UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NORA BEVERAGES, INC., Plaintiff	:	
	:	No.5:91-CV-780 (EBB)
v.	:	
THE PERRIER GROUP OF AMERICA, INC., *et al*, Defendants	:	

RULING ON MOTION FOR CERTIFICATION

Plaintiff has moved this Court for a certification to the Second Circuit Court of Appeals of the question of the granting of summary judgment in favor of Defendants, dated October 14, 1999. The Motion [Doc. No. 297] is DENIED.

This is an eight year-old case which simply cannot withstand yet another delay. The appeal from the original grant of summary judgment took one year for the Court of Appeals to decide, due to its overcrowded docket. This Court could anticipate such another extended delay. Plaintiff has written in its Memorandum of Law accompanying this Motion that it intends, in any event, to appeal this Court's Ruling of October 14, 1999. Inasmuch as the trial of the contract claim is scheduled for February, 2000, this would mean at most a de minimus delay in the appeal. [1]/ Accordingly,

[1]/ *See*, Ruling on Motion for Extension of Time.

the Court finds that there exists just reason for the delay of this appeal, the case is not an exceptional one, nor will there be any unusual hardship in requiring Plaintiff to await, in accordance with normal federal practice, the disposition of the entire case before obtaining appellate review. *See* Fed.R.Civ.P. 54(b). *See also* Hogan v. Consolidated Rail Corp., 961 F.2d 1021, 1025 (2d Cir. 1992)(dismissing appeal as abuse of discretion). *See also* Campbell v. Westmoreland Farm, Inc., 403 F.2d 939 (2d Cir. 1968)(dismissing interlocutory appeal because it would delay trial of the pending claims).

Further, this case will no doubt generate an appeal by the party which loses on the contract claim at the trial of this matter. The potential for piecemeal appeals in this case is, therefore, great. The Court believes that this is the antithesis of judicial economy. The Second Circuit has repeatedly admonished district courts not to enter Rule 54(b) orders "routinely or as an accommodation to counsel." and has further cautioned that the discretionary power to grant 54(b) certification should be exercised sparingly in light of the "historic federal policy against piecemeal appeals." Hogan, 961 F.2d at 1025, *citing* Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 8 (1980). "Piecemeal review . . . is not favored." D'Ippolito v. Cities Service Company, 374 F.2d 643, 648 (2d Cir. 1967).

The Court believes, in contrast to Plaintiff's claim, that

the damages expert should only be needed to be deposed one time. It would surely be an enormous waste of counsels' time not to depose him once on all three claims, as Plaintiff is so confident of reversal of the October 14, 1999, Ruling. [2]/ Even if this Court is reversed on its grant of summary judgment "the policy against piecemeal appeals . . . should not be subverted by the specters of additional trials." Brunswick Corp. v. Sheridan, 582 F.2d 175, 185 (2d Cir. 1978)(appeal dismissed).

The Court hopes that the Plaintiff will accept this Ruling in good faith and do nothing more to attempt to delay the trial now set for February, 2000. An order denying Section 1292(b) certification is an interlocutory order that is not appealable. *See generally*, D'Ippolito, 374 F.2d at 648 *cited in* Hernandez v. The New York Law Department Corporation Counsel, 107 F.3d 2 (2d Cir. 1997).

The collateral order doctrine is also unavailable to Plaintiff as that unique doctrine "is limited to trial court orders affecting rights which will be irretrievably lost in the absence of an immediate appeal". Richardson-Merril, Inc. v. Koller, 472 U.S. 424, 430-31 (1985). To fit within the collateral order exception, the interlocutory order must: " [i] conclusively determine the disputed question; [ii] resolve an

[2]/ Per the representations of defense counsel, Plaintiff's counsel has yet to depose their damages expert, regardless of the fact that his reports were given to Plaintiff's counsel in February, 1999 and the October 5, 1999 Ruling denied Plaintiff's motion in limine regarding the testimony of the expert.

important issue completely separate from the merits of the action; and [iii] be effectively unreviewable on appeal from a final judgment." Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978). It is beyond cavil that the granting of the Defendants' Motion for Summary Judgment on Counts Five and Eight of the Complaint does not fall within this exception.

This is also not a case for mandamus, as the Court has not declined to exercise decision-making authority entrusted to her under Fed.R.Civ.P. 56. *See* LaBuy v. Howes Leather Company, 352 U.S. 249, 256 (1957); McLee v. Chrysler Corporation, 38 F.3d 67, 68 (2d Cir. 1994). *Accord* D'Ippolito, 374 F.2d at 648(writ of mandamus "extraordinary").

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of November, 1999.