

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

NATURIBE FOODS, LLC, a foreign
limited liability company,

Plaintiff,

Case No. 12-10585-CKB

vs.

HON. CHRISTOPHER P. YATES

SIEGEL EGG CO., INC., a foreign
corporation,

Defendant.

_____ /

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR
SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

Since the inception of this case, Plaintiff Naturipe Foods, LLC (“Naturipe”) has been fending off the claims and defenses of Defendant Siegel Egg Co, Inc. (“Siegel Egg”). Naturipe has convinced the Court that Naturipe’s standard terms and conditions are incorporated into the parties’ agreement, see Opinion and Order Granting Defendant’s Motion to Set Aside Entry of Default, but Denying Defendant’s Motion for Summary Disposition (June 5, 2013), and that those terms and conditions bar each of Siegel Egg’s counterclaims. See Opinion and Order Granting Plaintiff’s Motion for Partial Summary Disposition Under MCR 2.116(C)(7) & (10) (Dec 26, 2013). Naturipe now takes aim at the last clay pigeon in the air, asserting that those terms and conditions similarly bar Siegel Egg’s only remaining defense to this suit. Specifically, Naturipe contends that its damages for breach of contract cannot be offset by a competing breach-of-warranty theory because Siegel Egg failed to give written notice of the alleged breach within 30 days of receipt of the goods. The Court agrees that the notice-of-claim provision bars Siegel Egg’s offset defense, so the Court shall grant summary disposition in favor of Naturipe under MCR 2.116(C)(10) on its claim for breach of contract.

I. Factual Background

“A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.” Corley v Detroit Bd of Educ, 470 Mich 274, 278 (2004). “In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” Id. Applying this standard, the Court shall limit its recitation of the facts to those relevant to this motion.

On August 19, 2011, Defendant Siegel Egg, a wholesale food distributor, signed a purchase order for 316,800 pounds of “Grade A” blueberries from Plaintiff Naturipe. See Plaintiff’s Brief in Support of Its Motion for Partial Summary Disposition, Exhibit 1. The purchase involved a series of installments, and Siegel Egg accepted the first two installments of blueberries in February and March of 2012. Each installment was inspected by Arnaldo DaCruz and Kenneth Siegel. DaCruz inspected roughly 20 boxes of blueberries from several different pallets and testified that, “in most all the cases the product did not meet Grade A standards.” See id., Exhibit 2 (Deposition of Arnaldo DaCruz at 117). Kenneth Siegel testified that the blueberries were difficult to inspect because they were frozen into large ice blocks “[s]o you couldn’t even look into them[.]” id., Exhibit 3 (Deposition of Kenneth Siegel at 67-68), but he also testified that the blueberries “that you could look in on had a lot of green like leafs mixed in[.]” and “[t]he color was terrible.” Id. (Deposition of Kenneth Siegel at 68).

Despite the defects, Defendant Siegel Egg resold the blueberries to its end customers, many of whom refused to accept the subpar produce. As a result, Kenneth Siegel informed John Loughridge of Plaintiff Naturipe in March or April of 2012 that Siegel Egg would not accept any of the remaining blueberry shipments because of quality issues, see Brief in Response to Plaintiff’s Motion for Partial Summary Disposition Pursuant to MCR 2.116(C)(10), Exhibit 3 (Deposition of Kenneth Siegel at 71-72), but Kenneth Siegel did not furnish written notice of those issues to Naturipe. See Plaintiff’s Brief

in Support of Its Motion for Partial Summary Disposition, Exhibit 3 (Deposition of Kenneth Siegel at 75-76). In any event, Siegel Egg refused to accept the remaining installment shipments due under the parties' agreement, so Naturipe filed this suit against Siegel Egg alleging breach of contract. Plaintiff Naturipe now requests summary disposition under MCR 2.116(C)(10) on its claim.¹

II. Legal Analysis

“Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” West v General Motors Corp, 469 Mich 177, 183 (2003). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” Id. Here, the parties agree that a signed purchase order existed and that Siegel Egg terminated that purchase order after receiving two installments of blueberries, but their agreement ends there. Plaintiff Naturipe has sued Defendant Siegel Egg for breach of contract, but Siegel Egg asserts that it acted within its rights in cancelling the contract because Naturipe breached the warranty of quality. Naturipe contends that the notice-of-claim provision in its standard terms and conditions precludes Siegel Egg from relying upon the alleged breach of warranty to offset Naturipe's claim for breach of contract, and it now requests summary disposition pursuant to MCR 2.116(C)(10). Siegel Egg responds with three alternative arguments. Siegel Egg contends, first, that the August 19, 2011, purchase order is not a valid contract, so the notice-of-claim provision does not apply; second, that even if the purchase order is a valid contract, the notice-of-claim provision applies only to single installments, not the entire contract; and third, that even if the notice-of-claim provision applies to cancelling the entire contract, Siegel Egg effectively satisfied the notice requirement.

