

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-11920
Non-Argument Calendar

D.C. Docket No. 1:12-cv-03262-MHS

NEWELL RUBBERMAID INC.,
GRACO CHILDREN'S PRODUCTS INC.,

Plaintiffs - Counter Defendants
Appellees,

versus

FLEXFLO USA, INC.,

Defendant - Counter Claimant
Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(October 23, 2014)

Before TJOFLET, WILSON, and ROSENBAUM Circuit Judges.

PER CURIAM:

This is a breach-of-contract action. Graco Children's Products, Inc. ("Graco"), under a "Distribution Agreement" with FlexFlo USA, Inc. ("FlexFlo") effective January 1, 2007, sold Graco products to FlexFlo for resale by FlexFlo to customers in Venezuela. The Agreement's term was one year, subject to renewal. The Agreement renewed annually for the one-year term beginning on January 1, 2008, through January 1, 2011. In October 2011, Graco informed FlexFlo that the Agreement would expire effective December 31, 2011, and that it would not accept any of FlexFlo's purchase orders after that date. When FlexFlo failed to pay Graco the balance due on purchases made through December 31, 2011—a sum totaling \$356,464.91—Graco brought this lawsuit in the District Court to recover the balance due.

FlexFlo, in response to Graco's complaint, admitted the balance due but claimed in its answer and counterclaim that Graco (1) breached the Agreement by wrongfully terminating the Agreement and refusing to accept purchase orders through December 31, 2011; (2) agreed to defer filing suit for the balance due pending good-faith efforts to negotiate a settlement of the indebtedness; and (3) breached that agreement by failing to negotiate in good faith before filing this lawsuit. FlexFlo also claimed a setoff in the amount of the profits it would have made on the sale of Graco products had Graco not wrongfully terminated the Agreement.

Following discovery, Graco moved the District Court for summary judgment. In an order entered on January 14, 2014, the court granted the motion—rejecting the merits of FlexFlo’s defenses and counterclaim in the process—and gave Graco judgment for \$356,464.91.¹ Doc. 86. FlexFlo appeals the judgment, arguing that summary judgment was precluded by material issues of fact as to whether Graco wrongfully terminated the Agreement and thereafter breached its agreement to defer collection proceedings pending the completion of good-faith settlement negotiations.

We have carefully considered FlexFlo’s arguments that material issues of fact precluded summary judgment and conclude, for the reasons the District Court gave in its January 14, 2014, order, that the arguments are foreclosed by the record.

AFFIRMED.

¹ On March 31, 2014, the District Court also ordered FlexFlo to pay Graco \$40,334.24 in prejudgment interest. Doc. 89.