NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1341

THE DOW CHEMICAL COMPANY

VERSUS

GEISMAR SPECIALTY PRODUCTS, LLC

DATE OF JUDGMENT: FEB 11 2011

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 579503, DIV. D, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE JANICE CLARK, JUDGE

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BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.

Disposition: REVERSED.

KUHN, J.

Appellant/plaintiff-in-reconvention, Geismar Specialty Products, LLC (GSP) appeals the trial court's grant of summary judgment in favor of appellee/defendant-in-reconvention, The Dow Chemical Company (Dow), dismissing its detrimental reliance claim. We reverse.

Dow filed a petition seeking to enforce a January 21, 2008 contract entitled, "PURCHASE AND SALE AGREEMENT," which was executed between Dow, as seller, and GSP, as buyer, for the sale by Dow of "Anhydrous HCL cars," to GSP (the 2008 contract). When GSP answered the suit, it asserted a reconventional demand against Dow, alleging Dow's liability for, among other things, damages resulting from GSP's detrimental reliance on Dow's promise and representation to exit the Anhydrous HCL market. The trial court granted Dow's motion for summary judgment, dismissing GSP's detrimental reliance claim, and this request by GSP for review of that ruling followed.[1]

GSP urges the trial court's grant of summary judgment is not supported by the record. We agree.

According to the terms of the October 19, 2006 contract entitled, "CONFIDENTIALITY AGREEMENT," which was executed between Dow and GSP (the 2006 contract), the parties were "interested in exploring the possibility of a transaction related to [Dow's] [A]nhydrous HCL business (the 'possible

[1] While this panel questions the propriety of the appeal of this judgment in light of the close relationship between this adjudicated detrimental reliance claim and the unadjudicated claim on the main demand; the evidence received at the trial on the main demand might eliminate the need for further review or require a second reconsideration of the same issue; and miscellaneous factors such as delay and expense, ***see R.J. Messinger, Inc. v. Rosenblum***, 2004-1664, p. 14 (La. 3/2/05), 894 So.2d 1113, 1122, because other panels of this court have concluded that GSP is entitled to an immediate appeal, we do not revisit the matter.

transaction')." The 2006 contract further provided that neither Dow nor GSP "shall be committed or liable in any way with respect to the possible transaction or the matters discussed unless and until a formal written contract with respect thereto [was] executed...." Underscoring this, were the provisions that:

> Neither party shall have any liability ... to the other party in the event that, for any reason whatsoever, no such formal written contract is executed. ...
>
> Except for the matters expressly specified in this Agreement or in any such formal written contract, neither party shall be entitled to rely on any statement, promise, agreement or understanding, whether oral or written, or any custom, usage of trade, course of dealing or conduct.[2]

According to the terms of the 2008 contract,[3] "The [railroad] Cars to be purchased are generally described as *Anhydrous HCL cars* ...." (Emphasis added.) Thus, at the trial on the merits, this contractual evidence would permit the trial court to conclude that the 2008 contract was a duly-executed "formal written contract" that constituted "a transaction related to [Dow's] [A]nhydrous HCL business," (i.e., the "possible transaction") so as to permit the liability of either of the parties who executed the 2006 contract. The evidence would further allow for a finding that because the 2008 contract was a "formal written contract," the provision that "neither party shall be entitled to rely on any statement, promise, agreement or understanding, whether oral or written, or any custom, usage of trade, course of dealing or conduct," as specified in the 2006 contract is

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[2] We point out that to the extent that the provisions of the 2006 contract we have quoted are an attempt to exclude or limit the liability of one party for intentional or gross fault that causes damage to the other party, they are null under the provisions of La. C.C. art. 2004.

[3] Although Dow contends that GSP failed to introduce the 2008 contract into evidence at the hearing on the motion for summary judgment based on the provisions of the 2006 contract, we note that GSP expressly moved to have all the evidence submitted at an earlier hearing admitted. And while the trial court did not expressly admit that evidence, we nevertheless find it proper to consider the provisions of the 2008 contract in our *de novo* review. ***See Thibodaux v. Tilton***,

inapplicable. As such, summary judgment, dismissing GSP's claim for detrimental reliance, was improperly granted on the showing made. ***See*** La. C.C.P. art. 966.

For these reasons, we reverse the trial court's ruling, which granted summary judgment and dismissed GSP's detrimental reliance claim urged as a reconventional demand. Appeal costs are assessed against The Dow Chemical Company.

REVERSED.

(Continued . . .)
2003-2220, p. 3 n.3 (La.App. 1st Cir. 10/22/04), 888 So.2d 920, 922 n.3, ***writ denied***, 2005-0075 (La. 2/18/05), 896 So.2d 44.