

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC,

Plaintiffs,

vs.

Case No. 2013-2742-CK

NARTRON CORPORATION, n/k/a GEN X MICROSYSTEMS and a/k/a OLDNAR CORPORATION, a Michigan corporation and UUSI, LLC, d/b/a NARTRON, a Michigan limited liability company,

Defendants,

And

UUSI, LLC, d/b/a NARTON, a Michigan limited liability company,

Defendant/Counter and Third-Party Plaintiff

vs.

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC

Counter-Defendants,

And

FUTABA CORPORATION OF AMERICA, a foreign corporation, THOMAS J. GRONSKI, RANDY GRIFFIN, and GINA TERRY,

Third-Party Defendants.

OPINION AND ORDER

Plaintiffs have filed a motion for summary disposition of Defendant's claim for lost revenue. Defendant Nartron Corporation ("Defendant") has filed a response and requests that the motion be denied. Plaintiffs have also filed a reply brief and supplemental brief in support of their motion. In addition, Defendant has filed a reply in support of its position.

Factual and Procedural History

Plaintiffs JVIS-USA, LLC and JVIS Manufacturing, LLC (collectively, "Plaintiffs") are Tier I suppliers of automotive parts for Chrysler. Defendant is a Tier II supplier of circuit boards and other electronic components used in the interiors that Plaintiffs supply to Chrysler. This matter originally arose out of Plaintiffs' claims against Defendant for breach of contract. Specifically, Plaintiffs allege that Defendant failed/refused to supply Plaintiffs circuit boards at the quantities, pricing and timing contained in the parties' supply agreement.

On November 12, 2013, Defendant filed its counter and third party complaint in this matter ("Counterclaim"). Although Defendant does not specifically seek to recover "lost revenue" in its Counterclaim, it has consistently asserted that it is seeking to recover over \$68,000,000.00 in "lost revenue."

On August 26, 2014, Plaintiffs filed their instant motion for summary disposition requesting the Court grant summary disposition in their favor on the issue of whether lost revenue is a type of damage recoverable under Michigan law. Defendant has since filed a response and reply and requests that the motion be denied. Plaintiffs have also filed a reply and supplement in support of their motion. On September 22, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

Standard of Review

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

Arguments and Analysis

The instant motion boils down to one question: Whether lost revenue is a type of damages which is recoverable under Michigan law. At the hearing held in connection with the instant motion Defendant's counsel, while maintaining that Defendant has not sought to recover lost revenue, stated that lost revenue could be recoverable under *Dayton Progress Corp v Moellering*, No. 89-CV-73100-DT (ED Mich, July 24, 1991), *aff'd*, 976 F2d 733 (6th Cir 1992). In *Dayton*, the court held:

27. The measure of damages in a breach of contract suit is to place the injured party in as good a position as he would have been in if the promised performance had been rendered. *Lawton v Gorman Furniture Corp*, 90 Mich App 258, 282 N.W.2d 797, 801 (1979); *Parmet Homes, Inc. v Republic Insurance Co*, 111 Mich App 140, 314 NW2d 453, 458 (1981); *Allen v Michigan Bell Telephone Co*, 61 MichApp 62, 68, 232 NW2d 302, 305 (1975).

28. Damages recoverable for breach of contract are those that arise naturally from the breach or those that were contemplated by the parties at the time the contract was made. *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich. 401, 295 N.W.2d 50 (1980). Where appropriate, such damages may include lost revenues, lost profits, and future loss of revenues and profits. *American Anodco, Inc v Reynolds Metal Co*, 743 F2d 417, 423 (6th Cir 1984); *Parmet Homes, supra*; *Lorenz Supply Co v American Standard, Inc*, 100 Mich App 600, 611 300 NW2d 335, 340 (1980), *aff'd*, 419 Mich 610 (1984); *Fera v Village Plaza, Inc*, 396 Mich 639, 242 NW2d 372 (1976).

As a preliminary matter, neither the Court in *Dayton*, nor any of the three cases cited by Judge Rosen ultimately awarded lost revenue to the prevailing party. The reason for that refusal, and the reason why lost revenue is not awarded under Michigan law, is simple. As Judge Rosen noted in *Dayton*, “the measure of damages in a breach of contract suit is to place the injured party in as good a position as he would have been in if the promised performance had been rendered.” While lost profits arising from a breach, if properly proven, are an appropriate element of damages (*Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175-176, 568 NW2d 365 (1997)), Defendant has failed to provide any authority, and the Court has not found any precedent, for awarding a party lost revenue. The reason is most likely because lost revenue, unlike lost profits, does not take into consideration the costs the party would have incurred had the contract been completed. Accordingly, if a party were awarded lost revenue it would be placed in a position better than the position they would have been in if the promised performance had been rendered. For this reason, the Court is convinced that while Defendant may potentially recover its lost profits, it can not potentially recover damages for lost revenue.

Conclusion

For the reasons discussed above, Plaintiffs’ motion for partial summary disposition is GRANTED. Specifically, Defendant will not be able to recover as damages its “lost revenue” in the event it prevails on its claims. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

/s/ JOHN C. FOSTER
JOHN C. FOSTER, Circuit Judge

Dated: October 8, 2014

JCF/sr

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