UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AINET CORPORATION,

Plaintiff,

-against-

XEROX STATE AND LOCAL SOLUTIONS, INC.,

Defendant.

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15-cv-3772 (PKC)

ORDER

CASTEL, U.S.D.J.

This Court presided over a two-day bench trial of this action, and, on July 18, 2017, issued its findings of fact and conclusions of law pursuant to Rule 52(a)(1), Fed. R. Civ. P. (Docket # 123.) The Court concluded that plaintiff AiNet Corporation ("AiNet") did not prove by a preponderance of the evidence that Xerox State and Location Solutions, Inc. ("Xerox") was liable on either of AiNet's two breach of contract claims. The Clerk entered Judgment in favor of Xerox on July 20, 2017. (Docket # 127.) Familiarity with the decision of July 18 is assumed.

AiNet now moves for reconsideration pursuant to Local Civil Rule 6.3. (Docket # 132.) "A motion for reconsideration should be granted only when the defendant identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust, 729 F.3d 99, 104 (2d Cir. 2013) (quotation marks omitted). For the reasons that will be explained, AiNet's motion for reconsideration is denied.

AiNet's motion primarily re-litigates the issues that it raised at trial. As discussed in the July 18 decision, the Subcontract between Xerox and AiNet expressly provided that Xerox

could, "in its sole discretion," terminate the Subcontract or Task Order for convenience if AiNet's "work is de-scoped or re-assigned at the request of CUSTOMER [the DHR] . . . ." (Docket # 123 at 10-11.) The DHR wrote to AiNet explaining that it had instructed relocation of DHR-owned equipment to a new facility, and Xerox then terminated its Task Order with AiNet. (Id. at 11.) The Court concluded that the termination was expressly permitted under the Subcontract and Task Order. (Id. at 10-14.) In its decision, the Court considered and rejected the argument that AiNet again raises, which asserted that Xerox could terminate or descope the Subcontract or Task Order only to the same extent that the DHR terminated its prime contract with Xerox. (Id. at 12-13.) For the reasons already explained in the July 18 decision, AiNet's motion for reconsideration is denied.

As to the Court's conclusion that Xerox cancelled its Purchase Order with AiNet, AiNet argues that "the evidence proffered by AiNET is largely – if not completely – ignored by the Court." (Docket # 134 at 3.) Again, AiNet points to evidence and arguments that it raised at trial concerning the e-mails of January 22, 2014, which the Court fully considered. The July 18 decision reviewed the e-mail records and trial testimony concerning the Purchase Order's cancellation. (Docket # 123 at 6-9.) As discussed, the Court found that it is more likely than not that AiNet received two e-mails directing cancellation of the Purchase Order; the testimony of AiNet's Pamela Sweeney confirmed receipt of one of the two e-mails; Sweeney testified that this e-mail effected a cancellation of the Purchase Order; and this e-mail circulated within AiNet over the course of that day. (Id. at 7.) While the evidence concerning the sending and receipt of the second e-mail was less clear-cut, the Court concluded, based on the credible testimony of Althea Cross and screenshots offered by Xerox, that it was more likely than not that the second e-mail

was sent by Xerox and received by AiNet. (Id. at 8-9.) AiNet's argument that the Court failed to consider its evidence and arguments is without merit.

AiNet also contends that the July 18 decision contains factual errors, and purports to offer a "page-by-page analysis" of the Court's errors. (Docket # 134 at 15-18.) It argues that the Court made an erroneous finding that AiNet denied server access to a firm sent by Xerox, and that the Court's citation to the Declaration of Vishnu Nanan does not support this finding. (Id. at 15 ("Contrary to this finding of fact, there is no reference to the 'denial of access' in the Nanan Declaration.") The Court referenced this incident when it summarized the deteriorating business relationship between AiNet and Xerox. (Docket # 123 at 4.) Although AiNet implies that the Court invented the incident, Nanan's declaration states as follows: "The first problem arose nearly immediately after the Task Order was signed, when AiNet refused to allow technical personnel access to its colocation facility because, due to an apparent and gross misunderstanding on AiNet's part, AiNet believed it had not been paid in a timely manner." (Nanan Dec. ¶ 18; emphasis added.) AiNet's counsel cross-examined Nanan at trial, and questioned him, in counsel's words, about his testimony "that AiNET refused to allow technical personnel to access its colocation facility due to a misunderstanding." (Trial Tr. 145.) Thus, while AiNet may dispute Nanan's characterization of the incident, the Court's reference to it was anchored in trial evidence and even the own words of AiNet's counsel. AiNet's contention to the contrary is without merit.[1]

AiNet proceeds to describe what it essentially views as a vendetta against AiNet on the part of Xerox and the DHR. (Docket # 134 at 15-18.) As the Court noted, New York law permits a party to exercise a termination-for-convenience clause "'without court inquiry into

[1] The Court's citation to evidence in its findings of fact and conclusions of law is intended to be exemplary, and not an exclusive catalog of all evidence in support of a finding.

good faith or motive . . . .'" (Docket # 123 at 13 (quoting Watermelon Plus, Inc. v. N.Y. City Dep't of Educ., 76 A.D.3d 973, 974 (2d Dep't 2010).) Again, AiNet's argument that the Court ignored or overlooked its evidence and argument is without merit.

AiNet's motion for reconsideration is DENIED. The Clerk is directed to terminate the motion. (Docket # 132.)

SO ORDERED.

P. Kevin Castel
United States District Judge

Dated: New York, New York
November 6, 2017