

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES MATTHEW FREEMAN,)
)
 Plaintiff,)
)
 v.) Case No. 4:15 CV 1473 CDP
)
MH EQUIPMENT COMPANY,)
)
 Defendant.)

MEMORANDUM AND ORDER

I have reviewed defendant MH Equipment Company’s motion for summary judgment, and the materials and briefs submitted in support of each party's position, and find there to be genuine issues of material fact in dispute between the parties, including, but not limited to, whether the manner by which MH Equipment determined the amount of commission to be paid to Freeman in relation to the Olin Equipment Sale was in compliance with – or in breach of – the agreement(s) contained within the Commission Program; and whether an agreement existed between the parties that Freeman accept what he considered to be a lesser commission than owed with a mutual understanding that Freeman’s acceptance constituted full satisfaction of his claim to additional commission.

On the information before the Court, I cannot say that MH Equipment has established its right to judgment with such clarity as to leave room for no

controversy and that Freeman is not entitled to prevail under any discernable circumstances. *Vette Co. v. Aetna Cas. & Sur. Co.*, 612 F.2d 1076, 1077 (8th Cir. 1980). Although Freeman asks that I strike certain portions of the Metzger Declaration that MH Equipment submitted in support of its motion, my review of the challenged portions of the declaration does not change my conclusion that genuine issues of fact exist in this action.

Accordingly,

IT IS HEREBY ORDERED that defendant MH Equipment Company's Motion for Summary Judgment [34] is **DENIED**.

IT IS FURTHER ORDERED that plaintiff James Matthew Freeman's Motion to Strike [39] is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that a **final pretrial hearing** will be held on **Friday, September 16, 2016 at 9:00 a.m.** in Courtroom 14-South. The case remains set for a jury trial on the two week docket beginning **September 19, 2016**.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 4th day of August, 2016.