

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1099

CA 10-00868

PRESENT: FAHEY, J.P., CARNI, LINDLEY, GREEN, AND GORSKI, JJ.

TOWNSEND OIL CORPORATION, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

ANTHONY L. MARINI, ET AL., DEFENDANTS,
AND EDWARD A. DUFFY, DEFENDANT-RESPONDENT.

DAVIDSON FINK LLP, ROCHESTER (DENNIS J. ANNECHINO OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

WOODS OVIATT GILMAN LLP, ROCHESTER (PAUL S. GROSCHADL OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Genesee County (Robert C. Noonan, A.J.), entered October 2, 2009 in a breach of contract action. The judgment granted the cross motion of defendant Edward A. Duffy for summary judgment dismissing plaintiff's complaint against him.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for the alleged breach of a Branded Dealer Supply Agreement (agreement) by defendants. We conclude that Supreme Court properly granted the motion of Edward A. Duffy (defendant) seeking summary judgment dismissing the complaint against him, although our reasoning differs from that set forth in the court's decision and order. The agreement provides, in relevant part, that "[plaintiff] shall sell and the [defendants] shall purchase during the term of this [a]greement and any extensions or renewals, the gasoline petroleum products and other products marketed and used by [plaintiff], all as shall be determined by [plaintiff]." Contrary to the determination of the court, the agreement is not a requirements agreement within the meaning of UCC 2-306 inasmuch as it is not exclusive on its face (see *Harvey v Fearless Farris Wholesale, Inc.*, 589 F2d 451, 461; see generally *Feld v Henry S. Levy & Sons*, 37 NY2d 466, 469-470). Nevertheless, we agree with the contention raised by defendant in Supreme Court, and as an alternative ground for affirmance on appeal (see *Parochial Bus Sys. v Board of Educ. of City of N.Y.*, 60 NY2d 539, 545-546), that the agreement is not enforceable because no quantity term appears therein (see UCC 2-201 [1]; *International Commercial Resources, Ltd. v Jamaica*

Pub. Servs. Co., Ltd., 612 F Supp 1153, 1155, *affd* 805 F2d 390).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court