

PROACTIVE LOGISTICS INC.

v.

WESTERN EXPRESS, INC.

Submitted on Briefs January 31, 2013

Decided February 5, 2013

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Proactive Logistics Inc. appeals from a judgment entered in the Superior Court (Androscoggin County, *Clifford, J.*) granting Western Express, Inc.'s motion for summary judgment, asserting that it was improperly denied discovery and the trial court misinterpreted the contract's language. The court found that Western did not breach its contract with Proactive by improperly soliciting, but Proactive did breach the contract by failing to attempt mediation prior to litigation. Western also cross-appeals from the court's judgment denying Western damages.

Contrary to Proactive's contention on appeal, the court did not abuse its discretion by denying Proactive's requests for additional discovery. *Selby v. Cumberland Cnty.*, 2002 ME 80, ¶ 12 n.11, 796 A.2d 678. Additionally, based on the summary judgment record, *Salem Capital Grp. v. Litchfield*, 2010 ME 49, ¶ 4, 997 A.2d 720, and the plain meaning of the unambiguous contract language, *Camden Nat'l Bank v. S.S. Navigation Co.*, 2010 ME 29, ¶ 16, 991 A.2d 800, Western did not breach the contract by improperly soliciting Proactive's customers. Also, Proactive failed to submit its concerns to mediation prior to filing this suit, thus breaching the contract's pre-suit mediation clause.

Finally, the trial court did not abuse its discretion by refusing to award damages to Western. *Graham v. Brown*, 2011 ME 93, ¶ 12, 26 A.3d 823 (“review of an award of damages is highly deferential”). By staying the litigation and requiring mediation, the court placed Western in the same position that it would have been in had there been no breach. *Lee v. Scotia Prince Cruises Ltd.*, 2003 ME 78, ¶ 22, 828 A.2d 210.

The entry is:

Judgment affirmed.

On the briefs:

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