

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	Chapter 11
	§	
AUTO PLUS AUTO SALES LLC,	§	CASE NO. 23-90055 (CML)
	§	
	§	(Formerly Jointly Administered
	§	under Lead Case IEH Auto Parts
Wind-Down Debtor.	§	Holding, LLC, Case No. 23-90054)
<hr/>		
IEH AUTO PARTS HOLDING LLC, <i>et</i>	§	
<i>al.</i>	§	
Plaintiffs,	§	
	§	
v.	§	ADVERSARY NO. 24-03040
	§	
ELLIOTT AUTO SUPPLY CO., INC.	§	
D/B/A FMP,	§	
Defendant.	§	

**DEFENDANT'S SUMMARY JUDGMENT RESPONSE
AND
DEFENDANT'S COUNTER-MOTION FOR SUMMARY JUDGMENT**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTON, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WIHTOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.



Defendant Elliott Auto Supply Co., Inc. d/b/a FMP (“Defendant”) files this Response to the Motion For Summary Judgment (“Motion”) [DKT 008] filed by Plaintiffs IEH Auto Parts Holding LLC, and its wind-down debtors (collectively referred to herein as “Plaintiff”), as well as Defendant’s Counter-Motion For Summary Judgment. In support thereof, Defendant would respectfully show the Court the following:

I. SUMMARY OF RELIEF REQUESTED

1. Plaintiff has preemptively sought summary judgment on its Motion¹ seeking to have the Court rule on its sole cause of action – a request for declaratory judgment relating to a single dispute resolution provision contained in the applicable Asset Purchase Agreements (“APA”) at issue in this case.²

2. Like Plaintiff, Defendant believes this dispute involves a question of contract interpretation appropriate for this Court to decide. However, for the reasons discussed herein, Defendant strenuously disagrees with Plaintiff’s proposed interpretation of the relevant portions of the APA, as Plaintiff’s flawed interpretation seeks to place additional burdens on the Independent Accountant designated to address post-closing inventory adjustment disputes under the terms of the APA that do not appear anywhere in the APA. In other words, Plaintiff requires nonexistent language to be read into the contract to get its desired result.

¹ It should be noted that Plaintiff filed its Motion: (a) prior to complying with any of the mandatory Rule 26 disclosure requirements; (b) prior to satisfying the required Rule 26(f) conference; (c) prior to the Court issuing a Rule 16(b)(1) scheduling order; and (d) prior to the Court and parties participating in a Rule 16(a) scheduling conference (collectively, the “Required Procedural Matters”). Despite these procedural irregularities, Defendant is not opposed to bypassing the Required Procedural Matters in an effort to resolve this dispute in an expeditious and cost-effective manner by having the Court summarily address Plaintiff’s Motion, as well as Defendant’s Counter-Motion.

² As reflecting in Plaintiff’s Motion, there are two Asset Purchase Agreements at issue – one dated June 12, 2023, and the other dated June 29, 2023. The relevant dispute language in both is identical. Accordingly, for purposes of this filing, both agreements shall be referred to, collectively, as the “APA.”

3. Notably, neither side claims any ambiguity with regard to the applicable dispute resolution provisions, and neither side has advised the Court that any discovery is required for the Court to address this contract interpretation issue. Accordingly, for purposes of judicial efficiency, and pursuant to FED. R. CIV. P. 56,³ Defendant respectfully requests that the Court simultaneously deny Plaintiff's Motion and grant Defendant's Counter-Motion For Summary Judgment (the "Counter-Motion") dismissing Plaintiff's Complaint in its entirety.

II. BACKGROUND FACTS ARE NOT DISPUTED

4. The history cited by Plaintiff in its Motion regarding how the parties got to this point, both factually and procedurally, is largely undisputed, and largely irrelevant to the matters addressed herein.

5. Defendant will note, however, that Plaintiff's Motion strangely cites Defendants' answer several times as support for its Motion when Defendant has not admitted the specific contention being relied upon by Plaintiff. *See, i.e.*, Motion at ¶¶ 9-15, 22. Defendant objects to all such citations as being inaccurate and misleading to the Court.

III. DEFENDANT'S COUNTER-MOTION IS RIPE FOR DETERMINATION

6. As noted in Plaintiff's Motion, Defendant does not contest that there is a judicable controversy between the parties, or that the parties' controversy is ripe for summary judgment. As such, for the same reasons that Plaintiff's Motion should be denied, Defendant's Counter-Motion should be granted and Plaintiff's sole cause of action should be dismissed with prejudice.

7. All exhibit references herein are to Exhibit A-1 attached to Plaintiff's Motion, which is incorporated herein by reference.

³ Incorporated by Rule 7056 of the Federal Rules of Bankruptcy Procedure.

IV. RELEVANT APA PROVISIONS

8. In short, the APA contains “Inventory Adjustment” and “Resolution of Disputes” sections setting forth how any “Disputed Amounts” relating to inventory balances at the time of closing shall be resolved monetarily.⁴

9. As discussed in the Motion, Sections 3.2(b)(i) and 3.2(b)(ii) of the APA set forth how and when the Plaintiff and Defendant, respectively, would deliver to each other inventory calculations for purposes of adjusting the Purchase Price paid under the terms of the APA.

10. Section 3.2(c)(i) of the APA sets forth the process by which the Plaintiff would then issue a “Statement of Objections” with regard to the Defendant’s inventory calculation, “setting forth [Plaintiff’s] objection in reasonable detail, indicating each disputed item or amount and the basis for [Plaintiff’s] disagreement therewith, together with a proposed Shortfall Amount (“Initial Shortfall Amount”) calculated as if each such disagreement was determined in favor of [Defendant].”

11. In the event the parties were unable to reach a resolution with regard to the Statement of Objections required by Section 3.2(c)(i), Section 3.2(c)(ii) provides a dispute resolution process by which an Independent Accountant “*shall resolve the Disputed Amounts only* and make any adjustments to the Inventory Adjustment, as the case may be, and the Closing Inventory Amount...” (emphasis added).

12. Section 3.2(c)(ii) goes on to clarify “the Independent Accountants shall *only* decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the applicable Closing Inventory Amount Statement and the Statement of Objections, respectively” (emphasis added).

⁴ Motion Exhibit A-1 at Section 3.2(b-c). Defined terms herein have the same meaning as set forth in the APA.

V. APPLICABLE LAW

13. Pursuant to Section 9.5 of the APA, Delaware law applies to the construction and interpretation of the APA.⁵ Following basic principles of contract law, “[w]hen interpreting a contract, the role of a court is to effectuate the parties’ intent. In doing so, [the court is] constrained by a combination of the parties’ words and the plain meaning of those words where no special meaning is intended.” *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006). “When the language of a ... contract is clear and unequivocal, a party will be bound by its plain meaning because creating an ambiguity where none exists could, in effect, create a new contract with rights, liabilities and duties to which the parties had no assented...” *Id.*, citing *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1193, 1195-96 (Del. 1992).

14. “When a term’s definition is not altered or has no ‘gloss’ in the [relevant] industry it should be construed in accordance with its ordinary dictionary meaning.” *Id.* at 740. A court must accept and apply the plain meaning of an unambiguous term in the context of the contract language and circumstances, insofar as the parties themselves would have agreed *ex ante*.” *Id.* The “true test is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.” *Id.*

VI. ARGUMENT & ANALYSIS

15. Unfortunately, despite the APA having been executed more than a year ago, the parties have never been able to proceed with the Section 3.2(c)(ii) dispute resolution process to finalize the required inventory adjustment calculations required by the APA. This delay is the direct result of Plaintiff: (i) insisting the Independent Accountant’s role is broader than “only resolving the Disputed Amounts”; and (ii) refusing to proceed with the resolution process set forth

⁵ Motion Exhibit A-1 at Section 9.5.

in the APA unless Defendant concedes to placing additional duties on the Independent Accountant that were not agreed upon nor appear in the APA. Rather than amicably working through these issues, Plaintiff elected to file this suit.

16. Defendant's position is very simple and consistent with the plain language of the APA. As made clear by the underlined portions of Section 3.2(c)(ii) of the APA cited above, the sole role of the Independent Accountant is to "resolve the Disputed Amounts only" for purposes of making the necessary adjustments to the Inventory Adjustment and Closing Inventory Amount (emphasis added).⁶

17. Plaintiff's Motion seeks to expand the Independent Accountant's limited role by asking this Court to declare that "in deciding on the Disputed Amounts, the Independent Accountant has a duty under Section 3.2 of the APA to determine whether the parties followed the Inventory Methodology in preparing their respective Closing Inventory Amount."⁷ To be clear, the Plaintiff needs this Court to add language that does not appear in the APA in order to decide the contract interpretation issue in its favor.

18. In essence, Plaintiff seeks to have the Independent Accountant assume the role of judge and jury with regard to ruling on whether Defendant complied with, or breached the APA, rather than simply undertaking the limited task assigned to the Independent Accountant in the APA of resolving the disputed inventory amounts.

19. Plaintiff's intent in filing this Motion is made clear by the concluding statements of its Motion, where Plaintiff boldly states "If the party did not follow the Inventory Methodology, the party did not comply with the APA and its inventory valuation cannot be adopted" (emphasis

⁶ Motion Exhibit A-1 at Section 3.2(c)(ii).

⁷ Motion at 12.

added).⁸ In other words, it appears Plaintiff's goal is to ultimately take the position Defendant's inventory valuation cannot even be considered by the Independent Accountant if Plaintiff's requested declaration is granted. However, such a position is entirely inconsistent with the express terms of the APA contemplating that the Independent Accountant must resolve the Disputed Amount "within the range of values assigned to each such item in the applicable Closing Inventory Amount Statement and the Statement of Objections, respectively."⁹ As such, Plaintiff's attempt to preclude the Independent Accountant from even considering Defendant's inventory valuation is nonsensical.

20. Regardless of intent, Plaintiff's interpretation is also not sustainable. As addressed below, there are a number of independent reasons that Plaintiff's position fails. Each individual reason is enough to deny the Motion alone. But, in combination, they clearly demonstrate the Motion is without merit.

21. First, as already noted, Plaintiff's interpretation blatantly ignores the repeated use of the word "only" in conjunction with the limited role of the Independent Accountant. At no point is the relief requested by Plaintiff included in the "only" obligations placed on the Independent Accountant.

22. Second, Plaintiff's reliance on the phrase "Inventory Methodology" comes from Section 3.2(b)(ii) of the APA, which is not even the relevant dispute resolution subsection. Instead, Section 3.2(b)(ii) is the subsection addressing how Defendant's Closing Inventory Amount Statement will be prepared by the Buyer, as opposed to any affirmative obligation on the part of the Independent Accountant.¹⁰

⁸ Motion at 12.

⁹ Motion Exhibit A-1 at Section 3.2(c)(ii) (emphasis added).

¹⁰ Motion Exhibit A-1 at Section 3.2(b)(ii).

23. Notably, the Independent Accountant’s role and obligations in the APA are not addressed until several subsections later in Section 3.2(c)(ii), which never makes any reference whatsoever to “Inventory Methodology,” much less charge the Independent Accountant with the duty of determining whether the parties have allegedly complied with the APA. Plaintiff’s request for declaratory relief effectively amounts to a request to rewrite the APA to provide that the Independent Accountant, as opposed to the Court, make a legal determination as to whether the terms of the APA have been followed, or whether there has been a breach of the APA. That is the role of a Court, not the Independent Accountant.

24. Third, other specific language of Section 3.2(c)(ii) of the APA directly contradicts Plaintiff’s interpretation. For example, in terms of what information must be provided to the Independent Accountant, this subsection expressly indicates that “any amounts remaining in dispute (‘Disputed Amounts’) and any amounts not so disputed ... shall be promptly ... submitted to the [Independent Accountant].”¹¹ Notably, this subsection only discusses “amounts” being presented to the Independent Accountant and says nothing about submitting legal or definitional issues for consideration.

25. Plaintiff’s flawed interpretation appears to be derived from a warped reliance on the word “item” in Sections 3.2(c)(i) and 3.2(c)(ii). In the first instance, the Plaintiff is tasked with sending Defendant a written statement (the “Statement of Objections”) “indicating each disputed item or amount and the basis for [Plaintiff’s] disagreement therewith...”.¹² Plaintiff apparently contends that an “item” can include a concept (in this case the defined concept of “Inventory Methodology”) as opposed to an actual “item” of inventory listed in the Defendants’ Closing

¹¹ Motion Exhibit A-1 at Section 3.2(c)(ii) (emphasis added).

¹² Motion Exhibit A-1 at Section 3.2(c)(i) (emphasis added).

Inventory Amount Statement.¹³ Notably, Section 3.2(c)(1) makes no reference to objecting to methodologies, which the parties certainly could have addressed if they had intended to include such a concept, but did not do so in the APA.

26. More importantly, however, the second use of the word “item” in Section 3.2(c)(ii) makes clear that the word “item” is referring to a physical item identified in the Defendant’s inventory listing when it states that the Independent Accountant’s decision “for each Disputed Amount must be within the range of values assigned to each such *item* in the applicable Closing Inventory Amount Statement and the Statement of Objections, respectively.”¹⁴ Again, there is no language in this provision that “item” can encompass a methodology.

27. Finally, the plain meaning of the word “item” as being part of an inventory listing in the context of Section 3.2 of the APA is further confirmed by the plain definition of the word “item” as found in Merriam-Webster, which defines the word “item” as “a distinct part in an enumeration, account or series.”¹⁵ As noted above, Delaware law requires that the Court construe a term “in accordance with its ordinary dictionary meaning.” *Lorillard Tobacco Co.*, 903 A.2d 728 at 740.

VII. SUMMARY & PRAYER FOR RELIEF

28. In summary, Plaintiff’s attempt to rewrite the APA and expand the Independent Accountant’s role from simply “resolv[ing] the Disputed Amounts only” to instead acting as judge and jury with regard to whether the Defendant followed or breached the Inventory Methodology is not supported by the plain language of the APA. As such, Plaintiff’s Motion should be denied,

¹³ Closing Inventory Amount Statement is defined in Section 3.2(b)(ii) as a statement that includes “the type of inventory, the amount of such inventory, the estimated market price and basis, as appropriate, assumed for such inventory.”

¹⁴ Motion Exhibit A-1 at Section 3.2(c)(ii).

¹⁵ <https://www.merriam-webster.com/dictionary/item>

Defendant's Counter-Motion should be granted, and Plaintiff's sole cause of action should be dismissed with prejudice. Additionally, Defendant should be granted all further relief to which it may show itself entitled.

Dated this 15th day of July 2024.

Respectfully submitted,

By: /s/ Jim D. Aycock

JIM D. AYCOCK

Attorney-in-Charge

State Bar No. 24034309

Federal Bar No. 20675

ANDREWS MYERS, P.C.

1885 Saint James Place, 15th Floor

Houston, Texas 77056

Phone: (713) 850-4200

Fax: (713) 850-4211

E-mail: jaycock@andrewsmyers.com

**COUNSEL FOR DEFENDANT, ELLIOTT
AUTO SUPPLY CO, INC. D/B/A FMP**

OF COUNSEL:

EDWARD L. RIPLEY

State Bar No. 16935950

Federal Bar No.

ANDREWS MYERS, P.C.

1885 Saint James Place, 15th Floor

Houston, Texas 77056

Phone: (713) 850-4200

Fax: (713) 850-4211

E-mail: eripley@andrewsmyers.com

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of *Defendant's Summary Judgment Response and Defendant's Counter-Motion for Summary Judgment* has been delivered to all counsel of record listed below pursuant to the Federal Rules of Civil Procedure on July 15, 2024.

Via ECF

Christopher R. Bankler on behalf of Plaintiff IEH Auto Parts Holding LLC
cbankler@jw.com, kgradney@jw.com

COUNSEL FOR THE PLAINTIFFS

/s/ Jim D. Aycock

JIM D. AYCOCK