

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 00-30458  
Summary Calendar

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BAUMER FOODS, INC.,

Plaintiff-Appellant,

VERSUS

NEW JERSEY MACHINE, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Eastern District of Louisiana

(99-CV-3611-G)

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October 26, 2000

Before DAVIS, JONES, and DeMoss, Circuit Judges.

PER CURIAM:\*

Baumer Foods, Inc. ("Baumer") purchased a commercial labeling machine from New Jersey Machine, Inc. ("NJM") in 1998. The documents used to effect this purchase were a purchase order from Baumer to NJM which had attached to it a prior quotation from NJM to a third party covering a similar machine. One of the printed

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\*Pursuant to 5<sup>TH</sup> CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

pages of this prior quotation contained "Additional Terms and Conditions" which set forth a forum selection clause and a clause limiting damages. The machine was built, delivered, and put into operation. Unfortunately the machine failed to operate as expected by Baumer and required substantial and continuing repairs to keep it operating. Finally in 1999 Baumer filed suit against NJM in the federal district court in New Orleans asserting diversity jurisdiction and seeking damages and redhibition under Louisiana law. However, unbeknownst to Baumer, NJM had previously filed suit against Baumer in the State of New Hampshire pursuant to the forum selection clause in the quotation appended to the purchase order. NJM moved to dismiss the federal court proceeding in Louisiana and the district court granted such motion. Baumer timely appeals.

We have carefully reviewed the briefs, the record excerpts, and relevant portions of the record itself. For the reasons stated by the district court in its Memorandum and Order filed March 17, 2000, we affirm the judgment entered on March 23, 2000 dismissing Baumer's petition.

**AFFIRMED.**