Charles M. Walker
U.S. Bankruptcy Judge
Dated: 4/20/2017

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

IN RE:	)	
JACKSON MASONRY, LLC,	)	CASE NO. 16-02065
	)	CHAPTER 11
Debtor.	)	JUDGE CHARLES M. WALKER
	)	
JACKSON MASONRY, LLC,	)	
	)	
Movant,	)	
	)	
v.	)	CONTESTED MATTER
	)	
RITZEN GROUP, INC.,	)	
	)	
Respondent.	)	

BENCH DECISION[1]

CHARLES M. WALKER

UNITED STATES BANKRUPTCY JUDGE

We are here in the Chapter 11 case of Jackson Masonry, LLC, for the entry of my decision following the hearing that began on Monday, December 5, 2016, continued with testimony and other evidence on Tuesday, December 6th and concluded on Wednesday December 7, 2016.

This decision that I will announce today is my bench decision. I am going to ask that if counsel to the parties obtains a transcript that the transcript be submitted to Chambers in Word

[1] This memorandum is being filed in conjunction with the Oral Ruling delivered by this Court on December 19, 2016, and related to the corrected transcript of the Oral Ruling filed on the Court's docket on April 20, 2017. This memorandum is filed in conjunction with the Oral Ruling of December 19, 2016 and the Order Disallowing Claim of Ritzen Group, Inc. in Part and Granting Judgment in Favor of Jackson Masonry, LLC ("Order") entered on January 13, 2017, located at Docket entry 375, and is meant only to clarify the record and makes no substantive changes to the Oral Ruling or the related Order.

format, so that we can correct inevitable problems with citation formats and other typographical errors, and then issue a corrected bench decision as the final and official version of my decision. But unless I misspeak terribly today in what I say, it is not my intention to make substantive changes to the decision that I will dictate today.

This matter is before the court as part of a consolidated hearing on the allowance of the claim of Ritzen Group, Inc. and the two adversary proceedings filed by Jackson Masonry and Ritzen, adversary proceedings 16-90263 and 16-90270, to determine if Ritzen Group ("Ritzen") has a claim against the Debtor arising out of the commercial real estate contract dispute as set forth in Ritzen's pre-petition state court lawsuit pending in Davidson County Chancery Court and stayed by the filing of this Chapter 11 proceeding.

Factual Background

The Debtor, Jackson Masonry, LLC – which I will refer to as the "Debtor" – and Ritzen Group, Inc. – which I will refer to either as "Ritzen" or "Buyer" – entered into a Real Estate Sale Contract – which I will refer to as the "Contract" on March 21, 2013, to which Debtor agreed to sell Property located at 1200 49th Ave., Nashville, Tennessee, to Ritzen. Under the Contract, Ritzen would pay the Debtor the Purchase Price of $1,550,000 ("Purchase Price") for the property located at 1200 49th Avenue North, Nashville, Tennessee – which I will refer to hereforth as the "Property". The Contract did not contain a financing contingency clause, and provided that Ritzen was to tender the purchase price in cash at the closing of the sale of the Property ("Closing").

The Contract effective date was directly tied to the date on which Ritzen obtained rezoning of the Property from industrial restrictive zoning to multifamily district zoning. Rezoning was accomplished on March 19, 2014 and, according to the terms of the Contract, the 180-day due diligence period began immediately thereon, with Closing to take place 30 days thereafter. The Contract provided Ritzen with two options to extend the due diligence period up to 30 days in order to receive all necessary approvals and permits. Therefore, the day after the zoning change was the effective date of the Contract, with the original Closing date to be on October 15, 2014. The options in the Contract, if exercised, would mean that the absolute last day to close would be December 15, 2014.

Section 7 of the Contract set forth the obligations of each party at Closing. Under Section 7(b), the Debtor was to deliver certain documents at Closing, including a general warranty deed, authorization to consummate the transaction, a lien waiver affidavit, a FIRPTA certificate, a certificate regarding flood plains, an assignment of all leases and service agreements, executed estoppel certificates, a title insurance policy, an insurance certificate naming Ritzen as an additionally insured for $2,000,000, and such other documents to effectuate the agreement.

Pursuant to Section 7(c) of the Contract, Ritzen's obligations at Closing included providing the balance due and executing any such documents or instrument necessary to effectuate the transaction.

On January 21, 2014, Keene Bartley, the closing attorney for the transaction, provided a title commitment to Ritzen that referenced certain exceptions to the title policy. Charles Morton, Ritzen's attorney, responded with a request regarding changes to the title policy as to two of the exceptions, and documentation regarding a third.

On September 8, 2014, Ritzen's attorney, Charles Morton, sent a letter to the Debtor's attorney, Tim Crenshaw, to exercise Ritzen's first 30-day option to extend the Closing date to November 15, 2014. Mr. Crenshaw responded with a request for documentation to support such an extension under the Contract terms and stating that absent the tender of the documentation, the Closing remained on October 15, 2014.

On October 7, 2014, Charles Morton requested an extension of the due diligence period in an attempt to set the Closing for December 15, 2014.

Although it appeared that the Debtor disputed Ritzen's right to extend the due diligence period and the Closing date, the Debtor continued to perform under the Contract. To that end, and in response to a December 2, 2014 letter from Ritzen's attorney, Laurence Papel, acknowledging December 15, 2014 as the date of the Closing (Exhibit 49), the Debtor indicated it was ready, willing and able to close, and confirmed the date of Closing as December 15, 2014 (Exhibit 50). Mr. Papel doubly confirmed the Closing date and stated that Ritzen would "attend the closing on December 15th" (Exhibit 51).

On December 12, 2014, Keene Bartley, confirming the Closing would be at 3:00 p.m. the following Monday, forwarded a round of draft closing documents to Ritzen's then-attorney,

Lawrence Papel. The documents included: (a) the pro-forma title policy, (b) the warranty deed, (c) the settlement statement, and (d) the flood certificate.

Upon receipt of the draft documents, Ritzen's then-attorney Mr. Lalonde, sent a letter to Mr. Crenshaw identifying missing documents from the drafts received from Keene Bartley. The missing documents were: the form Assignment Agreement (pursuant to Section 7(b)(vii) of the Contract), estoppel certificates (pursuant to Section 7(b)(viii) of the Contract), proof of insurance (pursuant to Section 7(b)(x) of the Contract), a FIRPTA certificate (pursuant to Section 7(b)(iv) of the Contract), and a corporate resolution authorizing the transaction (pursuant to Section 7(b)(iii) of the Contract). Finally, Mr. Lalonde stated that the Closing would not go forward on December 15, 2014 (Exhibit 62).

On December 14, 2014, the Debtor provided Ritzen with additional draft closing documents, including estoppel certificates, lease assignments, proof of insurance, FIRPTA, and the corporate resolution authorizing the transaction (Exhibit 66).

At 2:30 p.m. on December 15, 2014, the Debtor's representatives appeared at Mr. Bartley's office for the Closing. At that time, the Debtor was prepared to tender the remaining closing documents for final review. At approximately 3:15 p.m., Mr. Papel called Mr. Bartley and informed him that Ritzen would not be appearing at the Closing. A few minutes later, Mr. Lalonde, another representative of Ritzen, emailed Mr. Crenshaw with a copy of a letter from Community First Bank & Trust to Douglas Hale, counsel for Amber Lane Development, LLC. The letter informed that Community First had funds on hand for delivery to Amber Lane for the purchase of the Property, and these funds were available "upon confirmation of the satisfaction of several conditions relating to the closing . . . ." The conditions were not articulated in the communication (Exhibit 79). The Debtor's representatives stayed at Mr. Bartley's office to close the sale of the Property until approximately 4:30 p.m. No one from Ritzen appeared at Mr. Bartley's office at any point on December 15, 2014.

Applicable Legal Standards

Jurisdiction

Jurisdiction is proper before this court pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b), and venue is proper under 28 U.S.C. §§ 1408 and 1409.

Tennessee State Law

Each party asserts a claim for breach of contract against the other. The bases for these claims sounds in state contract law, and Tennessee is the only state with an interest in this action. Therefore, application of Tennessee state law is required. *See Limor v. Weinstein & Sutton (In re SMEC, Inc.),* 160 B.R. 86 (Bankr. M.D. Tenn. 1993), *Fidelity Nat'l Title Ins. Co. of NY v. Wilhoite (In re Wilhoite),* No. 313-90099, 2013 WL 6979404 (Bankr. M.D. Tenn. Dec. 13, 2013).

Contract Interpretation

When called upon to interpret or construe a contract, the court must initially determine if the language of the instrument is ambiguous or contains ambiguous terms. *Planters Gin Co. v. Federal Compress & Warehouse Co., Inc.,* 78 S.W.3d 885, 890 (Tenn. 2002). If the court determines no ambiguities exist, the literal meaning of the language in the agreement controls. The court then moves to interpretation of the contract to ascertain the intentions of the parties. This is done by giving the language of the document its usual, natural, and ordinary meaning. *Adkins v. Bluegrass Estates, Inc.,* 360 S.W.3d 404 (Tenn. Ct. App. 2011) (citing *Allstate Ins. Co. v. Watson,* 195 S.W.3d 609 (Tenn. 2006)).

The parol evidence rule prohibits courts from venturing outside the four corners of an unambiguous agreement to determine the intentions of the parties. *Rogers v. First Tennessee Bank Nat'l Ass'n,* 738 S.W.2d 635 (Tenn. Ct. App. 1987).

Breach of Contract

Under Tennessee state law, a plaintiff with a breach of contract claim must prove (1) the existence of an enforceable contract; (2) nonperformance amounting to breach of the contract, and (3) damages caused by the breach. *ARC LifeMed, Inc. v. AMC-Tennessee, Inc.,* 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005). The parties here have stipulated that a contract between the parties did exist and that damages will be adjudicated at a separate hearing. Therefore, at this juncture, the court will focus on the second element and determine which party breached, if any, and under what terms that breach occurred.

Implied Covenant of Good Faith and Fair Dealing

It is well-established that Tennessee "common law imposes a duty of good faith in the performance of contracts." *Dick Broadcasting Co., Inc. of Tennessee v. Oak Ridge FM, Inc.,* 395 S.W.3d 653, 660 (Tenn. 2013) (quoting *Wallace v. Nat'l Bank of Commerce,* 938 S.W.2d 684,

686 (Tenn. 1996)). This duty is imposed in every contract, and applies to the performance and enforcement of every contract. *Id.* (citing *Lamar Advertising Co. v. By-Pass Partners*, 313 S.W.3d 779, 791 (Tenn. Ct. App. 2009)). While the purpose of the implied covenant is to honor the reasonable expectations of the contracting parties and to protect the rights of those parties, including the right to the benefit of their bargain, it does not create new rights or obligations under the contract. *Id.* citing *Goot v. Metro. Gov't of Nashville & Davidson County*, No. M2003-02013-COA-R3-CV, 2005 WL 3031638, at *7 (Tenn. Ct. App. Nov. 9, 2005).

The Evidence

Witnesses

George Ritzen and Rogers Jackson

On direct examination, Mr. George Ritzen and Mr. Rogers Jackson testified as to the terms of the Contract, their individual understanding of those terms, as well as their actions and reactions to events and communications between the parties from Contract execution through the Closing date.

George Ritzen

Mr. Ritzen described the rezoning of the Property, as well as possible side deals, and financing options that arose during the pendency of the Contract. The Court found Mr. Ritzen's testimony to be very credible. He expressed his concerns with the deal, such as the possibility of the Property being sold out from under him, as well as his issues with the closing documents. He also testified that he hired new counsel in Laurence Papel in early November of 2014 because he thought the Debtor was "becoming difficult to deal with." Mr. Ritzen stated that he thought Mr. Crenshaw was trying to dictate the due diligence process to him in his letter of July 23, 2013 (Exhibit C), and he appeared offended by that. However, a review of the letter, and Mr. Crenshaw's testimony indicate that Mr. Crenshaw appeared to be offering assistance to Mr. Ritzen with matters typically addressed through due diligence in a transaction of this nature.

Additionally, Mr. Ritzen stated that it was his understanding that an assignment would be executed at closing, but that as of December 15, 2014 only an oral agreement with Austin Pennington, president of Amber Lane Development, existed as to the assignment. Importantly, Mr. Ritzen testified that as of the closing date of December 15, 2014, there existed no finalized funding package in a form sufficient to close the transaction with the Debtor.

Rogers Jackson

Like Mr. Ritzen's testimony, the Court found Mr. Jackson's testimony to be very credible. He included an overview of the Debtor's financial situation throughout the pendency of the Contract. His statements supported his contention that he did not want a delayed closing. His company was facing a critical deadline: its line of credit was coming due in three months.

