

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

-----  
UNIEK, INC.,

Plaintiff,

v.

DOLLAR GENERAL CORPORATION,

Defendant.

-----

ORDER

06-C-0311-C

The discovery disputes in this case are threatening to overshadow the merits of the lawsuit itself. Now before the court is defendant Dollar General Corporation's motion for reconsideration of the court's March 16, 2007 decision overturning the magistrate judge's decision to require plaintiff Uniek, Inc. to produce certain information regarding its contractual relationships with customers other than defendant.

Before I say anything further about this particular dispute, I will take this opportunity to advise counsel for plaintiff that it is counterproductive to sprinkle its briefs with ad hominem attacks on defendant and its counsel. In the future, I will simply ignore in whole any brief or other pleading that contains derogatory remarks about the character, alleged purposes or thought processes of the opposing party or counsel. Forewarned is forearmed.

Defendant argues that it was error for the court to conclude that evidence of plaintiff's relationships with its other customers was irrelevant to the issue of promissory estoppel. It might be irrelevant to the first element of such a claim, defendant says, but it is highly relevant to the third element, the policy element, which requires the court to decide whether enforcement of the alleged promise is necessary to avoid injustice and it is also relevant to the parties' cross claims for breach of contract. Plaintiff asserts that the court was correct in holding the information irrelevant and continues to insist that disclosure of the information would be devastating to it because it would inevitably reveal to defendant highly confidential and proprietary information relating to plaintiff's other customers.

Defendant is correct that in ruling that plaintiff did not have to turn over all of its information about its customer information, I focused on what I perceived was the irrelevance of that information to the first element of promissory estoppel and did not consider the third element expressly. It remains unclear to me what bearing plaintiff's business practices would have on that decision. Would it not be much more relevant for plaintiff to show that its business practices were those followed by others in the same or similar businesses? If the jury were to find that plaintiff always used formal contracts, never used formal contracts or used some combination of the two practices, would it follow that an injustice had been done if plaintiff had used its regular practice in dealing with defendant and defendant had failed to purchase picture frames from plaintiff? Or, conversely, would

it follow that no injustice had occurred if plaintiff had used a different practices in this one particular instance? Would any of this matter if plaintiff's practices were completely idiosyncratic as compared with those of similar businesses? And if this were so, how could anyone say that an injustice had been done?

As to the dueling breach of contract claims, I have trouble understanding what relevance other agreements would have to the determination whether the parties had reached a meeting of the minds in the particular circumstances at issue in this lawsuit.

Nevertheless, because it is *possible* that defendant could use the information it is seeking to prove that plaintiff had abandoned all of its usual precautions in responding to what it thought was defendant's commitment to a long term deal between the parties and because plaintiff did so, it cannot show "reasonable reliance" as an element of injustice, I will modify the March 16 order to allow defendant some portion of the discovery it is seeking.

#### ORDER

IT IS ORDERED that the order entered on March 16, 2007, is MODIFIED to require plaintiff Uniek, Inc. to provide defendant Dollar General Corporation copies of the agreements it had in place with its ten largest customers during the period 2004-2006 and to provide copies of any and all formal contracts it had in place with any other customer of any size during that same period. FURTHER, IT IS ORDERED that if the parties have not

reached agreement about plaintiff's need to respond to defendant's Document Request No. 27, plaintiff is to respond to that request in the manner set out at p. 6 of plaintiff's Objections to Magistrate Judge's Order on Other Customer Information, dkt. # 108.

Entered this 5<sup>th</sup> day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge