

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JOHNSON CONTROLS, INC.

PLAINTIFF

v.

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

ANSON STAMPING, INC. et al.

DEFENDANTS

MEMORANDUM OPINION

This matter is before the Court on the Defendants’ motion to amend and certify our order granting partial summary judgment. For the reasons stated below, we will deny this motion by a separate order entered this date.

FACTS

The facts relevant to this motion are set forth in our earlier opinions in this case, dated March 27, 2000, and October 19, 2000.

DISCUSSION

Pursuant to 28 U.S.C. § 1292(b), a district judge can certify an issue for appeal when four conditions are met: (1) the question involved is one of “law”; (2) the issue is “controlling”; (3) there is substantial ground for difference of opinion about the issue, and (4) an immediate appeal would “materially advance the ultimate termination of the litigation.” *Cardwell v. Chesapeake & Ohio Railway Co.*, 504 F.2d 444, 446 (6th Cir. 1974). Certification to appeal should only be granted in exceptional situations, *Id.*, or where resolution of an action would be assured by a particular result in the Circuit Court, *Usaco Coal Co. v. Carbomin Energy, Inc.*, 550 F.Supp. 19, 20 (W.D.Ky. 1982).

Certification of this case for interlocutory appeal is improper. First, substantial grounds for differences of opinion do not exist regarding whether the contract between the parties amounts to

a requirements contract. In our earlier opinions, we did not deny or question the validity of the law stated in *City of Louisville v. Rickwell Mfg. Co.*, 482 F.2d 159 (6th Cir. 1973), and its progeny; we doubted its applicability to the case before us. Although the Court of Appeals may eventually determine that we were wrong in our assessment, the question of whether *Rickwell* applies to the facts at hand is not a pure question of law as is required by § 1292(b). The legal concepts surrounding the UCC and its treatment of requirements contracts are well-established and do not need resolution by the court of appeals.

Also, certification would not materially advance the ultimate termination of this case. Although, as Anson argues, it would be more time consuming to hold two trials rather than one, this is true of all cases which come before us. Certainly, more is required in order to constitute an exceptional situation. In this case, a reversal by the court of appeals would not obviate the need for litigation or ensure a particular result. *Usaco*, 550 F.Supp. at 20.

CONCLUSION

For the reasons stated above, we find that there are no grounds upon which to grant Anson's motion to amend and certify this issue for interlocutory appeal. Therefore, we will deny Anson's motion by a separate order entered this date.

This _____ day of _____, 2001.

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 Defendant's motion to amend and certify our order granting partial summary judgment is **DENIED**.

IT IS SO ORDERED this ____ day of _____, 2001.

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

cc: Counsel of Record