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THIS WEEK'S DECISIONS

Contract

Purchase of electrical cable

Where the plaintiff supplied electrical cable to the defendant pursuant to a contract, the plaintiff is entitled to payment of \$15,357.70.

Discussion

The Court finds the following facts, based on the credible evidence presented at trial: Needham Electrical Supply Corp. d/b/a NESCO...is a commercial supplier of electrical cable and other electrical devices. Interconnect Computer Cabling Services, Inc...is a contractor in the commercial technology field. Interconnect installs a variety of data, video, and security systems in both commercial and public buildings. Interconnect does a substantial amount of work on school building projects.

On March 2, 2004, Interconnect entered into an agreement with NESCO, Terms and Conditions of Sale were executed by Michelle Tilton, the treasurer of Interconnect and the wife of the President of Interconnect, Phillip Tilton. This agreement had a provision that governed substitution of like items, which clearly indicated that unless otherwise specified by purchaser in writing, NESCO will not substitute similar items. William MacDonald was a Project Manager for NESCO. He was NESCO's representative in most of its dealings with Interconnect. Trevor Jollin was the Procurement Manager for Interconnect. MacDonald and Jollin would speak to each other on almost a daily basis. Jollin ordered Comtran cable from NESCO, and estimated that 90% of the cable that Interconnect ordered from NESCO was Comtran. In 2005, MacDonald had a discussion with Jollin regarding Genesis cable, NESCO decided that it would be stocking Genesis, although Comtran would still be available for

clients. If Comtran was ordered, there would be a one day wait in getting the Comtran, while Genesis would be on the shelf. MacDonald testified that he was directed by his superior to sell the cable that we (NESCO) had in stock, which was Genesis. After discussing the Genesis cable, Jollin agreed to have NESCO supply Genesis cable for some of Interconnect's ongoing jobs. Jollin believed that the Genesis cable was made by a company related to Comtran, although he admitted that any misunderstanding of the conversation between Jollin and MacDonald regarding the Genesis cable was attributable to Jollin. It is clear that Jollin had the ability to order and bind Interconnect in his position and based on his past dealings with NESCO.

When NESCO delivered the Genesis cable to Interconnect. it came in clearly labeled Genesis boxes. On the invoices sent by NESCO, it indicated that Comtran was being supplied to Interconnect. NESCO double-shipped an order of Genesis, resulting in twice as much cable as was necessary being sent to a job site. The excess cable was brought back to Interconnect to be picked up by NESCO. Michelle Tilton saw the Genesis boxes and immediately questioned why Genesis was being used. Interconnect had concerns about warranties, as in some cases the Genesis cable had a shorter warranty period than Comtran cable.

Michelle Tilton testified that Trevor Jollin would purchase the items necessary for a job, and that she would eventually get the packing slip. She would match the packing slip with the purchase orders. She was the office manger, and she would process all receivables/payables. Ms. Tilton was upset when she discovered that Genesis cable was being used, and she tried on a number of occasions to get information about the warranties that Genesis had as related to the systems being installed by Interconnect. NESCO was slow in responding to requests from Interconnect

regarding the warranty information.

The Court finds that the Plaintiff has proven by a preponderance of the evidence that there was an agreement between the parties supported by valid consideration. The Plaintiff performed by providing the cable, which Mr. Jollin agreed to accept. The Defendant used the cable and subsequently did not tender payment. The agreement to use the Genesis was not a substitution made unilaterally by the Plaintiff, but rather a decision by Interconnect, at the suggestion of NESCO, to use Genesis cable. Comtran was still available and could still be ordered from NESCO. Interconnect chose to use the Genesis. While NESCO had a financial incentive to sell the Genesis cable, it was still Interconnect's decision to use the Genesis. Jollin chose to order and accept the Genesis cable, without consulting the Tilttons. In his position, Jollin had the authority to act in this manner and bind Interconnect.

Interconnect owes monies to the Plaintiff for the product that was provided. There was no evidence that NESCO was a party to any bid specifications for any jobs being performed by Interconnect. It was Interconnect's decision to use the Genesis cable, at NESCO's suggestion. The Court does not find violation of the Terms and Conditions, and if a violation did occur, it was de minimis. The Plaintiff is entitled to recover for the fair and reasonable value of the material and labor supplied to the Defendant.

Accordingly, the Court enters judgement for the Plaintiff in the amount of \$15,357.70.

Needham Electrical Supply Corporation v. Interconnect Computer Cabling Systems, Inc. (Lawyers Weekly No. 16-014-09) (3 pages) (Canavan, J.) David S. Katz for the plaintiff; Leo S. McNamara for the defendant (Dedham District Court) (Docket No. 0654-CV-1125) (July 27, 2009).