

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

_____	:	APRIL TERM, 2012
CONTINENTAL CASUALTY	:	
COMPANY	:	NO. 03046
	:	
v.	:	COMMERCE PROGRAM
	:	
NORTHEAST INTERNATIONAL	:	CONTROL NO. 12113306
MARKET, LLC	:	
_____	:	

ORDER

AND NOW, this 31st day of January, 2013, upon consideration of the motion for partial summary judgment of plaintiff, Continental Casualty Company, and any response thereto, it is hereby

ORDERED

that the said motion is **GRANTED**. Further, it is hereby

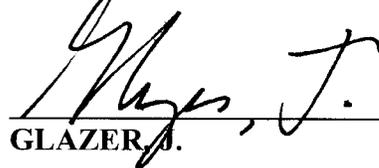
ORDERED

that a judgment is entered in favor of plaintiff, Continental Casualty Company, and against defendant, Northeast International Market, LLC, in the amount of \$55,929.25 for breach of contract and account stated. Moreover, it is hereby

ORDERED

that plaintiff's motion for sanctions is **DENIED**.

BY THE COURT:



GLAZER, J.

Continental Casualty Co-ORDOP



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

**CONTINENTAL CASUALTY
COMPANY**

v.

**NORTHEAST INTERNATIONAL
MARKET, LLC**

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APRIL TERM, 2012

NO. 03046

COMMERCE PROGRAM

CONTROL NO. 12113306

OPINION

GLAZER, J.

January 31, 2013

Before the court is the motion for partial summary judgment of plaintiff, Continental Casualty Company. For the reasons set for the below, plaintiff's motion is granted.

FACTS AND PROCEDURAL BACKGROUND

Plaintiff, Continental Casualty Company ("Continental"), brought the instant suit against defendant, Northeast International Market, LLC ("Northeast"), for breach of contract, unjust enrichment, account stated, quantum meruit, and breach of covenant of good faith and fair dealing on April 25, 2012. Defendant raised the affirmative defenses of payment and fair consideration and release and satisfaction in its answer to plaintiff's complaint. Continental issued an insurance policy ("property policy") to Northeast for the effective dates of August 15, 2010 through August 15, 2011. The property policy had an initial premium of \$34,569.00. Continental then issued a renewal of the 2010 policy ("renewal policy") for the effective dates of August 15, 2011 through October 17, 2011. The renewal policy had an initial premium of \$40,511.00. Additionally, Continental issued a workers' compensation insurance policy ("WC policy") effective date of August 15, 2010 through August 15, 2011. The initial premium for the

WC policy was \$14,963.00. Collectively, the initial premiums for all the policies totaled \$90,043.00. Northeast paid \$59,659.75 for the initial premiums, leaving a balance of \$30,383.25. Subsequently, Continental issued a cancellation credit to Northeast in the amount of \$36,563.00. Therefore, after the cancellation credit, the balance was -\$6,179.75.

Under the terms of the property policy, the initial premium is a “deposit premium only.” See plaintiff’s motion for summary judgment, Exhibit A, Part 3, pp. 7-8. Further under the WC policy, “[t]he premium shown on the information page, schedules, and endorsements is an estimate.” Id. at Exhibit A, Part 6, pp. 31. Continental is permitted to audit the records related to the policies and determine the actual exposure for the effective dates of coverage on both policies. Id. “An audit establishes the correct premium base for ... insurance coverage by verifying actual exposures. After ... audit, an adjustment will be made to the premium that as estimated at issuance.” Id. at Exhibit A, Part 3, pp. 36.

Plaintiff conducted an audit of the property policy and the WC policy. Plaintiff alleges that the audit of the property policy rendered an additional premium amount of \$17,718.00 owed by Northeast. Id. at Exhibit A, Part 6, pp. 53. Further alleged, the audit of the WC policy produced an additional premium amount of \$44,391.00. Id. at Exhibit A, Part 6, pp. 56. Therefore, taking into consideration the past balance of -\$6,179.75, after audit, plaintiff is allegedly owed \$55,929.25¹. Defendant admits that a demand has been made by plaintiff for the alleged remaining balance. See defendant’s answer to complaint, ¶ 25. Defendant denies owing the additional premium and states, “[t]o the extent a response may be necessary, defendant specifically denies and disputes that it owes the amount of additional premiums claimed and calculated by plaintiff as a result of plaintiff’s audit.” See defendant’s response to plaintiff’s

¹ Plaintiff asserted in its motion for partial summary judgment that the amount owed is \$56,003.25. However, after assessing plaintiff’s calculation, the court has determined that the actual amount owed is \$55,929.25.

motion for partial summary judgment, ¶ 25. However, defendant does not offer any evidence to support its denial.

