

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

TELESPECTRUM WORLDWIDE, INC. : CIVIL ACTION
v. :
GRACE MARIE ENTERPRISES, INC. : NO. 99-549

MEMORANDUM AND ORDER

FULLAM, Sr.J. JULY , 1999

In August 1998, plaintiff Telespectrum Worldwide was hired by defendant Grace Marie Enterprises to perform telemarketing services in connection with a number of political races. Telespectrum has brought this breach of contract action, claiming that it has not been paid \$818,388.27 which it is owed. Grace Marie subsequently filed counterclaims for breach of contract, fraud and negligent misrepresentation. Telespectrum seeks dismissal of the counterclaims, arguing that the breach of contract claim seeks incidental and consequential damages which are barred by the terms of the written contract entered into by the parties, and that the fraud and negligent misrepresentation claims seek tort damages barred by Pennsylvania's economic loss rule.

Grace Marie contends that the services for which Telespectrum is seeking payment are not those included in the written contract and its ten written addenda, but were for

additional services agreed upon in a later, oral contract. In addition, the written contract specifies that Texas law is to govern any dispute arising thereunder. At this early stage in this litigation, it is simply not possible to ascertain whether the bar on incidental and consequential damages and/or the choice of law provision contained in the written contract should be imported into any subsequent oral contract between the parties. An Order follows.

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ORDER

AND NOW, this day of July, 1999, IT IS ORDERED that Plaintiff's
motion to dismiss defendant's counterclaims is DENIED.

Fullam, Sr.J.