

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5643
Summary Calendar

CITIZENS OFFSET, INC.,

Plaintiff/Counter Defendant-Appellant,

versus

WEB PRESS CORP.,

Defendant/Counter Claimant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(CV-91-1195)

(May 4, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

In this diversity action tried to the court, Plaintiff/Counter Defendant-Appellant Citizens Offset, Inc. appeals the final judgment of the district court in favor of Defendant/Counter Claimant-Appellee Web Press Corp., contending that (1) the court's

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

finding of no breach of warranty was clearly erroneous, and (2) the court erred in concluding that Plaintiff's Exhibit 80, a post-agreement analysis of costs savings prepared by Defendant's salesman, did not modify the contractual warranty expressly made by Defendant in the agreement.¹ We have carefully considered the facts and legal arguments advanced by counsel in their briefs to this court and have reviewed the record. We are satisfied that the district court's opinion more than adequately addressed and disposed of the issues. We can add nothing to the correct and comprehensive analysis of this case contained in the district court's opinion. Instead of writing separately, then, we adopt the reasoning, findings, and conclusions expressed therein, incorporate it by reference, and annex a copy hereto.

AFFIRMED.

¹We express no opinion as to whether a "reliance" requirement is part of "basis of the bargain" analysis under Washington law. WASH. STAT. tit. 62A, §2-313. We conclude as a matter of law that the post-agreement analysis prepared by Defendant's salesman does not modify the express warranty found in the contract. Section 2-209(2) provides that "[a] signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded" WASH. STAT. tit. 62A, §2-209(2). Citizen argues that in order to bar modifications there must be a contractual provision similar to the following: "This contract cannot be modified nor rescinded without a written and signed modification or rescission."

Citizen ignores section 12 of the contract, which specifically states that "[t]here shall be no assignment of this agreement by Buyer or any modification of the agreement without the express written consent of an authorized officer of Web." (Emphasis ours.) Thus, the contract itself precludes creation of post-agreement warranties, i.e., modification of the existing contractual warranties, without the express written consent of an authorized officer of Web. Exhibit 80 simply does not qualify as a modification to the agreement.