

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

AGCHEM, INC., d/b/a UNITED	:	NO. 03-00,999
AGRI PRODUCTS-NORTHEAST,	:	
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION
FAIRFIELD FARMS, P/S, DAVID	:	
RAKESTRAW and RUSSELL TWIGG,	:	
Defendants	:	Motion for Summary Judgment

**OPINION AND ORDER**

Before the Court is Plaintiff's Motion for Summary Judgment, filed March 8, 2004.

Argument on the motion was heard May 10, 2004.

This matter arises from the sale by Plaintiff to Defendant Fairfield Farms of certain agricultural products and the failure of Fairfield Farms to make full payment therefor. Plaintiff obtained a default judgment against Fairfield Farms and Defendant David Rakestraw, and now seeks summary judgment against Defendant Russell Twigg. Plaintiff alleges that Rakestraw and Twigg were partners in Fairfield Farms, that the purchase of its products was made by Rakestraw in the name of the partnership, and that as a partner, Twigg is jointly liable for the debt. Twigg admits that, at least until December 31, 2001<sup>1</sup>, he was a partner with Rakestraw but alleges Rakestraw was restricted under the partnership agreement from making the subject purchases.

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<sup>1</sup> Since the Court is denying Plaintiff's motion for summary judgment on broader grounds, the Court need not reach the further issue of the appropriateness of summary judgment with respect to any purchases made after December 31, 2001.

Plaintiff points to Section 8321 of the Uniform Partnership Act for the proposition that the act of every partner in carrying on in the usual way the business of the partnership binds the other partners. 15 Pa.C.S.A. Section 8321(a). Defendant Twigg points out, however, that the same section also provides an exception, where the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of that fact. Id. Plaintiff's Complaint and Motion are both silent as to the issue of its knowledge respecting any restriction on Rakestraw's authority. Twigg's Answer and Response likewise do not address the matter. The Court cannot, therefore, find Plaintiff is entitled to judgment as a matter of law, making summary judgment inappropriate.

ORDER

AND NOW, this 10<sup>th</sup> day of May 2004, for the foregoing reasons, Plaintiff's Motion for Summary Judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Bernard Cantorna, Esq., 1901 E. College Ave., State College, PA 16801  
Joseph Orso, III, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson