

Based upon Plaintiff's Motion for Directed Verdict¹ on Defendant's Affirmative Defenses of Waiver and Estoppel, and the Memorandum submitted in Support of that Motion, as well as the testimony and evidence presented at trial,

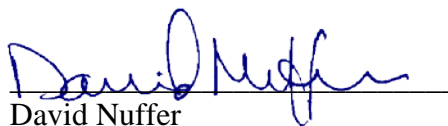
IT IS HEREBY ORDERED that

1. Plaintiff's Motion is GRANTED as to defendant's affirmative defense of estoppel. An essential element of estoppel under Texas law is detrimental reliance on the concealing or misrepresentation of material facts. See Nelson v. Jordan, 663 S.W.2d 82, 87 (Tex. App. 1983). Defendant did not introduce any evidence that Plaintiff concealed or misrepresented any facts to Defendant. Nor did Defendant introduce any evidence that it relied to its detriment on anything Plaintiff did. Accordingly, a directed verdict on Defendant's affirmative defense of estoppel is appropriate.

2. Plaintiff's Motion is DENIED at this time as to Defendant's affirmative defense of waiver.

Dated August 21, 2012.

BY THE COURT:



David Nuffer
United States District Judge

¹ Docket no. 233.