

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

**CHRYSLER GROUP, LLC,  
Plaintiff,**

v.

**Case No. 14-138352-CK  
Hon. James M. Alexander**

**TV MINORITY COMPANY, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on two motions for summary disposition filed by Defendant Logistics Insight Corporation. One motion seeks summary disposition of the First Amended Cross Complaint of General Mill Supply Company, and one seeks summary of the Cross-Claim of TV Minority Company.

Chrysler Group filed its Complaint after learning of the theft of shipping containers worth thousands of dollars. Chrysler had contracts with Defendants TV Minority and Logistics for care of these containers. TV Minority was contracted to transport the empty containers to Logistics, who was contracted to perform various container-management services, including verifying receipt of the containers and reporting shortages. Defendant General Mill did not have a written contract with Chrysler, TV Minority, or Logistics.

Chrysler contends that, from June 2012 through March 2013, one of TV Minority's drivers diverted "dozens and dozens of semi-trailer loads" of these containers bound for Logistics and sold them for scrap to General Mill. As a result, Chrysler filed its Complaint, alleging: (1) Breach of Contract as to TV Minority; (2) Breach of Contract as to Logistics; (3)

Violation of the Bulk Merchandise Container Act; (4) Statutory Conversion; and Common Law Conversion against General Mill.

Relevant to the current motions, General Mill and TV Minority filed Cross-Claims against Logistics. General Mill filed the same alleging claims of: (1) Breach of Contract – Third-Party Beneficiary and (2) Negligence. TV Minority alleges claims of: (1) Breach of Contract – Third-Party Beneficiary; (2) Negligence; and (3) Tortious Interference with a Contract.

Logistics now moves for summary disposition of General Mill’s and TV Minority’s Cross-Claims under MCR 2.116(C)(8) and (C)(10). A (C)(8) motion tests the legal sufficiency of the complaint, and a (C)(10) motion tests the factual basis of a complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

## **I. General Mill**

First, Logistics argues that it is entitled to summary disposition of General Mill’s Cross Complaint because: (1) General Mill is not a third party beneficiary of the contract between Chrysler and Logistics; and (2) it owes no duty to General Mill on which to base a negligence claim, and General Mill also cannot establish proximate cause.

### *A. Third-Party Beneficiary*

The Revised Judicature Act provides, at MCL 600.1405:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise has undertaken to give or to do or refrain from doing something directly to or for said person.

With respect to this statute, our Supreme Court has reasoned:

A person is a third-party beneficiary of a contract only when that contract establishes that a promisor has undertaken a promise “directly” to or for that person. By using the modifier “directly,” the Legislature intended “to assure that contracting parties are clearly aware that the scope of their contractual undertakings encompasses a third party, directly referred to in the contract, before the third party is able to enforce the contract.” *Schmalfeldt v N Pointe Ins Co*, 469 Mich 422, 428; 670 NW2d 651 (2003); citing MCL 600.1405; *Koenig v South Haven*, 460 Mich 667, 677; 597 NW2d 99 (1999).

The *Koenig* Court held, “section 1405 does not empower just any person who benefits from a contract to enforce it. Rather, it states that a person is a third-party beneficiary of a contract only when the promisor undertakes an obligation “directly” to or for the person.” *Koenig*, 460 Mich at 676-677.

Based on the foregoing, Logistics argues that it is undisputed that it never made “any contractual promise or undertook in its contract with Chrysler to give or to do or refrain from doing something directly for [General Mill],” and General Mill fails to so allege.

Regarding this claim, General Mill’s First Amended Cross Compliant alleges, in paragraph 76, “[General Mill] was a known and intended third party beneficiary of [Logistics’] contractual duties.” General Mill, however, fails to identify what contract “directly” refers to it as contemplated by *Schmalfeldt* and *Koenig*.

Because General Mill fails to allege the existence of a contract that contemplates it as a beneficiary of the same, its claim for Breach of Contract – Third Party Beneficiary as to Defendant Logistics is properly DISMISSED under (C)(8).

### *B. Negligence*

Next, “[t]o establish a prima facie case of negligence, a plaintiff must prove: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000), citing *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993).

As stated, Logistics argues that General Mill cannot establish that Logistics owed it any duty. “Whether a duty exists is a question of law that is solely for the court to decide.” *Harts v Farmers Ins Exch*, 461 Mich 1, 6; 597 NW2d 47 (1999), citing *Murdock v Higgins*, 454 Mich 46, 53; 559 N.W.2d 639 (1997). “If there is no duty, summary disposition is proper. However, if factual questions exist regarding what characteristics giving rise to a duty are present, the issue must be submitted to the fact-finder.” *Laier v Kitchen*, 266 Mich App 482, 496; 702 NW2d 199 (2005).

Regarding this claim, General Mill alleges that Logistics “undertook and owed various duties in connection with the sorting, care, retrieval, organization, tracking, loss prevention, management and/or transportation of pallets lawfully collected, retrieved and/or obtained from [Chrysler].” Cross-Claim, at paragraph 79. General Mill further alleges that Logistics “breached a duty of care owed to [it],” and it “was a foreseeable victim.” Cross-Claim, at paragraphs 81, 84.

The Court, however, is unconvinced that these conclusory allegations establish that Logistics owed General Mill any duty. As stated, Chrysler contracted TV Minority to deliver its containers to Logistics. Chrysler contracted Logistics to care for those containers. General Mill is a stranger to these relationships. Logistics had no duty to ensure that TV Minority’s driver did not redirect some of Chrysler’s containers to General Mill, and no reasonable trier-of-fact could so conclude.

As a result, General Mill's claim for Negligence as to Defendant Logistics is similarly DISMISSED under (C)(8).

## **II. TV Minority**

Next, Logistics seeks summary disposition of the Cross-Claim of TV Minority. As stated, TV Minority alleges claims of: (1) Breach of Contract – Third-Party Beneficiary; (2) Negligence; and (3) Tortious Interference with a Contract.

Pursuant to the Court's March 25, 2014 Order, TV Minority was required to file a response to Logistics' motion by April 30, 2014. TV Minority, however, has failed to file a response or present any other evidence contradicting Logistics' claims. The Michigan Court of Appeals has held that:

A party opposing a motion brought under C(10) may not rest upon the mere allegations or denials in that party's pleadings, but must by affidavit, deposition, admission, or other documentary evidence set forth specific facts showing that there is a genuine issue for trial. . . . [W]here the opposing party fails to come forward with evidence, beyond allegations or denials in the pleadings, to establish the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993) (internal citations omitted).

Because TV Minority has failed to respond to Logistics' motion, the Court concludes that TV Minority has failed to present any evidence contradicting Logistics' claims, and as a result, fails to establish a question of fact regarding its entitlement to judgment as a matter of law.

The Court will note that, on May 9, 2014, TV Minority did file a First Amended Cross Claim against Logistics, but it did so without first seeking the Court's approval as required by

MCR 2.118(A)(2).<sup>1</sup> As a result, TV Minority's First Amended Cross Claim was improperly filed, is hereby stricken, and will not be considered.

Because TV Minority failed to respond, the Court concludes that it concedes Logistics' right to judgment as a matter of law under (C)(10). Therefore, Logistics' motion for summary disposition is GRANTED, and TV Minority's Cross-Claim against Defendant Logistics is hereby DISMISSED.

### **III. Conclusion/Summary**

In summary, both of Logistics' motions for summary disposition are GRANTED, and General Mill's and TV Minority's Cross-Claims against only Defendant Logistics are DISMISSED in their entirety.

**IT IS SO ORDERED.**

May 21, 2014  
Date

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

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<sup>1</sup> A review of the record reveals that Logistics filed its motion for summary disposition as its first responsive pleading on March 19, 2014. As a result, TV Minority had 14 days from that date to file an amended Cross-Claim and failed to do so. MCR 2.118(A)(1).