United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-7031 **September Term, 2019**

FILED ON: JANUARY 22, 2020

3E MOBILE, LLC,
APPELLANT

v.

GLOBAL CELLULAR, INC.,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:14-cv-01975)

Before: GARLAND, *Chief Judge*, TATEL, *Circuit Judge*, and EDWARDS, *Senior Circuit Judge*.

JUDGMENT

This appeal from the United States District Court for the District of Columbia's judgment and findings of fact and conclusions of law was considered on the record and on the briefs of the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is

ORDERED and **ADJUDGED** that the judgment of the district court be affirmed.

This appeal arises out of a contract dispute between Global Cellular, a retail company that sells mobile phone cases largely sourced from Chinese manufacturers, and 3E Mobile, a products supplier based in China. 3E purchased a competitor of Global's that had previously sued Global for copyright infringement. When 3E then settled the claim with Global, Global and 3E entered into a separate manufacturing agreement that sought to have 3E act as either a manufacturer or middleman between Global and its Chinese suppliers, taking advantage of a Chinese intra-country tax credit and passing on the savings to Global. Pursuant to the manufacturing agreement, Global would send monthly payments to 3E, which would serve as credit for Global placing "orders" with 3E.

Following months of miscommunication and no successful orders, Global ceased paying and the parties cross-sued for breach of contract. After a three-day bench trial, the Magistrate Judge,

in a thorough and well-reasoned opinion, concluded that the manufacturing agreement lacked a definition of "order," an essential term, and was therefore unenforceable. *See 3E Mobile, LLC v. Glob. Cellular, Inc.*, 2019 WL 1253455, at *5 (D.D.C. Mar. 19, 2019). On appeal, 3E advances a single argument: that the manufacturing agreement was not a standalone contract because it was inextricably bound up with the settlement of the original copyright claim and therefore "order" was not, in fact, an essential term. We reject this challenge.

The magistrate judge correctly concluded that the manufacturing agreement was a standalone contract. Both the manufacturing agreement and the settlement agreements contained integration clauses. Under Pennsylvania law, which the parties agree governs the manufacturing agreement, "[a]n integration clause stating the parties mean the writing to represent their entire agreement is a 'clear sign' the writing represents the entire agreement," *Solar Innovations, Inc. v. Plevyak*, No. 1110 MDA 2012, 2013 WL 11272849, at *6 (Pa. Super. Ct. Mar. 20, 2013), and "two contracts may be construed together to represent a complete transaction. . . only . . . where two contracts exist, and where one contract does not provide for a complete representation of the intent of the parties," *Lenzi v. Hahnemann Univ*., 445 Pa. Super. 187, 197–98 (1995). Applying this precedent and crediting the testimony of two individuals at Global, the Magistrate Judge found it was "not plausible" that the parties intended for the two contracts to form a single transaction. On appeal, "the district court's findings as to the parties' intent are reviewed deferentially, i.e., reversed only for clear error," *United States v. Microsoft Corp*., 147 F.3d 935, 945 n.7 (D.C. Cir. 1998), and we perceive no error—let alone clear error—in the Magistrate Judge's finding.

Construing the manufacturing agreement as a single contract, the Magistrate Judge also correctly concluded that "order" was an essential but undefined term of the manufacturing agreement, and the contract was therefore void. All of 3E's obligations hinged on Global placing an "order" for products, and 3E nowhere offers a coherent definition of the term. Because "Pennsylvania law requires that a plaintiff . . . must establish . . . the existence of a contract, including its essential terms," *Courier Times, Inc. v. United Feature Syndicate, Inc.,* 300 Pa. Super. 40, 54 (1982), 3E cannot demonstrate that an enforceable contract existed. *See* Restatement (Second) of Contracts § 33 cmt. a (1981) ("If the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract.").

The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk