

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	:	Chapter 11
	:	
COOL SPRINGS LLC,	:	
Reorganized Debtor	:	Case No. 22-10912 (MFW)
	:	
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WINGSPIRE EQUIPMENT FINANCE LLC,	:	Adv. Pro. No. 23-50395
	:	(MFW)
Plaintiff	:	
	:	
v.	:	
	:	
E-CRANE INTERNATIONAL USA INC.,	:	Rel. Docs. 12, 35, 36,
	:	37, 38, 39, 40, 41,
Defendant	:	42, 43, 44, 45

OPINION¹

Before the Court are the Cross Motions of Wingspire Equipment Finance LLC f/k/a Liberty Commercial Finance LLC ("Wingspire") and E-Crane International USA Inc. ("ECI") for Summary Judgment on the remaining count of Wingspire's Amended Complaint. For the reasons stated below, the Court will grant ECI's Motion and deny Wingspire's Motion.

I. FACTUAL BACKGROUND²

Metal Services LLC (the "Debtor") provided services to global steel companies, including the processing and removal of

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

² The facts recited as background are undisputed. Adv. D.I. 36 at 4-14; Adv. D.I. 38 at 2-9. References to the docket in the instant adversary proceeding are to "Adv. D.I. #."

molten slag and metal scrap. To do so, the Debtor purchased, or leased, large pieces of machinery and equipment. On June 23, 2020, Wingspire and the Debtor entered into a Master Lease pursuant to which Wingspire agreed to finance the manufacturing of certain equipment that the Debtor purchased.

In October 2021 and February 2022, the Debtor circulated requests for proposals for the construction of two cranes to be used by the Debtor at the Nucor Steel Gallatin LLC ("Nucor") site. The Debtor subsequently accepted ECI's proposals for construction of the cranes per the Debtor's specifications (the "Proposals").³ Pursuant to Purchase Orders it issued to ECI, the Debtor agreed to pay, according to Progress Payment Schedules, a total of \$1,807,300 for the construction of Crane 1 and \$1,466,500 for the construction of Crane 2 (collectively, the "Cranes").⁴ Wingspire agreed to provide funding for the purchase of the Cranes under Schedule Nos. 18 and 26 to the Master Lease.⁵ The Debtor and Wingspire advised ECI of Wingspire's agreement to finance the Cranes and arranged for ECI to bill Wingspire directly for the Progress Payments.⁶

³ Adv. D.I. 39 (Sarago Decl.), Exs. A & B.

⁴ Id. Exs. C & D.

⁵ Id. Exs. F & G.

⁶ Adv. D.I. 36 (Vulpio Decl.), Exs. A-10 & A-13; Adv. D.I. 39 (Sarago Decl.), Exs. J, K, L; Adv. D.I. 43 (Osborne Decl.) ¶¶ 17 & 18.

On September 27, 2022 (the "Petition Date"), the Debtor and several of its affiliates filed cases under chapter 11 of the Bankruptcy Code.⁷ As of the Petition Date, Wingspire had paid ECI the first two scheduled Progress Payments (a total of \$1,084,380) for Crane 1 and the first Progress Payment (\$439,950) for Crane 2 (the "Deposits").⁸

In early January 2023, the Debtor filed a motion to reject certain contracts it had with Nucor, and Nucor filed a motion to compel rejection of all its contracts.⁹ Those motions were ultimately settled by rejection of the Nucor contracts for the Gallatin site.¹⁰ The Court approved that settlement on March 3, 2023.¹¹ Because the Cranes were intended for use on the Gallatin site, ECI filed a motion to compel the Debtor to assume or reject its purchase contracts by a date certain.¹² That motion was resolved by a stipulation between the Debtor and ECI that the contracts to purchase the Cranes would be rejected and the Debtor

⁷ The bankruptcy cases were originally jointly administered under the case of Phoenix Services Topco, LLC, Bankr. No. 22-10906. References to the docket in the jointly administered bankruptcy case are to "D.I. #."

⁸ Adv. D.I. 36 at 10; Adv. D.I. 39 (Sarago Decl.) ¶ 28, Ex. M.

⁹ D.I. 397; D.I. 400.

¹⁰ D.I. 554.

¹¹ D.I. 606.

¹² D.I. 503.

would abandon any interest it had in them. On April 10, 2023, the Court approved the stipulation.¹³

On April 27, 2023, the Debtor filed an omnibus motion to reject, inter alia, the Master Lease with Wingspire.¹⁴ On May 23, 2023, the Court entered an order granting that motion and providing that “[a]ny party with any interest in the E-Cranes, the E-Crane Contracts, or the E-Crane deposits is permitted to exercise any rights and remedies any such party may have in the E-Cranes under the E-Crane Contracts or the related lease documents, as applicable; provided that, notwithstanding anything herein to the contrary, this provision does not grant any right to exercise any rights or remedies against the Debtors or property of the Debtors’ estates.”¹⁵

Thereafter, Wingspire filed an adversary proceeding against ECI seeking (1) damages for breach of contract; (2) restitution for ECI’s retention of Crane 1 and the Deposits paid for the construction of the Cranes; and (3) a constructive trust in Wingspire’s favor on the Deposits it paid for Crane 2.¹⁶ ECI filed a Motion to Dismiss the Amended Complaint, which Wingspire

¹³ D.I. 699; D.I. 701.

¹⁴ D.I. 733.

¹⁵ D.I. 804 ¶ 4.

¹⁶ A First Amended Complaint was filed by Wingspire on August 17, 2023 (hereinafter referred to as the “Amended Complaint”). Adv. D.I. 12.

opposed. By Opinion and Order dated February 1, 2024, the Court granted the Motion to Dismiss Counts 2, 3 and 4 of the Amended Complaint. However, the Court denied the Motion to Dismiss Count 1 because it found that Wingspire had alleged the parties had a written agreement which ECI had breached and that there was a genuine issue of material fact on the intent of the parties and the effect of the documents.¹⁷

On December 17, 2024, ECI filed a Motion for Summary Judgment on the remaining Count of the Amended Complaint.¹⁸ Wingspire opposed ECI's Motion and filed its own Motion for Summary Judgment.¹⁹ The Motions have been fully briefed and are ripe for decision.

II. JURISDICTION

The Court has subject matter jurisdiction over this adversary proceeding.²⁰ This action is a proceeding related to the bankruptcy case as it does not arise in or under the Bankruptcy Code but involves a question of what was property of the estate as of the Petition Date.²¹ The parties have consented

¹⁷ Adv. D.I. 23 at 19.

¹⁸ Adv. D.I. 35; Adv. D.I. 36.

¹⁹ Adv. D.I. 37; Adv. D.I. 38; Adv. D.I. 40.

²⁰ 28 U.S.C. §§ 157(b) & 1334(b).

²¹ Id. § 157(b).

to entry of a final order by the Court.²²

III. DISCUSSION

A. Standard of Review²³

Pursuant to Rule 56(a), a court should grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."²⁴ The movant bears the initial burden of proving that it is entitled to relief and there is no genuine dispute of material fact.²⁵ When the movant has met its burden, the non-moving party must present evidence showing that it is entitled to relief or that there is a genuine dispute of material fact. The latter requires more than "some metaphysical doubt as to the material facts."²⁶ A fact is material when, under applicable

²² See Adv. D.I. 12 ¶ 13; Adv. D.I. 16 ¶ 3; Adv. D.I. 36 at 3. Wellness Int'l Network, Ltd. v. Sharif, 575 U.S. 665, 686 (2015) (holding that the bankruptcy court may enter a final order without offending Article III if the parties consent).

²³ The applicable Federal Rules of Civil Procedure are incorporated into the Federal Rules of Bankruptcy Procedure. See Fed. R. Bankr. P. 7056. Therefore, citations herein are to the Federal Rules of Civil Procedure.

²⁴ Fed. R. Civ. P. 56(a).

²⁵ Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

²⁶ Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

substantive law, it "might affect the outcome of the suit."²⁷ A dispute over a material fact is genuine when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."²⁸

When considering a motion for summary judgment, the court must make its determination based upon the record of the case presented by the parties, which may include the pleadings, exhibits, and products of discovery.²⁹ The court should not weigh the evidence and determine the truth of the matter; rather, the court must simply determine whether there is a genuine issue for trial.³⁰ In doing so, the court must "view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor."³¹ However, while reasonable factual inferences will be drawn against the moving party, "those

²⁷ Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

²⁸ Id.

²⁹ Fed. R. Civ. P. 56(c).

³⁰ Argus Mgmt. Grp. v. GAB Robins, Inc. (In re CVEO Corp.), 327 B.R. 210, 214 (Bankr. D. Del. 2005). See also Brandywine One Hundred Corp. v. Hartford Fire Ins. Co., 405 F. Supp. 147, 149 (D. Del. 1975) (holding that "all inferences, doubts and issues of credibility should be resolved against the moving party." (quoting Suchomajcz v. Hummel Chem. Co., 524 F.2d 19, 24 (3d Cir. 1975))).

³¹ Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)). See also United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

inferences must be supported by evidence (as opposed to mere assertions or allegations) that supports each element of the claim.”³² Normally, courts find that “conclusory, self-serving affidavits” are insufficient to meet a party’s burden on summary judgment, unless they address specific factual allegations and are not rebutted by contrary evidence.³³

If a court ultimately finds that there is no genuine dispute of material fact, it may enter judgment as a matter of law, either for or against the movant, in full or in part, applying the applicable substantive law.³⁴ If the record could lead reasonable minds to draw conflicting inferences or conclusions, summary judgment is improper, and a trial is necessary.³⁵

³² In re Sea-Land Corp. S’holders Litig., 642 A.2d 792, 799 (Del. Ch. 1993), aff’d sub nom. Sea-Land Corp. S’holder Litig. v. Abely, 633 A.2d 371 (Del. 1993) (citations omitted).

³³ See, e.g., Paladino v. Newsome, 885 F.3d 203, 208 (3d Cir. 2018) (holding that a conclusory, self-serving affidavit was insufficient to withstand a motion for summary judgment because it failed to “set forth specific facts that reveal a genuine issue of material fact.”). But see Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161-62 (3d Cir. 2009) (holding that a conclusory, self-serving affidavit was sufficient because it addressed specific facts raising a genuine issue of material fact and was not contested by any contradictory evidence submitted in rebuttal).

³⁴ Fed. R. Civ. P. 56(a), (f).

³⁵ O’Connor v. Boeing N. Am., Inc., 311 F.3d 1139, 1150 (9th Cir. 2002) (holding that critical factual disputes precluded a grant of summary judgment).

B. Arguments

Wingspire contends that it has an express enforceable contract with ECI to pay ECI in exchange for all right, title, and interest in the Cranes. It asserts that this contract is separate from ECI's contract to sell the Cranes to the Debtor and is evidenced by (i) invoices, emails, and other documentation between ECI, as Seller, and Wingspire, as Buyer, (ii) the Progress Payments made by Wingspire and accepted by ECI for the Cranes, and (iii) the other conduct of the parties. Wingspire argues that a contract for the sale of goods, like the Cranes, can be formed through the communications and conduct of the parties which demonstrates the existence of such a contract.³⁶

ECI responds that a contract for the sale of goods over \$500 requires a written agreement signed by the party to be charged.³⁷ ECI asserts that the documents on which Wingspire relies were not

³⁶ See 6 Del. Code Ann. § 2-204(1) ("A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract."). See also Country Store Prods., Inc. v. Cornucopia Prods., Inc. (In re Country Store Prods., Inc.), 21 B.R. 28, 31 (Bankr. E.D. Pa. 1980) (holding that even absent a written contract, the parties' conduct proved the existence of their agreement).

³⁷ See 6 Del. Code Ann. § 2-201 ("Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by the party's authorized agent or broker.").

signed by ECI and thus do not satisfy that requirement. ECI acknowledges, however, that a contract may be found to exist where the parties' undisputed actions "clearly manifest[] mutual recognition that a binding obligation was undertaken."³⁸ ECI contends nonetheless that Wingspire's evidence falls far short of that standard.

The Court concludes that the parties' conduct may provide evidence of a meeting of the minds necessary to establish the existence of a contract.³⁹ As the plaintiff, Wingspire has the burden of proving that the parties intended to enter into an

³⁸ PCS Sales (USA), Inc. v. Nitrochem Distrib., Ltd., No. 03 Civ.2625(SAS), 2004 WL 944541, at *5 (S.D.N.Y. May 3, 2004).

³⁹ Id. See also Hardwire, LLC v. Zero Int'l, Inc., C.A. No. 14-54-LPS-CJB, 2014 WL 5144610, at *9 (D. Del. Oct. 14, 2014) ("U.C.C. § 2-204 also reflects the common law principle that a meeting of the minds on all essential contract terms is critical for contractual formation, whether the parties manifest their intent to be bound by word, act or conduct."); Rohm and Haas Elec. Materials, LLC v. Honeywell Int'l, Inc., C.A. No. 06-297-GMS, 2009 WL 1033651, at *5 (D. Del. April 16, 2009) (holding that to establish the existence of a contract, plaintiff must show that "a reasonable person would conclude, based on the objective manifestations of assent and the surrounding circumstances, that the parties intended to be bound by their agreement on all essential terms." (internal quotations omitted)); Black Horse Cap., LP v. Xstelos Holdings, Inc., C.A. No. 8642-VCP, 2014 WL 5025926, at *12 (Del. Ch. Sept. 30, 2014) (determining intent to be bound objectively "based upon their expressed words and deeds as manifested at the time rather than by their after-the-fact professed subjective intent" (citations omitted)); Debbs v. Berman, No. 7973, 1986 WL 1243, at *7 (Del. Ch. Jan 29, 1986) (holding that a determination of whether the parties entered into an agreement "must be premised on the totality of all such expressions and deeds given the attendant circumstances and the objectives that the parties are attempting to attain." (internal citations omitted)).

agreement for the sale of the Cranes from ECI to Wingspire and for the return of Wingspire's payments if the Cranes were not completed and delivered, as it alleges in Count 1 of the Amended Complaint.⁴⁰

1. Documentation

Wingspire contends that the parties' correspondence and invoices manifest the requisite intent to form an express contract whereby ECI agreed to sell the Cranes to Wingspire.⁴¹ ECI contends that none of those documents evince ECI's intent to sell Wingspire the Cranes, which it had already sold to the Debtor. Moreover, ECI argues that none of the documents support Wingspire's claim that it is entitled to the Cranes without paying the full purchase price reflected in the Purchase Orders.⁴²

⁴⁰ Adv. D.I. 12 ¶¶ 50-51. See, e.g., Finger Lakes Cap. Partners, LLC v. Honeoye Lake Acquisition, LLC, C.A. No. 9742-VCL, 2015 WL 6455367, at *15 (Del. Ch. Oct. 26, 2015) (holding that the party seeking to enforce an alleged contract bears the burden of proving its existence by a preponderance of the evidence), aff'd in part, rev'd in part, 151 A.3d 450 (Del. 2016).

⁴¹ Quandry Sols. Inc. v. Verifone, Inc., C.A. No. 07-097, 2009 WL 997041, at *12 (E.D. Pa. Apr. 13, 2009) ("Although an agreement need not contain all of the terms necessary for the execution of the agreement, it must represent a meeting of the parties' minds on the essential terms of their agreement" which include "the time and manner of performance and price or other consideration." (internal quotations and citations omitted)).

⁴² Adv. D.I. 39 (Sarago Decl.), Exs. A-D.

a. Emails

The documents cited by Wingspire include a series of emails beginning in December 2021 between Wingspire and ECI. Wingspire argues that those emails prove the parties agreed that Wingspire would be listed as the Buyer of the Cranes. ECI contends that nowhere in those documents is there such an agreement.

The Court agrees with ECI. The Court finds that nowhere in the emails does Wingspire request, nor ECI consent, to have Wingspire designated as the Buyer of the Cranes. In fact, the initial email from Wingspire to ECI states that Wingspire agreed to finance the Debtor's purchase of the Cranes, not to buy the Cranes itself.⁴³

Nonetheless, Wingspire repeatedly argues that, in those emails, it requested that the invoices for the Cranes be changed to designate Wingspire as the "Buyer." However, a thorough reading of those emails demonstrates that this argument is fallacious. The emails do not even mention the word "Buyer."⁴⁴ Instead, they show that Wingspire merely requested that the invoices for the Cranes be "billed to" Wingspire and that the Cranes be "shipped to" the Debtor.⁴⁵ Therefore, the Court concludes that the emails do not provide any evidence of an

⁴³ Id. Ex. J.

⁴⁴ Id.

⁴⁵ Id.

agreement between Wingspire and ECI that Wingspire would buy the Cranes from ECI.

b. Invoices

Wingspire also contends that the invoices issued by ECI are evidence of the parties' agreement that Wingspire was the Buyer of the Cranes.⁴⁶ It argues that the invoices provided the essential terms of the parties' agreement for the sale of the Cranes to Wingspire (price, payment and delivery) and thus satisfy the requirements of Article 2 of the Uniform Commercial Code (the "UCC").⁴⁷

ECI asserts that the invoices do no such thing. It notes that nowhere on the invoices is Wingspire listed as the Buyer of the Cranes.⁴⁸ ECI contends that it sent the invoices to Wingspire at the Debtor's request, because Wingspire was financing the Debtor's purchase of the Cranes.⁴⁹

The Court agrees with ECI that the invoices do not evidence an agreement between ECI and Wingspire whereby Wingspire would

⁴⁶ Id. Exs. K & L.

⁴⁷ 6 Del. Code Ann. § 2-204(1). Quandry Sols., 2009 WL 997041, at *12 (holding that evidence of an agreement need not contain all the terms of the parties' agreement but must contain the essential terms, including "the time and manner of performance and price or other consideration.") (citations omitted).

⁴⁸ Adv. D.I. 39 (Sarago Decl.), Exs. K & L.

⁴⁹ Id. Ex. J; Adv. D.I. 43 (Osborne Decl.) ¶ 11, Ex. A.

purchase the Cranes. The invoices on which Wingspire relies simply show that ECI complied with Wingspire's request to bill Wingspire, rather than the Debtor, for the Cranes: the invoices state that they were "billed to" Wingspire and that the Cranes were to be "shipped to" the Debtor.⁵⁰ Again, contrary to Wingspire's repeated assertions, nowhere on the invoices is Wingspire listed as the Buyer of the Cranes.

Wingspire contends, however, that the invoices expressly incorporated by reference the Proposals for the Cranes.⁵¹ The Court concludes that this contention actually contradicts Wingspire's assertion that it had an agreement with ECI to buy the Cranes. The Proposals and Purchase Orders reflect that it was the Debtor, not Wingspire, to whom ECI agreed to sell the Cranes.⁵² Nothing in the invoices changed that fact.

c. Tax Exemption Certificate

Wingspire also relies on a tax exemption certificate that reflects Wingspire as the Buyer and ECI as the Seller of the Cranes.⁵³ Wingspire asserts that the tax exemption certificate was issued by ECI to Wingspire⁵⁴ and demonstrates that ECI

⁵⁰ Adv. D.I. 39 (Sarago Decl.) ¶ 25, Exs. K & L.

⁵¹ Id.

⁵² Id. Exs. A-D.

⁵³ Id. Ex. H.

⁵⁴ Adv. D.I. 39 (Sarago Decl.) ¶ 39.

acknowledged Wingspire as the Buyer of the Cranes.⁵⁵

ECI denies that it prepared or sent the tax exemption certificate to Wingspire. It notes that Wingspire's own evidence shows that Wingspire prepared the tax exemption certificate and sent it to ECI "for [its] record, in order to remove the sales tax from the invoices."⁵⁶

The Court concludes that the tax exemption certificate does not provide evidence of a contract of sale between Wingspire and ECI. First, contrary to Wingspire's bald assertion, there is no evidence that ECI created the tax exemption certificate. Second, the tax exemption certificate is signed only by Wingspire, not by ECI.⁵⁷ Third, Wingspire's own documents show that the tax exemption certificate was sent by Wingspire to ECI on December 16, 2021, as part of its initial communication with ECI.⁵⁸ Fourth, as noted above, in its initial communication Wingspire expressly stated that it was "financing" the Debtor's purchase of the Cranes, not that it was buying the Cranes.⁵⁹

⁵⁵ Adv. D.I. 38 at 17.

⁵⁶ Adv. D.I. 39 (Sarago Decl.), Ex. J at 000855.

⁵⁷ Id. Ex. H.

⁵⁸ Id. Ex. J. Further, Wingspire admits that the tax exemption certificate was produced by Wingspire to ECI in discovery. Id. ¶ 15.

⁵⁹ Id. Ex. J.

d. The Master Lease

Wingspire asserts, however, that the Debtor had agreed to assign the Purchase Orders it had with ECI to Wingspire, pursuant to the Master Lease and Equipment Schedules.⁶⁰ Wingspire contends that the Master Lease demonstrates that the Debtor “intended for Wingspire to have the sole rights and interests in the Equipment.”⁶¹

ECI argues that any agreement between the Debtor and Wingspire provides no evidence that ECI and Wingspire entered into an agreement. ECI also notes that Wingspire provided no evidence that ECI consented to the Debtor’s agreement to assign its rights in the Cranes’ contracts to Wingspire.

The Court agrees with ECI that the Master Lease between the Debtor and Wingspire cannot establish that a contract existed between ECI and Wingspire. The Master Lease is an agreement only between Wingspire and the Debtor; it provides no evidence that ECI intended to enter into a contract giving Wingspire any interest in the Cranes or any right to a refund of the Progress Payments it made on the Debtor’s behalf. Further, Wingspire

⁶⁰ Id. ¶ 11, Exs. E, F, G.

⁶¹ Id. ¶¶ 16 & 17, Exs. F & G (“[i]f [Debtor] has entered into a purchase order and/or other documents relating to the Equipment (the “Purchase Documents”) with [Defendant], [the Debtor] hereby assigns to [Wingspire] all of its rights and interests in the Equipment and the Purchase Documents, but none of [the Debtor’s] obligations.”).

produced no documents demonstrating that ECI agreed to any assignment of the Cranes' contracts to Wingspire (or even any documents advising ECI of an assignment).⁶²

Even if ECI had agreed to an assignment, there is no evidence that ECI agreed to change the terms of its agreement with the Debtor. Under that agreement, ECI retained title to the Cranes until it was paid in full, which never happened.⁶³ Further, Wingspire cites no support, in the Master Lease or the Debtor's agreement to purchase the Cranes, demonstrating that it is entitled to a return of the Progress Payments.

2. Progress Payments Made by Wingspire

Wingspire contends that, even if the above documents do not constitute an express written contract, the existence of a binding agreement is evidenced by the fact that (i) ECI billed Wingspire directly,⁶⁴ (ii) Wingspire paid ECI for the invoices,⁶⁵ (iii) ECI accepted Wingspire's payments, and (iv) ECI partially

⁶² In its Opinion on the Motion to Dismiss, the Court held that Wingspire had not asserted a valid claim that it had acquired any rights in the Cranes by virtue of the assignment language in the Master Lease or the Schedules. Adv. D.I. 23 at 14-15 (concluding that because ECI retained title to the Cranes until it was paid in full, which never happened, the Debtor never acquired any right, title or interest in the Cranes which it could assign to Wingspire).

⁶³ Adv. D.I. 39 (Sarago Decl.), Ex. A at General Conditions ¶ 22.

⁶⁴ Id. Exs. K & L.

⁶⁵ Adv. D.I. 39 (Sarago Decl.) ¶ 31, Ex. M.

performed by beginning to construct the Cranes. Wingspire argues that each party's partial performance of a contract is sufficient evidence of the existence of a contract under the UCC.⁶⁶

ECI responds that its acceptance of the Progress Payments from Wingspire does not evidence any agreement by ECI to sell the Cranes to Wingspire. Instead, ECI emphasizes that it accepted Wingspire's payments as payments made on the Debtor's behalf.

The Court agrees that Wingspire's payments and ECI's acceptance of those payments do not evidence an agreement by ECI to sell the Cranes to Wingspire. Rather, when considered in the context of all the other evidence showing that Wingspire was merely financing the Debtor's purchase of the Cranes⁶⁷ and the

⁶⁶ See 6 Del Code Ann. § 2-201(3)(c) (an agreement for the sale of goods is enforceable "with respect to goods for which payment has been made and accepted or which have been received and accepted."). See also Agrifolia Baja Best v. Harris Moran Seed Co., 44 F. Supp. 3d 974, 996 (S.D. Cal. 2014) (holding that the statute of frauds could not be asserted as a defense because there was no dispute that payment was accepted and goods were delivered); Uni-Products, Inc. v. Bear (In re Uni-Products, Inc.), 153 B.R. 764, 772 (Bankr. E.D. Mich. 1993) (finding that "a sale agreement which is not evidenced by a writing signed by the seller may nevertheless be enforceable if the seller accepted conditional payment for the goods in question from the purchaser"); Country Store Prods., 21 B.R. at 31 (finding that a transaction was an agreement of sale within UCC § 2-201(3)(c) where there was evidence of a \$1,000 deposit check and an invoice documenting the sale of candle-making equipment).

⁶⁷ Adv. D.I. 43 (Osborne Decl.) ¶¶ 17-18; Adv. D.I. 39 (Sarago Decl.), Ex. J at 000841 (email from Wingspire, with a copy to the Debtor, advising ECI that Wingspire was financing the Debtor's purchase of the Cranes and asking that the invoices be sent to it and captioned "bill to" Wingspire and "ship to" the Debtor); Exs. K & L (invoices captioned "bill to" Wingspire and

lack of any evidence that Wingspire and ECI agreed that all right, title, and interest in the Cranes would be transferred to Wingspire notwithstanding ECI's prior agreement to sell the Cranes to the Debtor, the Court concludes that the payments reflect only that Wingspire was paying ECI on the Debtor's behalf.

Furthermore, the Court rejects Wingspire's contention that a reasonable person would conclude that ECI and Wingspire entered into an agreement by which Wingspire paid ECI \$1.5 million for Cranes. The Purchase Orders provided that the price of the Cranes totaled approximately \$3.3 million.⁶⁸ None of Wingspire's evidence reasonably supports the conclusion that ECI agreed to sell Wingspire the Cranes at any price, let alone at half price.

3. Conduct of the Parties

The parties' conduct further supports the Court's conclusion that there was no agreement for the sale of the Cranes between Wingspire and ECI. When the final payments for the Cranes were not timely made, ECI sought relief from the Debtor, not from Wingspire. If ECI believed it had a contract with Wingspire, it would not have felt constrained by the automatic stay of the Debtor's bankruptcy case and would have pursued Wingspire for the

"ship to" the Debtor). See also Adv. D.I. 36 (Vulpio Decl.), Exs. A-10 & A-13.

⁶⁸ Adv. D.I. 39 (Sarago Decl.), Exs. C & D.

balance of the purchase price of the Cranes. It did not. Instead, ECI sought payment from the Debtor⁶⁹ and ultimately filed a motion to compel the Debtor to assume or reject the Purchase Orders.⁷⁰ Clearly, ECI believed it had a contract with the Debtor, not with Wingspire.

Similarly, if Wingspire truly believed that it had an agreement with ECI to purchase the Cranes, it would have felt compelled to pay ECI the full purchase price in order to obtain title and delivery of the Cranes.⁷¹ In response to ECI's request for information, Wingspire never stated that it was prepared to pay for the Cranes but said that it had to wait for instructions from the Debtor.⁷² Further, Wingspire filed a proof of claim in the Debtor's bankruptcy case seeking, inter alia, repayment of the Progress Payments it had made on behalf of the Debtor to ECI for the Cranes.⁷³

⁶⁹ Adv. D.I. 36 (Vulpio Decl.), Ex. A-3 (proof of claim no. 425 filed by ECI on January 9, 2023, in the amount of \$1,749,470 representing the balance of the Progress Payments due on the Cranes).

⁷⁰ D.I. 503.

⁷¹ Adv. D.I. 39 (Sarago Decl.), Exs. A & B at General Conditions ¶ 22 ("The Product shall remain the property of [ECI] until paid for in full to the extent that the retention of title is valid under the relevant law.").

⁷² Adv. D.I. 43 (Osborne Decl.) ¶ 21. See also Adv. D.I. 36 (Vulpio Decl.), Ex. A-7.

⁷³ Adv. D.I. 36 (Vulpio Decl.), Ex. A-4 (proof of claim no. 478 filed by Wingspire seeking in excess of \$4,227,345.45

Based on the "objective manifestations of [the parties] . . . and the surrounding circumstances,"⁷⁴ the Court cannot conclude that Wingspire has met its burden of proving that ECI "intended to be bound by [any] agreement [with Wingspire] on all essential terms"⁷⁵ for a sale of the Cranes to Wingspire. Instead, the Court concludes that the parties' actions are evidence only of an agreement by Wingspire to pay ECI for the Crane on the Debtor's behalf. This is consistent with the documentary evidence discussed above, as well.⁷⁶ Because "there [was] no mutual assent or meeting of the minds, there is no enforceable contract"⁷⁷ for a sale of the Cranes by ECI to Wingspire. As a result, the Court concludes that Wingspire's claim for breach of contract has no basis.

which includes the Progress Payments it had made to ECI on the Debtor's behalf for the Cranes).

⁷⁴ Rohm and Haas, 2009 WL 1033651, at *5.

⁷⁵ Finger Lakes Cap., 2015 WL 6455367, at *15.

⁷⁶ Adv. D.I. 36 (Vulpio Decl.), Exs. A-3, A-4, A-10, A-13; Adv. D.I. 39 (Sarago Decl.), Exs. E, F, G, J, K, L; D.I. 503; D.I. 699; D.I. 701; D.I. 733; D.I. 804.

⁷⁷ Thomas v. Thomas, No. 2008-10-102, 2010 WL 1452872, at *4 (Del. Com. Pl. Mar. 19, 2010). Because there is no enforceable contract between Wingspire and ECI, the Court need not address Wingspire's contention that it is entitled to a return of at least a portion of the payments which it made on behalf of the Debtor under the UCC. Cf. 6 Del. Code Ann. § 2-718.

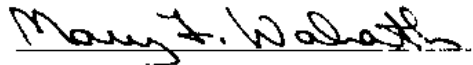
IV. CONCLUSION

Because the Court concludes that Wingspire has failed to sustain its burden of establishing that a contract for the sale of the Cranes existed between it and ECI, the Court will grant ECI's Motion for Summary Judgment and deny Wingspire's Motion for Summary Judgment.

An appropriate Order is attached.

Dated: April 3, 2025

BY THE COURT:

A handwritten signature in black ink, appearing to read "Mary F. Walrath", is written over a horizontal line.

Mary F. Walrath
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:	:	Chapter 11
	:	
COOL SPRINGS LLC,	:	
Reorganized Debtor	:	Case No. 22-10912 (MFW)
	:	
	:	
WINGSPIRE EQUIPMENT FINANCE LLC,	:	Adv. Pro. No. 23-50395
	:	(MFW)
Plaintiff	:	
	:	
v.	:	
	:	
E-CRANE INTERNATIONAL USA INC.,	:	Rel. Docs. 12, 35, 36,
	:	37, 38, 39, 40, 41,
Defendant	:	42, 43, 44, 45

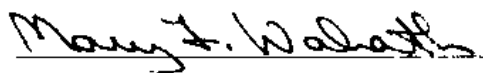
ORDER

AND NOW this **3rd** day of **APRIL, 2025**, upon consideration of the Cross Motions of Wingspire Equipment Finance LLC f/k/a Liberty Commercial Finance LLC ("Wingspire") and E-Crane International USA Inc. ("ECI") for Summary Judgment on the remaining count of Wingspire's Amended Complaint and for the reasons stated in the accompanying Opinion, it is hereby

ORDERED that the Motion of Wingspire for Summary Judgment is hereby **DENIED**; and it is further

ORDERED that the Motion of ECI for Summary Judgment on Count 1 of the Amended Complaint is hereby **GRANTED**.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge