

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RAND-WHITNEY CONTAINERBOARD	:	
LIMITED PARTNERSHIP,	:	
PLAINTIFF	:	
	:	
V.	:	CIV. NO. 3:96CV413 (HBF)
	:	
TOWN OF MONTVILLE and TOWN OF	:	
MONTVILLE WATER POLLUTION	:	
CONTROL AUTHORITY	:	
DEFENDANTS	:	

RULING ON PLAINTIFF'S MOTION FOR
ENTRY OF JUDGMENT FOR MONTVILLE'S BREACH
OF THE MODIFICATION AGREEMENT

I. INTRODUCTION

On December 30, 2004, plaintiff, Rand-Whitney Containerboard Limited Partnership, filed a motion seeking entry of judgment, including pre- and post-judgment interest, based on the jury's finding that the defendants breached the service fee agreement. On January 12, 2005, the defendants filed an objection to this motion for entry of judgment. [Doc. #338]. For the reasons that follow, plaintiff's motion for entry of judgment [Doc. #336] is **DENIED**.

II. BACKGROUND

The Court assumes familiarity with the background facts of this case, and will discuss only those facts essential to the disposition of this motion.

This case was filed in 1996. On summary judgment, the Court determined as a matter of law that the defendants breached the Water Supply Agreement, and that defendants had several defenses

to liability that would require a trial. See Ruling on Cross Motions For Summary Judgment, and On Plaintiff's Motion For Order Discharging It From Settlement Bond Obligations (March 4, 2002). A jury trial was held from July 15, through August 9, 2002. The first jury found in favor of defendants on the fraud counterclaim, and thus never reached the indemnification issue.

Distinct from the issue of the breach of the Supply Agreement, the first jury found that Montville breached the Service Fee provision of the Modification Agreement by overcharging Rand-Whitney, and awarded Rand-Whitney a verdict of \$344,872 on that claim.

On September 30, 2003, the Court set aside the jury's verdict on the fraud counterclaim, ruling that there was insufficient evidence to support its finding. See Ruling on Plaintiff's Motion For Judgment, Or, In The Alternative, For A New Trial (September 30, 2003). As defendants had no remaining defenses as to liability, a second trial on plaintiff's damages and defendants' defenses to damages was held in May, 2005. The second jury delivered a verdict in favor of plaintiff in the amount of \$10 million dollars.

III. STANDARD OF LAW

When a case presents one or more claims for relief, a court may, pursuant to Rule 54(b) of the Federal Rules of civil Procedure:

direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment. ...

Id.

The United States Supreme Court has stated that the function of a district court under Rule 54(b) is to act as a "dispatcher". Curtiss-Wright Corp. V. Gen. Elec. Co., 466 U.S. 1, 7-8 (1980). "It is left to the sound judicial discretion of the district court to determine the 'appropriate time' when each final decision in a multiple claims action is ready for appeal"

Id.

The Second Circuit has stated several factors for a district court to consider in making this determination, namely, 1) the "relatedness of the pending and adjudicated claims"; 2) the "factual bases for the claims," and 3) "the effect a decision on the pending claims would have on the questions raised on appeal." Bristol Technology, Inc., v. Microsoft Corp., 127 F. Supp.2d 85, 90 (D.Conn. 2000), citing FDIC v. Bernstein, 944 F.2d 101, 108-09 (2d Cir. 1991).

The Second Circuit has also cautioned against the excessive use of Rule 54(b), stating that "[t]he power 'should only be used in the infrequent harsh case' where there exists 'some danger of hardship or injustice through delay which would be alleviated by immediate appeal.'" L.B. Foster Co. v. Am. Piles, Inc., 138 F.3d 81, 86 (2d Cir. 1988) (citations omitted).

Here, plaintiff has failed to establish one of the essential elements for granting partial judgment pursuant to Rule 54(b), namely, that there is no just reason to delay entry of judgment until completion of all matters pending before the court. While plaintiff is entitled to judgment on the finding that the defendant breached the Service Fee Agreement provision, plaintiff has not presented any circumstances which would require partial entry of judgment prior to the conclusion of all the issues presented. Numerous post-trial motions have been filed by the parties in this case, several of which remain pending. The plaintiff has failed to provide the court with any justification for entering partial judgment prior to the adjudication of these remaining claims.

On the current record, the Court has heard nothing to indicate that entry of partial judgment, prior to resolution of the remaining issues pending before the court, is appropriate.

IV. CONCLUSION

____ For the reasons discussed above, plaintiff's motion for entry of judgment [Doc. #336] is DENIED.

SO ORDERED at Bridgeport this 29th day of September, 2005.

_____/s/
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE