

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EAST COAST BROKERS AND PACKERS,
INC.,

Plaintiff,

v.

CASE NO: 8:07-cv-171-T-26MSS

SEMINIS VEGETABLE SEEDS, INC.,

Defendant.

ORDER

The Court has for its consideration Defendant's motion to dismiss counts III and IV of Plaintiff's complaint based on the legal premise that Florida's economic loss rule bars the causes of action pleaded in those counts - negligent representation and negligence. Accepting the well-pleaded allegations of Plaintiff's complaint as true, as the Court must do at this stage of the proceedings, the Court is unable to conclude that Plaintiff can prove no set of facts entitling it to relief on those counts.¹ More specifically, the Court is unable to determine whether Plaintiff is wholly unable to prove that the tort claims alleged in counts III and IV require proof of facts separate and distinct from the

¹ Given this conclusion, the Court needs no response from Plaintiff.

express and implied contract warranty claims alleged in counts I and II. Such a determination must await a more fully developed factual record.²

Accordingly, it is ordered and adjudged as follows:

- 1) Defendant's Motion to Dismiss Counts III and IV (Dkt. 4) is denied.
- 2) Defendant shall file an answer and defenses to counts III and IV within 10 days

of this order.

DONE AND ORDERED at Tampa, Florida, on January 29, 2007.

s/Richard A. Lazzara

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record

² The Court notes that one of the four cases Defendant cites in support of its position was decided after a trial on the merits, see Straub Capital Corp. v. L. Frank Chopin, P.A., 724 So. 2d 577 (Fla. Dist. Ct. App. 1998), and two others were decided within the context of motions for summary judgment. See Taylor v. Maness, 941 So. 2d 559 (Fla. Dist. Ct. App. 2006); Royal Surplus Lines, Ins. Co. v. Coachmen Indus., Inc., 2002 WL 32894915 (M.D. Fla. 2002).