

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

TIM HENRY **PLAINTIFF**

v. **3:07CV00158 WRW**

THE PREMCOR REFINING GROUP, INC. **DEFENDANT**

THE PREMCOR REFINING GROUP, INC. **THIRD PARTY PLAINTIFF**

v.

FLASH OIL COMPANY OF ARKANSAS, INC. **THIRD PARTY DEFENDANT**

ORDER

Pending is Flash Oil Company of Arkansas, Inc.'s ("Flash Oil") Motion for Summary Judgment (Doc. No. 67). The Premcor Refinancing Group, Inc. ("Premcor") has responded.¹

Flash Oil's Motion asks the Court to reverse its findings, set out in a November 7, 2008,² and an April 24, 2009, Order,³ that a contract existed between Premcor and Flash Oil. The November 7, 2008, Order denied Flash Oil's motion to dismiss, in part because "a contract does exist between the parties."⁴ The April 24, 2009, Order granted Premcor's motion for partial summary judgment as it related to finding a valid contract between the Flash Oil and Premcor.⁵

¹Doc. No. 76.

²Doc. No. 49.

³Doc. No. 63.

⁴Doc. No. 49.

⁵Doc. No. 63.

On June 12, 2009, Flash Oil deposed Mr. Steven Fite. Based on Mr. Fite's deposition testimony, Flash Oil contends that Mr. Fite did not have personal knowledge of the information contained in his earlier affidavit, and that, without personal knowledge, the reliability of Mr. Fite's affidavit is suspect. Even without considering the challenged portions of Mr. Fite's affidavit and deposition testimony, the Court does not change its conclusion set out in its previous Orders.⁶ The reasoning of the Court in reaching its conclusion remains the same: Mr. Patrick Stoner, Flash Oil's vice president, filled out page one of the Carrier Responsibility Agreement ("CRA") and signed Exhibits A and B to the CRA. The parties performed under the contract. Ms. Renata Nix, gasoline controller for Flash Oil, testified that the CRA was in effect. Further, as required by the CRA, Flash Oil requested that Premcor be listed as an additional insured on its policy.⁷

Flash Oil points out the Premcor does not have a copy of the signed CRA in its files. I am not persuaded that, because Premcor cannot find a copy of the CRA in its files, no contract existed.

CONCLUSION

Based on the findings of fact and conclusion of law above, Flash Oil's Motion for Summary Judgment (Doc. No. 67) is DENIED.

IT IS SO ORDERED this 24th day of August, 2009.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

⁶Doc. Nos. 49, 63.

⁷Doc. No. 76-4.