

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

**ROBERT BOSCH BATTERY SYSTEMS, LLC,
Plaintiff,**

v.

**Case No. 14-141294-CK
Hon. James M. Alexander**

**SAMSUNG SDI AMERICA, INC, and
SAMSUNG SDI CO, LTD,
Defendants.**

**OPINION AND ORDER RE:
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

This matter is before the Court on Plaintiff’s motion for preliminary injunction. Defendant is the sole supplier of certain batteries that Plaintiff uses to create the battery pack that Chrysler exclusively uses in its Fiat 500e electric automobile. The parties currently dispute whether Defendant is supplying “conforming” batteries under the terms of the parties’ agreements.

Plaintiff claims that Defendants breached the agreements by supplying non-conforming batteries. Defendants, on the other hand, claim that Plaintiff breached the supply agreements by withholding PPAP approval of the batteries. Defendants also claim that Plaintiff’s required battery specifications both impossible to produce and not required under the agreements. As a result, Defendants claim that Plaintiff breached or repudiated the supply agreement.

As a result of this dispute, Defendants have or have threatened to stop shipping these batteries, which Plaintiff claims will result in the shutdown of Chrysler’s 500e production. To

stop this from happening, Plaintiff filed the present motion – seeking a preliminary injunction requiring Defendants to continue shipping the batteries while the parties’ underlying dispute is resolved through arbitration.

When considering whether to grant injunctive relief:

a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 148; 809 NW2d 444 (2011).

On the first element, Plaintiff argues that it is likely to prevail on its claim that Defendants must continue supplying the battery cells while the parties resolve their underlying dispute because the parties’ agreements so provide.

On September 14, 2012, the parties entered into both a Master Supply Agreement (MSA) and a Multi-Annual Contract (MAC). Paragraph 26 of the MSA specifically incorporated Bosch’s North American Terms and Conditions of Purchase (POTC) requirements. In fact, said paragraph provides that, in the event that the MSA and another individual contract contradict, the POTC “shall prevail.” (MSA at paragraph 26).

Under Paragraph 32 of the POTC (emphasis added):

32.1 Buyer and Seller shall first endeavor to resolve through good faith negotiations any dispute arising under the Order. IF a dispute cannot be resolved through good faith negotiations within a reasonable time, either party may request non-binding mediation by a mediator approved by both parties. If mediation fails to resolve the dispute within thirty (30) days after the first mediation session, all disputes arising out of or relating to the Order shall be resolved through binding arbitration. The arbitration proceedings shall be conducted before a panel of three arbitrators (one appointed by each party and the neutral appointed by the other two arbitrators) in accordance with the Commercial Rules of the American Arbitration Association including application of the Optional Rules for Emergency Measures of Protection and shall be governed by the United States

Arbitration Act and this Section 32. The arbitration shall be conducted in the city and state, district or province of Buyer's primary place of business, and the language of the arbitration shall be English. The arbitrators shall issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. **While arbitration proceedings are pending, the parties shall continue to perform their obligations under the Contract without setoff for any matters being contested in the arbitration proceedings.**

Based on the foregoing, Plaintiff argues that Defendants are "required to continue supplying the Battery Cells . . . while the parties engage in the dispute resolution provisions required by the Supply Agreements." And, Plaintiff points out, despite claiming that the batteries are non-conforming, it has continued to place orders for batteries and accept shipments of the same regardless of the merit of Defendants' breach of contract claim – as it is bound by the same performance obligation.

In response, Defendants spend much of their time arguing the merits of the underlying dispute – rather than the true issue – whether battery shipments must continue while the parties resolve their underlying dispute.

What little is offered by Defendants – that the Cobasys Terms control rather than the POTC – is unpersuasive. Further, the Court rejects Defendants' argument that the arbitration is a prerequisite to continuing performance. This reading strains logic and a common-sense interpretation of this provision. Read as a whole, Paragraph 32.1 takes great pains to provide that the parties try to resolve disputes through various ADR methods, and while those methods are explored, the parties continue to perform their obligations under their Agreements.

Next, Plaintiff argues that it will suffer irreparable harm if Defendants stop battery shipments – which would stop production of Chrysler's 500e and significantly damage Plaintiff's relationship with Chrysler. Further, under Paragraph 8.2 of the POTC, the parties agreed that

money damages were not a sufficient remedy if Defendant stopped performing under the agreements.

In support of its claim that a damaged business reputation can constitute irreparable harm, Plaintiff cites to *Kelsey-Hayes Co v Galtaco Redlaw Castings Corp*, 749 F Supp 794, 798 (ED Mich 1990). The *Kelsey-Hayes* Court concluded that irreparable harm can be established via the potentially catastrophic disruption of the supply chain to the automotive industry. The Court is persuaded by this reasoning.

While this case does not involve typical “just-in-time” delivery, the batteries are produced in Korea and shipped by sea to Plaintiff. The transit time is long, and any disruption could potentially cause Plaintiff to be unable to provide the battery packs to Chrysler, which would result in 500e production shutdown. Should this happen, Plaintiff’s goodwill and reputation with Chrysler may be immeasurably damaged.

Next, Plaintiff argues that the issuance of an injunction will not harm Defendants more than not issuing one. The Court agrees and rejects Defendants claim that Plaintiff is building its damages with each battery shipment. Rather, as Plaintiff argues, it is mitigating its potential damages by accepting the “non-conforming” battery cells and subsequently modifying them to meet specifications. Damages are likely far worse than Defendants not shipping any batteries – causing a production shutdown.

Finally, Plaintiff claims that “public policy strongly favors the issuance of an injunction.” The Court agrees and Defendants offer no real substantive argument otherwise.

For all of the foregoing reasons, the Court finds that Plaintiff has established its entitlement to a preliminary injunction. Defendants are to continue shipping the battery cells as

required by the parties' agreements while the parties engage in the ADR process to resolve their underlying dispute. Plaintiff may prepare and file an appropriate Injunctive Order.

IT IS SO ORDERED.

June 19, 2014 _____

Date

_____/s/ James M. Alexander

Hon. James M. Alexander, Circuit Court Judge