

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

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UNITED STARS INDUSTRIES, INC.,

Plaintiff,

v.

PLASTECH ENGINEERED PRODUCTS,  
INC.,

Defendant.  
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OPINION AND ORDER

06-C-0349-C

This is a civil action for resolution of a dispute arising out of a commercial relationship between the parties for the supply of welded stainless steel tubing manufactured by plaintiff United Stars Industries, Inc. Plaintiff alleges that defendant Plastech Engineered Products, Inc. breached a settlement agreement that the parties had negotiated under which all prior disputes between the parties would be resolved and defendant would make a long term commitment to purchase plaintiff's tubing. According to plaintiff, it invoiced defendant for purchases made in the fall of 2005 at discounted prices reflecting the terms negotiated under the settlement agreement; had it known that defendant would repudiate the agreement, it would have charged defendant higher prices and it would not have given

defendant a credit on its previous purchases. Defendant denies that it entered into any agreement with plaintiff and contends that it is liable only for the amounts on the invoices that accompanied the stainless steel tubing shipped during the fall of 2005, which it does not view as discounted. In the alternative to its claim for breach of contract, plaintiff contends that it is entitled to recover beyond the prices it invoiced defendant for the tubing for the reasonable value of serviced rendered and product provided to defendant.

Jurisdiction is premised on diversity of citizenship of the parties and more than \$75,000 in dispute. 28 U.S.C. § 1332.

The case is before the court on defendant's motion for partial summary judgment relating to a portion of the goods shipped. I conclude that it is not possible to grant defendant's motion because too many of the relevant facts are in dispute. The following facts are the only ones that are both material and undisputed.

#### UNDISPUTED FACTS

Plaintiff United Stars Industries, Inc. is a Michigan corporation with its principal place of business in Michigan. Defendant Plastech Engineered Products, Inc. is a Delaware corporation with its principal place of business in Wisconsin.

Defendant is in the business of supplying parts to the automotive industry. Between May 2000 and October 2005, defendant purchased stainless steel tubing directly from

plaintiff. It did so by sending plaintiff blanket purchase orders, pursuant to which defendant submitted “follow-on requests” for scheduled releases of the goods. Plaintiff shipped the goods to defendant, along with invoices for each shipment.

In early 2005, plaintiff advised defendant that it had miscalculated the applicable surcharges on invoices it had sent previously and that it had done so to its detriment in the amount of \$703,947.00. Defendant reviewed the invoices, which it had paid, and advised plaintiff that it believed it had been overbilled by at least \$892,844.00.

In July 2005, the parties met to try to resolve the billing dispute. Plaintiff proposed a resolution conditioned upon defendant’s entering into a long term agreement with plaintiff. Thereafter, defendant submitted purchase orders to plaintiff dated August 8, 2005, August 23, 2005 and August 26, 2005. Plaintiff shipped goods and invoices to defendant at various times from August 2005 through October 2005.

#### DISPUTED FACTS

The parties dispute whether defendant agreed orally to the settlement agreement, whether the parties agreed on the amount that defendant had been underbilled or overbilled, whether the parties entered into a long term agreement under which defendant would continue purchasing its products from plaintiff as long as plaintiff adhered to the pricing terms set forth in the July 25, 2005 settlement letter, whether defendant amended its

purchase orders to reflect the agreed upon pricing terms of the settlement, whether plaintiff shipped and invoiced products in accordance with the settlement agreement and pursuant to the amended purchase orders and whether a spreadsheet plaintiff prepared describing the invoices sent at various times between August 2005 and October 2005 shows that the purchases were invoiced in accordance with the prices reflected on the purchase orders.

#### OPINION

At the heart of the parties' dispute over payments is the settlement agreement, which plaintiff asserts was agreed to and which defendant denies it ever accepted. So long as the parties dispute the existence and validity of that agreement, I cannot determine whether defendant breached the agreement or even who owes what to whom. If the agreement took effect (which it may have done whether or not defendant signed it), then defendant is bound to pay the amounts it agreed to and would be found to have breached the agreement if it failed to make those payments and failed to continue its long term commitment to plaintiff. If the agreement never did have legal effect, but plaintiff believed reasonably that it had, then it may be necessary to analyze the sufficiency of the payments that defendant made.

In its reply brief, defendant argues that even if plaintiff is correct that defendant agreed orally to the settlement proposal, such an agreement would be unenforceable under the statute of frauds and the parol evidence rule. I have ignored these arguments because

defendant did not raise them in its initial brief, so as to give plaintiff a fair chance to respond to them. Plaintiff has asked for an opportunity to file a surreply brief but its legal views on the statute of frauds would not be helpful until the facts can be further developed.

A final comment is warranted. In a footnote in its brief in support of its motion for partial summary judgment, defendant notes that it reserved the right to seek leave to file additional motions for summary judgment based on the results of discovery that had not yet been completed. Defendant has the right to seek leave to file such a motion but it should not expect that it will be granted. As the preliminary pretrial order specified, defendant had until January 2, 2007 in which to file any motions for summary judgment. Moreover, the magistrate judge warned the parties that delays in obtaining discovery were not a ground for seeking an extension of the motion and briefing deadlines. PPTC Order, dkt. #19, at 3.

#### ORDER

IT IS ORDERED that plaintiff United Stars Industries' motion to file a surreply brief is DENIED and defendant Plastech Engineered Products, Inc.'s motion for partial summary

judgment is DENIED.

Entered this 21st day of March, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge