

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

COMMONWEALTH ALUMINUM
CORPORATION

PLAINTIFF

v.

CIVIL ACTION NO. 3:00-CV-120-S

STANLEY METAL ASSOCIATES

DEFENDANT

MEMORANDUM OPINION

This matter is before the Court on the Defendant's motion to dismiss. The Defendant, Stanley Metal Associates ("Stanley"), claims that the Plaintiff, Commonwealth Aluminum Corp. ("Commonwealth") has failed to state a claim upon which relief can be granted and that this Court lacks jurisdiction. For the reasons stated below, we will deny these motions by separate order.

FACTS

The following facts are contained in Commonwealth's Amended Complaint and, for the purposes of this motion, must be accepted as true. *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996).

Commonwealth is in the business of manufacturing multi-use sheet products. In the course of its business, it buys scrap aluminum from suppliers to be used in its production process. Stanley is one of these scrap aluminum suppliers which has done business with Commonwealth.

The two parties entered into an oral agreement "on or about" October of 1998. This agreement was evidenced by eight purchase orders sent by Commonwealth to Stanley. Stanley, however, never fulfilled its obligations under the oral agreement and, with respect to each purchase order, delivered less aluminum than was requested or none at all.

DISCUSSION

Failure to State a Claim

Stanley argues that Commonwealth fails to state a claim upon which relief can be granted. In deciding a motion to dismiss, this Court must “construe the complaint liberally in the plaintiff’s favor and accept as true all factual allegations and permissible inferences therein.” *Sistrunk*, 99 F.3d at 197 (quoting *Gazette v. City of Pontiac*, 41 F.3d 1061, 1064 (6th Cir. 1994)).

Stanley argues that Commonwealth’s complaint does not state a cause of action for breach of contract on five of the eight purchase orders. It admits that, on three of these purchase orders, it began performance and that that action was sufficient to transform them into contracts. For the remaining five, it argues that Commonwealth has not alleged any action on its part which would amount to acceptance of the contract. Without an acceptance by Stanley, there could be no contract, and therefore, no cause of action for breach of contract.

However, it is clear that Commonwealth has alleged that there was an overarching oral agreement which was evidenced by these purchase orders. Commonwealth claims that it was this oral argument which was breached, and thus, it states a claim upon which relief can be granted.

Commonwealth’s responsive brief and Stanley’s reply brief raise additional issues, including whether this alleged oral agreement satisfies the Statute of Frauds, K.R.S. §355.2-201(1). We agree that these are valid and substantive concerns. For that reason, we defer from ruling on them until they are raised and briefed by the parties in a more appropriate motion for summary judgment. Because Stanley’s motion only requests dismissal under Fed.R.Civ.P. 12(b) and did not, in the initial brief, raise these issues, we do not address them now.

Subject Matter Jurisdiction

Stanley's argument that this Court lacks subject matter jurisdiction to hear this case is based upon the assumption that we will dismiss the five contract claims previously discussed. Because we do not find in Stanley's favor on those claims, this issue is moot.

CONCLUSION

This Court finds that Commonwealth states a claim upon which relief can be granted. Therefore, we will deny Stanley's motion by a separate order entered this date.

This _____ day of _____, 2000.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

For the reasons set forth in the memorandum opinion entered this date and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Defendant's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED this ____ day of _____, 2000.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record