

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

<p>City of Chicago, Plaintiff,  v.  Motiv Power Systems, Inc., Defendant.</p>	) ) ) ) ) )	      <b>No: 19 C 1817</b>  <b>Judge Ronald A. Guzmán</b>
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**ORDER**

For the reasons stated below, Plaintiff's motion to dismiss the counterclaim [34] is granted.

**STATEMENT**

This case deals with a 2012 contract between the City of Chicago and Motiv Power Systems, Inc. ("Defendant") pursuant to which Defendant was to provide the City with electric-powered commercial vehicles. The City alleges that Defendant has failed to provide or deliver a properly-working vehicle under the Contract. Defendant filed a counterclaim alleging breach of contract.

The City moves to dismiss the counterclaim on several grounds, but the Court addresses only one, as it is dispositive. Section 3.64 of the contract, titled "Disputes," states as follows: "Except as otherwise provided in this Contract, [Defendant] *must* and the City *may* bring any dispute arising under this Contract which is not resolved by the parties to the Chief Procurement Officer for decision based upon the written submissions of the parties." (Contract, Dkt. #1-1, at 72, § 3.64.) (emphasis added). Based on this language, the City contends that Defendant's counterclaim alleging breach of contract must be dismissed. Defendant responds that the City has "waived the ability to enforce the dispute resolution mechanism against" Defendant by choosing to file suit in court. Not only is Defendant's position unsupported by Illinois case law, it is also unpersuasive. The manner in which Defendant can seek relief for a dispute arising under the contract is set forth expressly in the contract and is not dependent on how the City chooses to pursue its claims. Pursuant to the contract, the City has a choice of where to seek relief, whereas Defendant does not. This is true even if the counterclaim alleged here is compulsory under Rule 13(a). *See Publicis Commc'n v. True N. Commc'ns Inc.*, 132 F.3d 363, 366 (7th Cir. 1997) (stating that "the view that a party to a forum-selection clause may not raise in a different forum, even as a compulsory counterclaim, a dispute within the scope of that clause. . . . must be right" and finding that the "district court should have enforced the . . . agreement by dismissing the counterclaim"). Accordingly, the Court dismisses the counterclaim.

**Date:** August 6, 2019



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**Ronald A. Guzmán**  
**United States District Judge**