

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GS CLEANTECH CORPORATION,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.)
)
ADKINS ENERGY LLC,)
)
Defendant/Counterclaim Plaintiff.)

Case No. 10 C 4391
Larry J. McKinney

ORDER

Counterclaim Plaintiff Adkins Energy LLC (“Adkins”) has moved to dismiss, pursuant to Rule 41(a)(2), that part of Count I of its Counterclaims seeking cost-of-completion damages. Dkt. No. 684. Adkins also provides notice that it is waiving its right to a jury with respect to the remaining issues of Count I of its Counterclaims. *Id.* It states that dismissal of that claim and the waiver will reduce the issues need to be tried and simplify the trial proceedings. *Id.* Further, Adkins seeks an order of dismissal as requested and the waiver, and the setting of a bench trial on the remaining issues in Count I of its Counterclaims, including the “second contract” issue, to commence on Monday, February 29, 2016 (all the issues together, the “Motion”). *Id.* Counterclaim Defendant GS CleanTech Corporation has objected in part. Dkt. No. 685.

Adkins’ Motion is **GRANTED** to the extent that its breach of contract Counterclaim, Count I, for cost-of-completion damages is **DISMISSED**. Further, the Court acknowledges Adkins’ written waiver of a jury trial of the remaining money damages issue under Count I, namely the assignment and payment of certain liens. The Jury Trial has

already been vacated and re-set as a Bench Trial to commence on Monday, February 29, 2015, at 9:00 a.m., as to that issue. However, Adkins' Motion is **DENIED** with respect to its request to commence a Bench Trial starting on Monday, February 29, 2016, on any alleged entitlement to injunctive relief with respect to an alleged contract not to sue. As discussed with the parties at yesterday's Teleconference, the question of whether or not injunctive relief should be tried in this action was set for briefing during the February 18, 2016, Teleconference; those briefs have yet to be filed and ruling thereon has not been made.

IT IS HEREBY ORDERED THAT:

1. Counterclaim Plaintiff Adkins Energy LLC's Count I seeking damages for cost-of-completion is DISMISSED with prejudice;
2. Counterclaim Plaintiff Adkins Energy LLC has waived a jury trial on the remaining monetary damages issues associated with Count I;
3. The briefing schedule on whether or not the Court should entertain Counterclaim Adkins Energy LLC's motion for an injunction to prevent it from being sued by Counterclaim Defendant GS CleanTech Corporation regarding other patents covering the same technology based on a second covenant not to sue is set as follows:
 - a. Adkins Energy LLC shall file its brief on or before March 14, 2016;
 - b. GS CleanTech Corporation shall file its response on or before April 11, 2016;
 - c. Adkins Energy LLC shall file any reply on or before April 18, 2016.

4. The Bench Trial on Counterclaim Plaintiff Adkins Energy LLC's Count I seeking damages related to the Harn liens is **CONFIRMED to begin on Monday, February 29, 2016, at 9:00 a.m., in Courtroom 2230**, Everett Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois.

IT IS SO ORDERED this 26th day of February, 2016.

A handwritten signature in black ink, appearing to read "Larry J. McKinney", is written over a horizontal line.

LARRY J. MCKINNEY, JUDGE
Sitting by Designation
United States District Court
Northern District of Illinois

Electronically distributed to all registered attorneys of record via ECF.