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SUFFOLK SUPERIOR COURT
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2009-04961-BLS1

NETEZZA CORPORATION

vs.

INTELLIGENT INTEGRATION SYSTEMS, INC.

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT INTELLIGENT
INTEGRATION SYSTEM, INC.'S MOTION FOR SUMMARY JUDGMENT

This action arises out of the termination of a Purchase and Distribution Agreement ("Agreement") under which plaintiff Netezza Corporation ("Netezza") contracted to distribute and ultimately purchase certain computer software products developed by defendant Intelligent Integration Systems, Inc., ("IISI"). Netezza alleges that it terminated the Agreement for cause because IISI improperly withheld promised software support and services. Netezza also claims that IISI has refused to return data warehouse appliance products that Netezza considers "confidential property."

Netezza seeks damages for breach of the Agreement (Count I) and its implied covenant of good faith and fair dealing (Count II), intentional interference with contractual relations and beneficial business relations (Count III), conversion (Count IV) and violation of G. L. c. 93A (Count V). Netezza also seeks a declaratory judgment that it had good cause to terminate the Agreement (Count VI).

IISI counterclaims for damages for breach of the Purchase and Distribution Agreement (Count I) and its implied covenant of good faith and fair dealing (Count II), breach of the parties' Solution Provider Agreement (Count III) and its implied covenant of good faith and fair dealing (Count IV), trade secret misappropriation and/or theft (Count V), unjust enrichment (Count VI), business defamation (Count VII), intentional interference with contractual relations (Count VIII), conversion (Count IX) and violation of G. L. c. 93A (Count XII). IISI also seeks specific performance of the Agreement's terms requiring return of proprietary information, including the source code and specifications of the software products at issue in the parties' agreements (Count X) and an injunction (i) prohibiting Netezza from possessing or using any IISI trade secret, confidential or proprietary information and (ii) requiring return to IISI of any such information (Count XI).

Currently before the Court is IISI's motion for summary judgment under Mass. R. Civ. P. 56 on all counts alleged by Netezza and on Count I of IISI's counterclaim. Netezza opposes the motion and, as a threshold matter, requests under Mass. R. Civ. P. 56(f) that the Court defer ruling on the portions of IISI's motion that seek dismissal of claims other than for breach of the Purchase and Distribution Agreement.¹

¹Mass. R. Civ. P. 56(f) provides, "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his

With respect to its rule 56(f) request, Netezza persuasively points out that the parties jointly proposed, and the Court ordered, that discovery be limited initially to issues of contract construction with the express understanding that IISI planned to file a motion for partial summary judgment on the breach of contract claim. (See Joint Scheduling Order, Mar. 9, 2010.) Although, as IISI argues, Netezza's rule 56(f) affidavit tilts toward the speculative as to the utility of further discovery, it nonetheless is sufficient overall to warrant relief as a matter of the Court's "considerable discretion" in this area, see Alphas Co. v. Kilduff, 72 Mass. App. Ct. 104, 110-113 (2008); see generally P.M. Lauriat, S.E. McChesney, W.H. Gordon, A.A. Rainer, Discovery § 2:10 (2001). IISI's motion is therefore not addressed as to Counts II-V of Netezza's complaint.²

The remainder of IISI's motion, however, is allowed. After a hearing and a thorough review of the motion papers and the summary judgment record, the Court concludes that IISI did not materially breach the Purchase and Distribution Agreement, and, accordingly, Netezza wrongfully terminated that Agreement.

opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

²Strictly speaking, Count I alleges Netezza's breach of contract claim, but ruling on that count also implicates and, in this case resolves, the controversy addressed in Count VI.

Summary judgment is appropriate where there is no genuine issue of material fact and, where viewing the evidence in the light most favorable to the nonmoving party, the moving party is entitled to judgment as a matter of law. See Scully v. Tillery, 456 Mass. 758, 767-768 (2010); Mass. R. Civ. P. 56(c). Under the stringent summary judgment standard, all logically permissible inferences and conflicts in the summary judgment materials are resolved in the nonmovant's favor, see, e.g., Willitts v. Roman Catholic Archbishop of Boston, 411 Mass. 202, 203 (1991).

