

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Daniel P. Cedrone and Poly-Tech Industrial,  
Inc.

Plaintiffs,

v.

Composite Resources, Inc.,

Defendant.

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IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

C.A. NO. 2019-CP-46-00051

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**RECEIVED**

**Jul 07 2023**

**SC Court of Appeals**

This matter comes before the Court on Plaintiffs Daniel P. Cedrone (“**Cedrone**”) and Poly-Tech Industrial, Inc.’s (“**Poly-Tech**”) (collectively “**Plaintiffs**”) Motion for Partial Summary Judgment as to Unambiguous Material Terms filed on March 18, 2022; Plaintiffs’ Reply in Support of Motion for Partial Summary Judgment as to Unambiguous Material Terms filed on May 4, 2022; and Plaintiffs’ Supplemental Memorandum in Support of Motion for Partial Summary Judgment as to Unambiguous Material Terms filed on May 18, 2022; (collectively, the “**Motion**”). Also before the Court is Defendant Composite Resources, Inc.’s (“**Defendant**” or “**Composite Resources**”) Memorandum in

Opposition to Plaintiffs’ Motion for Partial Summary Judgment as to Alleged “Unambiguous” Terms filed on May 3, 2022; and Defendant’s Motion and Memorandum for Contract Construction filed on May 13, 2022 (collectively, the “Opposition”). The Court also has before it the several exhibits filed with the Motion and Opposition, along with the Complaint, and Defendant’s Amended Answer and Counterclaims. After conducting an initial hearing on May 4, 2022, this Court continued the matter to May 20, 2022 for the purpose of receiving additional briefing and arguments. Both parties expanded their discussion of the present matter by exploring in more detail the terms of the Contract and the terms raised in the Motion.

The Motion seeks entry of Partial Summary Judgment (SCRCP Rule 56). The Motion initially sought to have certain terms in a contract between these parties declared “unambiguous” material terms. Plaintiffs submitted a memorandum in support of their position. The motion and memorandum focused on certain terms related to the payment of a commission rate of \$1.75 per tourniquet sold and a provision in the contract that read “for as long as the project continues.” Plaintiffs asserted that partial summary judgment was proper because the contract language establishes, as a matter of law, that the Defendant is liable to the Plaintiffs for payment of \$1.75 per tourniquet beyond the termination date of August 31, 2018.

The Defendant filed its Opposition to the Motion asserting (1) the agreement (Contract) must be construed as a whole and that the plaintiffs are picking and choosing a few terms that misconstrues the terms; (2) other provisions, including the termination

clause, is contrary to Plaintiffs' unreasonable construction which leads to the conclusion of an agreement that is perpetual in nature and never can be terminated; (3) that Plaintiffs' reliance on extrinsic terms establishes that certain terms in the Contract are ambiguous; and (4) if the Contract was not terminable as a matter of law pursuant to the Termination provision, then the Contract is, at best, ambiguous as to the terms for which Plaintiffs seek construction.

Having reviewed the papers submitted by the parties in connection with the Motion, the Opposition, the record evidence presented, and the arguments made by counsel at the two hearings the Court has held on the Motion, this Court finds that Plaintiffs are entitled to partial summary judgment and hereby orders, for the reasons stated herein, that Plaintiffs' Motion is GRANTED.

### **I. Factual and Procedural Background**

From June 2005 through August 2018, the parties had a business relationship related to the manufacturing and sale of a one-handed combat application tourniquet that is standard issue for the United States Armed Forces, other military around the world, police, firefighters, emergency medical technicians and others. According to Defendant, the Combat Tourniquet is a 100% effective and has decreased the mortality rate due to extreme exsanguination by 85%. [See Amended Answer, Para. 2]. In June 2005, Plaintiff Poly-Tech executed the Contract with Composite establishing an independent sales representative/commission relationship for all products manufactured by Composite, including the Phil Durango Combat Application Tourniquets ("**Combat Tourniquet**"),

and establishing a vendor relationship with the respect to certain raw materials. [See Amended Answer, Para. 3 admitting to the Contract, which is attached as **Exhibit A** to the Complaint].

Plaintiffs introduced Composite to Phil Durango L.L.C. (“**Durango**”), the company under which the Combat Tourniquet (sometimes referred to as the “CAT Tourniquet” or “C-A-T Tourniquet”) was developed. [See Amended Answer, Paras. 11-12]. The Combat Tourniquets were subject to “special account” provisions found in Annex C, Section C, Contract, page 11 of 11. On June 26, 2018, Composite notified Poly-Tech of its intent to terminate the Contract pursuant to Section IX’s provision for termination without cause upon sixty (60) days written notice. [See Amended Answer, Para. 23]. Composite stopped making all sales commission payments to Poly-Tech as of August 31, 2018. [See Amended Answer, Para. 24].

The Complaint was filed on January 7, 2019 alleging several causes of action, including causes of action for breach of contract, statutory commissions, and declaratory judgment based on the Contract. Through the Motion, Plaintiffs seek to have this Court interpret the unambiguous terms of the Contract and enter partial summary judgment as to the Composite Resources’ past, present and future obligations to pay Plaintiffs commissions and raw material profit guarantee for as long as Composite Resources or an affiliated company makes the Combat Tourniquets.

Alternatively, the Motion argues that the uncontroverted external evidence filed with the motion papers as to the past, present and future obligation to pay commissions and

raw material profits eliminates the possibility of a genuine issue of material fact as the relief requested in the Motion.

## II. Standard of Review

Rule 56(c) of the South Carolina Rules of Civil Procedure requires that summary judgment be granted if “there is no genuine issue of material fact and... the moving party is entitled to judgment as a matter of law.” S.C.R.C.P. 56(c). *See Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991). “Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008). “When opposing a summary judgment motion, the nonmoving party must do more than ‘simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003).

“It is a question of law for the court whether the language of a contract is ambiguous.” *S.C. Dep’t of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). The determination of whether a contract term is ambiguous is a threshold question of law for the court. *World-Wide Rights Ltd. P’ship v. v. Combe Inc.*, 955 F.2d 242, 245 (4th Cir. 1992) (holding that a court should first consider “whether, as a matter of law, the contract is ambiguous or unambiguous on its face.”). In South Carolina

“[c]ontract interpretation begins with the plain language of the agreement.” *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 756 S.E.2d 148, 152 (S.C. 2014), *reh'g denied* (June 25, 2014). In determining this threshold legal issue, the Court should be guided by the principal that “[a] contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.” *Padgett v. S.C. Ins. Reserve Fund*, 531 S.E.2d 305, 307 (S.C. Ct. App. 2000). “If the contract's language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect.” *Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 198, 821 S.E.2d 667, 669 (2018). Until the nonmoving party establishes a material ambiguity on the issue under consideration for summary judgment, factual disputes dependent on matters outside the contract are neither material nor genuine. *see Russell v. Wachovia Bank, N.A.*, 353 S.C. at 218, 578 S.E.2d at 334 (holding that “the inquiry ... necessarily implicates the substantive evidentiary standard of proof that would apply at a trial on the merits.”) (internal citation omitted).

Even if this Court were to determine the contract was ambiguous, “it may yet examine evidence extrinsic to the contract that is included in the summary judgment materials, and, if that evidence is, as a matter of law, dispositive of the interpretive issue, grant summary judgment on that basis.” *World-Wide Rts. Ltd. P'ship v. Combe Inc.*, 955 F.2d 242, 245 (4th Cir. 1992); *see also Sprint Nextel Corp. v. Wireless Buybacks Holdings, LLC*, 938 F.3d 113 (4th Cir. 2019); *Mears Grp., Inc. v. Kiawah Island Util., Inc.*, 372 F. Supp. 3d 363, 372 (D.S.C. 2019) (“Therefore, summary judgment is appropriate when the

contract in question is unambiguous or when an ambiguity can be definitively resolved by reference to extrinsic evidence”).

### III. Findings of Fact

In connection with this order, this Court makes the following findings of fact:

1. The June 1, 2005 Sales Representative Agreement, attached to the Complaint as Exhibit A (herein referred to as the “**Contract**”) is the only operative agreement between the parties relative to the issues in this civil action.
2. The terms within the four corners of the Contract unambiguously establish that the Defendant was and is contractually obligated to pay Plaintiffs a commission of “\$1.75 per tourniquet sold” including after termination of the sales representative relationship on August 31, 2018, including on Combat Tourniquets Defendant produces and sells after the date of this Order, until the Combat Tourniquets stop being produced and sold (“Tourniquet Commissions”).
3. The terms within the four corners of the Contract also unambiguously establish that the Defendant was and is obligated to pay to Plaintiffs “\$1.12 per yard” of “Aplix 500” material, “\$0.51 per yard” of 1 inch wide “Aplix Hook 800” and “\$0.163 per yard” of 1 inch wide “Aplix Loop 800” purchased since August 31, 2018, and which is purchased after the date of this Order, for the manufacturing of Combat Tourniquets, until the tourniquets stop being produced and sold (“Raw Material Profits”).

4. Poly-Tech Industrial, Inc. is the “representative” under the Contract and functions as an independent contractor.
5. The Contract representative relationship terminated on August 31, 2018. This is uncontested and reflected in the June 26, 2018, letter from Jonathan Bennett to Daniel Cedrone, president of Poly-Tech Industrial, Motion, Exhibit B.
6. The obligation to pay Tourniquet Commissions and Raw Material Profits survive the termination of the Contract.
7. The Tourniquet Commissions and Raw Material Profits set forth on page 11 of the Contract are “exceptions” to be paid separately as provided on page 11.
8. The Contract is not indefinite or uncertain.

#### **IV. Conclusion of Law and Legal Analysis**

The Court begins by stating certain contract interpretation principles:

1. Whether a contract or contract term is ambiguous is a matter of law is for the Court. *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001) (“[i]t is a question of law for the court whether the language of a contract is ambiguous.”). The construction of a contract is also a question of law for the Court. *Curry v. Carolina Ins. Grp. of SC, Inc.*, 428 S.C. 60, 71, 832 S.E.2d 760, 765 (Ct. App. 2019) (“[g]enerally, the construction of contracts is a question of law for the court.”).

2. The cardinal rule of contract interpretation is to ascertain and give legal effect to the intentions of the parties, as determined by the contract language. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).
3. "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958).
4. "When a contract is unambiguous a court must construe its provisions according to the terms the parties used; understood in their plain, ordinary, and popular sense." *Schulmeyer*, 353 S.C. at 134, 579 S.E.2d at 495. Generally, from within the "four corners" of the contract. *McPherson v. J.E. Serrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945) ("primarily from the contents of the writing itself, or, as otherwise stated, from the four corners").
5. The court must enforce an unambiguous contract according to its terms, "regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully". *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994).
6. "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976).
7. In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered. *Klutts Resort Realty, Inc. v. Down 'Round Development Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25

(1977); *DD Dannar, LLC v. SC LAUNCH!, Inc.*, 431 S.C. 9, 27, 846 S.E.2d 883, 892 (Ct. App. 2020).

8. "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 94 S.E.2d 485, 493 (Ct. App. 2004).
9. Courts should try to avoid interpreting a contract in a way that makes a material term superfluous. *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 418, 756 S.E.2d 148, 153–54 (2014) (recognizing exclusive nature of the contract in order to give meaning to the termination provision).
10. Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and other construction, which is equally consistent with the language employed, would make it reasonable and fair and just, the latter construction must prevail. *C.A.N. Enters., Inc. v. S.C. Health & Human Serv. Fin. Commn.*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (citation omitted).
11. "[C]ontract provisions are not vague and indefinite simply because the contracting parties disagree about their meaning. Contract provisions are vague and indefinite if they do not provide an adequate basis or standard for deciding whether the agreement has been kept or broken and there are no extrinsic means by which the terms may be made certain, e.g., trade usage, past practice of the parties." *Dairy King, Inc. v. Kraft, Inc.*, 851 F.2d 356 (4th Cir. 1988).

Applying these contract interpretation principles, Plaintiffs are entitled to the partial summary judgment requested in the Motion. Summary judgment is properly granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCPP.

To establish a breach of contract, Plaintiffs need only establish the existence of a contract, a breach of the duty imposed upon defendant under the contract, and resulting damages. Defendant has admitted the existence of the Contract, and that it stopped making Tourniquet Commission and Raw Material Profit payments as of August 31, 2018.

