

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 14-cv-0877-WJM-MJW

IMPORT FRESH DIRECT, LLC,

Plaintiff,

v.

PREMIER TRADING, LLC, d/b/a ALLIANCE WHOLESALÉ,
DIRECT LINE TRANSPORTATION, LLC,
WILLIAM VOGEL, and
ANTHONY FILPI,

Defendants.

ORDER VACATING FINAL JUDGMENT

Plaintiff Import Fresh Direct, LLC (“Plaintiff”) brings this action against Premier Trading, LLC, doing business as Alliance Wholesale (“Premier”), Direct Line Transportation, LLC (“Direct Line”), William Vogel, and Anthony Filpi (collectively “Defendants”) alleging violations of various provisions of the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. §§ 499a *et seq.*, and related claims. (ECF No. 1.) This matter is before the Court on Defendants’ Motion to Strike Entry of Judgment Based Upon Clerk’s Erroneous Reliance Upon Stricken Pleading. (ECF No. 58.)

On April 15 and 16, 2014, Defendants filed a Notice of Offer of Settlement and Amended Notice of Offer of Settlement, offering to resolve the case for a payment of \$80,000 and citing Colorado Revised Statute § 13-17-202. (ECF Nos. 40 & 41.) On April 29, 2014, Plaintiff filed an Acceptance of Defendants’ Offer of Judgment and Motion for Order of Payment, again citing § 13-17-202 and moving the Court to issue

an order for Defendants to pay the balance owed to Plaintiff under the settlement agreement. (ECF No. 51.) However, because neither party cited federal procedural law, the Court struck Plaintiff's Acceptance of Offer of Judgment and Motion for Order of Payment on May 6, 2014. (ECF No. 55.) The Court permitted Plaintiff to re-file a notice of Acceptance of Offer of Judgment pursuant to Federal Rule of Civil Procedure 68(a). (*Id.*)

On May 6, 2014, Plaintiff filed a Notice of Acceptance of Offer of Judgment pursuant to Rule 68, attaching Defendants' filed settlement offer, and Plaintiff's acceptance with proof of service. (ECF No. 56 at 1, Ex. D.) Plaintiff requested that the Clerk of Court enter judgment with the notation that attorneys' fees and costs had not been determined based on the absence of any such language in Defendants' offer. (*Id.* at 2.) Accordingly, and pursuant to Rule 68(a), the Clerk entered Final Judgment with Plaintiff's requested notation. (ECF No. 57); Fed. R. Civ. P. 68(a) ("If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.").

On May 7, 2014, Defendants filed a Motion to Strike Entry of Judgment, arguing that the Clerk should not have entered judgment because Plaintiff's acceptance was stricken, and that the judgment erroneously stated that fees and costs had not been determined when Defendants intended their offer to be inclusive of any fees and costs. (ECF No. 58 at 1-2.) On the same day, Defendants filed a Motion to Stay Entry of Judgment Pending Negotiated Settlement of the Case, stating that the parties were in the process of resolving their dispute about the issue of attorneys' fees and costs and

that judgment should not yet be entered. (ECF No. 60.)

Based on the parties' recent filings, the Court concludes that despite Plaintiff's representations in its notice of Acceptance of Offer of Judgment, the parties are not yet in agreement with respect to the terms of the settlement of this case. Accordingly, judgment was entered in error, and the Final Judgment must be vacated pursuant to Federal Rule of Civil Procedure 60(a). Defendants' Motion to Strike Entry of Judgment is therefore granted. However, the Court will permit Plaintiff to address the merits of Defendants' contentions raised in their Motion to Strike Entry of Judgment when Plaintiff files its response to the Motion to Stay Entry of Judgment.

For the reasons set forth above, the Court ORDERS as follows:

1. Defendants' Motion to Strike Entry of Judgment (ECF No. 58) is GRANTED; and
2. The Final Judgment (ECF No. 57) is VACATED.

Dated this 8th day of May, 2014.

BY THE COURT:



William J. Martinez
United States District Judge