligation for such like Products required hereunder. If Seller elects not to meet such lower price, then Seller may withdraw its lower price at any time on at least thirty (30) days notice thereof to Buyer or immediately upon termination of the competitive lower price.

[Agreement ¶5]. The term “competitive price” is used as a subject heading in the Agreement, and is fully defined by the text that follows it. Paragraph Five thoroughly explains the term “competitive price” as an obligation on Defendant to either meet any lower price that Plaintiff proves, or release Plaintiff from the terms of the Agreement. Since the Agreement itself fully defines the subject heading “competitive prices,” the Court finds that this phrase is not ambiguous.

In advancing its pricing theory, Plaintiff asks the Court to rewrite two full paragraphs of the Agreement. A separate section of the Agreement describes the pricing policy agreed to by the parties:

4. Price. The initial price (per unit) for Products purchased hereunder shall be set forth in Exhibit A attached hereto. Seller may at its discretion increase or decrease from time to time the price of any Product hereunder by giving Buyer at least thirty (30) days prior notice of such price increase or decrease. In the event Seller notifies Buyer of a price increase pursuant to the terms of this paragraph, Seller may, at any time prior to the effective date of such price increase, grant to Buyer what is commonly known in the industry as a temporary voluntary allowance (“TVA”), pursuant to which Seller will grant a temporary delay in the implementation and the effective date of such price increase. Any TVA may be withdrawn by Seller at any time by giving Buyer notice twenty-four (24) hours prior to the effective time of such withdrawal. In the event of any governmental action substantially affecting Seller's right to maintain or change the price of any Product or terms of payment and at any time such government is in effect, Seller shall have the right, at its option, to (i) terminate this Agreement on thirty (30) days notice to Buyer, or (ii) postpone, by notice to Buyer, the effective date of any price change or change of other terms until such date as Seller is no longer prevented from effecting any such change. By its election to postpone rather than terminate, Seller shall not waive its right to terminate thereafter.

[Agreement ¶4]. Contracts “should be read as a whole, in an attempt to harmonize and give effect to all of the contract provisions.” Lee v. Barnes, 977 P.2d 550, 552 (Utah Ct. App. 1999). Reading Paragraphs Four and Five in harmony, the Court cannot conclude that the term “competitive price”

is ambiguous. Rather, the parties used the subject headings “price” and “competitive price” to caption each section. The succeeding paragraphs then fully define the meaning of both of these terms.

Plaintiff admits that it intentionally omitted its concept of “competitive price” from the Agreement because Mr. Dean thought that this pricing idea was “embarrassing” and “politically incorrect.” [Def. Reply, Ex. 1, Dean Depo. at 115-116, 129]. Mr. Dean, a seventeen year veteran of the block molding industry, is well experienced in negotiating large corporate contracts. [Def. Memo, Ex. A, Dean Depo. at 23-26, 157-158]. “Courts are not obligated to rewrite contracts entered into by parties dealing at arms' length, to relieve one party from a bargain later regretted, simply on supposed equitable principles.” Webb v. ROA General, Inc., 804 P.2d 547, 551 (Utah Ct. App. 1991)(citing Hal Taylor Assocs. v. Unionamerica, Inc., 657 P.2d 743, 749 (Utah 1982)). Based on the parol evidence rule and the Agreement's Integration Clause, the Court finds that Plaintiff cannot sustain a breach of contract claim based on the Agreement.

Plaintiff, however, alternatively frames its case in terms of the implied covenant of good faith and fair dealing. Plaintiff submits that Defendant breached the implied covenant of good faith and fair dealing by failing to provide Plaintiff with EPS at a price as low as the lowest price received by any of Plaintiff's competitors. In response, Defendant contends that Plaintiff cannot use the implied covenant of good faith to add new rights and duties to the Agreement.

Utah's Commercial Code provides that “[e]very contract or duty within this act imposes an obligation of good faith in its performance or enforcement.” Utah Code Ann. § 70A-1-203. The Utah Supreme Court has recognized that a contract includes a covenant of good faith and fair dealing. St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 199 (Utah 1991). “Under the implied covenant of good faith and fair dealing, each party impliedly promises that he will not

intentionally or purposely do anything which will destroy or injure the other party's right to receive the fruits of the contract.” Brown v. Moore, 973 P.2d 950, 954 (Utah 1998). The Court, however, cannot “interpret the implied covenant of good faith and fair dealing to make a better contract for the parties than they made for themselves.” Id. Nor can a covenant of good faith be used “to establish new, independent rights or duties not agreed upon by the parties.” Id.

In this case, an examination of the Agreement's language reveals no express duty on the part of Defendant to offer Plaintiff a price “as low as” any price offered to Plaintiff's competitors. Defendant's only express contractual obligation was to meet any lower price established by Plaintiff, or release Plaintiff from its quantity obligations under the Agreement. Defendant's failure to adhere to Plaintiff's pricing formula, a term nowhere found in the Agreement, cannot form the basis of a breach of the covenant of good faith and fair dealing. “A contrary holding would establish new, independent rights or duties not agreed upon by the parties.” Brown, 973 P.2d at 954.

Finally, Plaintiff argues that Defendant did not fix Plaintiff's prices in good faith, thereby breaching the covenant of good faith that Utah law attaches to the Agreement's open price provision. The Utah Code provides that parties can conclude a contract for sale even though the price is not settled; however “[a] price to be fixed by the seller or by the buyer means a price for him to fix in good faith.” Utah Code § 70A-2-305. Defendant, however, argues that this provision does not apply to the Agreement because Plaintiff was free to purchase product at a lower price from another seller.

In Richard Short Oil Co., Inc. v. Texaco, Inc., 799 F.2d 415 (8th Cir. 1986), the United States Court of Appeals for the Eighth Circuit held that as a matter of law, a buyer cannot succeed on a bad faith claim based on an open price provision where the buyer was free to buy from others if the seller refused to match prices offered by these other sellers. Id. at 422; accord Harvey v. Fearless Farris Wholesale, Inc., 590 F.2d 451, 461 (9th Cir. 1979). Defendant correctly points out that Plaintiff was

not a captive buyer, subject to the pricing whim of Defendant. Rather, under the terms of the Agreement, Plaintiff was not obligated to pay a cent over the best price it could obtain from another seller. In accordance with Richard Short Oil Co., and Harvey, the Court cannot conclude that Defendant acted in bad faith in fixing its prices to Plaintiff.

Moreover, Plaintiff premises this argument on its contention that Defendant was required to provide EPS to Plaintiff at a price as low as the lowest competitor in Plaintiff's territory. As discussed supra, the Agreement does not express this pricing concept. Plaintiff again invites the Court to interject a new term into the Agreement between the parties. The Court refuses this invitation.

B. RULE 56(f) RELIEF

In accordance with the foregoing, Plaintiff's breach of contract claim fails. Plaintiff, however, moves for a continuance under Rule 56(f) of the Federal Rules of Civil Procedure. Plaintiff submits the affidavit of counsel in support of this motion. Counsel states that he needs to take six additional depositions which are essential to Plaintiff's opposition. In addition, Plaintiff submits the affidavit of Mr. William Dean, Plaintiff's President and CEO, who states that he has requested counsel conduct a separate six depositions. Finally, at oral argument, Plaintiff's counsel identified one additional individual, Ray Macatee, who would testify as to the business practices of Richard Maires.

Rule 56(f) provides:

When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f). Under the law of this Circuit, a Rule 56(f) Motion “must identify with specificity what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not previously been obtained.” Lunderstadt v. Colafella, 855 F.2d 66, 71 (3d Cir. 1989). Furthermore, the opposing party must be specific and provide all three types of information required. See, e.g., Radich v. Goode, 886 F.2d 1391, 1394-95 (3d Cir. 1989)(affirming district court's grant of summary judgment when opposing party only identified several unanswered interrogatories and failed to file affidavit, identify how unanswered interrogatories would preclude summary judgment, or identify information sought).

Although Plaintiff's affidavits identify a total of eleven depositions that have not been taken, and one deposition that has not been concluded, Plaintiff fails to explain why this information was not previously obtained. Indeed, Plaintiff fails to explain why Plaintiff was unable to submit the affidavit of these witnesses. Only three of the proposed deponents are currently employed by Defendant. Plaintiff was free to contact the remaining witnesses at its convenience.

Furthermore, Plaintiff fails to identify how any of the proposed discovery would preclude summary judgment. Broadly categorized, Plaintiff seeks discovery in four¹ basic areas: (1) the prior oral discussions and interpretations of the Agreement; (2) Defendant's prior course of dealings with other customers; (3) Defendant's contacts with Plaintiff's representatives and visits to Plaintiff's plants; and (4) the Geofoam materials market in general. The Court concludes that all of the proposed discovery is irrelevant to the issues raised in Defendant's Motion for Summary Judgment. As the Court found supra, the proposed parol evidence is inadmissible to contradict the express terms of the agreement. Moreover, Plaintiff has already expressed its alleged interpretation of the

¹Plaintiff further identifies its then pending Motion to Compel, and the information sought therein as essential to justify its opposition. On October 5, 1999, Magistrate Judge Charles Smith denied Plaintiff's Motion to Compel in its entirety.

Agreement through Mr. Dean's testimony. Accordingly, the Court will deny Plaintiff's Motion for Continuance.

C. LEAVE TO AMEND

Finally, Plaintiff asks the Court for leave to amend its Complaint. Plaintiff seeks leave to add five claims: (1) breach of covenant of good faith and fair dealing; (2) fraud; (3) negligent misrepresentation; (4) promissory estoppel; and (5) unjust enrichment. Defendant opposes this motion.

Rule 15(a) of the Federal Rules of Civil Procedure provides that "leave [to amend] shall be freely given when justice so requires." In Foman v. Davis, 371 U.S. 178 (1962), the Supreme Court identified a number of factors to be considered in ruling on a motion to amend under Rule 15(a):

In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be "freely given."

Id. at 182; accord Heyl & Patterson Int'l, Inc. v. F.D. Rich Housing of the Virgin Islands, Inc., 663 F.2d 419, 425 (3d Cir. 1981). The United States Court of Appeals for the Third Circuit has emphasized that "prejudice to the non-moving party is the touchstone for the denial of the amendment." Cornell & Co. v. Occupational Safety and Health Rev. Comm'n, 573 F.2d 820, 823 (3d Cir.1978). But the non-moving party must do more than merely claim prejudice; "it must show that it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the. . . amendments been timely." Heyl & Patterson Int'l, Inc., 663 F.2d at 426 (citing Deakyne v. Comm'rs of Lewes, 416 F.2d 290, 300 (3d Cir.1969)).

1. Prejudice

This Circuit defines prejudice as “undue difficulty in prosecuting [or defending] a lawsuit as a result of a change in tactics or theories on the part of the other party.” Deakyne v. Comm'rs of Lewes, 416 F.2d 290, 300 (3d Cir.1969); Schuylkill Skyport Inn, Inc. v. Rich, Civ. A. No. 95-3128, 1996 WL 502280, at *3 (E.D.Pa. Aug. 21, 1996). For the following reasons, the Court finds that allowance of Plaintiff's proposed amended complaint unduly prejudices Defendant.

Plaintiff states that when Mr. Dean, its own President and CEO, was deposed on August 5, 1999, it learned about his discussions with Mr. Maires. On August 8, 1999, Plaintiff then deposed Mr. Maires who testified that he did not recall making any promises to Mr. Dean that Defendant would give Plaintiff a price “as low as” any of its competitors. Plaintiff thus premises its five new claims on Defendant's “failure to acknowledge the prior oral agreement.”

The Court agrees with Defendant that these facts are not “newly discovered.” From the moment it filed its Complaint, Plaintiff knew that Defendant denied the existence of the prior alleged oral agreement. A close review of Plaintiff's Amended Complaint reveals that Plaintiff does not seek to add newly discovered facts to the Complaint, but rather seeks leave to plead an additional remedy that Plaintiff should have been aware of from the outset.

Though this case is currently set for trial in less than three weeks, these five new tort claims would put Defendant to the task of further answer, further discovery, and further pretrial motions. Indeed, Plaintiff's new legal theories would require Defendant to start over with respect to this litigation, litigation that has been pending for nearly a year and a half. Accordingly, the Court finds that allowance of the proposed amendments would unduly prejudice Defendant.

2. Futility

“Futility” means that the complaint, as amended, would fail to state a claim upon which relief could be granted. Glassman v. Computervision Corp., 90 F.3d 617, 623 (3d Cir. 1996)(citations

omitted). In assessing “futility,” the court applies the same standard of legal sufficiency as applies under Rule 12(b)(6). Id. For the reasons that follow, the Court finds that Plaintiff’s proposed amendments are futile.

In Count II, Plaintiff proposes a breach of the covenant of good faith and fair dealing claim. As discussed supra, the Court finds that Defendant is entitled to summary judgment on this legal theory. Accordingly, this claim is futile.

In Count III, Plaintiff seeks to bring a fraud claim, alleging that Defendant intentionally and falsely represented that it would give Plaintiff a price “as low as” any competitor. Based on the same facts, Plaintiff seeks to add a negligent misrepresentation claim in Count IV. In addition, Plaintiff asks leave to bring a promissory estoppel claim in Count V, and an unjust enrichment claim in Count VI. Again, all of these claims are premised on the admission of parol evidence concerning the prior oral representations of Mr. Maires. “Addressing these issues requires consideration of extrinsic evidence, which is impermissible in light of the integrated and unambiguous [c]ontract.” Lee v. Barnes, 977 P.2d 550, 553 (Utah Ct. App. 1999); see also Quorum Health Resources, Inc. v. Carbon-Schuylkill Comm. Hospital, Inc., 49 F.Supp. 2d 430, 433 (E.D. Pa. 1999)(fraud claim dismissed where claim required the introduction of pre-contractual representations). Based on the Court’s holding that the Agreement is integrated and unambiguous, Plaintiff’s claims are barred by the parol evidence rule.

Furthermore, under Utah law, reasonable reliance is a necessary element of fraud, negligent misrepresentation, and promissory estoppel. Crookston v. Fire Ins. Exchange, 817 P.2d 789, 800 (Utah 1991)(fraud); Atkinson v. IHC Hospital, Inc., 798 P.2d 733, 737 (Utah 1990)(negligent misrepresentation); Tolboe Construction Co. v. Staker Paving & Construction Co., 682 P.2d 843, 845-46 (Utah 1984)(promissory estoppel). Taking the allegations in the Amended Complaint as true,

Plaintiff's claim of reasonable reliance cannot withstand scrutiny. Where a party disclaims a representation in a contract, such disclaimer destroys the party's allegation that the agreement was executed in reliance upon contrary oral representations. Danann Realty Corp. v. Harris, 157 N.E.2d 597 (N.Y. Ct. App. 1959). In this case, the Agreement expressly defines both the term “competitive price,” as well as the parties' pricing arrangement. In addition, the Agreement is a fully integrated document. Plaintiff admits that its pricing theory was intentionally omitted from the Agreement, and that it understood the terms of the Integration Clause. Plaintiff cannot now allege reasonable reliance upon Mr. Maires' contrary oral representation.

In addition, Utah law precludes Plaintiff from bringing an unjust enrichment claim or a promissory estoppel claim where an express contract covers the subject matter of the litigation. American Towers Owners Ass'n, Inc. v. CCI Mechanical, Inc., 930 P.2d 1182, 1193 (Utah 1996)(quoting Mann v. American Western Life Ins. Co., 586 P.2d 461, 465 (Utah 1978)); Davies v. Olson, 746 P.2d 264, 268 (Utah. Ct. App. 1987) (“Recovery under quantum meruit presupposes that no enforceable written or oral contract exists.”).

Accordingly, the Court finds that these proposed amendments are futile. In accordance with the foregoing, the Court will deny Plaintiff's Motion for Leave to Amend.

IV. ATTORNEY'S FEES

Defendant submits that pursuant to the Agreement, it is entitled to the recovery of attorneys fees in connection with this action. Plaintiff does not contest this legal position.

Under Utah law, a court may award attorneys' fees only where authorized by statute or contract. Equitable Life & Cas. Ins.. v. Ross, 849 P.2d 1187, 1194 (Utah Ct. App. 1993). Where provided for by contract, “attorney fees are awarded in accordance with the terms of that contract.”

Id. The Agreement states:

Buyer shall agree to pay promptly upon demand any and all attorney's fees incurred by Seller in the collection, by suit or otherwise, of any outstanding balances owing for Products purchased by Buyer or in the enforcement of Seller's rights under this Agreement.

[Agreement ¶19]. Nevertheless, an award of attorneys' fees “must be reasonable and supported by adequate evidence.” Equitable Life & Cas. Ins., 849 P.2d at 1194. Accordingly, the Court finds that Defendant is entitled to its reasonable attorney's fees incurred in connection with this action. The Court, therefore, directs Defendant to file a Motion for Attorneys' Fees within thirty (30) days.

V. CONCLUSION

In summary, the Court will grant Defendant's Motion for Summary Judgment, and Motion for Attorney's Fees. Furthermore, the Court will deny Plaintiff's Motion for Continuance, and deny Plaintiff's Motion for Leave to Amend. An appropriate Order follows.

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

INSULATION CORPORATION OF
AMERICA,

Plaintiff,

vs.

HUNTSMAN CORPORATION,

Defendant.

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CIVIL ACTION No. 98-6336

ORDER

AND NOW, this day of January, 2000, upon consideration of Defendant's Motion for Summary Judgment, Plaintiff's Motion for Leave to Amend, Plaintiff's Motion for Continuance of Other Relief Pursuant to Rule 56(f), the briefing thereon and the oral argument held January 6, 2000,

IT IS HEREBY ORDERED that

1. Defendant's Motion for Summary Judgment (docket #31-1) is **GRANTED**;
2. **JUDGMENT** is entered in favor of Defendant and against Plaintiff;
3. Defendant's Motion for Attorney's Fees (docket #31-2) is **GRANTED**;
4. Plaintiff's Motion for Leave to Amend (docket #50) is **DENIED**;
5. Plaintiff's Motion for Continuance or Other Relief Pursuant to Fed.R. Civ. P. 56(f) (docket #52) is **DENIED**; and
6. Defendant is **ORDERED** to file a Motion for Attorneys' Fees within thirty (30) days of the date of this Order.

BY THE COURT:

John R. Padova