

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

DIVISION I

CA07-1189

June 25, 2008

NEW LIFE BEAUTY CENTER, INC.
APPELLANT

APPEAL FROM SEBASTIAN
COUNTY CIRCUIT COURT [NO.
CV-05-366 (I)]

V.

PALOMAR MEDICAL
TECHNOLOGIES, INC.

APPELLEE

HON. JAMES O. COX,
JUDGE

AFFIRMED

New Life Beauty Center sued Palomar Medical Technologies for breach of a sales contract for certain equipment. The trial court dismissed, ruling that Arkansas courts lacked jurisdiction because a forum-selection clause in the contract specified Massachusetts as having exclusive jurisdiction over any suit arising out of the agreement. We affirm.

New Life argues that the trial court erred in dismissing its suit. Although a single-page form titled “Palomar Terms and Conditions of Sale” states that the purchaser consents to the exclusive jurisdiction of the courts of Massachusetts, New Life asserts that this was not part of the parties’ agreement because New Life never received a copy of those “Terms and Conditions.” We do not agree. The record contains a sales agreement¹ signed by both parties

¹There are actually two executed agreements for the sale of the same equipment in the record, both of which are alleged to have been altered in some respect by the opposing party. Although the merits of the contract suit depends on deciding which of these documents controls, that issue is irrelevant for purposes of this appeal because both of the agreements acknowledge New Life’s agreement to the Terms and Conditions, and there is no allegation that this portion of

expressly providing that it was “subject to Palomar Medical’s Terms and Conditions as listed on the reverse,” and acknowledging that New Life understood and agreed to the Terms and Conditions of purchase “as stated on reverse or attached hereto.” New Life was thus charged with knowledge that there were in fact additional terms to the agreement, and those terms are construed together with the rest of the writings in determining the intention of the parties. *International Graphics, Inc. v. Bryant*, 252 Ark. 1297, 482 S.W.2d 820 (1972). Whether New Life had actual knowledge of the Terms and Conditions or not, it is bound by them because one is bound by law to know the contents of papers that he signs. *Jordan v. Diamond Equipment & Supply Co.*, 362 Ark. 142, 207 S.W.3d 525 (2005).

New Life also argues that the trial court erred in dismissing the lawsuit because Palomar waived the forum-selection clause by requesting affirmative relief. We disagree. Palomar did file a counterclaim for the equitable value of the use of the equipment in the event that New Life sought rescission of the agreement. Although asserting a permissive counterclaim waives the right to object to venue, assertion of a compulsory counterclaim does not. *Arkansas Game & Fish Commission v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987). The question, then, is whether Palomar’s counterclaim for the equitable value of the use of the equipment in the event that New Life sought rescission of the agreement was permissive or compulsory.

A counterclaim is compulsory if it exists when the claim is filed, arises out of the same transaction or occurrence as the opposing party’s claim, and does not require the presence of

the agreement was altered.

third parties over whom the court cannot acquire jurisdiction. Ark. R. Civ. P. 13(a). Here, there is no assertion that the presence of any such third parties would be required to adjudicate the counterclaim. Furthermore, although the parties differ on which of two documents executed a few days apart was valid and should control, there is no assertion that there was more than a single binding agreement between the parties. Finally, although New Life's claim was for breach of contract and Palomar's counterclaim was for the equitable value of the use of the equipment in the event that New Life sought rescission of the agreement, the counterclaim was compulsory because it was inextricably bound to the same transaction from which the claim arose. *See Arkansas Game & Fish Commission v. Lindsey*, 292 Ark. 314, 730 S.W.2d 474 (1987).

Affirmed.

GLADWIN and ROBBINS, JJ., agree.