

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**UV LOGISTICS, LLC,  
Plaintiff,**

**v.**

**Case No. 14-138329-CK  
Hon. James M. Alexander**

**SUPERIOR CAM, INC, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Plaintiff's Motion for Summary Disposition. In its Complaint, Plaintiff alleges that provided freight services to Defendants in connection with Defendants Superior Cam's and Fisher & Company's purchase of surplus manufacturing equipment sold by GM after closing plants in New Hudson, Michigan and Indianapolis, Indiana.

Defendants Superior and Fisher had contracts with Defendant MSR Industrial Services to dismantle, remove, transport, and install the equipment on each party's premises. MSR then contracted with Plaintiff to provide freight services on the projects.

On June 13, 2013, Plaintiff presented MSR with a single \$150,585 invoice for these projects, but MSR could not reconcile the invoice with its own records. As a result, MSR sought clarification – which was apparently not provided. On January 15, 2014, Plaintiff then filed the present suit – seeking to be paid for its services. In its Complaint, Plaintiff seeks \$24,500 against Superior,

\$117,960 against Fisher, and \$150,585 against MSR.<sup>1</sup> Plaintiff also seeks reasonable attorney fees, collection fees, and interest.

To its end, Plaintiff now seeks summary disposition under MCR 2.116(C)(10), which tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), "the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

In their Response, Defendants seek summary disposition in Fisher's and Superior's favor on Plaintiff's breach of contract claim under MCR 2.116(I)(2). Defendants also seek summary of Plaintiff's quantum meruit and unjust enrichment claims as to all Defendants. Despite the Court's July 3, 2014 Order permitting the same, Plaintiff did not file a Reply Brief challenging Defendants' requests.

Relative to its relationship with Plaintiff, MSR issued purchase orders to Plaintiff that described the work to be performed and the price. Plaintiff, however, never signed these purchase orders. It is undisputed, however, that Plaintiff performed all services contemplated thereunder.

Upon delivery to Defendants Superior's and Fisher's facilities, Plaintiff presented bills of lading for signature. The bills of lading did not contain any price terms. Instead, the signature line merely identified the signor as the "consignee" – who acknowledged that the shipment was "received in good order" except as otherwise noted. Defendants claim, and Plaintiff does not dispute, that

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<sup>1</sup> Plaintiff seeks these amounts on claims of: (1) breach of contract, (2) open account, (3) account stated, (4) quantum meruit, and (5) unjust enrichment.

these bills of lading were always only signed by MSR representatives.

The present dispute revolves around which documents represent the contracts for Plaintiff's freight services. Plaintiff claims that the amounts owed are determined under its bills of lading and incorporated "tariffs," and these amounts are recoverable directly from Superior and Fisher – as well as MSR.

Defendants, on the other hand, argue that the purchase orders represent the agreement of the parties – based on Plaintiff's performance under the same. Defendants also argue that Superior and Fisher are improper parties to this suit as they never contracted or interacted with Plaintiff in any way. Instead, they simply hired MSR to do a job. MSR is the party that contracted out freight services to Plaintiff, and MSR has a genuine dispute over the amount owed.

The Court is inclined to agree with Defendants for several reasons. First, Plaintiff claims that its rates are governed by incorporated "tariffs" referenced on the bills of lading – pursuant to 49 USC 13710. Defendants respond, however, that the Fourth Circuit in *Gaines Motor Lines, Inc v Klaussner Furniture Indus*, 734 F3d 296, 305 (4th Cir 2013) held that application of 49 USC 13710 is not necessary when a motor carrier (such as Plaintiff) agreed to rates via a private contract – as the case here. The Court agrees with this reasoning.

The Court finds that Plaintiff's relationship with MSR is based on the purchase orders that MSR issued. Plaintiff performed under these purchase orders, which incorporated terms and conditions that provide that "[c]ommencement of work or filling of order is deemed an acceptance of the order."

Our Supreme Court has also held:

It is entirely true that if the plaintiff in this case had rendered performance required by the purchase order without objecting to its provisions plaintiff might be found

thereby to have accepted the provisions of the purchase order. By failing to object the plaintiff might be deemed to have agreed that the purchase order superseded any earlier oral contract. *Ensign Painting Co v Alfred A Smith, Inc*, 385 Mich 268, 272-273; 188 NW2d 534 (1971).

The Court rejects Plaintiff's argument that any other contract determined rates. The only other documents provided (the bills of lading) were issued after Plaintiff completed its performance and did not mention any shipping rates. While MSR representatives signed the bills of lading, they apparently only did so to acknowledge receipt in approved condition.

Additionally, the back of the bills of lading also acknowledge that the freight was received "subject to the contracts" – which the Court concludes are the purchase orders. For these reasons, the Court finds that the contract rates are not governed by "tariffs" or the Interstate Commerce Act. Rather, the rates are governed by the purchase orders issued by MSR.<sup>2</sup>

Because the parties contested the method used to determine the contract price, and neither party presents sufficient evidence of the amount owing, the Court finds that there remain questions of fact regarding damages.

Further, because Superior and Fisher are not parties to the purchase orders, they are improper Defendants in this lawsuit. And as stated, Plaintiff failed to contest this issue by filing a Reply Brief. For this reason, Defendants Superior Cam and Fisher & Company are entitled to summary disposition, and Plaintiff's Complaint as to these Defendants only is DISMISSED in its entirety.

Finally, MSR claims that it is entitled to summary disposition of Plaintiff's quantum meruit and unjust enrichment claims because an express contract (the purchase orders) exists that covers the

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<sup>2</sup> Assuming arguendo that the Court concluded otherwise, the Court will also note that Plaintiff fails to support its conclusion that Superior and Fisher were "cosignees" under the bills of lading. Plaintiff presents no authority or argument supporting its conclusion, and Michigan law is clear that "[a] party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim." *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). Additionally, the bills of

same subject matter. Indeed, it is well settled that a contract will only be implied if there is no express contract covering the disputed subject matter. *Campbell v Troy*, 42 Mich App 534, 537; 202 NW2d 547 (1972).<sup>3</sup> Because express contracts exist, Plaintiff's claims based on quantum meruit and unjust enrichment are improper.

For all the above reasons, Plaintiff's motion for summary disposition is DENIED in its entirety.

Defendants' motion for summary as to Defendants Superior Cam and Fisher & Company is GRANTED and these Defendants are DISMISSED from this lawsuit.

Finally, Defendants' motion for summary as to Plaintiff's quantum meruit (Count Four) and unjust enrichment (Count Five) claims is GRANTED, and these claims are DISMISSED.

**IT IS SO ORDERED**

September 3, 2014 \_\_\_\_\_  
Date

/s/ James M. Alexander \_\_\_\_\_  
Hon. James M. Alexander, Circuit Court Judge

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lading do identify a "cosignee" as the person signing the documents – who Plaintiff does not dispute was always an MSR representative.  
3 Again, Plaintiff failed to file a Reply Brief contesting Defendants' entitlement to summary disposition on this basis.