UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JOHNSON CONTROLS, INC. PLAINTIFF

v. CIVIL ACTION NO. 3:97CV-500-S

ANSON STAMPING COMPANY, INC., et al DEFENDANTS

MEMORANDUM OPINION

This matter is before the Court on the Defendants' motion, pursuant to Rule 59(e), to amend our order granting the Plaintiff partial summary judgment. The Defendants, Anson Stamping Company, Inc., *et al*. (herein collectively "Anson") claim that there are grounds for this Court to review and reverse all, or most parts, of the earlier decision because 1) there has been an intervening change in the controlling law of this case, 2) there was clear legal error which should be corrected, and 3) the grant of partial judgment will lead to "manifest injustice."

Motions for reconsideration are extraordinary in nature and so should only be granted sparingly. *Plaskon Electronic Materials v. Allied-Signal*, 904 F.Supp. 644, 669 (N.D.Ohio 1995)(citing *In Re August, 1993 Regular Grand Jury*, 854 F.Supp. 1403, 1406 (S.D.Ind. 1994) and *Bakari v. Beyer*, 870 F.Supp. 85, 88 (D.N.J. 1994)). There are three basic situations in which a court will reconsider its order: 1) there has been an intervening change in the controlling law, 2) there is new evidence which has become available, and 3) there is a need to correct clear legal error or to prevent manifest injustice. *Id*. (citing *Bermingham v. Sony Corp. of America, Inc.*, 834, 856 (D.N.J. 1992)). The court, in order to promote finality of decisions and judgments, should not consider such a motion when the moving party merely disagrees with the court's decision and attempts to reorganize and refocus its previous evidence and legal analysis. *Id*.

Anson does not claim that there has been new evidence uncovered which would warrant us reconsidering our decision. Anson does, however, claim that the other two considerations apply. We will deal with each of these claims in turn.

Intervening Change in Controlling Law

Anson claims that *A & A Mechanical, Inc. v. Thermal Equipment Sales, Inc.*, Ky.App., 998 S.W.2d 505 (1999), constitutes an intervening change in controlling legal authority. *A & A Mechanical* was not released for publication until eight days after Anson submitted its response to Johnson's motion for partial summary judgment. Thus, Anson was unable to bring this case to the Court's attention in its initial brief.

However, *A & A Mechanical* does not alter existing Kentucky law or contradict the legal analysis used by the Court in our earlier opinion. Nevertheless, Anson argues that three aspects of *A & A Mechanical* warrant attention. First, Anson points to the holding in that case that in order to form a valid contract under the Uniform Commercial Code ("UCC"), the parties do not have to fix the quantity term. *Id*. at 509. Instead, the quantity term "may be measured by the output of the seller or the requirements of the buyer: . . .." Id.

In our earlier opinion, we observed that the Supply Agreement between Johnson and Anson measured quantity according to Johnson's issuance of release schedules. (Memorandum Opinion, March 27, 2000, at 5.) Johnson was not required to issue release orders for all of its requirements or to purchase all of the Anson's output. Thus, the Supply Agreement does not amount to a requirements contract.

Next, Anson points to the discussion of the UCC's parol evidence rule. *A & A Mechanical*, 998 S.W.2d at 510. Anson argues that the course of dealing between the parties, together with

documents, should be used to supplement the terms of the Supply Agreement. Anson then cites numerous items to suggest (1) that Johnson intended for Anson eventually to become the sole provider of production parts for the PN150 program and (2) that Anson, for all practical purposes, was the only manufacturer which could supply those parts. However, Anson does not present any evidence which suggests that exclusivity was an express, or even implied, provision of the contract between the two parties. Although in practical terms Johnson may have had no where else to turn, it is abundantly clear that it never promised that it would not look elsewhere to get these parts. Without such a promise, either express or implied, Anson cannot establish that the Supply Agreement is a requirements contract.

Finally, *A & A Mechanical* stands for the proposition that determining whether price quotations are offers or merely invitations to offer is a question of fact. *Id*. at 511. The standard on a motion for summary judgment is whether there is a "genuine issue as to any material fact . . .." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Thus, the Court can decide questions of fact when it is clear that one party cannot produce enough evidence to create a genuine dispute on that issue. Anson presented no evidence which could create a genuine issue of fact as to whether the Supply Agreement created an exclusive requirements contract.

We are unpersuaded that there has been a change in Kentucky law requiring withdrawal of our earlier opinion.

Clear Legal Error and Manifest Injustice

Anson also suggests that we reconsider our earlier opinion because there is clear legal error and manifest injustice. Anson's argument centers on the case of *City of Louisville v. Rockwell Manufacturing Co.*, 482 F.2d 159 (6th Cir. 1973). In that case, the Sixth Circuit Court of Appeals

held that complete exclusivity was not required in order to create a requirements contract under the UCC. *Id*. at 164. Instead, a contract to purchase "part" of a party's needs, when accompanied by an estimate of those needs, could be sufficient to create a requirements contract. *Id*.

Anson relies on three exhibits which it claims contain estimates of Johnson's needs so as to turn the open-ended Supply Agreement into a more definite requirements contract. (Def.'s Reply Supp. Amend Order, App. 3a-c.) Two of these, Appendices 3a and 3b, are clearly identified as requests by Johnson for price quotations and were treated as such by Anson. They do not bind Johnson to purchase the listed parts from Anson. The other document, Appendix 3c, is a purchase order for the Mercedes Program. Johnson does not deny that it created a valid contract with Anson in this purchase order. Instead, it denies liability on that program. (Pla.'s Memo. Supp. Summ. J. at 42.) The issue of whether Johnson is liable to Anson for "specific payment for services actually provided by Anson Stamping pursuant to issued purchase orders and release schedules" was preserved for trial by our order. Thus, it is not at issue.

Anson also cites *Cyril Bath v. Winters Industries*, 892 F.2d 465 (6th Cir. 1989), for the proposition that exclusivity in a requirements contract can be implied by the circumstances. However, in that case, as in *City of Louisville*, the agreement between the parties contained explicit references to the identified goods which were actually ordered. *Id.* at 467. The Supply Agreement in this case does not contain a reference to identified goods. Therefore, these authorities are not applicable. Certainly, Johnson's solicitation of price quotations, even in the face of the Supply Agreement, do not bind Johnson to a requirements contract for those parts.

Anson next argues the Court committed clear legal error by making the Supply Agreement only binding upon Anson. However, Anson misreads our ruling. We found that the Supply

Agreement was not a contract unless there were orders placed and bids accepted. Because Johnson placed orders under the PN150 Program which were accepted, Anson was bound. Johnson also established that there was no genuine issue of material fact as to whether Anson was in breach on those orders. Thus, summary judgment was granted. The Court, however, did not conclude that Anson was in breach under the Supply Agreement for orders not placed by Johnson or bids not accepted by Anson.

Finally, Anson contends that the award to Johnson of $563,412.36 is manifestly unjust because it is owed more than this total by Johnson for tooling work and refurbishment on purchase orders issued by Johnson. Anson's set-off claim, however, survived Johnson's motion for summary judgment and may be proven at trial. Anson's remaining arguments on manifest injustice are unavailing.

Conclusion

Anson has failed to meet its burden of establishing that there has been an intervening change in the controlling law of Kentucky or that there is clear legal error or manifest injustice which must be corrected. Therefore, this Court will not reconsider its order granting Johnson partial summary judgment. Anson's motion will be denied by a separate order.

This _____ day of _____, 2000.

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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 Motion by the Defendants and Counter-Claim Plaintiffs, Pursuant to Fed.R.Civ.P. 59(e) to Amend Order Granting Partial Judgment is **DENIED**.

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

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

cc: Counsel of Record