As a clear and unambiguous agreement, the Contract’s construction is “a matter of law” for the Court. *Watts v. Monarch Builders Inc.*, 272 S.C. 517, 252 S.E.2d 889 (1979). “When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect, and the court must construe it according to its plain, ordinary, and popular meaning.” *Community Services Associates, Inc. v. Wall*, 808 S.E.2d 831, 835, 421 S.C. 575, 582 (Ct. App. 2017) (internal citation omitted). *Accord Shipyard Property Owners' Ass'n v. Mangiaracina*, 307 S.C. 299, 414 S.E.2d 795, 801 (Ct. App. 1992) (“Where an action presents a question as to the construction of a written contract and the language of the contract is clear and unambiguous, the question is not one of fact but one of law.”).

Partial summary judgment as to issues, rather than entire claims, is appropriate, especially when those issues are ultimately issues for the Court to be determined as a matter

of law. *see e.g. Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027, 1035, 1066 (D.S.C. 1993) (granting partial summary judgment on contract remedy term). Courts routinely dispose of affirmative defenses on summary judgment even though such disposition does not resolve any claim in the case. *see Fisher v. Stevens*, 355 S.C. 290, 294, 584 S.E.2d 149, 151 (Ct. App. 2003) (granting plaintiff’s motion for summary judgment for a finding, as a matter of law, that the defendant’s affirmative defense of release did not apply); *Crosby v. Prysmian Commc'ns Cables & Sys. USA, LLC*, 397 S.C. 101, 104, 723 S.E.2d 813, 814 (Ct. App. 2012) (granting partial summary judgment and holding that an affirmative defense “fails as a matter of law”). Similarly, the narrow issue of punitive damages relief is also often determined on summary judgment. *Nash v. Tindall Corp.*, 375 S.C. 36, 38, 650 S.E.2d 81, 82 (Ct. App. 2007).

For the purpose of narrowing the issues via this threshold question, it is appropriate to focus on provisions of a contract that are unambiguous, even if other provision might not reach that level of clarity. *See Atkinson Warehouse & Distribution, Inc. v. Ecolab Inc.*, 15 Fed. Appx. 160, 163 (4th Cir. 2001) (holding that the court must “consider particular provisions in the context of the entire agreement.”); *Martin v. Bay*, 400 S.C. 140, 150–51, 732 S.E.2d 667, 673 (Ct. App. 2012) (construing easement document and finding as a matter of law that boundary of easement was unambiguous and not subject to external interpretations, while finding access to easement subject to external interpretation). Because the relief sought in this Motion for Partial Summary Judgment is compelled by the Contract and the plain reading of Defendant’s Amended Answer and discovery

responses, as well as the application of South Carolina statutes and common law, this case is particularly appropriate for entry of partial summary judgment.

Although not the basis for granting the relief set forth in this Order, the Court's review of the supplemental material confirms that the Contract's terms set forth in the four corners of the Contract support entry of partial summary judgment establishing that the Contract obligates Defendant to pay Plaintiff's the Tourniquet Commissions and Raw Material Profit payments at the rate set forth on page 11 of the Contract during the term of the Contract, beginning in June 2005, extending beyond the termination of the sales representative relationship on August 31, 2018, and lasting for so long as the Combat Tourniquets are produced and sold. The Plaintiffs' supplemental material included discovery responses and deposition testimony, including the following points.

On June 28, 2019, Composite responded to Requests for Admission, Requests for Production, and Interrogatories, all of which are in the record and were filed with the Court on July 19, 2022. Excerpts of these discovery responses were filed with the Motion as Exhibits E, F & G. As noted in Exhibit E, Composite Resources admitted the following facts relevant to this Order:

- a. ***The June 1, 2005 Sales Representative Agreement attached to the Complaint is the most recent written agreement executed between Poly-Tech Industrial and Composite Resources, Inc. which governs or governed the rights and obligations of Poly-Tech with regard to Combat Application Tourniquets under the special account identified with Phil Durango, LLC. (RTA No.1);***
- b. ***Sales to "special accounts" as defined in subsections C of ANNEX C of the June 1, 2005 Sales Representative Agreement were to be paid "as described below" in subsection C and were exceptions to the commission rates in subsections A and B of ANNEX C (RTA No. 5); and***

c. *Exhibit A, is a genuine copy of the June 1, 2005 Sales Representative Agreement.* (RTA-Genuineness No. 1).

