

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

DANA LIMITED,

Plaintiff,

vs.

MICO INDUSTRIES, INC.,

Defendant.

Case No. 15-05700-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING PLAINTIFF DANA
LIMITED'S MOTION FOR PRELIMINARY INJUNCTION

In the automotive industry, long supply chains and “just in time” delivery give suppliers an extraordinary amount of leverage in demanding concessions from purchasers of custom-built parts. Indeed, one intransigent supplier can shut down production lines up and down the supply chain. In this case, Plaintiff Dana Limited (“Dana”) has requested injunctive relief barring one of its suppliers, Defendant Mico Industries, Inc. (“Mico”), from cutting off shipments of shock tower brackets that are incorporated into axle-tube assemblies for the Ford Motor Company P-473 Super Duty Truck program. Mico insists that it can no longer furnish shock tower brackets for \$5.60 per unit, so Mico has asked the Court to either release it from any further obligation to provide shock tower brackets to Dana or require Dana to pay a higher per-unit price from this point forward. Based on the Court’s conclusions that the two parties entered into a binding contract in 2013 for the supply of shock tower brackets at \$5.60 for “the life of the program” and that a disruption in the supply of those parts will result in irreparable harm throughout the supply chain, the Court shall enter a preliminary injunction directing Mico to continue supplying brackets to Dana for \$5.60 per unit.

I. Factual Background

For more than a decade, Defendant Mico has fabricated and shipped shock tower brackets for Plaintiff Dana in connection with the Ford P-473 Super Duty Truck program. Initially, Dana paid Mico \$8.57 per unit for the brackets, see Defendant's Response to Plaintiff's Motion for Preliminary Injunction, Exhibit 3, but the parties contemplated that the per-unit price for brackets would steadily decrease over the life of the program.¹ See id. In March of 2013, the parties began a dialogue about possible cost reductions "on the current shock bracket assembly." See Hearing Exhibit 3 at page 10 (March 7, 2013, e-mail from Butch Bosco to Daniel Costello). As that discussion evolved through e-mail correspondence, Butch Bosco offered a reduced price of \$5.899 per piece on behalf of Mico, see id. at page 9, the parties exchanged detailed information, see id. at page 6, Daniel Costello made a counter-proposal for Dana of "an ALL IN piece price of **\$5.60** for this shock tower" bracket, see id. at page 4, and Bosco – as "Account Manager Mico Industries, Inc." – responded in an e-mail on March 20, 2013, as follows:

Mico has reviewed your commercial request below regarding the Shock Bracket Assembly. We agree with your request regarding the selling price of \$5.60 all in, the surcharges and scrap credit will continue to be in effect based on the American Metal Market indices as the market fluctuates in the future. This is contingent on Dana's agreement to keep the current assembly in Mico for the remainder of the life of the current assembly on the P 473 program.

We would like to make the effective date of this change April 1, 2013. We also would like to continue to pursue with Dana our redesign program for the future. As we have looked at the tooling cost and feel that the our [sic] initial estimate can be reduced by \$50,000.

Id. at page 4. After an exchange of e-mails about the details of the revised agreement, Bosco sent

¹ Such a trend is common in the automotive-supply industry, where suppliers ultimately can recover their fixed costs for production projects and, as a result, reduce their production costs to the variable costs associated with providing the parts.

a final e-mail to Costello stating: “I have talked with Hank Visser a number of times regarding this format and Mico agrees with your calculations as we go forward effective April 1, 2013.” See id. at page 2 (March 26, 2013, e-mail from Bosco to Costello).

True to their word, the parties maintained their commercial relationship after April 1, 2013, at a revised rate of \$5.60 for each shock tower bracket. In fact, when Plaintiff Dana informed Butch Bosco of Defendant Mico in June of 2014 that Ford wanted “to change the mix/capacity on the Ford P473 front program” and asked whether Mico could handle that “uplift with no additional capital, tooling or piece price[.]” Mico’s independent sales representative tersely responded that “Mico does not foresee the need for any additional capital, tooling or piece price needed for the increased volume below.” See Hearing Exhibit 8. Shortly thereafter, Joseph Meinke became president of Mico, and he soon became convinced that Mico was losing money on the shock tower brackets it sold to Dana. Nevertheless, because Mico hoped to obtain a contract for production of components for the next generation of Ford Super Duty trucks known as the P-558 program, Meinke decided that Mico would bear the loss on the shock tower brackets that it supplied for the P-473 program in order to improve its position in the bidding process for the P-558 program.

In May of 2015, Defendant Mico learned that it had lost out in the bidding process for the P-558 program. Almost immediately, Mico demanded relief from Plaintiff Dana with respect to the price for the shock tower brackets for the P-473 program. See Hearing Exhibit 9 at page 6 (e-mail from Mike Lazzarini to Jacob Moser). Dana refused to relent, so Mico threatened “to discontinue production on this part effective June 14, 2015[.]” See id. at page 2. Dana responded by filing this action on June 22, 2015, alleging breach of contract and promissory estoppel. On June 30, 2015, the Court conducted an evidentiary hearing to address Dana’s request for a preliminary injunction. At

the conclusion of that hearing, the Court promised to issue an opinion promptly on that request for injunctive relief. Thus, the Court must now determine whether Dana should be granted injunctive relief to maintain its supply of shock tower brackets from Mico.

II. Legal Analysis

An injunction “represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity.” Davis v Detroit Financial Review Team, 296 Mich App 568, 613 (2012). Because Plaintiff Dana requests injunctive relief, it must bear “the burden of establishing that a preliminary injunction should be issued[.]” See MCR 3.310(A)(4). Our Court of Appeals “has identified four factors to consider in determining whether to grant a preliminary injunction[.]” Davis, 296 Mich App at 613. Those four factors are as follows:

(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.

Id. The Court must remember that an injunction is only appropriate if “there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.” Id. at 614. Applying these standards, the Court shall address the propriety of injunctive relief in this case.

A. Likelihood of Success on the Merits.

Although Plaintiff Dana has advanced two claims, Dana has chosen to rely exclusively upon its breach-of-contract theory in pursuing injunctive relief. Under Michigan law, that claim requires proof of three elements: “(1) there was a contract (2) which the other party breached (3) thereby

resulting in damages to the party claiming breach.” Miller-Davis Co v Ahrens Construction, Inc, 495 Mich 161, 178 (2014). A contract “requires an offer and acceptance, and mutual assent to be bound, which is also described as a ‘[m]eeting of the minds.’” Houghton Lake Area Tourism & Convention Bureau v Wood, 255 Mich App 127, 149 (2003). The Court concludes that the exchange of e-mails in March of 2013 between Daniel Costello of Dana and Butch Bosco on behalf of Defendant Mico involved an offer and acceptance sufficient to form a contract. See Hearing Exhibit 3. Moreover, the Court concludes that the terms of that contract are memorialized in Bosco’s e-mail of March 20, 2013, which agreed to “the selling price of \$5.60 all in . . . for the remainder of the life of the current assembly on the P 473 program.” See Hearing Exhibit 3 at page 4.

Faced with contractual language it no longer wishes to honor, Defendant Mico has urged the Court to alter the price term of its agreement with Plaintiff Dana. This the Court cannot do because “[a] fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*.” See Rory v Continental Ins Co, 473 Mich 457, 468 (2005). The March 20, 2013, e-mail sent by Butch Bosco on behalf of Mico unambiguously assents to “the selling price of \$5.60 all in,” see Hearing Exhibit 3 at page 4, and agrees “to keep the current assembly at Mico for the remainder of the life of the current assembly on the P 473 program.” See id. Thus, the central terms of the parties’ contract governing price and duration cannot be changed at the Court’s whim. In fact, Mico expressed no interest in changing those terms when invited to do so in June of 2014, see Hearing Exhibit 8, and Mico’s president, Joseph Meinke, subsequently made a strategic decision to abide by the terms of the contract in hopes of obtaining additional work from Dana, so any modification by the Court of the unambiguous terms of the contact seems antithetical to the parties’ own decisions about how best to manage their contractual obligations.

Although Defendant Mico contests Plaintiff Dana's likelihood of success on the merits, the Court regards Dana's victory as virtually inevitable. First, the e-mail exchange makes clear that the duration of the contract is "the remainder of the life of the current assembly on the P 473 program," see Hearing Exhibit 3 at page 4, so Mico's obligation to provide shock tower brackets for \$5.60 per unit will not terminate until the P-473 program runs its course.² Second, Mico argues that it has no contractual relationship with Dana because U.S. Manufacturing Corporation, which essentially acts as a purchaser's agent for Dana, constitutes Mico's only contracting partner, but the e-mail exchange in March of 2013 between Butch Bosco and Daniel Costello completely undercuts that contention. See Hearing Exhibit 3. Third, Mico asserts that any contractual relationship it may have with Dana contemplates spot buys, rather than a requirements agreement, but the terms set forth in the e-mail exchange in March of 2013 between Bosco and Costello make clear that Dana and Mico entered into a requirements contract.³

To be sure, Defendant Mico has merely threatened to breach its contract with Plaintiff Dana, but that threat to terminate the supply of shock tower brackets expressed by Mico supports a claim for "repudiation or anticipatory breach" on behalf of Dana. See Stoddard v Manufacturers National Bank of Grand Rapids, 234 Mich App 140, 163 (1999) ("if, before the time of performance, a party

² Joseph Meinke testified that he expected that the P-473 program would end by the Spring of 2015, but the request for quotations for the next-generation P-558 program that Plaintiff Dana sent to Defendant Mico on June 21, 2013 makes clear that the next-generation P-558 program was not scheduled to begin until January 1, 2016. See Hearing Exhibit 6 at page 2. Therefore, Mico knew or should have known by June of 2013 that the P-473 program would not end until after 2015.

³ As our Court of Appeals explained in an unpublished decision: "A requirements contract is one in which 'the quantity term is not fixed at the time of contracting [and t]he parties agree that the quantity will be the buyer's needs or requirements of a specific commodity or service' over the life of the contact." Eden Foods, Inc v American Soy Products, Inc, No 318337, slip op at 6 (Mich App Jan 22, 2015) (unpublished decision).

to a contract unequivocally declares the intent not to perform, the innocent party has the option to either sue immediately for the breach of contract or wait until the time of performance”). Hence, the Court concludes that Dana may proceed on its breach-of-contract claim even though it has not yet been damaged by a termination of the supply of shock tower brackets. Because Mico has threatened “to discontinue production on this part effective June 14, 2015,” see Hearing Exhibit 9 at page 2, the Court need not require Dana to wait for that breach to occur before allowing Dana to proceed on its breach-of-contract claim.

B. Irreparable Harm.

In most circumstances, monetary damages readily compensate a plaintiff for losses resulting from a breach of contract, so injunctive relief ordinarily is not appropriate when the plaintiff alleges breach of contract. As our Supreme Court has explained, “a preliminary injunction should not issue where an adequate legal remedy is available.” See Pontiac Fire Fighters Union Local 376 v City of Pontiac, 482 Mich 1, 9 (2008). But supply-chain litigation in the automotive industry more readily lends itself to injunctive relief because a breach of contract disrupting the “just in time” delivery of components can cause catastrophic harm throughout the supply chain. See, e.g., Kelsey-Hayes Co v Galtaco Redlaw Castings Corp, 749 F Supp 794, 797-798 & n7 (ED Mich 1990). Dana has made a compelling showing that no viable alternative exists if Mico stops supplying shock tower brackets. By all accounts, it would take weeks – or even months – to find another supplier and ensure that that supplier could produce shock tower brackets satisfactory to Ford for the P-473 program. And during the search for a new supplier, the supply chain would remain idle. This constitutes precisely the type of irreparable harm that warrants injunctive relief.

C. Balance of Harms.

In simple terms, the balance of harms turns upon whether more harm will ensue if the supply chain is disrupted or if Defendant Mico is required to fulfill its obligation under the parties' contract. Allowing Mico to withdraw from its contractual relationship with Plaintiff Dana will have a ripple effect throughout the supply chain, idling production lines and depriving Ford Motor Company and its consumers of products that should be brought to market. In contrast, requiring Mico to complete its obligation under the contract may very well cause Mico financial distress, but Mico itself chose to endure that financial hardship in 2014 when it had the opportunity to adjust its per-unit price, see Hearing Exhibit 8, and later when Mico's president elected to meet the contract-based price in hopes of obtaining additional orders from Dana. Only after Mico learned it had failed in its bidding effort on the P-558 program did the company seek to withdraw from its contractual relationship with Dana for shock tower brackets for the P-473 program. Thus, the Court concludes that the balance of harms militates in favor of holding the parties to their contractual obligations, especially because the P-473 program will likely end within a matter of months, thereby liberating Mico from the financial burden of supplying shock tower brackets at the price of \$5.60 per unit.

Defendant Mico insists that requiring it to continue supplying shock tower brackets for \$5.60 for the duration of the P-473 program will bankrupt the company, so the Court should enter an order permitting Mico to substantially raise the per-unit price. That argument, however, incorrectly frames the question before the Court. The per-unit price Mico negotiated with Plaintiff Dana constitutes a market-based outcome of arm's-length bargaining. As our Supreme Court has observed, "[c]ourts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals to arrange their affairs via contract." Rory, 473 Mich at 468. Proposing a decidedly non-

market solution in which the Court sets a new per-unit price, Mico insists that the harm should fall on Dana, rather than Mico, because Dana is a larger company that can more readily bear the financial burden of the parties' price dispute. Such an approach would not only contravene the unambiguous terms of the parties' contract, but also require the Court to arbitrarily override the laws of supply and demand that have guided the parties' negotiations for more than a decade. The Court most assuredly ought not arrogate that power to itself, even at the insistence of one of the parties. Accordingly, the Court rejects Mico's invitation to set a new per-unit price for shock tower brackets for the duration of the P-473 program.

D. Harm to Public Interest.

The potential harm to the public in the absence of injunctive relief is manifest. If the Court allows Defendant Mico to cut off the supply of shock tower brackets, workers throughout the supply chain almost certainly will be laid off and Ford's Super Duty trucks will not be delivered to market. These predictable harms will not occur if the Court issues an injunction requiring Mico and Plaintiff Dana to live up to their contractual obligations. Consequently, the appropriate outcome seems clear: the Court must provide injunctive relief to keep the supply chain properly functioning.

III. Conclusion

For all of the reasons stated in this opinion, the Court concludes that Plaintiff Dana has made a compelling case for a preliminary injunction that holds the parties to their contractual obligations and keeps the supply chain in working order. Therefore, **IT IS ORDERED that Defendant Mico Industries, Inc., shall be prohibited and enjoined from cutting off the supply of shock tower brackets to Plaintiff Dana Limited for the life of the P-473 program or until further order of**

the Court. IT IS FURTHER ORDERED that the per-unit price for each shock tower bracket shall be \$5.60 per the terms of the parties' contract. Although the Court understands that such a price may be financially burdensome for Mico, the Court cannot substitute a different price for the parties' contractually agreed per-unit price.

IT IS SO ORDERED.

Dated: July 2, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge