STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24CV024851-590
HONEYWELL SAFETY PRODUCTS USA, INC., Plaintiff, v. SVS LLC, d/b/a S2S GLOBAL and PREMIER, INC., Defendants.	**ORDER AND OPINION ON MOTION TO DISMISS**

1. This contract dispute arises out of Honeywell Safety Products USA, Inc.'s agreement to supply nitrile gloves to S2S Global. Honeywell alleges that S2S Global wrongfully repudiated their contract and that S2S Global's parent, Premier, Inc., breached a related guarantee. S2S Global and Premier have jointly moved to dismiss the amended complaint. For the following reasons, the Court **DENIES** their motion.

K&L Gates LLP, by Marla T. Reschly, Daniel D. McClurg, Loly G. Tor, and Michael S. Nelson, for Plaintiff Honeywell Safety Products USA, Inc.

Moore & Van Allen PLLC, by J. Mark Wilson and Rebecca E. Alba, and McDermott Will & Emery LLP, by Michael S. Nadel and Harrison S. Carpenter, for Defendants SVS LLC, d/b/a S2S Global and Premier, Inc.

Conrad, Judge.

I.
BACKGROUND

2. The Court does not make findings of fact on a motion to dismiss made under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The following background assumes that the allegations in the amended complaint are true.

3. Since June 2021, Honeywell has supplied nitrile gloves to S2S Global under the terms of a multiyear deal. The original agreement called for S2S Global to buy 750 million gloves in the first year and double that number in the third year and beyond, although later amendments trimmed those figures. S2S Global also agreed to stagger its orders so that it would buy roughly a quarter of its annual commitment every three months. Premier guaranteed S2S Global's volume commitment and payment obligations. (*See* Am. Compl. ¶¶ 24–27, 32, 34, ECF No. 5.)

4. Honeywell does not itself manufacture the gloves; rather, it works with a third-party manufacturer. In mid-2023, Honeywell chose American Nitrile to replace an existing manufacturer. Disputes about the quality of American Nitrile's gloves have festered ever since. Although sample gloves passed initial lab testing, the results of S2S Global's audit of American Nitrile's facility were unsatisfactory. Even so, S2S Global provisionally approved American Nitrile as the new manufacturer, agreed not to delay its onboarding, and promised to issue purchase orders for its gloves after onboarding was complete. S2S Global did, in fact, issue purchase orders throughout the rest of 2023. At the same time, S2S Global pressed for more lab testing of American Nitrile's gloves. This second round of tests produced a failing grade. Honeywell blamed shoddy testing equipment and urged a third round of tests, which resulted in a passing grade. But S2S Global stopped accepting American Nitrile's gloves anyway and went on to impose new onboarding requirements despite Honeywell's position that onboarding was already complete. (*See* Am. Compl. ¶¶ 34, 35, 38, 39, 41, 43, 45, 54–56, 59–61, 64.)

5. Then, in April 2024, S2S Global directed American Nitrile to stop production altogether, citing three customer complaints. A few days later, S2S Global asked Honeywell if it would agree to a mutual termination of their supply contract. When Honeywell declined, S2S Global performed another audit of American Nitrile's facility, identified a few trivial irregularities, and used its findings as a pretext to disqualify American Nitrile as a manufacturing partner. Honeywell tried to investigate the customer complaints and audit findings but alleges that S2S Global stonewalled all inquiries. (*See* Am. Compl. ¶¶ 69, 73, 75–82.)

6. Worried, Honeywell demanded assurance that S2S Global would honor its contractual obligations. The response did little to soothe Honeywell. S2S Global canceled all purchase orders for American Nitrile's gloves, recalled gloves that it had sold to end users, and announced its intent to notify regulatory authorities of the recall. Having done so, S2S Global told Honeywell that it "remains ready to purchase" gloves that conform to their supply contract. (*See* Am. Compl. ¶¶ 83, 84, 87, 88, 91, 92, 95, 96, 100.)

7. Convinced that S2S Global was saying one thing and doing another, Honeywell renewed its demand for assurance of performance. From Honeywell's vantage point, the basis for the recall was flimsy, and the way S2S Global went about it contravened the supply contract's recall terms. And by canceling its open orders, S2S Global had broken its promise to fulfill its volume commitment with balanced ordering throughout the year. So Honeywell sought assurance backed by specific corrective actions: withdrawal of the recall notice, retraction of what it saw as a

pretextual disqualification of American Nitrile, and acceptance of a shipment of gloves from a past order, among other things. S2S Global accepted the shipment but rejected the rest, instead exhorting Honeywell to find a new manufacturer. Premier likewise spurned Honeywell's demand for payment under its guarantee. (*See* Am. Compl. ¶¶ 98, 101, 102, 104–06, 110, 119.)

8. Now, in its amended complaint, Honeywell claims that S2S Global's failure to provide adequate assurance of future performance amounts to a wrongful repudiation of the supply contract. Honeywell also claims that Premier breached its guarantee.

9. S2S Global and Premier have jointly moved to dismiss the amended complaint in its entirety. (ECF No. 21.) After full briefing and a hearing on 12 November 2024, the motion is ripe for decision.

II.
LEGAL STANDARD

10. A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of the complaint." *Isenhour v. Hutto*, 350 N.C. 601, 604 (1999) (citation and quotation marks omitted). Dismissal is proper when "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Corwin v. Brit. Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (citation and quotation marks omitted). In deciding the motion, the Court must treat all well-pleaded allegations as true and view the facts and

permissible inferences in the light most favorable to the nonmoving party. *See, e.g.*, *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 332 (2019).

III.
ANALYSIS

11. S2S Global and Premier argue as follows: a breach by repudiation occurs when a contracting party unequivocally states that it can't or won't perform its contractual duties; there's no allegation in the amended complaint that S2S Global made that sort of unequivocal statement; and, thus, the repudiation claim must be dismissed. Dismissal of the repudiation claim, they add, necessitates dismissal of the claim against Premier for breach of the guarantee.

12. This argument is off target. As Honeywell correctly observes, the contract at issue is one for a sale of goods (nitrile gloves) and is therefore governed by North Carolina's version of the Uniform Commercial Code. The statutory scheme allows one contracting party to "demand adequate assurance" of future performance from the other when "reasonable grounds for insecurity" exist. N.C.G.S. § 25-2-609(1). Failure to give adequate "assurance of due performance" in response to a "justified demand" is deemed "a repudiation of the contract." *Id.* § 25-2-609(4). Thus, to state a claim for breach by repudiation under section 25-2-609, Honeywell must allege that it had reasonable grounds for insecurity, that it demanded assurance of performance from S2S Global, and that S2S Global failed to give adequate assurance. It isn't necessary for Honeywell to go further and allege that S2S Global affirmatively and unequivocally renounced the contract.

13. In their reply brief, S2S Global and Premier object that the amended complaint never refers to section 25-2-609 and, as a result, does not give fair notice of a claim under it. There may be cases in which a plaintiff's failure to cite a governing statute for a given claim is an insurmountable pleading defect. But this isn't such a case. The amended complaint alleges that the parties' supply contract is one for a sale of goods, that S2S Global breached the contract by repudiation, and that the repudiation resulted from S2S Global's failure to provide adequate assurance of performance in response to a justified demand. (*See, e.g.*, Am. Compl. ¶¶ 24, 123–29.) These allegations "give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief." N.C. R. Civ. P. 8(a)(1).

14. Also in their reply brief, S2S Global and Premier argue for the first time that Honeywell has failed to state a claim under section 25-2-609 because the amended complaint does not sufficiently allege that Honeywell's demand was reasonable and that S2S Global's attempted assurance was inadequate. These arguments are untimely. *See* BCR 7.7. And they are unpersuasive.

15. It is not true, as S2S Global and Premier contend, that Honeywell's demand was unreasonable as a matter of law because portions of it went beyond the scope of the contract. Although there is little North Carolina case law in this area, courts elsewhere have consistently rejected similar arguments under analogous versions of section 25-2-609. As the Supreme Court of Iowa held, "[t]he mere fact that the assurances demanded by" the plaintiff "necessitated action beyond that required by

the contract does not render the demand unreasonable as a matter of law." *Top of Iowa Co-op v. Sime Farms, Inc.*, 608 N.W.2d 454, 469 (Iowa 2000) ("Thus it is the very purpose of 2-609 to authorize one party to insist upon more than the contract gives."); *see also, e.g.*, *Brisbin v. Superior Valve Co.*, 398 F.3d 279, 287–88 (3d Cir. 2005) ("But we analyze a request for adequate assurance in a practical way, and such a request need not be tied to a contractual right."). These decisions are highly persuasive even if not binding. *See Kerry Bodenhamer Farms, LLC v. Nature's Pearl Corp.*, 2018 NCBC LEXIS 84, at *18 (N.C. Super. Ct. Aug. 15, 2018) (noting that "the General Assembly directed our courts to construe the code with an eye toward making uniform the law among the various jurisdictions" (cleaned up)).

16. Nor is it conclusive that S2S Global allegedly stated that it "has always been and remains ready" to buy products conforming to the contract. (Am. Compl. ¶ 100.) Deeds matter as much as words do. Indeed, verbal assurances may well be inadequate when followed by "equivocations and contradictions." *BRC Rubber & Plastics, Inc. v. Cont'l Carbon Co.*, 981 F.3d 618, 627 (7th Cir. 2020) (finding seller's assurance inadequate despite an affirmative statement of intent to comply with the contract when its course of action demonstrated otherwise).

17. The bottom line is that the reasonableness of a demand and the adequacy of any assurance given in response are fact-intensive inquiries better suited to summary judgment. For now, the Court must take Honeywell's allegations as true. Those allegations tend to show that S2S Global held American Nitrile to arbitrary and shifting standards as a pretext to reject its gloves, ignored Honeywell's requests for

information, directed American Nitrile to stop glove production, canceled unfilled purchase orders, initiated a baseless recall, and proposed a mutual termination of the supply contract. (*See, e.g.*, Am. Compl. ¶¶ 38, 53, 58, 69, 73, 96, 98.) The allegations also show that S2S Global mostly refused Honeywell's demand that it withdraw the recall notice, retract the pretextual disqualification of American Nitrile as a manufacturing partner, and take other steps to give assurance of its future performance. (*See* Am. Compl. ¶¶ 105, 106.) This is more than sufficient at the pleading stage to support an inference that Honeywell's demand was justified and that S2S Global's response was inadequate.

18. Accordingly, the Court concludes that Honeywell has stated a claim against S2S Global for breach by repudiation. Having done so, the Court also concludes that Honeywell has stated a claim against Premier for breach of its guarantee, given that S2S Global and Premier offer no independent challenge to that claim.

IV.
CONCLUSION

19. For these reasons, the Court **DENIES** the motion to dismiss.

SO ORDERED, this the 14th day of November, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases