

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

LOMBARD METALS
CORPORATION

Plaintiff

v.

AMG RESOURCES
CORPORATION

Defendant

JANUARY TERM, 2013

NO. 0994

COMMERCE PROGRAM

RECEIVED

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ORDER

AND NOW, this 26th day of January, 2015, after a bench trial in this matter, it is hereby

ORDERED

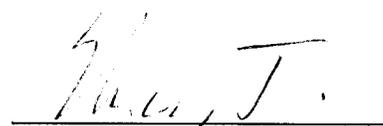
that a finding is entered on Count I of the Complaint for breach of contract in favor of plaintiff and against defendant in the sum of \$95,165.01 plus 6% interest from July 31, 2012 to the date of judgment (\$14,219.36), for a total of \$109,384.37. This court finds in favor of defendant for the remaining Counts of negligent misrepresentation and fraud.

BY THE COURT:

DOCKETED

JAN 26 2015

R. POSTELL
DAY FORWARD


GLAZER, J.

Lombard Metals Corporation Vs Amg Resources -ORDOP



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was then unwound and inspected on July 6, 2012, whereupon it was discovered that it contained defects. Upon learning of the defects, plaintiff immediately notified defendant.

It is undisputed that AMG unknowingly sold Lombard material that was non-conforming.² Because the parties stipulated to the underlying facts, this court held a one-day bench trial on December 2, 2014 to determine the sole issue remaining in the case: whether plaintiff notified defendant of the breach of contract in a timely and reasonable manner. Thereafter, on January 21, 2014, parties submitted post-trial memorandum to supplement their arguments.

Based upon the evidence, this court finds that plaintiff's notice of breach was delivered in a timely fashion, and Lombard is entitled to resulting damages.

DISCUSSION

The requirement to provide sufficient notice of a breach is governed by 13 Pa.C.S.A. §§ 2608(b), 2607(c)(1), of the Uniform Commercial Code. These statutes provide that:

§ 2608. Revocation of acceptance in whole or in part

(b) Time and notice of revocation.--Revocation of acceptance must occur within a *reasonable* time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

§ 2607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

(c) Notice of breach.--Where a tender has been accepted:

² On December 1, 2014, the parties submitted a joint stipulation of facts, which details the material facts surrounding the case. Those facts were adopted by this court, and are incorporated by reference herein.

(1) the buyer must within a *reasonable* time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy;...

13 Pa.C.S.A. §§ 2608(b), 2607(c)(1) (emphasis added). Reasonableness is not confined to a specific time-table, nor can it be examined in a vacuum. See 13 Pa.C.S.A. § 1205 (“Whether a time for taking an action required by this title is reasonable depends on the nature, purpose and circumstances of the action.”); see also Smith v. Penbridge Associates, Inc., 655 A.2d 1015, 1020 (Pa. Super. 1995) citing Ford Motor Credit Co. v. Caiazzo, 564 A.2d 931 (Pa. Super. 1989) (stating “what is a reasonable time after tender or delivery for rejection or revocation of defective goods is generally deemed a question of fact to be resolved by the fact finder, and no express outside time limit is set.”).

The evidence illustrates that the parties had a positive business relationship, and Lombard relied on the nature of this relationship when agreeing to purchase the material from AMG. Defendant purchased the material from RG Resources, which was described as “1035 cold rolled with surface scratches,” and then proceeded to sell the material in “as described condition” to Lombard. When Lombard purchased the material from AMG, the president of Lombard, John Ruttenberg, testified that Reineke, “is a reputable supplier and we had good business relations together and I trusted his description of the steel and accepted it.” [Notes of Testimony 17:14-17]. Moreover, Reineke was aware that Lombard was relying on his description and was acting based upon defendant’s honorable reputation. [N.T. 54:20-55:6]. Until Lombard was directly alerted to the presence of tags on the material indicating it contained holes, plaintiff had no reason to suspect that the material was different than what defendant had promised. Even though the material arrived at the public warehouse with the tags already on it, plaintiff was not

obligated to take unnecessary and costly measures to inspect the material for conformity, especially when there is no evidence that defendant had breached its contracts in the past.

The reasonableness of plaintiff's notice of breach is further supported by defendant's response to the situation. When defendant received notice of the deformity on June 22, 2012, defendant did not question plaintiff's timing or inform plaintiff that its conduct was unreasonable. [N.T. 72:20-24]. In fact, after learning of the situation, defendant made a similar claim to RG Steel about the misrepresentation of the quality of the steel. Just as AMG did not raise an issue as to the reasonableness of Lombard's notice, RG Steel did not challenge AMG's claim as being untimely. [N.T. 72:25-73:13]. Then, in an attempt to amend the situation amongst them, AMG agreed to reduce the contract price with Lombard, and AMG would receive a credit from RG Steel for the price reduction. In all likelihood, had RG steel not filed for bankruptcy protection, and AMG was able to realize the value of its credit, this litigation would not have ensued. Unfortunately for AMG, failing to receive the benefit of its credit from RG Steel does not absolve AMG from its obligation to Lombard.

Because a court is to evaluate reasonableness based upon the circumstances at hand, this court grants substantial weight to the parties' relationship, plaintiff's reliance on defendant's description, and the parties having not even broached the topic of the reasonableness of the notice until the commencement of litigation. Therefore, regardless of whether Lombard rejected the material or revoked its acceptance, plaintiff acted reasonably in notifying AMG of the breach and is entitled to damages.

CONCLUSION

In light of the evidence, plaintiff notified defendant of the misrepresentation in a reasonable manner, and a finding is entered on Count I of the Complaint for breach of contract in

favor of plaintiff and against defendant in the sum of \$95,165.01 plus 6% interest from July 31, 2012 to the date of judgment (\$14,219.36), for a total of \$109,384.37. This court finds in favor of defendant for the remaining Counts of negligent misrepresentation and fraud.

BY THE COURT:



GLAZER, J.