

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LATINO FOOD MARKETERS, LLC,

Plaintiff,

v.

OLE MEXICAN FOODS, INC.,

Defendant.

ORDER

03-C-0190-C

A hearing was held by telephone in this case on September 26, 2003, before United States District Judge, Barbara B. Crabb. Plaintiff appeared by Marta Meyers and Richard Bolton; defendant was represented by Kevin Hudson.

After hearing argument, I determined that at the evidentiary hearing scheduled for October 1, 2003, (1) defendant will bear the burden of proving that the parties executed the contract that contains the forum selection clause; (2) the standard of proof on this issue is preponderance of the evidence; (3) the parties may adduce evidence of post-November 12, 2001 conduct only as it relates to whether defendant signed the contract on or before November 12, 2001; (4) the court's findings on the existence and effect of the contract will not have any preclusive effect when the matter is tried to a jury.

Ms. Meyers stated that she wanted an opportunity to respond to defendant's motion in limine to exclude secondary evidence of the existence of the signed contract. She may file and serve her response no later than noon, September 30, 2003. The parties will have a chance to argue the point at 9:00 a.m. on October 1.

Entered this 26th day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge