VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-02493

Superior Technical Ceramics Corp. v. Specialty Seal Group, Inc.

DECISION ON MOTION TO DISMISS COUNTERCLAIM

This is a contract action. Plaintiff/Counterclaim Defendant Superior Technical Ceramics Corp. ("STC") sues Defendant/Counterclaim Plaintiff Specialty Seal Group, Inc. ("SSG") for breach of contract and unjust enrichment arising from SSG's alleged failure to pay for ceramics products. SSG counterclaims, alleging that STC breached their agreement by failing to deliver the agreed number of units at the agreed price, forcing SSG to seek cover for the remaining units at a higher price. STC moves for dismissal of the counterclaim. The court grants the motion.

On a motion to dismiss for failure to state a claim, the court accepts all facts pleaded in the complaint as true and makes all reasonable inferences in the non-moving party's favor. *E.g., Baldauf v. Vt. State Treasurer*, 2021 VT 29, ¶ 8, 215 Vt. 18 (adding that courts "conclude that a party fails to state a claim only when it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief"); V.R.C.P. 12(b). Ordinarily, that standard would be dispositive here. SSG has sufficiently alleged that the parties entered into a contract for STC to deliver 100,000 ceramic insulators; that STC breached by delivering only 39,912 insulators; and that SSG has incurred damages as a consequence of that breach. *See* V.R.C.P. 8(a) (requiring only that pleadings contain "short and plain statement of the claim showing that the pleader is entitled to relief").

In their motion papers, however, the parties submitted matters outside the pleadings: STC's original quote, with accompanying terms and conditions; SSG's subsequent purchase order; emails between the parties; and documentation as to shipment dates and quantities. At oral argument, the parties agreed that all these materials were properly before the court on the motion to dismiss. *See Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 10 n.4, 186 Vt. 605 (mem.) ("[w]hen the complaint relies upon a document ... such a document merges into the pleadings and the court may properly consider it under a Rule 12(b)(6) motion to dismiss." (citation omitted)). They also agreed that the contract consisted of the quote, terms and conditions, and purchase order.

With these elaborations factored into the picture, the allegations and evidence, viewed in the light most favorable to SSG, support the following narrative. On or about October 23, 2020, STC gave SSG a quote for ceramic insulators. The quote set a price of $2.31 per unit, but made clear that SSG had to take delivery within one year. STC further reserved the right to increase the price, unilaterally, if its costs increased. The quote made clear that "[t]he order will be subject to STC's standard terms and conditions," and attached the Terms and Conditions. Ex. A to Mot. to Dismiss. The Terms and Conditions, in turn, made clear that STC's offer was "expressly conditioned on Buyer's unconditional acceptance of these Terms"; that "STC expressly rejects all additional or different terms or conditions (i) submitted to STC in Buyer's tender or request for proposal/quotation documents, purchase orders, shipping instructions or other acceptance documents"; and that "[f]ulfillment of this Order does not constitute acceptance of any of [sic] other terms and conditions and does not serve to modify, add to, or amend this Order, regardless of when or how such terms and conditions were submitted to STC." Ex. B to Mot. to Dismiss, ¶ 2.

In response, on or about January 11, 2021, SSG submitted a purchase order for 100,000 ceramic insulator units at the quoted price of $2.31 per unit, to be delivered over the next 23 months. STG then started shipping insulators. Over the course of the next year and change—through mid-February 2022—STC delivered 39,912 units, all at the quoted price. On January 10, 2022, it advised that it was preparing to ship over 5,000 of those units. In response, SSG stated that it would not accept any units that were shipped at "the raised price." Ex. D to Mot. to Dismiss. STC continued to ship units at the quoted price, while SSG apparently sought cover in the marketplace for the remaining units. It found comparable ceramic insulators at a unit price $ .70 higher than STC's original quoted price. At the time of the counterclaim's filing, SSG had purchased 20,352 of the more expensive units, for an additional cost of $14,246.40. SSG has an ongoing need for the ceramic insulator units and will continue to cover with more expensive units until all 100,000 units are procured.

On these facts, SSG asserts that the parties entered into a contract that required STC to deliver 100,000 ceramic insulators over the course of a nearly two-year period, at a fixed price. Under this argument, the contract was formed when SSG submitted its purchase order and STC shipped product in response. *See* 9A V.S.A. § 2–206(1)(b) ("an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods"); *see also*, *SEC Am., LLC v. Marine Elec. Sys., Inc.*, 2011 VT 125, ¶ 9, 191 Vt. 541 ("Thus, the submission of a purchase order is generally considered to be an offer to purchase which the seller may then accept or reject."). If STC then

breached the contract, SSG could then have been entitled to cancel the agreement and cover its losses. 9A V.S.A. § 2–711.

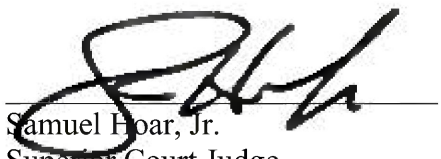
The problem with this argument is that it completely ignores the plain language of both STC's initial quote and its terms and conditions, which both parties agree were part of the contract. The initial quote made clear that SSG "[m]ust take full quantity within 12 months of order placement" for the quoted price to apply. Ex. A. It further expressly incorporated the terms and conditions. *See id.* ("The order will be subject to STC's standard terms and conditions."). By its terms and conditions, STC's offer was "expressly conditioned on Buyer's unconditional acceptance of these Terms" and SSG was put on notice that STC "expressly rejects all additional or different terms or conditions" submitted by the Buyer. Ex. B, ¶ 2. The Terms also acknowledge, "[f]ulfillment of this Order does not constitute acceptance of any of [sic] other terms and conditions and does not serve to modify, add to, or amend this Order, regardless of when or how such terms and conditions were submitted to STC." *Id*. These provisions defeat any argument that by shipping units in response to SSG's order, STC either agreed to SSG's attempted modification or waived any of the incorporated terms and conditions.

Viewed in the light most favorable to SSG, the contract documents establish at most an agreement on STC's part to deliver the units on the schedule SSG requested, and to hold the price at $2.31 for a period of twelve months. There is even an argument that STC was not obligated to sell at that price, because the purchase order called for the units to be delivered over well more than a year. This argument, however, is moot, as the documents before the court reflect that STC held the price for more than a year from order placement, and for more units than SSG ordered for delivery during that year. In short, the evidence that the parties both agree is properly before the court makes abundantly clear that STC did not breach any agreement.

ORDER

Obviously, this conclusion defeats the counterclaim. If there is no breach, there is no right to cancel; nor is there a right to cover. Accordingly, the court grants the motion, and dismisses the counterclaim. The parties shall confer and submit a discovery/ADR stipulation within 30 days of this Order.

Electronically signed pursuant to V.R.E.F. 9(d): 6/27/2023 2:45 PM



Samuel Hoar, Jr.
Superior Court Judge