

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

September 25, 2012

(VIA E-FILED)

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RE: *AlliedBarton Security Services, LLC v. Gallery Holdings, LLC*
C.A. No. 09C-11-096 FSS

Upon Defendant's Motion for Summary Judgment - DENIED.
Upon Plaintiff's Motion for Summary Judgment - DENIED.

Dear Counsel:

This is a contract dispute stemming from a large asset purchase. The dispute centers on funds escrowed as purchase price security. Part of the price was put aside and, depending on what happened between the agreement's signing and closing, the escrow would go to Seller or be returned to Buyer. Put simply, the parties argue about whether conditions occurred after signing that entitle Seller to some of the purchase price's return. Discovery has closed and both sides move for summary judgment.

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AlliedBarton, a nationally known security company, purchased HR Plus from Defendant to expand AlliedBarton's pre-employment background screening business, which is technology-based. Importantly, AlliedBarton has corporate locations in Chicago and Philadelphia, and HR Plus in Evergreen, Colorado.

The escrow agreement, with its conditions, is in the Asset Purchase Agreement. Specifically, the parties agreed that if HR Plus's revenue between June 13, 2008 and December 13, 2008, the "adjustment period," were less than the 12-months before closing, AlliedBarton would receive the escrow funds as a downward price adjustment. If, however, a "triggering event" occurred within that adjustment period, AlliedBarton would lose any claim to an adjustment and Gallery would be entitled to the full price, including escrow.

The parties agree that HR Plus's revenues fell sharply during the adjustment period, triggering a purchase price adjustment. AlliedBarton, therefore, wants the escrowed funds returned to it. Gallery, however, claims that AlliedBarton caused several "triggering events," which cost AlliedBarton any claim to the price adjustment.

Apart from agreeing that revenues fell during the adjustment period, there are several material factual disputes precluding summary judgment. Out of six triggering event possibilities, the parties mainly clash over event 2.4(d)(ii): "a material portion of the operations of [HR Plus] have been relocated from Evergreen, Colorado." In addition to other complaints, Gallery claims AlliedBarton relocated the "overwhelming majority of [HR Plus's] customer service work" to Chicago.

In other words, although the parties mostly agree about the customer service work's movement during the adjustment period, they disagree over whether the movement amounts to "a material portion of the operations" relocated from Colorado. Because "material portion" is not defined by the agreement, a jury will have to decide what that means.

Gallery also claims that AlliedBarton's conversion from HR Plus's

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“Paradox” computer system to AlliedBarton’s “Dashboard,” housed in Chicago, was “a significant relocation of services and operations.” Plaintiff responds that the purchase agreement did not prevent a system conversion and that the Colorado site retained “functionality” and “access” to the Dashboard program. Again, the question whether converting from “Paradox” to “Dashboard” was a “significant relocation” is a jury question. The same goes for other issues, e.g., whether AlliedBarton’s “optional” narrative report constituted a material change in service offerings, and so on.

As mentioned, material disputes exist and, therefore, the parties’ cross motion for summary judgment are **DENIED**. The court is issuing a new scheduling order, setting this case for trial on November 11, 2013, the earliest possible date.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
oc: Prothonotary (Civil)