

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

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CASSIDY FARMS, LLC,

Plaintiff,

-against-

**DECISION & ORDER
AFTER FRAMED ISSUE
HEARING
Index No.: 64000/2015**

**ATLANTIC BUILDING SYSTEMS, LLC d/b/a
ARMSTRONG STEEL CORPORATION,
Defendant.**

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WOOD, J.

In the instant matter, Plaintiff Cassidy Farms, LLC (“Cassidy”) commenced two actions in this court demanding the return of monies paid on two contracts with defendant, Atlantic Building Systems, LLC d/b/a Armstrong Steel Corporation (“Armstrong”). Pursuant to a stipulation between the parties and so ordered by this court, the action brought under Index No. 64308/2015 was consolidated with this one.

This court conducted a framed issue hearing to resolve defendant Armstrong’s motion seeking an order compelling arbitration of all claims raised in Cassidy’s complaint pursuant to CPLR Article 75, and as set forth in the parties’ agreement; staying the action pending determination of the arbitration pursuant to CPLR 7503(a); and awarding defendant the attorneys’ fees and costs associated with this motion pursuant to the parties’ agreement.

Specifically, this action arises out of a purchase order in connection with Cassidy's proposed purchase of a steel building for a gym. The exhibits and testimony reflect that on June 26, 2015, Armstrong transmitted to Cassidy a proposed contract in the form of a purchase order for the gym. By its authorized representative and principal, James Cassidy, Cassidy signed the gym purchase order via Docusign, a transaction management tool that employs electronic signatures.

Upon execution of the gym purchase order, Cassidy was required to pay Armstrong the sum of \$58,825 as an engineering and drawing payment. According to Armstrong, Cassidy attempted to make this payment on June 26, 2015, but there was a problem arising from an incorrect routing number. As a result, the automated transfer for the first payment was not received by Armstrong until July 2, 2015. Armstrong's representative Nicole Bullock testified that she executed and mailed the agreement to Cassidy on that day. On July 10, 2015, Armstrong's manager, Kayleigh Chambers sent Jim Cassidy an email introducing herself and wrote that she would call him to review the project. She also enclosed a document to enable Cassidy to refine its project, such as by adding doors and windows on the structure.

Cassidy also contacted Armstrong seeking plans and materials for a barn structure. On July 8, 2015, Armstrong sent Cassidy a specification sheet with details for the barn. On July 14, 2015, Armstrong transmitted to Cassidy a proposed purchase order for the barn. Later that day, Cassidy, by Jim Cassidy, signed the proposed barn purchase order and electronically transferred the required payment of \$23,000 to Armstrong. On July 14, 2015, Armstrong, again by Bullock, signed the barn purchase order. Bullock allegedly mailed the fully executed Barn Purchase Order to Cassidy on July 16, 2015.

On August 24, 2015, Cassidy attempted to cancel the gym purchase order via an email from Jim Cassidy to Chambers. On August 25, 2015, Cassidy's counsel sent an email demanding return of the first payment of \$58,825 paid on the gym purchase order. Counsel claims that Armstrong never returned the fully executed gym purchase order.

Pertinent to the analysis of the whether an agreement exists, is the provision which reads "If Seller accepts this Purchase Order, Seller's authorized officer shall sign and return the fully executed Purchase Order to Buyer. If not accepted by the Seller, the deposit above shall be returned to the Buyer" (Exhibit 1 and 2). Paragraph 1 of the Terms and Conditions (Exhibit C to the motion) states that the contract is binding upon acceptance in writing by an authorized representative of the Seller and cannot thereafter be canceled or modified.

James Cassidy testified that at no time before August 25, 2015, did Armstrong ever return any executed purchase order or the terms and conditions or provide Cassidy with any documents. Rather, Armstrong allegedly continued to negotiate and transmit to Cassidy, via its internet based Docusign program, proposal for changes to the scope of work on the project and revised drawings. After failed negotiations over proposed changes and given that Armstrong had not returned the fully executed purchase order, Cassidy withdrew its offer in the purchase order by e-mail on August 24, 2015, and demanded the immediate return of its \$58,825 deposit. Only after Cassidy terminated the purchase order did Armstrong transmit to Cassidy the purported fully executed purchase order.

However, before addressing whether the agreements were returned by Armstrong to Cassidy, the court must address the other issue raised by Cassidy. The purchase order, by its express terms, states:

The representative of the Seller preparing this Purchase Order is not an officer of the Seller and is not authorized to accept or sign this order on behalf of Seller. If Seller accepts this Purchase Order, Seller's authorized officer shall sign and return the fully executed Purchase Order to Buyer.

At the hearing, Nicole Bullock testified that she is not an officer of Armstrong. While Armstrong apparently engages in the practice of allowing Ms. Bullock to be the signatory on their purchase orders, that is not what the Purchase Order states and requires. In fact, the additional statement in this section provides that: "The representative of the Seller preparing this Purchase Order is not an officer of the Seller and is not authorized to accept or sign this order on behalf of Seller," further serves notice to a purchaser that it should not assume that Ms. Bullock's signature means that Armstrong has accepted the contract. Notably, the pre-printed section under the signature line is "ARMSTRONG REPRESENTATIVE SIGNATURE," not "ARMSTRONG OFFICER SIGNATURE", nor even the more ambiguous option "ARMSTRONG AUTHORIZED REPRESENTATIVE." Of the three logical options, Armstrong chose the one that most easily can be read to apply to its admonition that this person is not authorized to accept the order on behalf of Armstrong. Clearly, by express terms of these agreements, Armstrong has a strong argument that they are not binding on Armstrong, had Armstrong wished to exercise that option. Armstrong cannot have it both ways, using this provision of the purchase order that it authored, as both a shield and a sword. A written agreement that is clear and unambiguous as a matter of law must be enforced according to the plain meaning of its terms (Maroney v Hawkins, 50 AD3d 862, 863 [2d Dept 2008]).

As the court determines that there was no enforceable agreement to arbitrate, defendant Armstrong's motion is **denied**.

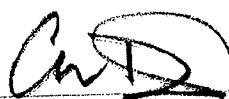
Now, based upon the foregoing it is hereby

ORDERED, that the parties are directed to appear on *October 31st*, 2017, at 9:15A.M. in courtroom 1600, the Settlement Conference Part, Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York 10601; and it is further

ORDERED, that Cassidy shall serve a copy of this order with notice of entry upon defendant within twenty (20) days of entry thereof and file proof of service on NYSCEF within five (5) days of service, in accordance with the protocols of NYSCEF; and it is further

ORDERED, that no party shall be entitled to costs as against the other, for this instant motion, All matters not herein mentioned are denied. This constitutes the decision and order of the court.

Dated: September 28, 2017
White Plains, New York


HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF