

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

THOMAS TROWER	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 02C-12-145-CLS
	:	
WASTE MANAGEMENT OF	:	
DELAWARE	:	
	:	
Defendant.	:	

Upon Consideration of Plaintiff's Motion for Summary Judgment
DENIED.

Paul A. Bradley, Esquire, McCarter & English, LLP, Wilmington, Delaware,
Attorney for Plaintiff.

James McC. Geddes, Esquire, Ashby & Geddes, Wilmington, Delaware,
Attorney for Defendant.

SCOTT, J.

Upon consideration of the Plaintiff's Motion for Summary Judgment, Defendant's opposition, and the record in this case, the Court finds and concludes as follows:

Plaintiff, Thomas Trower ("Trower") filed a *pro se* Complaint on December 17, 2002, alleging a breach of contract claim against Waste Management of Delaware ("Defendant"). Trower was employed full-time by the Defendant from February 9, 2000 until August 30, 2000. During this time, the Defendant instituted an incentive program to improve customer service and to improve employee morale. However, in order to be eligible to participate in the program an individual had to be a full-time, active employee, not subject to disciplinary probation. As part of this program employee names were submitted by districts that scored the highest in customer satisfaction. After the names had been submitted the Defendant held a drawing and awarded the winner a new Ford Explorer. On August 17, 2000, the Defendant held a drawing and Trower was named as the winner. The Defendant, however, did not deliver the Ford Explorer to Trower.

Trower has filed a Motion for Summary Judgment contending that no genuine issues of material fact exist regarding the rules of the program and his eligibility. Trower contends that the rules of the program, as set forth in

the “Explorer Giveaway Program Procedures”¹ and “Reward Eligibility Qualifications,”² were clear and unambiguous. He asserts that there is nothing in the record to dispute the fact that he met the criteria for eligibility.³ The Defendant, however, contends that summary judgment is inappropriate because the program’s requirements and Trower’s eligibility are disputed issues of material fact.

Summary judgment will only be granted when, after viewing the record in a light most favorable to the non-moving party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.⁴ Summary judgment will not be granted when a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.⁵

The Court concludes that summary judgment is inappropriate because the parties dispute the program requirements. Trower contends that the rules, as set forth in the “Explorer Giveaway Program Procedures” and “Reward Eligibility Qualifications,” are clear and unambiguous. Whereas, the Defendant claims that the language in the “Reward Eligibility

¹ Pl. Mot. Summ. J., Ex. A, at WM0009-WM0010.

² *Id.* at WM0011.

³ Pl. Mot. Summ. J., at ¶7.

⁴ *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973); *see also McCall v. Villa Pizza, Inc.*, 636 A.2d 912 (Del. 1994).

⁵ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

Qualifications” contemplates circumstances in which an employee’s eligibility may not fall within the guidelines set forth therein. This raises an issue of material fact regarding the program’s eligibility requirements. In addition, the parties dispute whether Trower was eligible to participate in the program. Trower contends that there is nothing in the record to dispute the fact that he met the criteria for eligibility. He alleges that he was a full time employee, was not on probation, and that there was no documentation of a disciplinary action in his employment file at the time of the drawing.

However, the Defendant has presented the deposition testimony of corporate representatives, Kevin Shegog and Rhonda Walker, which raise a material issue of fact as to whether Trower was in good standing with the company at the time of the drawing. Accordingly, after viewing the record in a light most favorable to the Defendant, this Court finds that genuine issues of material fact remain and a more thorough inquiry into the facts of this case is desirable. Therefore, this 17th day of January, 2006, Trower’s Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.