UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CARL T. MADSEN, INC., d/b/a Madsen Electric, a Washington corporation,

Plaintiff,

v.

ABB , INC., a Delaware corporation; and MWH CONSTRUCTORS, INC., A Delaware corporation,

Defendant.

CASE NO. C08-5596 KLS

ORDER DENYING MWH CONSTRUCTORS' MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST CARL T. MADSEN, INC.

MWH filed a Motion for Partial Summary Judgment Against Carl T. Madsen, Inc. (ECF No. 138) in which it asks this court to enter a partial summary judgment motion determining, as a matter of law, that Madsen and MWH had certain enumerated contractual duties and responsibilities. MWH asserts that the motion is based on the plain language of the unambiguous contract documents.

Madsen filed its Response (ECF No. 158) in which it opposed the motion on the grounds that the motion is, in fact, a request for declaratory relief which, if granted, would result in a series of advisory opinions.

In its Reply (ECF No. 168), MWH asserts that its motion is based on contract interpretation which is a matter of law.

The Court finds that there are material issues of fact, raised by Madsen, which preclude this court's grant of the requested relief. This case is scheduled for a bench trial and it is best left for the time of trial for the court to make a legal determination regarding the parties respective contractual rights and obligations, based on all the evidence. The motion is therefore DENIED.

Dated this 25 day of October, 2010.

Karen L. Strombom
United States Magistrate Judge