

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

MAPIL. S.A.	:	July Term, 2002
	:	
Plaintiff,	:	No. 005029
	:	
v.	:	Commerce Program
	:	
GREEN STRIPE, INC. f/k/a/ GREEN STRIPE	:	
INTERNATIONAL MARKETING, INC. t/a	:	
GS DISTRIBUTION COMPANY a/t/a PHILLY	:	Control No. 120743
FRESH, et. al. J. MANN-R. FINLEY, INC.	:	
	:	
Defendant.	:	

MEMORANDUM OPINION

C. DARNELL JONES, J.

Before the Court is the Motion for Summary Judgment of Plaintiff Mapil S.A. (“Mapil”). For the reasons fully set forth below, said Motion is **denied**.

DISCUSSION

On or about August 1, 2002, Mapil filed a complaint against Defendant Green Stripe, Inc. f/k/a Green Stripe International Marketing t/a GS Distribution Company a/t/a Philly Fresh (“Green Stripe”), asserting claims for breach of contract and unjust enrichment arising out of Green Stripe’s alleged failure to pay for goods delivered to it by Mapil (the “Complaint”). Pl. Mtn., Ex. A. In the Complaint, Mapil seeks damages in the amount of \$51,064.68. Id.

On or about October 15, 2002, Mapil served Green Stripe with requests for admissions and discovery requests. Pl. Mtn., Ex. B. To date, Green Stripe has failed to respond or object to the requests, nor has it moved to withdraw or amend the admissions. In its Motion, Mapil asserts that the requests for admissions should be deemed admitted pursuant to Rule 4014 (d) and that, based upon such admissions, it is entitled to judgment against Green Stripe as a matter of law in the amount of \$58,727.17 (including interest).

Rule 4014 provides, in pertinent part:

- (a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rules 4003.1 through 4003.5 inclusive set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of any document described in the request...
 - (b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a verified answer or an objection addressed to the matter, signed by the party or by his attorney....
- * * *
- (d) Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission....

Pa.R.C.P. 4014. Under this rule, requests for admissions must call for “matters of fact rather than legal opinions and conclusions.” Id.; Dwight v. Girard Med. Ctr., 154 Pa. Commw. 326, 333, 623 A.2d 913, 916 (1993); Commonwealth v. Diamond Shamrock Chemical Co., 38 Pa. Commw. 89, 94, 391 A.2d 1333, 1336 (1978). Since conclusions of law are not within the permissible scope of requests for admissions under Rule 4014, those statements in the requests for admissions which constitute conclusions of law are not properly before the court. Id.

With that in mind, because of Green Stripe’s failure to respond to the requests for admissions and pursuant to Rule 4104, the following facts hereby are deemed admitted¹ for purposes of the instant motion and also for trial:

- 1. Green Stripe admits that placed an order for the purchase of the goods at issue in this litigation. (Request 9);
- 2. Green Stripe admits that it received the ordered goods at issue in this litigation. (Request 10);
- 3. Green Stripe admits that no payment was made to Mapil with respect to such

¹ To date, Green Stripe has not moved for withdrawal of said admissions, nor has it offered any reason whatsoever for its failure to respond to such admissions other than that “most of those requests for admissions are improper under Rule 4014 and the ones that are proper were so poorly worded by Plaintiff that their admission is of no consequence.” Def. Resp. at 2. This, even if true, does not excuse Green Stripe from its obligation to respond to the requests. By choosing to ignore Rule 4014, Green Stripe has run the risk of having the facts contained therein deemed admitted. This court would caution counsel to avoid such an unnecessary risk in the future by, at the very least, filing objections to the requests it feels are improper.

goods. (Request 11);

4. Green Stripe admits that the prices reflected on the invoices attached as Exhibit 1 to Mapil's Complaint are the prices that were agreed by the parties to be charged and paid (Request 14) and that such prices were the usual and customary prices therefore (Request 15);
5. Finally, Green Stripe admits the authenticity, receipt and relationship of all documents attached to the Complaint and produced by Mapil in discovery (Requests 1, 2, 3, 5, 8, 12, 13).

See Pl. Mtn., Ex. B. In its response, Green Stripe further admits that Mapil's documents are legitimate and does not dispute the "fairness of the invoice or the price, quantity or delivery of the merchandise" or "the mathematics used in computing the amount of money [Mapil] has claimed in the Complaint." Def. Resp. at 2. However, Green Stripe argues that such facts alone are not determinative for the purposes of summary judgment. Id.

Green Stripe is marginally correct. The admission of the foregoing facts does not in and of itself entitle Mapil to the relief sought as a matter of law. It is well established that summary judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating that no material issue remains. Salerno v. LaBarr, 159 Pa. Commw. 99, 102, 632 A.2d 1002, 1004 (1993). In other words: "[t]he threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low; a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle the plaintiff to relief." Id. Here, genuine issues of material fact exist which preclude the entry of summary judgment.

In its Response, Green Stripe asserts that it has a valid defense; *i.e.*, that the quality of the product delivered was not up to grade, as revealed by certain USDA inspections, which Green Stripe has attached to its response. Def. Resp., Ex. A. It is unclear at this point whether these inspection reports have been produced in discovery or if they will be precluded at trial.² Clearly,

² Despite Green Stripe's egregious and unapologetic failure to respond to Mapil's discovery requests and requests for admissions, Mapil has not moved to compel such responses, nor has it moved to preclude Green Stripe from offering evidence regarding its defenses at trial. The ultimate issue of whether Green Stripe should be precluded from offering any documents or witnesses at trial need not be decided for purposes of the instant motion, and would be more appropriately resolved pursuant to a motion *in limine*. The issue then becomes whether Green Stripe is precluded from raising any such

