

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MENARD, INC.,

Plaintiff,

vs.

DIAL-COLUMBUS, LLC, et al.,

Defendants.

4:12-CV-3077

ORDER

This matter is before the Court on its own motion upon receipt of the mandate of the United States Court of Appeals for the Eighth Circuit (filing [91](#)) from defendant Terry L. Clauff's appeal in this matter. As the Court understands the Eighth Circuit's opinion, the Court has been directed to further consider "whether the Nebraska common law and/or [Neb. Rev. Stat.] § 21-2635 preclude Clauff's argument that his liability under the Lease Assignment may be relieved or avoided because DKC-Columbus came into existence, adopted the contract, and commenced performance on it." *Menard, Inc. v. Dial-Columbus, LLC*, No. 14-1741, slip op. at 11 (8th Cir. Mar. 26, 2015) (footnote omitted) (filing [88](#)).

Pursuant to the Eighth Circuit's mandate, the Court will reopen Menard's motion for summary judgment (filing [53](#)). All evidence and briefing previously filed with respect to that motion will be considered as having been re-submitted. As the moving party, Menard will be directed to file a supplemental brief in support of its motion for summary judgment, along with any further evidence it should wish to provide. Clauff may then file a supplemental response brief and any additional evidence. Menard may then reply to Clauff's brief and evidence.

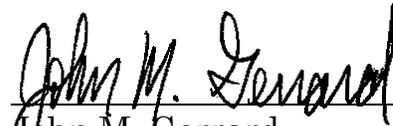
The Eighth Circuit also noted what it believed to be "the potential for factual deficiencies in the summary judgment record[.]" *Id.* at 2-3, 11. Accordingly, rather than set a briefing schedule, the Court will direct the parties to confer and consider whether additional discovery is required. Then, the parties should set a status conference with the Magistrate Judge to discuss case progression, including a discovery schedule (if any) and a briefing schedule on the motion for summary judgment.

IT IS ORDERED:

1. The Clerk of the Court is directed to reopen Menard's motion for summary judgment (filing [53](#)).
2. The parties will be directed to brief and submit the motion for summary judgment as set forth in this order.
3. On or before May 6, 2015, the parties shall contact the Magistrate Judge's chambers to set a status conference, after which the Magistrate Judge shall set a schedule for disposition of the motion for summary judgment.

Dated this 24th day of April, 2015.

BY THE COURT:



John M. Gerrard
United States District Judge