Composite Resources also provided the following interrogatory answer:

**INTERROGATORY NO. 10:** Identify and describe the nature and operational terms of any agreements or modifications between Composite and Poly-Tech and/or Cedrone from 2000 forward in time, including the Agreement, dated June 1, 2005, at issue in this case, and state who negotiated and drafted those agreements and state how and why each such term of any such agreement impacts, if at all, the obligations and benefits of the Agreement in this case.

**ANSWER:** CRI objects to this interrogatory on the basis that it seeks information that is not relevant to the issues in this dispute. **The June 1, 2005 agreement sets forth “the nature and operational terms” between the parties.** Further, CRI objects to this interrogatory on the basis that it seeks information beyond all applicable statutes of limitation. (emphasis added).

Finally, Composite Resources provide the following document requests responses:

**REQUEST FOR PRODUCTION NO. 6:** Please produce all documents relied on by Composite in answering any interrogatory propounded by Poly-Tech in this case.

**RESPONSE:** Plaintiffs are already in possession of the June 1, 2005 Sales Representative Agreement.

**REQUEST FOR PRODUCTION NO. 24:** Please produce any and all ... documents, ... including all attachments to each or documents referenced within each between Poly-Tech/Cedrone and Composite Resources related to Poly-Tech's rights and obligations under the Sales Representative Agreement.

**RESPONSE:** ... CRI responds that it is this 2005 Sales Representative Agreement that sets forth Poly-Tech's rights and obligations. ...

**REQUEST FOR PRODUCTION NO. 34:** Please produce any and all ... documents, ... including all attachments to each or documents referenced within each between Poly-Tech/Cedrone and Jonathan Bennett related to Poly-Tech's rights and obligations under the Sales Representative Agreement.

**RESPONSE:** ... CRI responds that it is this 2005 Sales Representative Agreement that sets forth Poly-Tech's rights and obligations. ...

In further support of the Motion, Plaintiffs submitted the testimony of the Operations Director, who was the Composite Resources' representative in drafting the Contract. In her deposition, Lisa Bennett, testified:

- Q. ... Did you consider it a forever thing?  
A. I considered it to be as long as the tourniquets were in production.  
Q. Okay. As long as Composite Resources is making tourniquets Poly-Tech would get the commission?  
A. Yes.  
Q. And negotiating and finalizing the 2005 agreement was that your intent?  
A. Yes.  
Q. And was that Composite's intent?  
...  
A. I believe it was Composite's intent.  
Q. Okay. And you were the operation director at the time?  
A. Yes.  
Q. And you had -- did you have authority on behalf of Composite to negotiate that agreement?  
A. Yes.  
...  
Q. And under this agreement there is no way for Composite to sell Poly-Tech's products and not pay Poly-Tech the commission, right?  
A. Correct.

See Deposition excerpt of Lisa Bennett, Motion, **Exhibit C**.

Once the party moving for summary judgment meets this initial burden, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(e), SCRCP. Here, Plaintiffs provided specific discovery responses and deposition testimony from Composite Resources' operations director at the time the Contract was executed that directly supports Plaintiffs' Motion. Defendant filed no counter evidence with its filings in opposition to the Motion. "When opposing a summary judgment motion, the nonmoving party must do more than simply show that there is a metaphysical

doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.” *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (internal citations omitted). In addition, Defendant’s discovery responses, noted above, disclaim any evidence of the intent or interpretation of the Contract, other than the Contract itself.

Defendant titled its supplemental filing “Defendant’s Motion and Memorandum for Contract Construction”, but did not cite a rule of civil procedure under which it was seeking “motion” relief. Defendant did argue that “Annex C” contains language that is “indefinite” and thus legally “unenforceable”, and that this Court should not construe a contract where doing so would require ascertaining the intentions of the parties by “mere guess and conjecture.” The Defendant’s argument isolates terms such as “regular contract” and “project” to avoid the parties’ original intent by asserting that these terms are “indefinite” because they are not defined within the written Contract. In making this argument, Defendant is not taking the position that the Contract is ambiguous and therefore subject to external information to derive the intent of the parties at the time the contract was formed. Rather, Defendant advances the position that the last provision of Annex C is, as a matter of law, “indefinite” and thus the Contract is legally unenforceable.

