

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

WESTERN OVERSEAS)
CORPORATION,)
Plaintiff,) C.A. No. CPU4-09-001257
)
v.)
)
TRANSFLOR LTD.,)
Defendant.)

Submitted: August 31, 2009
Decided: September 14, 2009

DECISION AFTER TRIAL

James F. Bailey Jr., Esquire, Three Mill Road, Suite 306A, Wilmington, DE
19806, *Attorney for Plaintiff*

John V. Work, Esquire, 1220 North Market Street 5th Floor, Wilmington
Delaware 19801, *Attorney for Defendant*

ROCANELLI, J.

This is a breach of contract/debt action. Plaintiff Western Overseas Corporation (“Western Overseas”) alleges Defendant Transflor Ltd., (“Transflor”) failed to pay certain invoices for services provided. Transflor admits it had a contract with Western Overseas and also admits it owes Western Overseas money for services rendered, but contests the amount due and owing. Trial was held on August 31, 2009, and the Court reserved decision. This is the Court’s decision after trial.

Western Overseas is an international freight forwarder and customs broker. Transflor is a wholesale importer and supplier of fresh-cut flowers. Western Overseas and Transflor entered into a contract whereby Western Overseas would receive payment from Transflor for clearing Transflor's imported flower shipments through government agencies such as the United States Customs Service and the United States Department of Agriculture.

Western Overseas alleges Transflor breached its contract with Western Overseas by failing to pay for brokerage services provided in the amount of \$17,147.48. Anthony Castroville, the Regional Vice-President of Western Overseas, testified regarding Western Overseas' general operating procedure providing customs clearance services and its billing procedures. Through Castroville, Western Overseas presented evidence of its contract with Transflor, the services provided, and the invoices submitted to Transflor. Western Overseas contends there are several unpaid invoices totaling \$17,147.48 which are the subject of this lawsuit.¹

The business relationship between Western Overseas and Transflor has existed since as early as August 2003. Transflor made so-called "bulk payments" to Western Overseas that did not correspond to any particular

¹ Specifically, Plaintiff's Exhibit 1 includes fourteen invoices, and a two-page document which purports to summarize the invoices plus interest and attorneys' fees. Western Overseas contends thirteen of the fourteen invoices are outstanding in full, but states partial payment of one invoice has been made.

invoice. Western Overseas attributed the payments made by Transflor to the oldest outstanding invoice first.

John Goeb, President and founder of Transflor, testified regarding invoices received from Western Overseas and payments made by Transflor. Goeb conceded Transflor owes money to Western Overseas pursuant to the contract but rejects the amount Western Overseas claims is owed. Rather, according to Goeb, Transflor owes \$4,636.95 to Western Overseas.²

Both parties testified regarding the importance of the on-going relationship between Western Overseas and Transflor. It was necessary for Transflor promptly to move its imported perishable fresh-cut flowers through United States Customs Service and the United States Department of Agriculture. Goeb explained he therefore made payments on behalf of Transflor regardless of any dispute about outstanding invoices. Goeb also conceded Transflor had an incompetent accountant at a certain point in the

² Transflor presented evidence that payments to Western Overseas were by wire-transfer or check. Defendant's Exhibit 1 documents six wire transfers made by Transflor to Western Overseas via Wilmington Savings Fund Society. Defendant's Exhibit 2 is summary using QuickBooks software, which Goeb prepared to document all invoices received and payments made. Defendant's Exhibit 2A is the first sheet of the QuickBooks report and lists notations made by Goeb reflecting transfers made that correspond to the amounts listed in Plaintiff's Exhibit 1. Defendant's Exhibit 3 is an invoice and two revised statements representing accounting errors by Western Overseas. The amounts that are marked were incorrectly billed to Transflor and subsequently corrected when brought to Western Overseas' attention.

business relationship between Western Overseas and Transflor. In or about 2005, Goeb assumed responsibility for accounting at Transflor.

As the plaintiff, Western Overseas has the burden of proof to establish a breach of contract by a preponderance of the evidence. First, Western Overseas must establish a contract existed. Second, Western Overseas must establish Transflor breached an obligation imposed by the contract. Finally, Western Overseas must prove it suffered damages as a result of Transflor's breach.³

There is no dispute the parties entered into a binding contract for Western Overseas to act as a broker and provide service for Transflor's imported fresh-cut flowers to be moved through the United States Customs Service and the United States Department of Agriculture. There is also no dispute Transflor breached the contract with Western Overseas by failing to pay for services rendered. Finally, there is no dispute Transflor owes money to Western Overseas. Western Overseas has met its burden of proof on its contract claim.

The only question is what damages are due Western Overseas by Transflor. The Court rejects the financial analysis presented by Western

³ *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).

Overseas as unreliable. The financial evidence presented in Plaintiff's Exhibit 1 simply does not support Western Overseas' claim at trial that it is owed \$17,147.48; nor does it support the amount owed as stated in the Complaint.

Moreover, although Western Overseas concedes payments were made by Transflor, its financial analysis does not account for any payments made by Transflor except a partial payment of one invoice and a \$200 good faith payment after litigation was undertaken by Western Overseas. The Court rejects Anthony Castroville's testimony as unreliable with respect to the financial calculations. John Goeb, on the other hand, testified based on his personal knowledge and his own review of the invoices and payments.

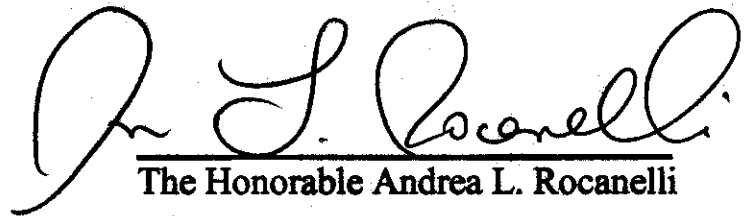
Western Overseas also presented evidence at trial that it is owed interest and attorneys' fee values pursuant to the contract. However, Western Overseas did not establish how interest should be calculated or from what date or dates it should be calculated. Moreover, the Court rejects Western Overseas' contention that the amounts identified as "collection fees" (Plaintiff's Exhibit 1) should be attributed as damages to Transflor as attorneys' fees pursuant to the contract.

Despite the failure of proof by Western Overseas, Transflor concedes it owes Western Overseas \$4,636.95. This amount is consistent with the

evidentiary record made by Transflor at trial. Goeb's testimony was credible and the Court finds Transflor presented reliable documentary evidence. The Court finds Transflor owes Western Overseas \$4,636.95 for services rendered by Western Overseas to Transflor pursuant to the contract.

THEREFORE, judgment is entered in favor of Plaintiff Western Overseas Corporation and against Defendant Transflor Ltd. in the amount of \$4,636.95, plus post-judgment interest at the legal rate; each party shall bear its own costs and attorneys' fees.

IT IS SO ORDERED.


The Honorable Andrea L. Rocanelli