As noted, the only issue currently before the Court is the proper construction of the parties' Purchase and Distribution Agreement. In this analysis, "[t]he object of the court is to construe the contract as a whole, in a reasonable and practical way, consistent with its language, background, and purpose." Northboro Inn, LLC v. Treatment Plant Bd. of Westborough, 58 Mass. App. Ct. 670, 674-675 (2003), quoting USM Corp. v. Arthur D. Little Sys., Inc., 28 Mass. App. Ct. 108, 116 (1989), and citing Starr v. Fordham, 420 Mass. 178, 190, 192 (1995). "So far as reasonably practicable [the contract] should be given a construction which will make it a rational business instrument and will effectuate what appears to have been the intention of the parties." Bray v. Hickman, 263 Mass. 409, 412 (1928); Winchester Gables, Inc. v. Host Marriott Corp., 70 Mass. App. Ct. 585, 595 (2007). Determination of the parties' intention may present a question of fact where the

contract contains ambiguous, uncertain or equivocal terms, Seaco Ins. Co. v. Barbosa, 435 Mass. at 772, 779 (2002); see Bank v. Thermo Elemental Inc., 451 Mass. 638, 651 (2008), but otherwise "is a question of law that is appropriate for a judge to decide on summary judgment," Seaco Ins. Co. v. Barbosa, 435 Mass. at 779, citing cases; see Basis Tech. Corp. v. Amazon.com, Inc., 71 Mass. App. Ct. 29, 36 (2008).³

The contract construction question here, at bottom, involves determining whether IISI was required under the Agreement to make its "geospatial" software function on Netezza's "TwinFin" data warehouse appliance.⁴ IISI argues that it was obligated only to make the geospatial software function on the data warehouse appliance that Netezza was selling in 2008 at the time that the Agreement was executed. According to IISI, making the geospatial software work on the TwinFin appliance introduced by Netezza in

³Although the question "[w]hether a contract is ambiguous is also a question of law," Eigerman v. Putnam Invs., Inc., 450 Mass. 281, 287 (2007), citing Fashion House, Inc. v. K mart Corp., 892 F.2d 1076, 1083 (1st Cir. 1989); see also Bank v. Thermo Elemental Inc., 451 Mass. 638, 648 (2008); Basis Tech. Corp. v. Amazon.com, Inc., 71 Mass. App. Ct. 29, 36 (2008), citing cases, neither party contends that any term of the Agreement is ambiguous. Of course, "an ambiguity is not created simply because a controversy exists between parties, each favoring an interpretation contrary to the other." Lumbermens Mut. Cas. Co. v. Offices Unlimited, Inc., 419 Mass. 462, 466 (1995); Boston Gas Co. v. Century Indem. Co., 454 Mass. 337, 356 n.32 (2009).

⁴Although the Agreement governed Netezza's distribution and purchase of IISI's "geospatial" and "extended SQL toolkit" software products, only the former is at issue.

2009 necessitated a degree of software development that the parties did not intend as a requirement under the Agreement. For the following reasons, the Court agrees.

"[C]ontract interpretation is largely an individualized process, with the conclusion in a particular case turning on the particular language used against the background of other indicia of the parties' intention." Starr v. Fordham, 420 Mass. at 190, quoting from United States v. Seckinger, 397 U.S. 203, 213 n. 17 (1970); Post v. Belmont Country Club, Inc., 60 Mass. App. Ct. 645, 651 (2004). Courts therefore "construe the contract with reference to the situation of the parties when they made it and to the objects sought to be accomplished." Starr v. Fordham, 420 Mass. at 190, quoting from Bryne v. Gloucester, 297 Mass. 156, 158 (1937); see Post v. Belmont Country Club, Inc., 60 Mass. App. Ct. at 651. "Extrinsic evidence bearing upon the background and purpose of the parties, as well as their understanding of the meaning of particular language used in the contract, may be considered . . . in resolving uncertainties in applying the terms of the written contract to the subject matter." Parrish v. Parrish, 30 Mass. App. Ct. 78, 86 (1991), quoting USM Corp. v. Arthur D. Little Sys., Inc., 28 Mass. App. Ct. at 116; see Colorio v. Marx, 72 Mass. App. Ct. 382, 387 (2008). Here, evidence in the summary judgment record shows (i) that the geospatial software defined in the Agreement did not operate on Netezza's TwinFin appliance, and (ii) that the

parties intended to exclude from the Agreement an obligation which would have required IISI to develop that software to make it function on the TwinFin.

As to the first point, there is no real dispute that it was necessary for IISI to modify the geospatial software defined in the Agreement before that product could function properly on the TwinFin appliance. The Agreement defines "IISI Products" in relevant part to "mean[] the geospatial . . . product[] described in the specifications set forth on Exhibit 1."⁵ It is undisputed that, at the time the Agreement was executed, the Exhibit 1 specifications described the then-existing version of IISI's geospatial software which ran on the 10000 series Netezza Performance Server, the data warehouse appliance being sold by Netezza in 2008. (See Turiello Aff. at pars. 15-16; Joint App. at tabs 7-8; Zimmerman Aff. at par. 3; Crowley dep. Cf. Baum Aff. at pars. 11-13.) The evidence also shows that the TwinFin appliance introduced in 2009 was technologically different from the 10000 series appliance, and that the then-existing geospatial software had to be "ported" to -- i.e. modified for use on -- the new

⁵In relevant part, Section 1 of the Agreement defined "IISI Products" to mean:

the geospatial and extended SQL toolkit products described in the specifications set forth on Exhibit 1 (and any new releases or new versions of such products (and the specifications thereto) provided by IISI to Netezza during the term of this Agreement and whose specifications are added to Exhibit 1 by IISI during the term of this Agreement).

platform. (See Zimmerman Aff. at pars. 12 & 18; Baum dep.; Joint App. at tabs 13, 15, 25-26, 68-69 & 85; Pingry Aff. at par. 11. Cf. Pingry Aff. at par. 16; Shepherd Aff. at par. 10; Joint App. at tab 87. But cf. Pingry Aff. at pars. 12 & 17.)

As to the second point, extrinsic evidence pertaining to negotiation of the Agreement demonstrates that the parties intended to exclude from their contract an obligation which would have required the sort of modification necessary to make the geospatial software function on the TwinFin. As Netezza acknowledges, making the geospatial software work on the TwinFin appliance was part of what Netezza considered the software's "roadmap functionality." (See Shepherd dep.; Joint App. at tab 9; Davis Aff. at par. 19.) There is no real dispute, however, that the parties agreed during negotiation of the Agreement to delete Netezza's proposed "Roadmap Functionality" provision because IISI specifically objected to being required to develop later versions, releases or enhancements of its software except as necessary to correct technical problems with existing products being used by customers. (See Turiello Aff. at pars. 8, 10 & 12-14; Zimmerman Aff. at par. 5; Zimmerman dep. Joint App. at tab 4. Compare Joint App. at tab 5 with Joint App. at tab 3. Cf. Crowley dep.; Baum Aff. at par. 16.)

In sum, construing the language of the Agreement within the context of its negotiation, the Court concludes that IISI was not contractually obligated to make its geospatial software product

work on Netezza's TwinFin appliance. Because Netezza thus has no reasonable expectation of proving its claim that IISI breached an obligation under the Agreement by refusing to make its geospatial software operate without error on the TwinFin appliance, summary judgment shall enter for IISI on Netezza's breach of contract count. A judgment shall also enter on Count VI of Netezza's complaint declaring that Netezza did not have good cause to terminate the Agreement under Section 8.2(a) based on IISI's conduct. Because under the circumstances involved here Netezza's termination and undisputed repudiation of the Agreement amounted to material breach, see, e.g., Coviello v. Richardson, 76 Mass. App. Ct. 603, 609-610 (2010); see also Farnsworth, Contracts § 8.15 at 437 (2nd ed. 1990), summary judgment shall additionally enter for IISI on Count I of its counterclaims.

ORDER

For the foregoing reasons, Defendant Intelligent Integration System, Inc.'s Motion for Summary Judgment as to Plaintiff's Complaint is ALLOWED in part. Judgment shall enter for defendant Intelligent Integration System, Inc., on Count I of the plaintiff's first amended complaint and on Count I of the defendant's counterclaims. A judgment shall also enter on Count VI of the first amended complaint declaring that Netezza Corp. did not have good cause to terminate its 2008 Purchase and Distribution Agreement with Intelligent Integration System, Inc.

Margaret R. Hinkle

Margaret R. Hinkle
Justice of the Superior Court

DATED:

8/19/10