

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DASCO, INC., a Colorado corporation,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 22-1424-JLH
)	
OLD WORLD INDUSTRIES, LLC, an)	
Illinois limited liability company,)	
)	
Defendant.)	

MEMORANDUM ORDER

Pending before the Court is Defendant’s Motion to Dismiss Plaintiff’s Complaint for failure to state a claim. (D.I. 9.) The case was reassigned to me in January 2024. On January 25, 2024, I referred the pending motion to a Magistrate Judge. (D.I. 16.) On May 6, 2024, the Magistrate Judge issued a detailed Report and Recommendation. (D.I. 29.) The Magistrate Judge recommended that the pending motion be GRANTED-IN-PART and DENIED-IN-PART. Defendant Old World Industries, LLC filed an objection (D.I. 32) and Plaintiff DASCO, Inc. responded (D.I. 39).

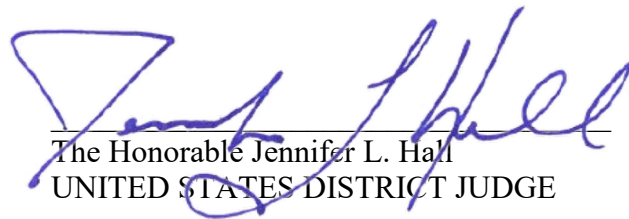
The parties dispute centers on the necessary earnings required to trigger an earn-out provision in an Asset Purchase Agreement. (D.I. 29.) In Count One, Plaintiff asks the Court to enter a declaratory judgement as to the meaning of this provision. After engaging in a lengthy and thorough analysis of the record, the Magistrate Judge determined that Plaintiff’s interpretation of the provision was “not unreasonable” and, accordingly, denied Defendant’s motion to dismiss. (D.I. 32 at 10.) After reviewing the R&R’s recommendations *de novo*, I agree with its conclusion that Defendant’s motion to dismiss should be denied with respect to Count One, and I overrule the objections.

No other objections were filed pursuant to Federal Rule of Civil Procedure 72(b)(2) in the prescribed period. The Court has reviewed the R&R's recommendation as to Defendant's motion to dismiss Counts Two and Three. The Court does not find clear error on the face of the record.

Accordingly, IT IS HEREBY ORDERED that:

1. Defendant Old World Industries, LLC's objections (D.I. 32) are OVERRULED.
2. The Report and Recommendation (D.I. 29) is ADOPTED.
3. Old World Industries, LLC's Motion to Dismiss for Failure to State a Claim (D.I. 9) is DENIED as to Count One.
4. Old World Industries, LLC's Motion to Dismiss for Failure to State a Claim (D.I. 9) is GRANTED as to Counts Two and Three. Counts Two and Three are dismissed without prejudice.

Dated: September 30, 2024



The Honorable Jennifer L. Hall
UNITED STATES DISTRICT JUDGE