

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SANMINA CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Case No. 1:19-cv-11710-KPF
	:	<i>related to</i>
DIALIGHT PLC,	:	Case No. 1:19-cv-11712-KPF
	:	
Defendant.	:	
	:	
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DIALIGHT’S SUR-REPLY
IN OPPOSITION TO SANMINA’S MOTION FOR RECONSIDERATION

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Sanmina's reply (ECF No. 135) makes arguments for the first time about evidence offered by Dialight in opposition to Sanmina's motion for summary judgment on its A/R claim. As explained below, Sanmina's arguments mischaracterize the evidence and should be disregarded.

First, Sanmina argues that pages 349-52 of Ronan Sheehy's transcript (ECF No. 98-71), cited by this Court in denying Sanmina's summary judgment motion (ECF No. 121 at 31), are irrelevant because Dialight did not "even claim that it was disputing any aspect of the A/R claim other than for the alleged shipment of defective goods that Dialight did not timely sort and thus admits it did not timely reject." Reply Br. 6. But this is false: Sheehy testified on Dialight's behalf at his 30(b)(6) deposition that most of the invoices in dispute "relate to quantities of materials that were not received" *and* that Dialight notified Sanmina about these issues "*several times a week . . . as they were arising.*" Tr. 349:19-23, 353:3-4 (emphasis added).

Further, Sheehy testified about a spreadsheet that Dialight sent to Sanmina in September 2019 recapping Dialight's issues with each disputed invoice, including those invoices for shipments that were not received. *Id.* 351:13-352:14. Dialight's cover email referenced an existing process between Dialight and Sanmina "to reconcile" the invoices.¹ This reconciliation process would have been unnecessary if these invoices had been accepted.

Second, Sanmina argues that Sheehy's testimony on page 199 is irrelevant because it is "tied to" a February 15, 2018 email and the disputed invoices were sent later. Reply Br. 5. But Sheehy testified that it was only "after this email" that he "looked much more specifically at all payments to Sanmina" because of the "number of issues that were happening with Sanmina." Tr. 196:11-17. His testimony on Page 199 then covered the post-February 15, 2018 period.²

¹ This email and spreadsheet are Exhibits 1 and 2 to the Declaration of Katharine K. Foote filed herewith.

² Sanmina similarly argues that the Court should disregard Page 66 of Sheehy's transcript because it was only "about past-due invoices as of February 2018." Reply Br. 4. But while Sanmina's counsel asked about outstanding invoices

Third, Sanmina argues that Sheehy’s testimony on pages 166-67 only “explains how Dialight rejected deliveries, without any statement that Dialight rejected the deliveries at issue in the A/R claim.” Reply Br. 5. But Sheehy’s testimony related to “the things we recharged to Sanmina” (Tr. 168:1-2), which included Dialight’s charges to Sanmina for the return of defective products or for un-received products pursuant to Section 23 (Warranty) of the MSA (ECF No. 95-21). *See, e.g.*, ECF Nos. 96-35 (Dialight’s charges to Sanmina for defective product); 96-38 (Dialight’s charges to Sanmina for shipments not received). Section 23 of the MSA provides for a warranty period lasting “eighteen (18) months” (MSA § 23.3) and Section 3.6 expressly states that it “shall not in any way limit Dialight’s rights under Section 23 (Warranty).” *Id.* § 3.6. Further, Dialight was permitted to offset these re-charges against any owed invoices, as Dialight explained in its summary judgment opposition. *See* ECF No. 92 at 25 (citing MSA § 11.5 (“Each party may at any time set off an amount owed by the other Party to such Party against any amount payable to the other Party from such Party, arising out of this Agreement.”)). Thus, Sheehy’s testimony on re-charges relates to Sanmina’s recovery on its A/R claim.

Fourth, Sanmina argues that the deposition testimony of Dan Harris should be disregarded because “none of the cited testimony addresses notices of rejection (timely or otherwise).” Reply Br. 6 (citing Harris Tr. (ECF No. 98-54) 265:1-270:4). But Harris testified about an email and spreadsheet that he sent to Sanmina on June 19, 2019 detailing why the disputed invoices were not paid.³ Harris wrote in his email sending the spreadsheet: “Sanmina, Attached is a file where we need more information to process the invoice or credits. . . . In the PO [Purchase Order] tab the invoices list[ed] here are where we haven’t go[t] either enough on the original PO or there is no

as of this date, Sheehy answered generally that Dialight was entitled to “question invoices, to raise disputes” and that “disputes were very slow to be resolved by Sanmina” without limiting his answer in time. Tr. 66:7-20.

³ This transmittal email and spreadsheet are attached as Exhibits 3 and 4 to the Foote Declaration filed herewith.

PO for this invoice.” Foote Decl. Ex. 3. Sanmina then replied to Harris’s email by writing that it would “review and get back with the details” on the disputed invoices and then Sanmina did so on June 28, 2019.⁴ *Id.* This exchange would have been pointless if these invoices had been accepted.

Further, Sanmina’s argument that Harris’s testimony did not involve the timeliness of the rejection notices is incorrect. Harris testified that the disputed unpaid invoices were largely “for materials, not finished goods.” Tr. 269:20-270:10. Section 3.6 of the MSA only requires rejection within 15 days for Products, not Materials, which are defined differently in the MSA. See § 1.6 (defining “Materials”); Definitions at 29 (defining “Products”). Indeed, Sanmina’s declarant, Jorge Camacho, expressly stated that “Section 3.6 of the MSA *does not include any deadline* to reject invoices that are not for ‘Products.’” ECF No. 126-1 at ¶ 13 (emphasis added). Because Harris testified that the rejected invoices involved materials, not Products, it was unnecessary to give the rejection notices within fifteen days in any event, even if Dialight had not told Sanmina about the issues as they arose (per Sheehy’s testimony). This further explains why Dialight and Sanmina were working contemporaneously to resolve the invoices in question.

Finally, Sanmina argues that Angel Escamilla’s testimony reflects that the rejections were untimely (Reply Br. 6) because he testified that the inspection and rejection process for materials sent after the MSA was terminated occurred in a “reasonable amount of time” after the shipments were received. Escamilla Tr. (ECF No. 98-55) 221:12-25. But these rejections were timely because, *inter alia*, the shipments involved materials, not Products (as explained above), and because Section 3.6 of the MSA does not apply to shipments that Sanmina sent to Dialight to reduce the quantum of materials in dispute post termination – Section 21.4 of the MSA lists the provisions that apply post termination, and Section 3 is not listed.

⁴ For clarity of review, Dialight produced this email chain in a format where the earliest-in-time email is at the top of the email chain and the later-in-time emails are lower on the email chain.

Dated: New York, New York
May 9, 2023

Respectfully submitted,

**MINTZ LEVIN COHEN FERRIS GLOVSKY
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/s/ Scott A. Rader

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CERTIFICATE OF SERVICE

I, Scott A. Rader, hereby certify that on May 9, 2023, I caused to be served a true and correct copy of the foregoing document with the Clerk of the Court using the CM/ECF filing system, which will send notification of such filing to all attorneys on record.

Dated: May 9, 2023
New York, New York

/s/ Scott A. Rader

Scott A. Rader