

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ENTERTAINMENT TECHNOLOGY : CIVIL ACTION
CORPORATION :
 :
v. :
 :
WALT DISNEY IMAGINEERING, et al. : No. 03-3546

ORDER

AND NOW, this 10th day of June, 2005, upon consideration of Defendants' Motion for Partial Summary Judgment and Supporting Exhibits (Docket Nos. 52, 56-58), Plaintiff's Opposition thereto and Supporting Exhibits (Docket Nos. 65 & 66), and Defendants' Reply to Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment (Docket No. 69), IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART AND DENIED IN PART** as follows:¹

¹ On January 28, 2000, Plaintiff Entertainment Technology Corporation ("ETC") and Defendant Walt Disney Imagineering ("WDI") entered into a contract whereby ETC agreed to build a new amusement park ride system for the Walt Disney World Epcot theme park called "Mission: Space." The contract, entitled "Fixed Price Material Procurement Contract" ("MPC"), set forth a "Fixed Price Amount" of \$25,741,772 as a lump sum payment for ETC's successful completion of the scope of work set forth in Exhibit A of the MPC. The MPC explicitly allowed WDI to make changes to ETC's scope of work and provided for changes in contract pricing.

After signing the MPC, the parties signed a number of change orders, one of which is the subject of this litigation - Change Order No. 22 ("No. 22"). No. 22 altered the scope of work set forth in the MPC and the commensurate payment terms. No. 22 also included language that limited WDI's ability to reduce ETC's scope of work. As explained below, WDI eventually reduced ETC's scope of work below the scope of work set forth in No. 22. A primary issue in this case is whether WDI breached No. 22 by this conduct.

At the same time the parties signed No. 22, the parties also signed a Settlement Agreement. This agreement stated that WDI was to pay ETC \$1,012,000 in exchange for ETC releasing WDI "from any and all liability to [ETC] on account of the claims heretofore asserted by [ETC's subcontractors or subvendors]." WDI paid ETC \$12,000 for settlement of one of the subvendor

IT IS FURTHER ORDERED that:

- (1) Defendants Walt Disney Imagineering Research and Development and Walt Disney Company's Motion for Summary Judgment on all Counts is **GRANTED as uncontested.**²
- (2) Defendants' Motion for Summary Judgment as to Count IV (Specific Performance) is **GRANTED as uncontested.**³
- (3) Defendants' Motion for Summary Judgment as to Count I (Breach of Contract), Count II (Unjust Enrichment), Count III (Breach of Settlement Agreement), and Count VII (Breach of Implied

disputes. A second issue in this case is whether WDI paid ETC the remaining \$1,000,000 pursuant to the terms of the Settlement Agreement.

By the middle of 2002, ETC and WDI reached a fundamental disagreement as to the reasons for the project's increasing cost and changes to the scope of work. ETC claimed that costs were increasing because WDI was continually making design changes; WDI asserted that the design changes were necessary because ETC had failed "to properly perform the work in accordance with the design requirements specification." At this point WDI reduced ETC's scope of work by ordering ETC to assign to WDI all open purchase orders to subvendors, leaving WDI with the responsibility to complete the project. WDI paid ETC for the minimal work it performed towards completion of the ride, but WDI did not pay ETC for work performed through subvendors assigned to WDI. WDI completed the Mission: Space project in July 2003.

On June 9, 2003, Plaintiff ETC filed this diversity suit against Defendants WDI, Walt Disney Imagineering Research and Development ("R&D"), Walt Disney World Company ("WDW Co."), and the Walt Disney Company ("TWDC"). ETC's complaint contained seven counts: Count I (Breach of Contract), Count II (Unjust Enrichment), Count III (Breach of Settlement Agreement), Count IV (Specific Performance), Count V (Declaratory Judgment), Count VI (Declaratory Judgment), and Count VII (Breach of Implied Duty of Good Faith and Fair Dealing). Defendants' motion seeks summary judgment for Counts I, II, III, IV, & VII. Defendants' R&D & TWDC move for summary judgment on Counts V & VI as well.

² Plaintiff ETC does not contest the dismissal of Counts V & VI regarding Defendants Walt Disney Imagineering Research and Development and the Walt Disney World Company. Therefore, Defendants' motion for summary judgment as to Counts V & VI is granted as uncontested.

³ Plaintiff ETC does not contest the dismissal of Count IV as to all Defendants. Therefore, Defendants' motion for summary judgment as to Count IV is granted as uncontested.

Duty of Good Faith and Fair Dealing) is **DENIED**.⁴

BY THE COURT:

s/ _____
HERBERT J. HUTTON, S.J.

⁴ Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that there are no genuine issues of material fact in dispute. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-32 (1986); Carter v. Exxon Co., 177 F.3d 197, 202 (3d Cir. 1999). An issue of material fact is said to be genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When considering a motion for summary judgment, a court must view all facts and inferences in a light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The court's "function is not to weigh the evidence and determine the truth of the matter," but to determine whether there are genuine issues of material fact in dispute. Carter, 177 F.3d at 202 (citation omitted). The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial; whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. See Anderson, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See id. at 248-51.

Based on the parties' voluminous filings in support of, and in opposition to, this motion, there remain significant questions of material fact precluding the entry of summary judgment in Defendants' favor on Counts I, II, III, & VII. Regarding Count I, there is a question of material fact as to whether WDI had the right to reduce ETC's scope of work under No. 22. Based on the contradictory language of No. 22 itself as well as the parties' course of performance, a jury must decide the factual issue concerning the proper interpretation of No. 22 and the rights it granted to the parties. Therefore, Defendants' motion for summary judgment on Count I must be denied. As to Count II, contrary to WDI's argument, Florida law allows a party to bring an unjust enrichment claim as an alternative claim to a breach of contract action. See, e.g., In re Managed Care Litigation, 135 F. Supp. 2d 1253, 1269 (S.D. Fla. 2001) (citing Fed. R. Civ. P. 8(e)(2)). Therefore, Defendants' motion for summary judgment on Count II is denied. Whether WDI paid ETC \$1,000,000 pursuant to the terms of the Settlement Agreement (as is argued by Defendants), or whether this payment was made to satisfy Defendants' obligations to ETC concerning "prepayments" ETC made to subvendors (as is argued by ETC), remains a question of material fact to be decided by a jury. Therefore, Defendants' motion for summary judgment as to Count III is denied. Lastly, whether WDI satisfied its obligation to act in good faith with respect to ETC is a material and genuinely disputed issue of fact that precludes the entry of summary judgment in Defendants' favor. Therefore, Defendants' motion for summary judgment on Count VII is denied.