

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

C&K TRUCKING, LLC,

Plaintiff,

v.

EXPEDITED FREIGHTWAYS, LLC,

Defendant.

No. 1:13-CV-4006

DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT

Defendant/Counter-Claimant, Expedited Freightways, LLC (“Expedited Freightways”), files this cross motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the Northern District of Illinois. In support of its cross motion, Expedited Freightways states as follows:

1. Expedited Freightways has sued Plaintiff/Counter-Defendant, C&K NuCo, LLC (“C&K”), for, *inter alia*, breach of contract based upon C&K NuCo’s failure to pay the purchase price adjustment, or earn-out, due to Expedited Freightways under the parties’ January 25, 2013 Asset Purchase Agreement (the “APA”). [See Ans., Aff. Def., and Countercl. ¶¶ 35-41, DE 60.] Expedited Freightways moves for summary judgment on this claim.

2. C&K has failed and refused to pay Expedited Freightways a Purchase Price Adjustment as provided for in Section 2.03 of the APA. On June 20, 2013, C&K issued an Aggregate Direct Profit Statement identifying \$464,622.15 in Aggregate Direct Profit. The Expedited Review Period began on June 21, 2013 and expired on July 5, 2013. Because Expedited did not object to C&K’s Aggregate Direct Profit Statement within the Expedited

Review Period, C&K’s Aggregate Direct Profit Statement was “deemed approved and binding upon the parties” pursuant to Section 2.03 of the APA. This plain and unambiguous language of the APA should end the inquiry in Expedited Freightways’ favor.

3. Additionally, Expedited is also entitled to summary judgment because the plain and unambiguous language of the APA defines “Direct Profit” as a function of gross sales – total sales *without deductions for uncollected revenue*. In its motion for summary judgment, C&K erroneously attempts to define Direct Profit by net sales – total sales with deductions for uncollected revenue. However, the APA expressly defines Direct Profit as “C&K’s . . . net revenues.” Net revenue is generally defined as gross sales less costs of goods sold. The parties adopted this definition of net revenue through their statements and course of conduct. Under the proper definition of net revenue, C&K’s Aggregate Direct Profit totaled \$464,622.15.

4. Because there is no genuine issue of disputed material fact as to Expedited Freightways’ entitlement to this amount (plus pre-judgment interest thereon), Expedited Freightways is entitled to judgment as a matter of law in the amount of \$329,107.36.

WHEREFORE, Expedited prays for entry of an Order (a) granting summary judgment for Expedited Freightways on its counterclaim for C&K’s failure to pay a Purchase Price Adjustment of \$329,107.36; (b) granting Expedited Freightways leave to file a petition for attorneys’ fees and a bill of costs within thirty (30) days of the Court’s ruling on this motion; and (c) granting such other relief as the Court deems appropriate.

Submitted this 19th day of September, 2016.

/s/ James V. Garvey

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the other parties in the foregoing matter with a copy of this **Defendant's Cross Motion for Summary Judgment** via the Court's CM/ECF notification system to:

Jeffrey Kosc, Esq.
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Submitted this 19th day of September, 2016.

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