¹ The Court dismissed Defendant Siegel Egg's counterclaims for breach of contract, setoff, and unjust enrichment on December 26, 2013. See Opinion and Order Granting Plaintiff's Motion for Partial Summary Disposition Under MCR 2.116(C)(7) & (10).

A. Existence of a Contract.

Defendant Siegel Egg at first alleged that a contract existed, see Counter-Complaint, ¶ 25, but it now contends that the August 19, 2011, purchase order is not a contract because the parties failed to reach a meeting of the minds as to the essential terms. To be sure, a contract is not formed unless the contracting parties reach “a meeting of the minds on all essential terms of a contract.” See Calhoun County v Blue Cross Blue Shield of Michigan, 297 Mich App 1, 13 (2012). But “courts do not look favorably on arguments that a contract cannot be enforced because of the indefiniteness of a term[.]” id. at 17, and “an agreement may be enforced as a contract even though incomplete or indefinite in the expression of some term, if it is established that the parties intended to be bound by the agreement, particularly where one or another of the parties has rendered part or full performance.” See id. at 15 (emphasis omitted); see also MCL 440.2207(3). Here, Siegel Egg argues that the two parties ascribed fundamentally different meanings to the term “Grade A,” so the parties never reached a meeting of the minds necessary to form a contract. Although the parties may have contemplated different meanings for the term “Grade A,” the parties nonetheless manifestly intended to be bound by the contract, as evidenced by Siegel Egg’s acceptance of two shipments of blueberries in February and March 2012. Therefore, although the term “Grade A” may be ambiguous, see Klapp v United Ins Group Agency, 468 Mich 459, 467 (2003), the parties reached a meeting of the minds sufficient to form a contract.²

B. Interpretation of the Contract.

As the Court has already decided, the August 19, 2011, purchase order incorporated Plaintiff Naturipe’s standard terms and conditions by reference. See Opinion and Order Granting Plaintiff’s

² Siegel Egg relies on Ford Motor Co v Kahne, 379 F Supp 2d 857 (ED Mich 2005), to assert that the parties failed to form a valid contract. In that case, the court determined that a contract did not exist because the contracting parties left “significant and essential terms” for “future negotiations and agreement.” Id. at 875. In contrast, Naturipe and Siegel Egg clearly agreed that their contract was for “Grade A” blueberries. They simply disagree about the meaning of that term.

Motion for Partial Summary Disposition Under MCR 2.116(C)(7) & (10) (Dec 26, 2013) at 4-5. The standard terms provide:

Buyer shall give written notice to the Seller of any claim for breach of warranty within thirty (30) days after receipt of the goods if the breach or defect in the goods was or should have been discovered upon inspection of the goods, and Buyer shall give written notice to the Seller of any other claim for breach of warranty within ninety (90) days after its [sic] discovers or should have discovered such breach. Any remedy of the Buyer against the Seller shall be barred unless notice is given in accordance with the foregoing provisions.

See Plaintiff's Brief in Support of Its Motion for Partial Summary Disposition, Exhibit 1 (Terms and Conditions, ¶ 10). Relying upon that provision, Naturipe contends that Defendant Siegel Egg's only remaining defense is barred because Siegel Egg failed to provide proper notice of the alleged breach of warranty within 30 days of receipt of the February and March 2012 shipments. Our Supreme Court recently ruled that "an unambiguous notice-of-claim provision setting forth a specified period within which notice must be provided is enforceable" DeFrain v State Farm Mutual Automobile Ins Co, 491 Mich 359, 362 (2012). Here, Siegel Egg does not dispute the enforceability of the notice-of-claim provision. Instead, Siegel Egg insists that the notice-of-claim provision applied only to the quality of individual installments, as opposed to a substantial impairment of the entire contract.

In asserting its argument, Siegel Egg relies upon MCL 440.2612, which applies to installment contracts subject to the Michigan Uniform Commercial Code ("UCC"). That statute provides that a purchaser may reject a single nonconforming installment "if the nonconformity substantially impairs the value of that installment and cannot be cured[.]" see MCL 440.2612(2), but rejection of a single nonconforming installment does not amount to breach of the contract as a whole. Rather, a buyer may cancel the entire installment contract only if the "nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract" and if the buyer seasonably notifies the seller of the defect. See MCL 440.2612(3). Siegel Egg argues that the contractual notice-of-claim

provision applies only to rejection of nonconforming installments, whereas cancellation of the contract in its entirety requires nothing more than reasonable notification under MCL 440.2612(3). The Court disagrees. “A fundamental tenant of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*.” Rory v Continental Ins Co, 473 Mich 457, 468 (2005) (emphasis in original). The notice-of-claim provision unambiguously requires the buyer to notify Plaintiff Naturipe “of any claim for breach of warranty within thirty (30) days after receipt of the goods if the breach or defect in the goods was or should have been discovered upon inspection of the goods[.]” See Plaintiff’s Brief in Support of Its Motion for Partial Summary Disposition, Exhibit 1 (Terms and Conditions, ¶ 10). The contract makes no distinction between notice of a nonconforming installment and notice of a substantial impairment of the contract as a whole. Instead, the notice-of-claim provision applies to “*any claim for breach of warranty*.” Id. (emphasis added). Thus, pursuant to the terms of the parties’ contract, Siegel Egg is barred from all remedies related to an alleged breach of warranty unless it provided notice within the time required under the parties’ contract.

C. Execution of the Contract.

Arnaldo DaCruz and Kenneth Siegel of Defendant Siegel Egg each inspected both blueberry shipments received in February and March of 2012. DaCruz sampled roughly 20 boxes of blueberries and testified that “in most all the cases the product did not meet Grade A standards.” See Plaintiff’s Brief in Support of Its Motion for Partial Summary Disposition, Exhibit 2 (Deposition of Arnaldo DaCruz at 117). Kenneth Siegel stated that the blueberries were difficult to inspect because they were frozen like ice cubes, but he described the quality that he was able to inspect as awful. See id., Exhibit 3 (Deposition of Kenneth Siegel at 67). Thus, Siegel Egg plainly was on notice of the alleged breach of warranty upon receipt of the blueberries from Plaintiff Naturipe. Further, Kenneth Siegel notified John Loughridge of Naturipe that he was cancelling the remaining contract due to the quality issues,

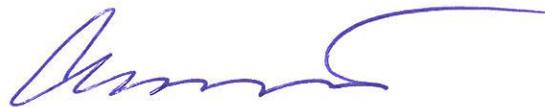
see Defendant's Brief Opposing Motion for Summary Disposition, Exhibit 3 (Deposition of Kenneth Siegel at 71-72) & Exhibit 4 (Deposition of John Loughridge at 50-51), but Kenneth Siegel neglected to furnish written notice of the alleged breach of warranty within 30 days of receipt of the blueberries. See Plaintiff's Brief in Support of Its Motion for Partial Summary Disposition, Exhibit 3 (Deposition of Kenneth Siegel at 75-76). Consequently, because Siegel Egg did not provide Naturipe with written notice of the quality issues within 30 days of receipt of the goods as required by the parties' contract, Siegel Egg is barred from any remedies related to the alleged breach of warranty. See id., Exhibit 1 (Terms and Conditions, ¶ 10).

III. Conclusion

For all of the reasons set forth in this opinion, the August 19, 2011, purchase order constitutes a contract with an enforceable notice-of-claim provision, which bars a buyer from asserting remedies for an alleged breach of warranty if the buyer fails to provide written notice of that breach within 30 days of receipt of the goods. In this case, Defendant Siegel Egg did not furnish Plaintiff Naturipe with written notice of an alleged breach of warranty with respect to the February and March 2012 blueberry shipments, so the notice-of-claim provision precludes Siegel Egg from asserting a defense concerning the quality of the blueberries. Accordingly, Siegel Egg has no viable defense to Naturipe's claim for breach of contract, so the Court shall grant summary disposition in favor of Naturipe pursuant to MCR 2.116(C)(10), thereby resolving the issue of liability and leaving only the issue of damages for trial.

IT IS SO ORDERED.

Dated: September 24, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge