IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL OF PENNSYLVANIA
CIVIL TRIAL DIVISION

DEL MONTE FRESH PRODUCE N.A., INC.	:	June Term 2004
	:	No. 167
Plaintiff,	:	
v.	:	Commerce Program
	:	
DELAWARE RIVER STEVEDORES, INC.	:	Control Nos. 030144, 030154
	:	
Defendant.	:	

O R D E R

AND NOW, this 30TH day of September, 2005, upon consideration of the Motion for Summary Judgment of Defendant Delaware River Stevedores, Inc. (Control No. 030144) and the response and reply thereto, the Motion for Summary Judgment of Plaintiff Del Monte Fresh Produce N.A., Inc. (Control No. 030154) and the response and reply thereto, and in accordance with the attached memorandum, it is hereby **ORDERED** and **DECREED** as follows:

1) The Motion for Summary Judgment of Defendant Delaware River Stevedores, Inc. is **DENIED**;

2) The Motion for Summary Judgment of Plaintiff Del Monte Fresh Produce N.A., Inc. is **GRANTED**;

3) Defendant Delaware River Stevedores, Inc. had a contractual obligation to name Plaintiff Del Monte Fresh Produce N.A., Inc. as an additional insured on its liability insurance policy at all relevant times, including the period from October 1, 2000 through September 30, 20002; and

4) This matter shall proceed in accordance with the Court's Order of February 9, 2005.

BY THE COURT,

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C. DARNELL JONES, II, J.

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MEMORANDUM OPINION

This action arises from a contract between Defendant Delaware River Stevedores, Inc. ("DRS") and Plaintiff Del Monte Fresh Produce N.A., Inc. ("Del Monte") for terminal and stevedoring services in effect from October 1, 2000 through September 30, 2002. Following bifurcation of the damage and liability phases of this matter pursuant to this Court's Order of February 9, 2005, the parties filed cross-motions for summary judgment to determine whether the contract required DRS to name Del Monte as an additional insured on its general liability insurance from October 1, 2000 through September 30, 2002.

DRS and Del Monte initially entered into an agreement on June 25, 1998. Pl. Mem., Ex. A. Under the agreement, DRS provided terminal and stevedoring services to Del Monte. DRS was required to maintain comprehensive general liability insurance, statutory workers' compensation insurance, business automobile liability insurance, and umbrella liability insurance in specified amounts and to name Del Monte as an additional insured under each such policy. The agreement ran until September 30, 1999.

As the effective period of the June 25, 1998 agreement approached its terminus, the parties entered into negotiations to continue their relationship. On September 27, 1999, Robert Palaima ("Palaima") of DRS noted that Del Monte had rejected DRS' offer. Pl. Mem., Ex. B. Later that same day, Sergio Mancilla ("Mancilla") of Del Monte indicated that Del Monte could not increase its payments to DRS for the terminal and stevedoring services, but would "renew the Camden agreement for one year with exactly same terms and conditions as expiring." Pl. Mem., Ex. B. On September 28, 1999, DRS accepted the agreement on these terms. Pl. Mem., Ex. B.

Prior to the expiration of the September 1999 agreement, Palaima and Mancilla began negotiating terms for terminal and stevedoring services for the period beginning October 1, 2000. On September 21, 2000, Palaima sent a letter to Mancilla stating DRS was pleased to continue working for Del Monte, setting forth certain rate increases, and noting that other "commodity and service rates will remain the same as the current agreement." Pl. Mem., Ex. C. On October 12, 2000, Ernie Casper ("Casper") of Del Monte sent Palaima an email stating that Del Monte had not seen a copy of "ANY LEGAL AGREEMENT OR ADDENDUM TO THE CURRENT CONTRACT FROM DRS." Pl. Mem., Ex. C. The email also stated that Del Monte "WOULD LIKE TO KEEP CURRENT CONTRACT IN TACT [sic], AND ISSUE AN ADDENDUM INDICATING THE AGREED UPON RATE CHANGES AND WORDING. THE ADDENDUM SHOULD HAVE TWO SIGNATURE LINE [sic] FOR SIGNATURES AGREEING TO THE CHANGES." On October 19, 2000, DRS sent Del Monte correspondence similar to the September 21, 2000 missive, except the letter indicated it was an addendum to the stevedoring agreement, set forth the specific dates of the

contract's effectiveness, and contained two signature lines. Pl. Mem., Ex. C. Palaima of DRS and two representatives of Del Monte signed the letter.

DISCUSSION

Pursuant to Pa. R.C.P. 1035.2, a party may move for summary judgment when (1) there is no genuine issue of material fact as to a necessary element of the cause of action or defense or (2) an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense. The court must review the entire record in the light most favorable to the nonmoving party and resolve all genuine issues of material fact against the moving party. Basile v. H & R Block, Inc., 563 Pa. 359, 365, 761 A.2d 1115, 1118 (2000).

In its motion for summary judgment, DRS contends the September 21, 2000 letter memorializes the agreement between Del Monte and itself for stevedoring and terminal services for the following two years. Written correspondence may constitute a contract and, if both parties act pursuant to the terms of such correspondence, it is unnecessary for both parties to sign the writing to evidence their acceptance of the agreement. Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 995 n.5 (3d Cir. 1987) (applying Pennsylvania law). Palaima of DRS was the sole person to sign the letter. Pl. Mem., Ex. C. DRS attempts to demonstrate that both parties accepted the September 21, 2000 letter agreement through their conduct. DRS notes that it billed Del Monte for work performed at the new rates as of October 1, 2000. Palaima Aff., at ¶12. The record, however, contains no evidence that Del Monte paid such bills. DRS also argues that Del Monte failed to request proof that it was a named insured. Although Debbie Vito of DRS testified that Del Monte never requested a certificate of insurance from DRS, Debbie Vito

Aff., at ¶5, this course of action proves nothing. The June 25, 1998 and September 1999 agreements required DRS to deliver the certificates of insurance to Del Monte, Pl. Mem., Ex. A, and DRS had forwarded such insurance documents to Del Monte in the past, Palaima Dep., at 49. Therefore, DRS cannot prove that Del Monte accepted the September 21, 2000 agreement through its conduct.

In its motion for summary judgment, Del Monte asserts the October 19, 2000 letter constitutes the agreement between the parties for terminal and stevedoring services between October 1, 2000 and September 30, 2002. Del Monte further argues that this document is an addendum to the September 1999 agreement that alters certain rates while leaving all other terms unchanged and in effect.

A contract exists when the parties reach a mutual understanding, exchange consideration, and sufficiently delineate the terms of their bargain. Weaverton Transp. Leasing, Inc. v. Moran, 834 A.2d 1169, 1172 (Pa. Super. 2003). The sole issue in determining the contractual status of the October 19, 2000 letter is whether DRS and Del Monte reached a mutual understanding. On October 12, 2000, Casper sent Palaima an email indicating that Del Monte desired to maintain the current contract except for certain changes in the rates and wording. Pl. Mem., Ex. C. The email further requested that Palaima issue an addendum with such changes and space for signatures to agree to such changes. On October 19, 2000, Palaima performed this task by sending a letter to Mancilla reflecting the changes sought by Casper. Pl. Mem., Ex. C. Coupled with Casper's request, Palaima's actions reveal a mutual understanding between the parties. Thus, the October 19, 2000 letter is a valid contract.

"A modification does not displace a prior valid contract; rather the new contract acts as a substitute for the original contract, but only to the extent that it alters it." Melat

v. Melat, 411 Pa. Super. 647, 656, 602 A.2d 380, 385 (1992). DRS contends that the October 19, 2000 letter cannot serve as a valid modification of the September 1999 agreement because that agreement had expired. This argument, however, misreads the terms of the October 19, 2000 letter. In particular, the letter states "the rates below will be in effect for the next two years, from October 1, 2000 through September 30, 2002." Pl. Mem., Ex. C. Since a court must not "assume that a contract's language was chosen carelessly or that the parties were ignorant of the meaning of the language they utilized," Seven Springs Farm, Inc. v. Croker, 569 Pa. 202, 208, 801 A.2d 1212, 1215 (2002), the effective date of the agreement is October 1, 2000. The use of the phrases "for the next two years" and "RE: Addendum to Stevedoring Agreement – Camden" in the letter make clear that this agreement is built upon the September 1999 agreement. The sole changes made to the September 1999 agreement concern certain rates. Therefore, the insurance terms in the September 1999 agreement, which are the insurance terms laid out in the agreement of June 25, 1998 because the September 1999 agreement was identical to the prior agreement except for its effective dates, Pl. Mem., Ex. B, are incorporated into the October 19, 2000 letter agreement. DRS needed to name Del Monte as an additional insured on its liability insurance policy at all relevant times. Summary judgment will be granted to Del Monte.

BY THE COURT,

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C. DARNELL JONES, II, J.