

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1192.1

CA 10-00785

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ.

SUBURBAN TOOL & DIE CO., INC.,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

CENTURY MOLD COMPANY, INC.,
DEFENDANT-RESPONDENT.

RELIN, GOLDSTEIN & CRANE, LLP, ROCHESTER, D.J. & J.A. CIRANDO, ESQS.,
SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR PLAINTIFF-APPELLANT.

HARRIS BEACH PLLC, PITTSFORD (KEVIN TOMPSETT OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Monroe County (Kenneth R. Fisher, J.), dated June 10, 2009. The order, among other things, denied plaintiff's motion for summary judgment and granted defendant's cross motion for partial summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by denying the cross motion and as modified the order is affirmed without costs.

Memorandum: Plaintiff appeals from an order denying its motion for summary judgment on the complaint for breach of contract and granting the cross motion of defendant for partial summary judgment on liability on its counterclaims, for breach of contract and quantum meruit. Although we conclude that Supreme Court properly denied plaintiff's motion, we agree with plaintiff that the court erred in granting defendant's cross motion. We therefore modify the order accordingly. Generally, "[w]hen interpreting a written contract, the court should give effect to the intent of the parties as revealed by the language and structure of the contract . . . , and should ascertain such intent by examining the document as a whole" (*Village of Hamburg v America Ref-Fuel Co. of Niagara*, 284 AD2d 85, 89, lv denied 97 NY2d 603). Here, neither party established that its interpretation of the contract is the only reasonable interpretation thereof (*see Arrow Communication Labs. v Pico Prods.*, 206 AD2d 922, 923). "Thus, the intent of the parties must be determined by evidence outside the contract," rendering summary judgment at this juncture inappropriate (*id.*). We note in particular that we are unable to

discern from the record before us whether plaintiff might have a valid claim for an account stated with respect to any of the purchase orders in question (see generally *M. Paladino, Inc. v Lucchese & Son Contr. Corp.*, 247 AD2d 515, 516).

Entered: November 12, 2010

Patricia L. Morgan

Clerk of the Court