

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

TECOT ELECTRICAL SUPPLY CO.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2007-03-269
)	
SKIPPER'S ELECTRIC, INC., a)	
Delaware Corporation,)	
PATRICK SKIPPER and)	
NATALIE SKIPPER, individually,)	
)	
Defendants.)	

**Submitted: December 9, 2008
Decided: January 9, 2009**

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Decision After Trial

This is a debt action by Plaintiff Tecot Electrical Supply Company (hereinafter "Tecot") to collect on an alleged invoice for specially ordered equipment it alleges was placed by Skipper's Electric, Inc., Patrick Skipper and Natalie Skipper (hereinafter "Skipper's"). Tecot alleges individual liability of Patrick Skipper and Natalie Skipper on the basis of a personal guarantee. The defendants collectively and individually deny liability. This is the court's decision.

Facts

Plaintiff Tecot Electric Supply Co. is a wholly-owned subsidiary of Rumsey Electric Co. Tecot distributes electrical supplies and industrial automation products through both its branch stores and a staff of outside salespeople. Defendant Patrick Skipper is the sole shareholder of Skipper's Electric, Inc., a Delaware Corporation that is engaged in the business of electrical contracting. Skipper has been in the electrical business since 1980 and incorporated Skipper's in 2004. Tecot brings this civil debt action seeking damages of \$21,357.60, alleging Skipper's ordered from Tecot a specially manufactured motor control center for a car wash (hereinafter "the control center") and subsequently refused to accept or pay for the unit. Skipper contends that he never intended to purchase the control center and never placed the order with Tecot.

Victor Banks, Tecot's branch manager during the time period in question, testified that under Tecot's general operating procedure, an electrical contractor purchases materials for a particular project on credit from Tecot and pays for the materials when they are paid by the customer. Once Tecot and the contractor agree to a sale, Tecot will send a purchase order to the "vendor" that will manufacture the equipment. The vendor then sends to Tecot a "submittal," which contains specifications and drawings of the equipment. Tecot then delivers the submittal to the customer, who must sign the submittal which indicates their approval.

Skipper's had an existing business relationship with Tecot before the time period in question, and had been purchasing electrical supplies from Tecot as early as March 2004. Skipper's also had a credit account with Tecot with a joint personal guaranty signed by Patrick Skipper and his wife, Natalie Skipper.¹ As of 2006, Skipper's monthly purchases from Tecot ranged between \$6,000 and \$10,000 per month.

In the late winter or early spring of 2006, Christopher Dispoto (hereinafter "Dispoto") asked Skipper to submit a proposal to perform electrical work on a car wash Dispoto planned to open in Georgetown, Delaware.² Skipper had previously done similar work on a car wash owned by Dispoto in Rehoboth, Delaware.³ Skipper's partner at that time had ordered a motor control center for the Rehoboth car wash from Tecot, for a price of about \$26,000. Skipper had been involved in reviewing the specifications of that control center and engaged in discussions regarding its purchase.

In April or May 2006, Sherman Stevens (hereinafter "Stevens"), a salesman for Tecot, arranged a meeting in Rehoboth (hereinafter "the Rehoboth meeting") with Dispoto, Skipper, and Banks to discuss Tecot's possible sale of a control center for the Georgetown car wash. At the meeting, Dispoto indicated that he was considering purchasing the control center for the Georgetown car wash from a different company for about \$17,000. He also indicated that he would be willing to pay slightly more for

¹ See Joint Exhibit 1, Complaint Exhibit A

² Dispoto did not have an account with Tecot.

³ The Rehoboth car wash opened in 2002. Skipper stated that he was working for another company at this time.

a General Electric (hereinafter “GE”) control center purchase through Tecot, similar to the one he purchased for the Rehoboth car wash. Stevens and Banks stated that they would discuss possible prices with GE and thereafter notify Skipper and Dispoto.

What occurred following the Rehoboth meeting is very much in dispute. Banks testified that at some point after the Rehoboth meeting, he reviewed the specifications for the control center with Skipper.⁴ He later told Skipper that Tecot could obtain the control center from General Electric for \$23,820, and Skipper approved that price. Banks further testified that once Dispoto obtained the driveway permit for the Georgetown car wash, Skipper told him to order the control center. On April 17, 2006, Banks placed the order for the control center with GE. GE then sent the submittal form to Tecot. Banks gave the submittal to Skipper in person, but did not require him to indicate his approval by signing it, which violated Tecot policy. GE shipped the control center to Tecot in several pieces, beginning in late July and ending early August. Beginning in August, Banks gave Skipper monthly invoices, and Skipper did not protest.⁵

Skipper presented a very different version of the facts through his testimony. Skipper stated he told both Stevens and Banks that Dispoto, not he, was the customer for the control center order. Skipper denied reviewing the control center specifications at any point with Banks. He also denied that Banks proposed a price

⁴ Banks testified that the motor sizes on the Georgetown control center order were different than those on the Rehoboth control center order.

⁵ See Complaint Exhibit B for the August invoice. This invoice named “Georgetown Carwash” in the “Customer Order Number” field. Banks testified that this was only the name of the order, rather than the name of the customer.

for the control center following the Rehoboth meeting, that he approved that price, or that he told Banks to order the control center. He also denied ever receiving the submittal from Banks. Skipper agreed that Banks handed him an invoice for the control center in August 2006, but stated that this was the earliest that he was aware that Tecot had ordered the control center. He also stated that once he began receiving the monthly invoices for the control center, he contacted Tecot and questioned why he was receiving them. Finally, Skipper testified that reviewing the submittal, what Tecot ordered was a copy of the control center from the Georgetown car wash, and did not include the specifications that Dispoto wanted for the Rehoboth car wash.

Dispoto's testimony conformed with that of Skipper. Dispoto testified he never intended for Skipper to pay for the control center, and that he intended to pay for it himself. He stated that the Rehoboth meeting was the last time Tecot representatives discussed the control center with him. Finally, he testified that he did not and would not have agreed on a price of \$23,820 for the control center.

Ultimately, neither Skipper nor Dispoto accepted or paid for the control center. Various problems arose with the Georgetown car wash, including zoning and partnership issues. The only improvements made on the property intended for the car wash included a highway entrance and storm water retention pond. While Skipper had been preparing to present a bid for the electrical work on the car wash, he never signed a contract to perform the work.

Once it became clear to Tecot that neither Skipper's nor Dispoto intended to accept or pay for the control center, Banks attempted to mitigate damages and sought other possible purchasers for the control center. Banks was unable to locate a buyer for the complete unit, but was able to sell parts of the control center back to GE for \$2,462.40. Therefore Tecot seeks damages of \$21,357.60, which represents the difference between the alleged contract price of \$23,820 and the \$2,462.40 it was able to recover by selling parts back to GE.

Decision

Both parties agree that there is no written contract for the sale of the control center, therefore the question is whether the acts and writings of the parties are sufficient for the court to find the existence of an oral contract. Skipper's *et. al* contends that Skipper never ordered the control center, and therefore there was also no oral contract. Additionally, Skipper's contends that even if there were an oral contract, it is unenforceable under Delaware's Statute of Frauds, 6 Del. C. §2-201, which requires a sale of goods of \$500 or more to be in writing. Tecot asserts that Skipper ordered the control center, and therefore there was an oral contract. Tecot then argues that the contract falls under one of the exceptions to the Statute of Frauds, and therefore does not have to be in writing in order to be enforceable.

To form a valid contract, there must be a "bargain in which there is manifestation of mutual assent to the exchange and consideration," also known as the "meeting of the minds."⁶ Where there is no meeting of the minds, there is no

⁶ *Quinones v. Access Labor*, 2008 WL 2410170 at 5 (Del.Super.)

enforceable contract in Delaware.⁷ In addition, a contract must contain all material terms in order to be enforceable:

If terms are left open or uncertain, this tends to demonstrate that an offer and acceptance did not occur. Until it is reasonable to conclude, in light of all ... surrounding circumstances, that all of the points that the parties themselves regard as essential have been expressly or (through prior practice or commercial custom) implicitly resolved, the parties have not finished their negotiations and have not formed a contract.⁸

The facts and circumstances here do not establish that the parties reached a complete meeting of the minds on all material terms. While there were discussions of the project, those discussions were not specific enough to form a basis for a contract. Skipper's testimony regarding the characteristics of the control center at issue was especially telling. Skipper stated that, judging by the submittal sent by GE to Tecot, the control center lacked the features that Dispoto wanted for the Georgetown car wash. Essentially, it was a copy of what Dispoto had ordered for the Rehoboth car wash. Tecot did not dispute this. Thus it is clear from the testimony presented that the parties did not have a meeting of the minds regarding the essential terms of price and design specifications for the control center. As such, no valid contract came into being.

Accordingly, judgment is hereby entered for the Defendants.

⁷ *Rodgers v. Erickson Air-Crane Co. L.L.C.*, 2000 WL 1211157 at 6 (Del.Super.)

⁸ *Ramone v. Lang*, 2006 WL 905347 at 11(Del.Ch.)

SO ORDERED

ALEX J. SMALLS
CHIEF JUDGE

Tecot-OP Jan 09