

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

CIVIL ACTION NO. 3:04CV-631-H

PAUL WHITEWOOD

PLAINTIFF

V.

ROBERT BOSCH TOOL CORP.

DEFENDANT

**MEMORANDUM OPINION AND ORDER**

A number of motions have accumulated since the remand of this case from the Sixth Circuit Court of Appeals and prior to the trial scheduled for September 28, 2009. Plaintiff has moved for a partial new trial and has also moved for summary judgment on the issue of rejection. Plaintiff has also moved to file an amended complaint alleging a new claim for fraud. The Court has considered these motions along with the opinion of the Sixth Circuit Court of Appeals in determining how to resolve these issues. First, this case has been in litigation almost five years. For Plaintiff to attempt an amendment which would add a new claim after four and half years and only several months prior to the scheduled trial date is well beyond any acceptable time limits. To allow such an amendment at this time would be unfairly prejudicial to Defendant and would even further delay final resolution of the dispute.

In Plaintiff's other two motions, he essentially argues that the Court should somehow preserve the original jury verdict in his favor and try only the issues related to defense of rejection which the Court did not instruct upon in the first trial. The Sixth Circuit suggested in its opinion that the entire matter should be retried. This makes sense because it would be

difficult to understand the defense of rejection without at the same time hearing evidence about the contract claim. The question of Plaintiff's acceptance in his rejection or repudiation of a prior order are inevitably intertwined. The Court concludes that the best course of action is to try the entire matter again with the appropriate instructions embodying the defense of rejection. The Court further believes that there is sufficient evidence upon which a reasonable jury could find that rejection has occurred.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff's motion to amend is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion for a partial new trial is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion for summary judgment is DENIED.

September 8, 2009

Handwritten signature of John G. Heyburn II in black ink, written over a circular seal of the United States District Court for the District of Oregon.

**John G. Heyburn II, Judge  
United States District Court**

cc: Counsel of Record