



News & Types: Commercial, Competition & Trade Update

Difficulties of Summary Judgment in Commercial Case - Summary Judgment May Not be Possible if Supply Agreements Aren't Clear

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Practices: Commercial, Competition & Trade, Litigation

A long term supply arrangement can become very complicated. The terms may become muddled or the parties' relationship becomes strained. This happened in a recent 7th Circuit case in which, surprisingly, the district court tried to resolve on summary judgment. But the 7th Circuit Court of Appeals found too many fact questions and reversed the summary judgment. (*Driveline Systems, LLC v. Arctic Cat, Inc.*, 7th Circuit Court of Appeals, No. 18-1424, August 23, 2019)

Driveline Systems and Arctic Cat had a very long relationship of nearly 10 years, quite enviable in this day and age. The predecessor of Driveline began selling parts for Arctic Cat in 1999. In June, 2002, Driveline and Arctic Cat entered into an agreement for the supply of specially manufactured parts. The 7th Circuit opinion also refers to a January, 2006 Supply Contract. Driveline was a "just-in-time" supplier, taking and filling orders daily with daily deliveries to Arctic Cat.

Things started going bad in 2007, when Arctic Cat sought a price reduction and, around the same time, learned that a foreign supplier could manufacture half-shafts, one of the parts supplied by Driveline, for approximately \$200,000 less per month. This apparently triggered negotiations between Arctic Cat and Driveline about the future supply of parts, especially the half-shafts. But, according to the opinion by Judge Bauer, during the negotiations Driveline's and Arctic Cat's relationship continued as usual. From January 2007 through February 2008, Arctic Cat paid Driveline between \$12 million and \$15 million for parts.

In early 2008, things got really bad and the finger pointing began. From Driveline's perspective, Arctic Cat became seriously delinquent, owing almost \$650,000 as of January, 2008. On January 21, 2008 Driveline stopped shipments. On January 24, 2008, Arctic Cat paid around \$372,000 and Driveline resumed shipments. Arctic Cat made another payment of around \$141,000. But in early February, 2008, Driveline halted shipments again, citing Arctic Cat's delinquent payments.

On February 8, 2008, Arctic Cat fired back, declaring Driveline in breach of contract and demanding Driveline to cover any resulting losses. The same day, Driveline wrote to Arctic Cat that it was in serious arrears and demanded a significant and immediate payment. The relationship collapsed and no further shipments were

made. On February 15, 2008, Arctic Cat sent a formal termination notice to Driveline. Then on February 19, 2008, Arctic Cat sent a demand for nearly \$541,000 in freight costs associated with Driveline's failure to deliver the parts.

The trial court tried to resolve this complicated case on summary judgment. It found Arctic Cat liable to Driveline for around \$182,000 and Driveline liable to Arctic Cat for around \$163,000. But, confusingly, it awarded Arctic Cat \$28,000 in attorneys' fees as the prevailing party with a net award to Arctic Cat of almost \$9,000.

Driveline appealed the summary judgment award and specifically the finding that there were no issues of material fact. Judge Bauer agreed and found several issues of fact that precluded summary judgment.

For example, the district court acknowledged that one of the issues is which party breached first. A material breach by a party will justify nonperformance by the other party. But who breached first turned out to be a complicated factual issue. The district court determined that prompt delivery was a material term, favoring Arctic Cat's claim of Driveline's delivery failure. The district court also determined that prompt payment was not a material term. The Uniform Commercial Code (the applicable law) provides that the time for payment, if not specified should be within a reasonable time. The term "reasonable" is a legal buzzword certainly implying a fact issue. So whether Arctic Cat's delay in payment was "reasonable" was a fact issue, not appropriate for summary judgment.

". . . The district court noted that Driveline excused late payments nearly a dozen times a year but did not find that any of those late payments were made after an unreasonable length of time, nor note that any of the circumstances surround those payments, or what percentage of payments were late.

. . . . This is the type of a genuine dispute as to a material fact which should have precluded summary judgment. . . . "

In addition, the terms of the agreement between the parties was a material fact. The relationship of the parties was governed by what Judge Bauer called a "mosaic of agreements." There was the Supply Contract from 2006, but Judge Bauer also cited conflicting terms on Driveline's invoices and Arctic Cat's purchase orders. So the 2006 Supply Contract may not have been an integrated agreement. Citing an Illinois case, Judge Bauer noted that "Whether a contract exists, its terms, and the intent of the parties are questions of fact for the trier of fact."

The status of the half-shaft business was also a factual issue. It was not clear if Arctic Cat terminated this portion of the business, whether it was permitted to do so, and whether the half-shaft business had an impact on Driveline's suspension of shipments.

The district court may have made a gallant attempt to come to what it felt was a correct decision. But, in doing so, it short-circuited the process designed to determine factual questions. In such a complicated fact pattern, it is understandable that Judge Bauer sent the case back to the district court.