

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

DIGITAL ALLY, INC.,)	
)	
Plaintiff and Counterdefendant,)	
)	
v.)	Case No. 09-2292-KGS
)	
Z3 TECHNOLOGY, LLC,)	
)	
Defendant and Counterplaintiff.)	

ORDER

This matter comes before the Court upon Z³ Technology, LLC's Motion *in Limine* to Bar Evidence and Argument Relating to Alleged Software Issues with DM355 Modules (ECF No. 213). In the current motion, Z³ seeks an order barring Digital from introducing any evidence and argument relating to any purported software issues with the DM355 modules as irrelevant under Fed. R. Evid. 401 and unfairly prejudicial under Fed. R. Evid. 403. For the reasons explained below, the motion is granted.

On November 1, 2008, Plaintiff Digital Ally, Inc. ("Digital") and Z³ entered into a contract entitled Production License Agreement PLA-2008.10.31 ("PLA-2008"). PLA-2008 called for Z³ to design a DM355 module for use in Digital's products and then manufacture and deliver to Digital 1,000 units along with the necessary software.

On June 8, 2009, Digital filed this lawsuit. In Count I of its Complaint, Digital alleged that Z³ breached PLA-2008 by delivering non-conforming DM355 modules. On November 4, 2009, Z³ filed a counterclaim against Digital.¹ In Count II of its Counterclaim, Z³ asserted that Digital breached PLA-2008.

¹ Am. Countercl., ECF No. 62.

On June 2, 2011, Z³ moved for summary judgment on Count II of its Counterclaim and Count I of Digital's Complaint.² Z³ argued that Digital did not comply with the software warranty provisions in PLA-2008 and thus could not assert a claim for breach of the software warranty or defend against Z³'s claim for breach of PLA-2008 based upon any alleged software deficiencies. Digital failed to respond to Z³'s motion on this point. Indeed, it was not even clear whether Digital was asserting breach of the software warranty. After considering Z³'s memorandum and the cited authorities contained therein, the Court held that "Digital has no claim regarding software issues in the DM355 module."³ As a result, the Court agrees that any purported software issues with the DM355 modules are irrelevant.

Accordingly,

IT IS THEREFORE ORDERED that Z³ Technology, LLC's Motion *in Limine* to Bar Evidence and Argument Relating to Alleged Software Issues with DM355 Modules (ECF No. 213) is hereby granted.

IT IS SO ORDERED.

Dated this 21st day of June, 2012 at Topeka, Kansas.

s/K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge

² Mot. for Summ. J., ECF No. 152.

³ Order at 59, ECF No. 194.