

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

**LANDSTAR EXPRESS AMERICA, INC,
Plaintiff,**

v.

**Case No. 14-142001-CK
Hon. James M. Alexander**

**NEXTEER AUTOMOTIVE CORP and
STEERINGMEX S,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on cross motions for summary disposition. This dispute centers on Plaintiff's claim that Defendants are liable for over \$5 million in expedited air shipping costs. The essential facts are undisputed.

Plaintiff is in the business of arranging transportation and logistics services for its customers, including expedited air transportation, using independent sales agents. Plaintiff agent relevant to this dispute was non-party New Dimension Logistics ("NDLX").

Defendants manufacture automobile steering assemblies in plants throughout the world, including plants in Saginaw, Michigan and Quintero, Mexico. Defendants then supply these steering assemblies to Ford and General Motors.

In 2011, non-party Contech was the sole supplier for a casting part that Defendants used in said steering assemblies. These parts were manufactured in Contech's plant in Clarksville, Tennessee and were delivered according to Defendants' just-in-time manufacturing strategy.

In June 2011, Contech apparently began having trouble keeping pace with Defendants'

parts demand and began to fall behind. In order to get these parts to Defendants' plants, Contech contracted with Plaintiff for expedited air shipping as soon as they came off the manufacturing line. This was apparently done at Defendants' insistence as necessary to avoid shutdowns of Ford's and GM's assembly lines and the accompanying large liquidated-damages provisions of Defendants' contracts with the auto manufacturers.

In fact, Defendants' contract with Contech contemplated that expedited shipping may be necessary at times, and if so, provided that it was Contech's responsibility to pay for the same.¹ There are no written contracts requiring Defendants to pay Plaintiff for the disputed expedited air shipping.

Contech is the party that arranged for Plaintiff's services and contracted with Plaintiff for payment of the same.² Indeed, in January 2013 and based on express contracts, Plaintiff obtained a money judgment for nearly \$6 million against Contech in the United States District Court for the Eastern District of Michigan. Plaintiff claims that it was able to collect some \$1.1 million from Contech and applied this amount to the outstanding shipments – leaving only “unpaid air shipments totaling \$5,013,416.05, exclusive of costs, fees and interest.”³

Plaintiff now seeks this amount from Defendants as beneficiaries of the expedited air shipments. To its end, Plaintiff sued on claims of: (Count I) breach of contract; and (Count II) unjust enrichment.

All parties now move for summary disposition under MCR 2.116(C)(10). A motion under (C)(10) tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In such a motion, “the moving party has the initial burden of supporting its

1 General Terms and Conditions, effective October 7, 2009, at paragraph 2.6.

2 Affidavit of Patrick Bosworth, NDLX's President and COO, dated May 22, 2012, paragraphs 7-8.

3 Plaintiff claims that it applied the \$1.1 million “to the expedited truck shipments at issue in the Contech litigation” – leaving only amounts owing on air shipments.

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).

1. Breach of Contract (Count I)

The parties first seek summary disposition of Plaintiff’s breach of contract claim. Plaintiff brings this claim based on common law consignee liability. The United States Supreme Court has reasoned: “the consignee is prima facie liable for the payment of the freight charges when he accepts the goods from the carrier.” *Pittsburgh, C, C & S L R Co v Fink*, 250 US 577, 581; 40 S Ct 27; 63 L Ed 1151 (1919).

But the applicability and reach of the *Fink* case and its progeny in post-1995 motor carrier deregulation has been debated in courts across the country.⁴ This is so because in the absence of

⁴ For a good discussion, see *Western Home Transp, Inc v Hexco, LLC*, 28 F Supp 3d 959, 967-969 (DND 2014) (internal footnotes removed):

There are a number of cases where courts have held or suggested in dicta that a consignee is liable for freight charges upon acceptance of goods shipped in interstate commerce as matter of federal common law based on the *Fink* line of cases. E.g., *Harms Farms Trucking v. Woodland Container*, No. 4:05cv3185, 2006 U.S. Dist. LEXIS 86940, 2006 WL 3483920 (D. Neb. Nov. 30, 2006); *C.F. Arrowhead Servs., Inc. v. AMCEC Corp.*, 614 F. Supp. 1384, 1387-88 (N.D. Ill. 1985) (noting the “somewhat questionable lineage” of the rule given the actual holdings in the *Fink* lines of cases and subsequent regulatory changes but accepting it given the weight of authority and citing cases). There are also a number of decisions where the rule of consignee liability upon acceptance is recited, but it is difficult to determine whether the liability being imposed was pursuant to a federal common law rule or deemed to be required by the regulatory regime then being enforced by the ICC, or its replacement, the Surface Transportation Board, including language in uniform bills of lading prescribed by regulation or administrative decision. See, e.g., *CSX Transp. Co. v. Novolog Bucks Cnty.*, 502 F.3d 247, 254-55 (3d Cir. 2007) (“The second [well-established principle] is that the consignee becomes a party to the transportation contract, and is therefore bound by it, upon accepting the freight; thus it is subject to liability for transportation charges even in the absence of a separate contractual agreement or relevant statutory provision.”) (citing the second sentence from the quotation set forth above from *Louisville & N.R. Co.* supra, but also referencing the current statutory requirements regarding consignee liability for rail shipments).

A number of other courts, however, have read the *Fink* line of filed-tariff cases more narrowly and

the motor carrier tariffs filed under the now-abolished Interstate Commerce Commission (the

have either held or suggested that consignee liability for freight charges for interstate shipments is simply a matter of contract in the absence of a federal statute, regulation, or administrative decision, including those governing federal tariffs. *Canadian Nat. Ry. v. Vertis, Inc.*, 811 F. Supp. 2d 1028, 1037-38 (D.N.J. 2011) (concluding that federal common law consignee liability did not exist outside the ambit of the Interstate Commerce Act); *Fikse & Co. v. U.S.*, 23 Cl. Ct. 200, 202-204 (1991) (rejecting contention that a consignee's acceptance of the shipment by itself creates an express or implied obligation to pay the freight charges); *E.W. Wylie Corp. v. Menard, Inc.*, 523 N.W.2d 395, 398-99 (N.D. 1994) (narrowly construing the Fink line of cases, concluding that liability for payment of freight charges is largely a matter of contract, and holding that any common law presumption about liability which may exist can be rebutted by evidence that the parties intended something else and has no application where there is an express contract).

Consistent with the latter line of decisions are a number of motor carrier cases decided since the last round of motor carrier deregulation in 1995, holding that carrier actions to collect unpaid freight charges from consignors or consignees present only state law claims for breach of contract where there is no required tariff. E.g., *Gaines Motor Lines, Inc. v. Klaussner Furniture Indus., Inc.*, 734 F.3d 296, 302-07 (4th Cir. 2013) (action against a consignor) ("Gaines Motor Lines"); *Evans Transp. Servs., Inc. v. Northland Servs., Inc.*, No. C11-1713MJP, 2012 U.S. Dist. LEXIS 29803, 2012 WL 727019, at **2-3 (W.D. Wash. Mar. 6, 2012) (action against a consignee); *GMG Transwest Corp. v. PDK Labs, Inc.*, No. CV 07-2548, 2010 U.S. Dist. LEXIS 95912, 2010 WL 3710421, at ** 2-3 (E.D.N.Y. Aug. 12, 2010); *Con-Way Transp. Servs., Inc. v. Auto Sports Unlimited, Inc.*, No. 1:04-cv-570, 2007 U.S. Dist. LEXIS 75451, 2007 WL 2875207, at *7 (W.D. Mich. Sept. 28, 2007); *Transit Homes of Am., Division of Morgan Drive Away, Inc., v. Homes of Legend, Inc.*, 173 F. Supp. 2d 1185 (N.D. Ala. 2001). In many of these cases, including the recent 2013 decision by the Fourth Circuit in *Gaines Motor Lines*, courts have dismissed federal actions commenced by carriers to collect the unpaid freight charges for lack of subject matter jurisdiction where, unlike in this case, diversity jurisdiction was not claimed or there was no grounds for it. And, while the holdings of all of these cases implicitly suggest the lack of consignee liability arising out of federal common law, several of the cases explicitly make reference to the Fink line of cases and note their inapplicability based on the lack of a federal tariff. See, e.g., *Gaines Motor Lines*, 734 F.3d at 302; *Transit Homes of Am.*, 173 F. Supp. 2d at 1189-90.

Finally, there are other decisions that are unclear as to whether what is being applied is a federal common law rule of consignee liability upon acceptance of goods or simply a more specific application of contract principles. For example, there are decisions which hold or suggest that acceptance of goods by a consignee is an indication of an implied agreement to pay the freight charges but are unclear whether the implied agreement arises as a matter of law or simply by the conduct of the parties. See, e.g., *States Marine Intern., Inc. v. Seattle-First Nat. Bank*, 524 F.2d 245, 247-48 (9th Cir. 1975); see generally 17 C.J.S. Contracts § 6 (database updated June 2014) (discussing types of implied contracts). Somewhat similarly, there are also decisions which suggest that consignee liability upon acceptance arises as matter of custom or industry practice. E.g., *Illinois Cent. R. Co. v. South Tec Dev. Warehouse, Inc.*, 337 F.3d 813, 820 (7th Cir. 2003) ("Liability for freight charges may be imposed only against a consignor, consignee, or owner of the property, or others by statute, contract, or prevailing custom.") (internal quotation and citing authority omitted); *Middle Atlantic Conference v. U.S.*, 353 F. Supp. 1109, 1118, 1120 (D.D.C. 1972) (three-judge panel); see *Oak Harbor Freight Lines, Inc. v. Sears Roebuck, & Co.*, 513 F.3d 949, 954-56 (9th Cir. 2008) (referencing "default standards" of consignor and consignee liability when an industry standard bill of lading is used). The distinction between whether federal common law is being applied or simply a more specific application of contract principles is of particular import with respect to whether federal or state law applies - particularly in the absence of a federally-established tariff.

existing law when *Fink* was decided), many courts have held that consignee liability does not exist. Rather, these courts hold, liability on freight charges are appropriately a matter of contract under state law. And the courts that continue to apply consignee liability appear to do so without any analysis of the effect of motor carrier deregulation.

The Court also notes that one case primarily relied on by Plaintiff, *Oak Harbor Freight Lines, Inc v Sears Roebuck, & Co*, 513 F3d 949, 954-56 (9th Cir 2008), founds consignee liability on 49 USC §§ 13101 et seq – which only applies to “motor carriers.” This statute, however, does not apply to air freight. And, as stated, Plaintiff only seeks payment of outstanding air freight charges.

In fact, Plaintiff cites to only one case that addresses common law consignee liability in the field of air freight – *Airborne Freight Corp v Irving Trust Co*, 26 AD2d 507; 354 NYS2d 215 (NY 1966) – a 1966 New York Supreme Court Appellate Division case applying the rules of the now-abolished Interstate Commerce Commission. Simply, the Court finds this case unpersuasive.

Further, the Court tends to find persuasive the line of cases that question common law consignee liability based on the *Fink* line of cases post-1995 motor carrier deregulation. Rather, as many courts have concluded across the country, the Court finds that a consignee’s acceptance of the shipment by itself does not create any express or implied obligation to pay the freight charges. Rather, liability for freight charges is a matter of contract, and all evidence in this case establishes that Contech secured and contractually agreed to pay Plaintiff’s charges.

For all of the foregoing reasons and viewing the evidence in the light most favorable to Plaintiff, the Court finds that there are no material questions of fact in dispute and Defendants are entitled to dismissal of Plaintiff’s Count I for breach of contract.⁵

⁵ Because the Court has so concluded, it is unnecessary to address the remainder of arguments made by the parties

2. Unjust Enrichment (Count II)

The parties also seek summary disposition of Plaintiff's unjust enrichment claim. "[I]n order to sustain a claim of . . . unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006); citing *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

As stated, it is undisputed that Contech: (1) was obligated to timely deliver parts to Defendants, (2) was obligated to pay for expedited freight if it was unable to meet the schedule;⁶ and (3) ordered the shipments at issue from Plaintiff.

The parties primarily rely on *Morris Pumps*, 273 Mich App 187 and *Aero Taxi-Rockford v General Motors*, an unpublished opinion per curiam of the Court of Appeals, decided May 30, 2006 (Docket No. 259565) in support of their positions.

In *Morris Pumps*, a supplier provided equipment and materials to a subcontractor for use on a large wastewater treatment project. When the subcontractor went out of business and abandoned the construction project, the suppliers' equipment and materials remained on the worksite.

The general contractor then hired a replacement subcontractor to complete the work, and that subcontractor used the previously provided materials found at the worksite. The replacement subcontractor, however, did not bill for said materials because they were already there, and neither

with respect to Plaintiff's breach of contract claim.

⁶ The Court notes that Plaintiff attempts to paint this issue as disputed, but a careful review of the evidence relied on, deposition transcripts of Contech witnesses, simply establishes that these Contech employees **believed that Defendants should be responsible** for the expedited freight service – despite the unambiguous express agreement otherwise. In fact, it's not clear if these employees even knew of the contract that provided it was Contech's obligation to obtain and pay for the same. As a result, this testimony is insufficient to overcome the express contract obligating Contech to pay for any required expedited shipping.

the general contractor nor the replacement subcontractor ever paid for the materials. The supplier then sued the general contractor on an unjust enrichment theory.

The Court of Appeals concluded that the supplier's unjust enrichment claim was valid because "[r]egardless of whether [the general contractor] itself retained and used the materials, or merely acquiesced in the replacement contractor's retention and use of the materials, [the general contractor] was necessarily a party to the decision to use and retain the materials without paying plaintiffs." *Morris Pumps*, 273 Mich App at 197.⁷

In *Aero Taxi*, the plaintiffs provided approximately \$5 million of freight transport services to GM and its agents – transporting automotive parts, components, and systems from one GM location to another. When plaintiffs were not paid for these services, they sued GM and its shipping agent, in relevant part, on an unjust enrichment theory.

The *Aero Taxi* panel concluded that there was no dispute that “a benefit was conferred on GM when plaintiffs provided freight transport services. Whether it would be unjust for GM not to pay plaintiffs for the services is a matter that we conclude should be left to the jury”

But the *Aero Taxi* decision, in addition to being non-binding, is distinguishable in a major respect – the plaintiffs in *Aero Taxi* contracted **with GM's agent** to provide the air-freight services **for GM** – shipping GM property from one GM location to another GM location. As a

⁷ The *Morris Pumps* Court further reasoned:

[a] third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited has not requested the benefit or misled the other parties Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. *Morris Pumps*, 273 Mich App at 196; quoting 66 Am Jur 2d, Restitution and Implied Contracts, § 32, p 628.

In this case, Defendants only expected Contech to comply with its obligations under their pre-existing contract – to obtain and pay for expedited freight services when it was clear that it was not going to be able to meet delivery deadlines. As reasoned later, Contech's performance of its contractual obligations is not a separate benefit conferred by Plaintiff on Defendants within the meaning of an unjust enrichment claim.

result, the *Aero Taxi* panel concluded that GM undisputedly received the benefit from the plaintiffs' services.

In this case, in contrast, Plaintiff contracted with Defendants' supplier (not agent) to provide air transport services that allowed said supplier to meet contractual obligations to Defendants. Further, said supplier expressly agreed to pay for these services in two separate contracts – one with Plaintiff and one with Defendants. Defendants were not the parties that received the primary benefit of Plaintiff's services; Contech was. This is so because Plaintiff's services allowed Contech to meet its preexisting contractual obligation to timely deliver parts to Defendants.

And unlike in *Morris Pumps*, Defendants derived no benefit directly from Plaintiff. Rather, the only benefit conferred on Defendants was the timely delivery of parts according to the terms of a written contract with Contech. In other words, Defendants received no additional benefit from Plaintiff's freight services other than that which it already contemplated in a written agreement with its supplier. While the supplier's performance of its contractual obligations was beneficial, the Court finds that it cannot serve as the basis for a benefit conferred by Plaintiff within the meaning of an unjust enrichment claim.

The Court is not inclined to travel the slippery slope advanced by Plaintiff – that an entity contracting with a supplier can impose nonpayment liability on an unrelated third-party manufacturer simply because the entity enabled the supplier to meet specific, pre-existing contractual duties to said manufacturer. If Plaintiff seeks an endorsement of this theory, it must look elsewhere.

Because the Court has concluded that Plaintiff has failed to establish the existence of a benefit conferred on Defendants within the meaning of an unjust enrichment claim, said claim fails, and Defendants are entitled to dismissal of this claim under (C)(10).⁸

Summary

To summarize, viewing all evidence in the light most favorable to Plaintiff, the Court concludes that there are no material questions of fact in dispute, and Defendants are entitled to judgment as a matter of law. Therefore the Court GRANTS Defendants' motion for summary disposition under (C)(10) and DISMISSES Plaintiff's Amended Complaint in its entirety.

For the same reasons, Plaintiff's motion for summary disposition is DENIED.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

June 24, 2015
Date

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

⁸ Because the Court has so concluded, it is unnecessary to address the remainder of arguments made by the parties with respect to Plaintiff's unjust enrichment claim. But the Court will note that our appellate courts should provide clarity on whether the existence of an express contract covering the same subject matter must be **between the same parties** in order to defeat an unjust enrichment claim. Compare *Morris Pumps*, 273 Mich App at 194 (reasoning "'Generally, an implied contract may not be found if there is an express contract *between the same parties* on the same subject matter.'" quoting 42 CJS, Implied and Constructive Contracts, § 34, p 33 (emphasis added)); with *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003) (reasoning "a contract will be implied only if there is no express contract covering the same subject matter" (no mention of between the same parties)); and *Martin v E Lansing Sch Dist*, 193 Mich App 166, 177; 483 NW2d 656 (1992) (reasoning "a contract will be implied only if there is no express contract" (same)).