Mr. Jackson also testified about the condition of the property and the tenants, who were to vacate the Property 60 days after the Closing. As to the title on the Property, he stated there had been no adverse change to the title. He also stated that although other parties had approached him regarding the Property, he informed them that he could not talk to them while this deal was pending. Mr. Jackson's testimony was well taken and the record contains nothing to indicate he did not intend to close at all times during the pendency of the Contract.

Austin Pennington

The next witness, Mr. Pennington, perhaps the most critical witness to determine whether Ritzen was able actual fund the purchase of the property, is a long-time friend of Mr. Ritzen's. In fact, he testified that they went to kindergarten together. He took the stand to discuss the details of an assignment between Ritzen and Pennington's development company, Amber Lane Development. Mr. Pennington was called to give the details of and verify the funding that would make the Closing on December 15, 2014 possible. Mr. Pennington's testimony did not meet the mark and lacked credibility. His description of the funding agreement with his step-father, Burton Keene, was sketchy to say the least. There was no clarity as to how the funding through the assignment would work, whether it was cash with a deed of trust, or financed with a guarantee. Was it a first position or second position situation? What was his step-father's interest in the Property after he funded the assignment? These are questions that remained after his testimony, even though he was questioned on direct and cross as to these details.

The two things Mr. Pennington was clear about were: (1) he would not fund the transaction through an assignment unless his name was on the title, and (2) as of the Closing, there was no executed written assignment agreement with Ritzen on behalf of his company or himself personally sufficient to provide that funding. Mr. Pennington presented little more than a hypothetical description of what might have been or could have been under circumstances that did not actually exist. His testimony lacked any convincing detail regarding a funding arrangement that could have really closed on December 15, 2014, with a specific identified

owner and a concrete method of financing. Ultimately, his testimony proved nothing more than that his step-father had the financial wherewithal to do a similar deal if his step-father had actually chosen to do so – not that Ritzen could have closed this particular deal on December 15, 2014. Taken as a whole, the Court found Mr. Pennington's testimony to lack credibility on the crucial question of Ritzen's ability to close.

Lori Bradley

Next, Ms. Bradley testified as to her actions in obtaining the required lease assignments and estoppel certificates. Her testimony was wholly credible and there is nothing in the record to contradict that she had obtained fully executed lease assignments and estoppel agreements pursuant to the Contract requirements by the Closing date on December 15, 2014.

Laurence Papel

Mr. Papel was the attorney hired by Ritzen in November 2014. He stated he was hired because Ritzen was worried the Debtor was not going to close the transaction. Mr. Papel testified as to his efforts on behalf of Ritzen to finalize an assignment and obtain funding in order to meet the December 15, 2014 Closing deadline. Although Mr. Papel insisted that a "closing" means money and documents flow, and does not mean people sit around a table, his letter of December 4, 2014 to Mr. Crenshaw (Exhibit 51) confirming the December 15, 2014 Closing date and stating Ritzen would "prepare for and attend a closing on December 15, 2014" contradicted his definition of "closing" in this case.

G. Miller Hogan

Mr. Hogan testified as an expert witness on behalf of Ritzen. Although Mr. Hogan was held out as an expert in commercial real estate transactions in the Nashville area, that could be said about the next five witnesses in this trial. Mr. Hogan's task was to clarify for the Court the "norm" for these types of contracts and transactions in Nashville. However, Mr. Hogan had not even reviewed the most recent documents tendered prior to the Closing, and he offered no testimony and no opinion in his report as to the state of the settlement statement, estoppel certificates, insurance certificates, lease assignments, FIRPTA certificate, and the flood plan certification. Although certainly a credible witness, his testimony did little to assist the Court and was no more "expert" than the experienced real estate attorneys who testified and who were part of the actual transaction.

Michael Franks and Douglas Hale

Mr. Franks and Mr. Hale testified as to the assignment agreement between Ritzen and Amber Lane.

Michael Franks

Mr. Franks is Vice-President of Commercial Lending for Community First Bank and Trust. Mr. Franks' testimony was that funds were available for transfer and he had authority to release those funds from Burton Keene's account on the date of Closing. He also stated that there was no loan from Community First Bank and he could not speak as to any other funding source.

Douglas Hale

Mr. Hale is a partner in the law firm of Hale and Hale and represented Austin Pennington as to the assignment between Ritzen and Amber Lane Development. He testified as to his understanding of the assignment agreement and what was to occur at the Closing. He stated that it was his experience that if a party holding an assignment was to take title at a real estate closing, the party charged with preparing the closing documents would need to be made aware of those details in order to finalize the documents. He also stated that the assignment read as to be executed prior to the Closing. A redline and a closing version of the assignment agreement was circulated at 12:17 p.m. on December 15, 2014. He did not expect Mr. Pennington to sign these documents because they did not have the required attachments, namely the note and deed of trust referenced in the agreement. He stated that it would not have been unusual for him to require some form of assurance from Community First Bank regarding the funds on deposit, and the letter provided on December 15, 2014 would put his client in a position to be ready, willing, and able to finalize the assignment agreement.

Keene Bartley

Mr. Bartley was the Closing attorney on the transaction at issue here. Mr. Bartley testified that he considered the documents circulated prior to Closing to be in a condition such that they could be updated at Closing with information regarding any assignment and funding of that assignment. In his opinion, there appeared to have been no adverse changes to the title. He had blocked off a few hours for the Closing in order to have time to make all necessary changes to the documents. Importantly, Mr. Bartley credibly testified that when he spoke to Mr. Papel on December 15, 2014, Mr. Papel did in fact ask for another extension and mentioned that Ritzen

was now talking to Capstar Bank seeking funding. Based on Mr. Bartley's uncontroverted testimony, which the Court finds credible since Mr. Papel was available at trial to contradict such statements regarding the nature of the conversation, the inference that can be drawn from the December 15th conversation between Mr. Bartley and Mr. Papel is that Ritzen was not in a position to close or else no extension would have been requested by Mr. Papel.

James Crenshaw

Mr. Crenshaw represented the Debtor in this transaction and provided information as to interaction with Ritzen regarding the requested extensions, the status of the insurance on the property required by the Contract, the progressive condition of the Closing documents, and the events of December 15, 2014. Mr. Crenshaw attested to Ritzen's request for an extension on December 15, 2014 and the mention of Capstar Bank as the latest financial institution from which Ritzen was seeking funding for the transaction.

Chris Lalonde

Mr. Lalonde represented Ritzen and was unavailable to testify. His deposition was read into the record. His statements were as to the condition of the Closing documents. Mr. Lalonde's stated that the Closing documents were transmitted in portable document format (PDF) rendering them unmodifiable. He also stated that he had requested a Housing and Urban Development Form 1, but that was typically only used in residential real estate transactions. His statements regarding the funding included that the funds were available for transfer and that the 3:00 p.m. Closing time made it impossible to wire funds for the Closing timely.

<u>The Closing Documents</u>

The condition of the Closing documents, and that condition that existed at the time they were tendered for review prior to Closing, are material and dispositive issues when determining breach on the part of the Debtor. The Contract called for the Debtor to tender nine documents at Closing. Ritzen has taken issue with seven of those documents and argued that the condition of these documents prevented the Closing from going forward, therefore, the Debtor breached. The seven documents at issue are:

1) The warranty deed – the defects alleged in the warranty deed are:
    a. Typographical errors;
    b. Incorrectly identified Ritzen as the new owner and not Amber Lane;
    c. The derivation clause mentioned a subsequent conveyance of the Property; and

d. Certain warranty language was missing;

2) The owner's lien waiver affidavit is alleged to be defective in that it incorrectly states there are no leases on the Property;
3) The flood plain certificate is alleged to be defective in that it incorrectly identifies Mr. Bartley's firm as the lender;
4) The assignment of leases was a blank form;
5) The executed estoppel certificates consisted of a blank form;
6) The title insurance policy contained certain exceptions from coverage that Ritzen requested be removed;
7) The liability insurance policy had umbrella liability in the amount of $5,000,000 per occurrence and was set to expire on January 1, 2015.

Conclusion

Despite over 20 hours of argument and witness testimony, this is actually a very straightforward matter. Clearing away all of the smoke and mirrors, it boils down to, under the terms of the Contract, who performed at the Closing of this commercial real estate transaction.

The language and terms of the Contract were clear and unambiguous. The responsibilities of the parties were distinctly set out, and there is no dispute as to the Closing date. Both parties presented evidence to establish the Closing date as December 15, 2014. Both parties presented evidence establishing that the Debtor was to tender certain documents sufficient to accomplish Closing of the transaction. Although Ritzen argued that the tender was implied in the Contract to be prior to the Closing, the court finds that the terms of the Contract clearly called for tender at Closing. Moreover, the pre-closing condition of the documents was such that it did not impair Ritzen's performance and did not prevent the Closing from moving forward on December 15, 2014. Mr. Bartley, the closing attorney, testified that he had set aside time for the Closing on December 15, 2014 sufficient to make the routine adjustments to the documents. The complained-of insufficiencies in those documents are not fatal to the Closing of the transaction. They could have been corrected with minor adjustments given the relative simplicity of the documents.

Documents are adjusted at Closing as a matter of course and this transaction was no exception. With the wealth of experience of the attorneys involved on both sides of this

transaction, it is impossible to believe that, with both sides at the Closing table or engaged in meaningful dialogue on the phone or by electronic communication on the day of closing, that the necessary changes could not have been accomplished with minimal effort. Debtor's deficiencies were relatively easy to correct, were not commercially unreasonable and within the scope of what a reasonable person would expect to handle to finalize the deal at closing, and overall simply did not rise to the level of a material breach.

There was a lot of reference to "ready, willing, and able" with regard to both parties to this transaction. I don't think the willing part is in question. The Debtor needed to close because they had a significant financial hardship. Ritzen wanted to close because they had invested a significant amount of time, energy, and money into this transaction. It appears from the evidence presented that both parties wanted the transaction to close, and acted in good faith toward that end. It's the "ready" and "able" that is at issue here.

What does "ready" mean in the context of closing this real estate transaction? "Ready" means prepared. Prepared to conduct the transaction. All the ducks are in a row, so to speak.

"Able" means prepared to pull the trigger. In this instance, prepared to tender documents and funds. The Debtor was prepared to tender the documents, but Ritzen was not prepared to tender funds. Ritzen's funding witness, Mr. Pennington, could not articulate basic points of the assignment or the Contract, let alone make any definitive statement regarding the status of funding on the date of the Closing. Ritzen's counsel, Mr. Papel testified that Ritzen did not have to physically show up to the Closing, but his letter of December 4, 2014 contradicts that statement and establishes the understanding that Ritzen had to literally bring money to the Closing table. Nothing in the record establishes Ritzen's ability to perform its responsibilities under the terms of the Contract on the Closing date: specifically, Ritzen could not and did not fund the transaction. In contrast to Debtor's deficiencies related to the documents that were tendered, which were easily correctable, Ritzen's deficiency – the ability to fund – was at the heart of the deal, was an absolute prerequisite to closing on the specified date, and did indeed rise to the level of being a material breach. The evidence including Ritzen's failure to attend the Closing at the agreed time and place supports this conclusion.

The Debtor's performance on the date of Closing indicates a readiness and ability to Close. The Debtor appeared at the agreed time and place for Closing with documents sufficient to accomplish the Closing. Although a great deal of time was spent during the hearing

discussing the relative significance of attending the physical closing scheduled for 3:00 p.m. on December 15, 2014 and the Court has referenced the failure to physically appear at the Closing. This Court's decision is not dependent on that point. Whether viewed as a precise moment in time in a specific conference room or viewed as an intended electronic closing within a rough range of time around that date and time, the fact is that Ritzen failed to prove that it was in a position to fund and close the deal – physically, virtually, electronically or any other way – on or about the agreed upon date.

Ritzen's actions on the date of Closing indicate they were unprepared and unable to perform their responsibilities. There is ample evidence in the record to show Ritzen's efforts and struggles in their attempt to assign and fund the transaction. What is missing from the record is any evidence that Ritzen had secured funding to close the deal on December 15, 2014. "Do. Or do not. There is no try." December 15, 2014 was the date to "Do." It was not the date to establish that you tried.

The Debtor acted in good faith and was ready, willing, and able to perform its responsibilities under the Contract on December 15, 2014, and therefore, did not breach.

Although it appears Ritzen acted in good faith as well, Ritzen was unable to perform its duties under the Contract on December 15, 2014, and consequently, Ritzen materially breached the Contract. Therefore, Ritzen does not have a claim against the Debtor.

A separate order will issue accordingly in the main case and the adversary proceedings based on the Court's Decision. The parties may submit their proposed orders referencing this oral opinion by Tuesday, December 20, 2016 at noon.