STATE OF MAINE BUSINESS AND CONSUMER COURT

Cumberland, ss. Docket No. BCD-WB-CV-09-39

L.L. BEAN, INC.
Plaintiff/Counterclaim Defendant

v.

WORCESTER RESOURCES, INC.
Defendant/Counterclaim Plaintiff

ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before the court is the Motion for Summary Judgment of Defendant and Counterclaim Plaintiff Worcester Resources, Inc. ("Worcester"), which seeks to foreclose Plaintiff and Counterclaim Defendant L.L. Bean, Inc. from asserting as an affirmative defense that Worcester's December 31, 2008 invoice was a material breach of the parties' November 26, 2008 oral agreement. The court heard oral arguments on June 30, 2011.

Background

The facts surrounding the November 26, 2008, oral agreement and December 31, 2008 invoice are largely undisputed. On November 24, 2008, the parties held a telephonic conference in which they agreed that Worcester would slow or stop production of balsam products, and would pass along any saved costs to L.L. Bean. (Def.'s Supp. S.M.F. ¶¶ 1-2; Pl.'s Opp. S.M.F. ¶ 1-2; Pl.'s Add. S.M.F. ¶ 1; Def.'s Reply S.M.F ¶ 1.) However, on December 31, 2008, Worcester sent L.L. Bean an invoice for the full amount due under the original contract, without reflecting any saved costs.

(Def.'s Supp. S.M.F. ¶¶ 16-17; Pl.'s Opp. S.M.F. ¶ 17.) L.L. Bean made a partial payment, but refused to pay the full invoice amount. (Def.'s Supp. S.M.F. ¶¶ 32-33; Pl.'s Opp. S.M.F. ¶¶ 32-33; Pl.'s Add. S.M.F. ¶ 13.)

Worcester alleges that it sent the December invoice with the expectation that it would trigger a discussion of the amount due at the annual end-of-season meeting. (Def.'s Supp. S.M.F. ¶ 36; Pl.'s Opp. S.M.F. ¶ 36.) Worcester hoped that L.L. Bean would pay the full amount of the 2008 purchase orders, and the two companies would work together to pass on savings in the 2009 season. (Def.'s Supp. S.M.F. ¶¶ 27, 30, 34.) Chittenden Bank required full payment of the 2008 invoice in order to provide another loan to Worcester in 2009; therefore, Worcester sought for L.L. Bean to pay the full amount in order to satisfy the bank and carry on business together in 2009. (Pl.'s Add. S.M.F. ¶¶ 11, 12, 34; Def.'s Reply S.M.F. ¶¶ 11, 12, 34.)

However, L.L. Bean was reluctant to pay the full amount due under the invoice because it did not want to be forced to do business with Worcester in 2009 to receive savings from the 2008 season. (Pl.'s Add. S.M.F. ¶ 2, 15; Def.'s Reply S.M.F ¶¶ 2, 15.) L.L. Bean argues that Worcester materially breached its oral agreement to credit L.L. Bean with saved costs by invoicing L.L. Bean for goods not manufactured, whereas Worcester alleges that it sent the invoice merely as a starting point for future negotiations. (Def.'s Supp. S.M.F. ¶ 36; Pl.'s Opp. S.M.F. ¶ 36; Pl.'s Add. S.M.F. ¶ 14; Def.'s Reply S.M.F. ¶ 14.)

During January and February of 2009, the parties attempted to reach agreement on a way for Worcester to pass on its cost savings to L.L. Bean, while still fulfilling its obligations to its lender, Chittenden Bank. (Def.'s S.M.F. ¶¶ 26-27, 34; Pl.'s Opp. S.M.F. ¶¶ 26-27, 34; Pl.'s Add. S.M.F. ¶¶ 16, 17, 18, 20; Def.'s Reply S.M.F. ¶¶ 16,

17, 18, 20.) The earlier discussions focused on what amount was due from Bean to Worcester, although the later discussions could be deemed compromise negotiations.[1]

Discussion

M.R. Civ. P. 56(c) provides that summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." M.R. Civ. P. 56(c)). For purposes of summary judgment, a "material fact is one having the potential to affect the outcome of the suit." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. "A genuine issue of material fact exists when there is sufficient evidence to require a fact-finder to choose between competing versions of the truth at trial." *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178, 1179.

If ambiguities in the facts exist, they must be resolved in favor of the non-moving party. *Beaulieu v. The Aube Corp.*, 2002 ME 79, ¶2, 796 A.2d 683, 685. At this stage, the facts are reviewed "in the light most favorable to the nonmoving party." *Lightfoot v. Sch. Admin. Dist. No. 35*, 2003 ME 24, ¶ 6, 816 A.2d 63, 65.

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[1] Settlement negotiations are generally not admissible under the Maine Rule of Evidence 408, which provides in relevant part:

> (a) Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromise or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations or in mediation is also not admissible on any substantive issue in dispute between the parties.

M.R. Evid. 408(a). Thus, the question whether Rule 408 precludes the admission of communications between the parties may turn on whether the communications were intended to determine an appropriate figure due under the modified agreement or to "compromise a claim" arising out of the agreement. As discussed at oral argument, there may not be a bright-line delineation between the two forms of communication in the course of the parties' exchanges.

The precise question raised in Worcester's motion is whether the fact finder could reasonably deem the December 26th invoice, standing alone, to be a material breach of the parties' November 24th oral agreement.

L.L. Bean asserts that, in sending the December 31st invoice for the full amount due under the original contract, Worcester materially breached the parties' November 24th oral agreement to pass along all cost savings associated with slowing or stopping production. A material breach "is a nonperformance of a duty that is so material and important as to justify the injured party in regarding the whole transaction as at an end." *Associated Builders, Inc. v. Coggins*, 722 A.2d 1278, 1280 (Me. 1999) (quoting *Down East Energy Corp. v. RMR, Inc.*, 697 A.2d 417, 421 (Me. 1997)). Thus, L.L. Bean argues that, if Worcester's issuance of the invoice was a material breach of the parties' express oral contract, its obligations under that contract were terminated.

Worcester counters that it sent the invoice merely to initiate a dialogue between the parties as to how to pass on saved costs. (Def.'s M. Dismiss at 10.) Worcester further asserts that L.L. Bean waived the defense of material breach by continuing negotiations throughout January and February, and failing to assert the defense of material breach during that time. (Def.'s M. Dismiss at 11, 16.)

Whether a material breach of a contract has occurred is at least in part a question of fact. *See Coastal Ventures et al. v. Alsham Plaza, LLC, et al.*, 2010 ME 63, ¶ 20, 1 A.3d 416. Likewise, whether waiver has occurred is also at least in part a question of fact. "Waiver is 'a voluntary or intentional relinquishment of a known right and may be inferred from the acts of the waiving party.'" *Blue Star Corp. v. CKF Props., LLC*, 2009 ME 101, ¶ 26, 980 A.2d 1270, 1277 (quoting *Interstate Indus. Unif. Rental Serv., Inc. v. Couri Pontiac*, Inc., 355 A.2d 913, 919 (Me. 1976) (citations omitted)).

As discussed at oral argument, the likelihood that the jury would decide that Worcester's issuance of the invoice was a material breach is questionable, mainly because there are indications that neither party treated the invoice as a material breach at the time. Moreover, a finding that the issuance of the invoice was a breach of the parties' express oral contract would not necessarily preclude Worcester from recovery. Both parties have asked the court to declare their respective rights and responsibilities as a result of all of their dealings as summarized above.

Worcester's motion for summary judgment calls for the court to resolve all facts and reasonable inferences in favor of L.L. Bean, the non-moving party. *Johnson v. Carleton*, 2001 ME 12, ¶ 11, 765 A.2d 571, 575. The viability of both L.L. Bean's defense of material breach and Worcester's claim of waiver rests primarily on what inferences the fact-finder will draw from the parties' conduct. "A jury is permitted to draw all reasonable inferences from the evidence." *Ma v. Bryan*, 2010 ME 55, ¶ 7, 997 A.2d 755, 758 (citing *Garland v. Roy*, 2009 ME 86, ¶ 17, 976 A.2d 940, 945). An inference is "a deduction as to existence of a fact which human experience teaches us can reasonably and logically be drawn from proof of other facts." *Id.* (citing *Ginn v. Penobscot Co.*, 334 A.2d 874, 880 (Me. 1975)).

Thus, the question on Worcester's Motion for Summary Judgment distills to whether the jury could reasonably infer that Worcester's issuance of the invoice was a repudiation (and a material breach) of its oral agreement to pass along saved costs. If so, Worcester's motion must be denied, so that the issue can be resolved by the jury. With all permissible inferences resolved at this stage in favor of L.L. Bean as the non-moving party, the court cannot say that Worcester's actions cannot reasonably be interpreted as L.L. Bean suggests they should be.

IT IS HEREBY ORDERED: The Motion for Summary Judgment Defendant/Counterclaim Plaintiff Worcester Resources, Inc. on the issue of L.L. Bean's defense of material breach is hereby denied.

Pursuant to M.R. Civ. P. 79(a), the clerk is hereby directed to incorporate this Order by reference in the docket.

Dated 22 July 2011

A. M. Horton
Justice, Business and Consumer Court

Entered on the Docket: 7.25.2011
Copies sent via Mail __ Electronically ✓