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Kingsly Compression, Inc. v. Mountain V Oil and Gas, Inc. ***No. 09-0316; 745 F.Supp.2d 628 (W.D. Pa. Sept. 28, 2010)***

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Plaintiff, Kingsly Compression, Inc. (“Kingsly”) fabricates, rebuilds, and reconditions small to medium natural gas compressors. Defendant, Mountain V Oil and Gas, Inc. (“Mountain V”) is an oil and gas producer, targeting natural gas trapped in the Marcellus Shale. These parties had a long standing business relationship, and although a standard form lease was generally executed between the two, sometimes business would be conducted without a lease being signed.

Mountain V solicited a natural gas compressor from Kingsly. The compressor had to be of precise specifications in order to meet the needs of Mountain V. Kingsly found a sufficient motor and a lease was executed, with a stated delivery date of twenty-six weeks. However, Kingsly shortly thereafter determined the motor for the agreed to unit would not work properly and a bigger, more powerful motor was needed. After attempting to find a refurbished motor for the unit, Kingsly determined that a special motor would have to be built in a facility in Brazil and shipped. Kingsly informed Mountain V that the new unit would take forty-two weeks to deliver.

Once the motor was built and the unit ready to be shipped, Mountain V informed Kingsly that it did not need the unit at that moment due to problems with the gas lines and a pending lawsuit. Kingsly then tried to find another party to lease the unit to, and requested Mountain V's consent. However, Mountain V refused to consent to the sale or lease of the unit. Kingsly then sued Mountain V for breach of agreement by failing to make payments under the lease. Both parties moved for summary judgment, and the court considered the facts.

The court first found that the twenty-six week delivery period was an enforceable clause of the agreement, but that Mountain V waived the enforceability of this provision. Specifically, the conduct and communications between the parties from the time the lease was executed to the time the payments became due made clear that Mountain V intended to remain under the agreement, albeit modified to account for the new motor being built in Brazil. Mountain V was aware of the extended production time associated with the new motor, and acquiesced to the delay in delivery time through its outward conduct and manifestations. Having waived the right to enforce the original delivery period, the court granted Kingsly's motion for summary judgment and entered a judgment as a matter of law in Kingsly's favor on liability for the breach of contract claim. The exact calculation for damages could not be reached using the evidence in the record, and the court ordered a brief detailing damages calculations.

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