Plaintiff now brings a motion for partial summary judgment seeking a judgment in favor of plaintiff and against defendant with regard to plaintiff's claims for breach of contract and account stated and defendant's affirmative defenses. Further, plaintiff requests that the court award monetary sanctions in the form of attorney's fees.

DISCUSSION

The court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Pa. R.C.P. 1035.2(1). A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. Note to Pa.R.C.P. 1035.2. When considering the merits for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Jones v. SEPTA, 565 Pa. 211, 772 A.2d 435, 438 (Pa. 2001). Further, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (Pa. 1991).

A party is not required to present his or her entire case at the summary judgment stage. Brecher v. Cutler, 396 Pa. Super. 211, 216, 578 A.2d 481, 483 (1990). However, a party must present depositions, affidavits, or other acceptable documents demonstrating that there is a genuine issue of material fact to be submitted to a fact-finder. Id. "Bold unsupported assertions of conclusory accusations cannot create genuine issues of material fact." McCain v. Pennbank, 379 Pa. Super. 313, 318, 549 A.2d 1311, 1313-14 (1988). "The purpose of a motion for

summary judgment under Rule 1035 is to expedite the trial of a matter. Controverted facts that appear in the pleadings can be verified by either side by persons who would be competent to testify at the trial of the matter.” Phaff v. Gerner, 451 Pa. 146, 150, 303 A.2d 826, 826 (1973).

In Pennsylvania, three elements are necessary to properly plead a cause of action for breach of contract: “(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract, and (3) resultant damages.” CoreStates Bank, Nat’l Assn v. Cutillo, 723 A.2d 1053, 1058 (Pa.Super. 1999). Further, “[a]n account stated is defined by a high authority to be ‘an account in writing, examined and accepted by both parties. And this acceptance need not be express, but may be implied from circumstances.’” Leinbach v. Wolle, 211 Pa. 629 (1905) quoting Story’s Eq. Jur. Sec. 526.

Plaintiff has satisfied their burden to establish claims for breach of contract and account stated. The record establishes that the defendant entered into three insurance contracts with plaintiff. See plaintiff’s motion for summary judgment, Exhibit A. Further, the essential terms of the audit are included in the policies. Id. Additionally, plaintiff establishes that the account statement was in writing and was produced to defendant. Id. Defendant does not contest that they received the statement. Further, defendant does not dispute that it was silent as to any objections regarding the audit prior to the commencement of the current action.

Defendant breached the contract by failing to pay the additional premium and thus damages occurred. Defendant asserts that it does not owe the additional premium therefore creating a material issue of fact. Further, defendant’s opposition is premised on the affirmative defense that the original payment satisfied the amount owed. However, defendant does not support its allegations with any evidence. Defendant does not identify an error in the audit, does not assert that there was a modification in the contract, does not dispute that an audit was

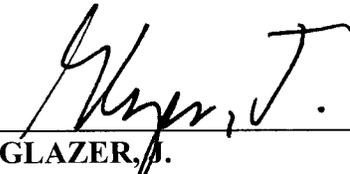
permissible, and further complied with the audit. Defendant merely relies on a blanket denials and assertions and does not cite to the record nor support their claims with an affidavit or deposition. Therefore, partial summary judgment is granted.

Additionally, plaintiff requests that the court impose sanctions. However, the court finds those arguments meritless.

CONCLUSION

Based on the foregoing, partial summary judgment is granted in favor of plaintiff, Continental Casualty Company, and against defendant, Northeast International Market, LLC, for breach of contract and account stated, in the amount of \$55,929.25.

BY THE COURT:



GLAZER, J.