

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

AMERIFACTORS FINANCIAL GROUP, LLC PLAINTIFF

v. No. 4:12-cv-202-DPM

WINDSTREAM SUPPLY, LLC DEFENDANT/
THIRD-PARTY PLAINTIFF

v.

HAL-TEC CONSTRUCTION, INC. THIRD-PARTY DEFENDANT

ORDER

1. Amerifactors is right: the Court overlooked Amerifactors's last fall-back argument that Windstream owed it \$63,480.39 in any event. *No 79 at 1, 14-15*. Amerifactors's Rule 59(e) motion to alter or amend the judgment is granted. Correcting this kind of mistake by the court is precisely Rule 59(e)'s office. *Innovative Home Health Care, Inc. v. P.T.-O.T. Associates of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir. 1998). The Judgment is vacated. And that part of the Court's Order, *No 103 at 11*, granting Windstream judgment across-the-board is vacated too.

2. The Court gives notice that it is considering entering summary judgment for Amerifactors for \$63,480.39 and a correlative summary

judgment for Windstream against Hal-Tec. FED. R. CIV. P. 56(f). The material facts on the unpaid invoices appear undisputed. Hal-Tec has defaulted on Windstream's indemnity claim. Windstream may file a brief, and anything it wants to bring to the Court's attention, by 8 January 2015. There's no need to refile any evidentiary material already on the docket; simply cite to it. Prior briefing should be referenced too, rather than redone. Amerifactors may respond within fourteen calendar days after Windstream's filing. And Windstream may reply within seven calendar days after Amerifactors responds.

3. In the circumstances, Windstream's motion for attorney's fees is denied without prejudice as premature.

4. Windstream must send (by some form of mail or commercial delivery requiring a signed receipt) a copy of this Order to Hal-Tec. Windstream must also provide proof of service by 19 December 2014.

* * *

Motion to alter or amend, *No 108*, granted. Judgment, *No 104*, vacated. Motion for fees, *No 105*, denied without prejudice. Notice of potential summary judgment on the remaining issues given.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

10 December 2014