This Court views the Defendant’s assertion that this language in Annex C, p. 11 of the Contract, is indefinite and legally unenforceable as meritless. In *Dairy King, Inc. v. Kraft, Inc.*, , the Fourth Circuit noted that:

“contract provisions are not vague and indefinite simply because the contracting parties disagree about their meaning. Contract provisions are vague and indefinite if they do not

provide an adequate basis or standard for deciding whether the agreement has been kept or broken and there are no extrinsic means by which the terms may be made certain, *e.g.*, trade usage, past practice of the parties.”

851 F.2d 356 (4th Cir. 1988) (finding that the parties intended an exclusive distributorship with a buyout provision and a market reentry mechanism). With regard to sales commission contracts, *Indep. Quality Foods, LLC v. Kansas City Steak Co., LLC*, 585 S.W.3d 855, 858–59 (Mo. Ct. App. 2019) is instructive. Unlike the Contract in the present matter, in *Kansas City Steak*, there was no express provision addressing payment of commissions after termination. Instead, the sales representative’s “right to commissions on post-termination sales depends on what type of commissioned salesperson [plaintiff] was under the parties' contract.” Under Missouri law, a sales representative classified as a “finder” retains the right to commissions on business even after termination, because “a finder has completed all of the work that needs to be completed and the right to payment vests upon the finding of business.” *Id.* at 859. The court further explained that “[t]he principle that a ‘finder’ may be entitled to ongoing commissions despite the termination of a contract is grounded in rudimentary contract law.” *Id.*

This Court’s view of the Defendant’s position as meritless is supported by the testimony of Lisa Bennett to the effect that “as long Composite Resources is making the tourniquets Poly-Tech would get paid;” and other portions of her sworn testimony that it was the Defendant’s intent that the Plaintiffs would be paid as long as the product was produced, even if the Plaintiffs did not sell the product. Even though the term “perpetual” has been used to describe this provision of the Contract, the provision is not perpetual

because it terminates once the product stops being produced and sold. This Court’s role is not to determine whether the parties made wise business decisions when the Contract was agreed upon. *See Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) (“[t]he court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly”). Notwithstanding, this provision, as it is written, does not make the Contract unenforceable. *see e.g., Aiken Petroleum Co. v. Nat'l Petroleum Underwriters of W. Millers Mut. Fire Ins. Co. of Kansas City, Mo.*, 207 S.C. 236, 252, 36 S.E.2d 380, 386 (1945) (finding no merit in the contention that the contract was indefinite where “the plaintiffs paid without question any premium rate that the defendant through the Moses Agency saw fit to fix [and t]here was never any question about the identity of the property to be insured or the ownership thereof”).

## V. Conclusion

For the reasons stated herein and set forth in the Motion, Plaintiffs’ Motion for Partial Summary Judgment is hereby **GRANTED**;

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT** partial summary judgment is granted in favor Plaintiffs to establish that, as a matter of law, for as long as Composite Resources is associated with the making and selling of C-A-T Tourniquets:

1. Composite Resources was and is obligated to pay Plaintiffs “\$1.75 per [Combat] [T]ourniquet sold,” for which this amount has not already been paid<sup>1</sup>, and for all Combat Tourniquets which are sold in the future, and

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<sup>1</sup> This Order does not strip Defendant of any viable statute of limitations defense it might be able to prove at trial with regard to sales prior to the termination date of August 31, 2018.

2. Composite Resources is additionally obligated to pay to Plaintiffs “\$1.12 per yard” of “Aplix 500” material, “\$0.51 per yard” of 1 inch wide “Aplix Hook 800” and “\$0.163 per yard” of 1 inch wide “Aplix Loop 800” which Composite Resources has purchased since August 31, 2018, and which it does purchase after the date of this Order, for the manufacturing of Combat Tourniquets.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** the relief sought in Defendant’s Motion and Memorandum for Contract Construction filed on May 13, 2022 is hereby **DENIED**;

**IT IS SO ORDERED.**

This \_\_\_th day of September, 2022.

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The Honorable J. Mark Hayes, II



York Common Pleas

**Case Caption:** Daniel P Cedrone , plaintiff, et al VS Composite Resources Inc

**Case Number:** 2019CP4600051

**Type:** Order/Summary Judgment

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132