

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ZF CHASSIS COMPONENTS, LLC,

Plaintiff/Counter-Defendant,

v

Case No. 2014-143905-CK

Hon. Wendy Potts

SAINT JEAN INDUSTRIES, INC.,

Defendant/Counter-Plaintiff.

OPINION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of Court  
Held in Pontiac, Michigan

On  
JAN 08 2016.

This dispute arises from an automotive component parts supply relationship and accommodation financing between nonparties General Motors, LLC and Honda of America Mfg, Inc, Plaintiff ZF Chassis Components, LLC, and Defendant Saint Jean Industries, Inc. For several years, ZF, GM, and Honda purchased parts from Saint Jean. In 2011, Saint Jean claims it had a fire in a manufacturing facility that threatened its ability to continue supplying parts to its customers. GM agreed to provide accommodation financing in late 2011 to prevent an interruption in the parts supply, and ZF and Honda contributed to that financing.

The GM loan was memorialized in a November 2012 Accommodation Agreement, which is the key document in this dispute. That agreement required ZF, Honda, and GM to continue purchasing "Existing Business" [parts currently in production] from Saint Jean through December 31, 2013 unless there was an "Event of Default." After December 31, 2013, ZF, Honda, and GM were allowed to "resource" parts (obtain the parts from other suppliers),

however, if they resourced the parts before the Accommodation Agreement expired on December 31, 2016, and Saint Jean did not commit an Event of Default, GM, Honda, and ZF would automatically forgive their respective portions of Saint Jean's debt. The Accommodation Agreement lists several Events of Default including "a material breach by Supplier [Saint Jean]" that would result in interrupting the customer's operations and a notice of default by an "Existing Secured Creditor" that results in an enforcement action against Saint Jean.

The Accommodation Agreement incorporated by reference various related agreements, including a Participation Agreement recognizing ZF and Honda's portion of the loan and a Loan and Security Agreement between GM and Saint Jean. Both the Accommodation Agreement and the Loan and Security Agreement required Saint Jean to provide financial information "as reasonably requested" by GM and ZF. The Accommodation Agreement also secured the GM loan through an interest in the proceeds of a business interruption insurance claim Saint Jean filed "relating to losses due to FPO1 (forge press no. 1)."

On September 15, 2013, GM, Honda, and ZF notified Saint Jean that they would resource the parts effective January 1, 2014. ZF sent Saint Jean a separate letter on September 19, 2013, also stating its intention to resource parts beginning January 1, 2014. Although ZF now claims that its decision to resource the parts was based on Saint Jean's breaches of the Accommodation Agreement, there is no evidence that ZF notified Saint Jean of any Event of Default before September 15, 2013. In fact, both the September 15<sup>th</sup> and September 19<sup>th</sup> letters acknowledge that the resourcing would result in loan forgiveness if there is no Event of Default, and neither letter identifies any existing Event of Default.

On October 1, 2013, The Travelers Property Casualty Company paid Saint Jean more than \$2 million on its business interruption claim. Saint Jean apparently notified another creditor, GE Capital, of its receipt of the insurance proceeds. On November 7, 2013, GE Capital sent Saint

Jean a notice of default demanding that Saint Jean remit the insurance proceeds, which it promptly did. Alicia Masse with Ernst & Young, LLP and Alderney Advisors, LLC testified in an affidavit that she was on the financial team who provided financial oversight of Saint Jean on behalf of GM and ZF from November 2012 through December 2013. Masse claims that between September 1, 2013 and December 31, 2013, her team requested financial information from Saint Jean, including specific requests on the status of the insurance claim. Masse further testified that Saint Jean advised her that there were no updates and it had not received any proceeds.

ZF filed this action in November 2014 asserting, among other claims, that Saint Jean breached the Accommodation Agreement by failing to reveal to ZF the status and receipt of the insurance proceeds. The Court granted in part Saint Jean's motion for summary disposition under MCR 2.116(C)(8) by dismissing all claims other than Count I alleging breach of the Accommodation Agreement.

Saint Jean now seeks summary disposition under MCR 2.116(C)(10), which tests whether there is a genuine issue of fact for trial. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). Saint Jean asserts that the breach of contract claim fails because ZF elected to resource the parts before December 31, 2016, and there was no Event of Default, which resulted in automatic loan forgiveness. The construction and interpretation of an unambiguous contract is a question of law. *Bandit Industries, Inc v Hobbs International, Inc*, 463 Mich 504, 511; 620 NW2d 531 (2001).

ZF first asserts that summary disposition is premature because Saint Jean obstructed ZF's discovery. However, this case is less than two weeks away from trial, discovery closed in November 2015, and ZF fails to explain how further discovery would assist it in responding to Saint Jean's motion. Although summary disposition is generally premature when discovery on disputed issues is ongoing, ZF has the burden of explaining how further discovery will yield

support for its position. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). Because ZF has not identified any outstanding discovery that is likely to support its position, the Court will not deny summary disposition on this ground.

ZF further argues that Saint Jean is not entitled to loan forgiveness because it committed an Event of Default by failing to reveal the status of the insurance claim or its receipt of the insurance proceeds. There is no question that Saint Jean had an obligation under the Accommodation Agreement to reveal financial information requested by ZF, and the Masse affidavit serves to raise a question of fact whether Saint Jean complied with that obligation. However, ZF fails to explain how Saint Jean's alleged failure to reveal receipt of the insurance proceeds would constitute an Event of Default as defined by the Accommodation Agreement. ZF appears to be relying on descriptions of an Event of Default within the Loan and Security Agreement that refer to a default of any provision of the agreement. However, ZF is not a party to that agreement – only GM and Saint Jean executed the Loan and Security Agreement. ZF cites no portion of the Accommodation Agreement, the Participation Agreement, or any other agreement between ZF and Saint Jean that gives ZF authority to enforce the provisions of the Loan and Security Agreement. In fact, the Participation Agreement expressly states that ZF will not have “the right to enforce any of the Loan Documents” and the rights and remedies under the Loan Documents “may only be exercised by Lender [GM].”

Thus, the only “Event of Default” that would be applicable to the loan forgiveness provision are the Events of Default listed in Section 6.0 of the Accommodation Agreement. To the extent that ZF is relying on Saint Jean's failure to report the insurance proceeds as a breach under Section 6.0(i) or (ii), those provisions require a “material breach” that “will likely result in an imminent interruption of a Customer's operations” or in fact results in an interruption of ZF's operations. ZF cites no evidence that Saint Jean's failure to reveal its receipt of the insurance

proceeds interrupted or will interrupt ZF's operations. Moreover, ZF fails to explain how Saint Jean's failure to disclose the insurance proceeds would constitute a "material breach" of the Accommodation Agreement. A breach is material if the nonbreaching party did not obtain the benefit it reasonably expected to receive. *Omnicom of Michigan v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997). ZF presents no evidence that Saint Jean's alleged failure to comply with financial reporting requirements prevented ZF from obtaining the benefit of its bargain under the Accommodation Agreement.

ZF also attempts to assert that Saint Jean committed an Event of Default under Section 6.0(v) because GE Capital issued a notice of default in November 2013. That provision refers to

a default occurs and is continuing in respect of an obligation to an Existing Secured Creditor under agreements between Supplier and such Existing Secured Creditor and, as a result of such default, the Existing Secured Creditor commences enforcement action against any real or personal property assets of Supplier securing such obligation . . .

However, there is no evidence that GE Capital commenced an enforcement action against Saint Jean. Thus, this Event of Default is inapplicable as well.

In sum, ZF agreed that it would forgive its portion of Saint Jean's debt if ZF resourced the parts that Saint Jean was supplying before December 31, 2013, and only an Event of Default would relieve ZF of this forgiveness obligation. Because ZF fails to demonstrate an issue of fact whether Saint Jean committed an Event of Default as defined by the Accommodation Agreement on or before December 31, 2013, Saint Jean is entitled to summary disposition and ZF's claim for breach of the Accommodation Agreement is dismissed with prejudice.

This order resolves the last pending claim and closes the case.

Dated: JAN 08 2016

IT IS SO ORDERED.

Hon. Wendy Potts