

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

GLENN DISTRIBUTORS CORP. : CIVIL ACTION
:
v. :
:
CARLISLE PLASTICS, INC. : NO. 98-2317

ORDER

AND NOW, this ___ day of January 2000, it hereby is
ORDERED as follows:

1. Upon consideration of the Motion of plaintiff Glenn Distributors, Inc. ("Glenn") that the Court Reconsider its Order of September 7, 1999 and the arguments of the parties, it hereby is ORDERED that the motion is GRANTED. Further, it hereby is ORDERED that this court's Memorandum and Order Dated September 7, 1999 is VACATED.

The arguments of the parties now indicate that the "quantities subject to change" provision of the contract between Glenn and Carlisle Plastics, Inc. ("Carlisle") is ambiguous, that is, capable of more than one construction and capable of being understood in more than one sense. Upon reconsideration, this court agrees that there might be at least three reasonable interpretations of that clause. Summary judgment in favor of Carlisle and against Glenn based on the legal interpretation of the contractual language therefore was not proper.

2. Upon reconsideration of the cross-motions for summary judgment, it hereby is ORDERED that both motions are DENIED.

First, there is a disputed material issue of fact as to the meaning of the "subject to change" clause. The evidence is in conflict and that conflict must be resolved by the fact-finder at trial. In one part of her deposition Sandra Johnson testified that Carlisle could not sell inventory to a different purchaser once an order was placed. In another part, she testified that close-out buyers, such as Glenn, receive only what is available when the order actually ships, that retail buyers have priority, and that the "subject to change" clause allows Carlisle to operate that way. Evidence of prior transactions between the parties also indicates that Carlisle frequently shipped lesser quantities than Glenn ordered, for reasons not apparent from the record, but all without precipitating claims for breach of contract. Second, there is a question of fact as to when Carlisle sold the products in question to other purchasers and whether some, any, or all of those sales breached the contract with Glenn. That issue must be resolved at trial.

3. Plaintiff shall file a Pre-Trial Memorandum, Memorandum of Law as to novel or complex issues, and Proposed Findings of Fact and Conclusions of Law or Proposed Jury Instructions, if a proper jury demand was timely made, on or before March 13, 2000.

4. Defendant shall file a Pre-Trial Memorandum, Memorandum of Law as to novel or complex issues, and Proposed Findings of Fact and Conclusions of Law or Proposed Jury

Instructions, if a proper jury demand was timely made, on or before March 20, 2000.

5. A Final Pre-Trial Conference/Settlement Conference shall be held on March 22, 2000 at 3 p.m. in Room # 17614, United States Courthouse.

6. Trial in this matter shall commence on March 27, 2000 at 9:30 a.m. in Courtroom 17A, United States Courthouse.

BY THE COURT:

JAMES T. GILES C.J.

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