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

FCA US LLC, a Delaware limited liability Company,

Plaintiff/Counter-Defendant,

Case No. 24-205863-CB

Hon. Victoria A. Valentine

v.

KAMAX, INC., a Delaware corporation, and KAMAX MEXICO S. DE R.L. DE C.V., a Mexican Corporation,

Defendants/Counter-Plaintiffs.

____/

OPINION AND ORDER REGARDING DEFENDANT KAMAX INC.'S MOTION FOR SUMMARY DISPOSITION AND TO DISSOLVE PRELIMINARY INJUNCTION

At a session of said Court held on the
17th day of May 2024 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

OPINION

This matter is before the Court on Defendant/Counter-Plaintiff Kamax Inc.'s Motion for Summary Disposition and to Dissolve Preliminary Injunction. Having reviewed the pleadings, the parties' briefs, and having considered the arguments presented at the motion hearing, the Court issues this Opinion and Order.

I.

Overview

Plaintiff FCA US LLC ("FCA") brings this action seeking to enforce automotive supply contracts with Defendants KAMAX, Inc. and KAMAX Mexico S. De R.L. De C.V. (collectively "Kamax"). FCA alleges that Kamax is obligated to supply FCA with fastener parts (the "Goods") "for automobiles that FCA manufactures in seventeen of its major automobile manufacturing plants, representing nearly all of FCA's North American assembly and powertrain manufacturing operations."[1] It is alleged that "KAMAX is obligated to supply FCA with the Goods pursuant to the relevant Purchase Orders issued by FCA and accepted by KAMAX and subject to the terms and conditions set forth in the Production and Mopar Purchasing General Terms and Conditions" (the "Agreements").[2]

FCA alleges that the Agreements are requirement contracts under which Kamax is obligated to supply FCA with the Goods to meet FCA's requirements set forth in FCA's releases through the life of the applicable FCA vehicle program. FCA alleges that Kamax breached the Agreements when "[i]nstead of continuing to supply the Goods under the agreed upon pricing terms, beginning February 20, 2024, Kamax stopped delivery of the Goods. . . ."[3] FCA filed the instant Complaint alleging breach of contract and seeking specific performance, declaratory judgment, and injunctive relief. Kamax filed a Counterclaim alleging claims of unjust enrichment, common law conversion, and statutory conversion.

In an Order dated March 21, 2024, this Court granted FCA's Motion for a Preliminary Injunction. On April 5, 2024, Kamax filed this Motion seeking Summary Disposition under MCR

[1] Complaint, ¶ 1.
[2] *Id.* at ¶ 10.
[3] *Id.* at ¶ 17.

2.116(C)(10) as to all the claims in FCA's Complaint as well as the Counterclaims alleged by Kamax. Kamax acknowledges that discovery is not yet complete in this case but asserts that summary disposition is appropriate under MCR 2.116(C)(10) because the question of whether the Agreements are requirement contracts or release-by-release contracts can be determined as a matter of law.

II.
Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Universal Underwriters Group v Allstate Ins Co,* 246 Mich App 713, 720; 635 NW2d 52 (2001). The court, in reviewing a motion under MCR 2.116(C)(10), "considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion." *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citation omitted). The motion may be granted "if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.*

Generally, summary disposition before discovery is complete is premature. *Caron v Cranbrook Ed Community*, 298 Mich App 629, 645; 828 NW2d 99 (2012). An exception to the general rule applies where further discovery does not stand a fair chance of uncovering factual support for the party opposing the motion. *Id.* "A party opposing a motion for summary disposition because discovery is not complete must provide some independent evidence that a factual dispute exists. Mere speculation that additional discovery might produce evidentiary support is not sufficient." *Id.* at 646 (quotation marks and citations omitted).

III.

Summary Disposition on FCA's Complaint

Contract Law-Supplier Contracts

"Under Michigan law, contracts for the sale of goods – including supplier contracts – are governed by the Uniform Commercial Code (the UCC), MCL 440.1101 *et seq*." *MSSC, Inc v Airboss Flexible Products Co*, 511 Mich 176, 180; 999 NW2d 335 (2023). The UCC "is to be liberally construed and applied to promote [its] underlying purposes and policies." MCL 440.1103; *Power Press Sales Co v MSI Battle Creek Stamping*, 238 Mich App 173, 180; 604 NW2d 772 (1999). Absent directly controlling UCC provisions, questions are resolved according to general legal principles including the law of contract interpretation. MCL 440.1103; *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 131-132; 602 NW2d 390 (1999).

A court's "goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself." *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144; 881 NW2d 95 (2016). "[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312; 931 NW2d 604 (2019) (emphasis in original) ("A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*" and a court "will not create ambiguity where the terms of the contract are clear.")

The question of whether contract language is ambiguous is a question of law. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). A contract is ambiguous if there is an irreconcilable conflict between provisions in the contract or "when a term is equally

susceptible to more than a single meaning." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 220; 933 NW2d 363 (2019). Under such circumstances the meaning of ambiguous contract language presents a question of fact. *Klapp*, 468 Mich at 469. "[I]f a contract is ambiguous, then extrinsic evidence is admissible to determine the actual intent of the parties." *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010) (quotation marks and citation omitted).

Requirements Contract versus Release-by-Release Contract

The parties agree that, for the purposes of this Motion, the issue is whether the alleged Agreements for "approximately 65%-100% of our requirements" are requirements contracts or release-by-release contracts.[4]

As was stated in *MSSC, Inc v Airboss Flexible Prods Co*, 511 Mich 176; 999 NW2d 335 (2023), the UCC governs supplier contracts. At issue in *Airboss* and in this case is the statute-of-frauds provision of the UCC and, more specifically, MCL 440.2201(1).[5] As described by the Michigan Supreme Court in *Airboss*:

> The first sentence of MCL 440.2201(1) mandates that contracts entered into for the sale of goods worth $1,000 or more must be in writing. The second sentence of MCL 440.2201(1) allows for some terms to be missing or incorrect but provides that a court can only enforce the contract up to the quantity set forth in writing. In other words, quantity is the only *essential* term required by the statute of frauds. If an agreement for the sale of goods contains a quantity, then the agreement satisfies

[4] As was described above, the alleged Agreements consist of Purchase Orders and related Terms and Conditions. "Kamax does not concede that these contracts are enforceable even if they are requirements contracts because it has other arguments than the quantity-term argument in this motion. Those other arguments require factual development. Kamax thus seeks summary disposition on the quantity-term argument because no factual development is necessary on that issue." Motion, p 1, n 2.

[5] MCL 440.2201(1) states:

> Except as otherwise provided in this section, a contract for the sale of goods for the price of $1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing.

> the statute of frauds. [*Airboss*, 511 Mich at 181 (citations omitted) (emphasis in original).]

The *Airboss* court went on to state:

> Thus, in reviewing an agreement involving the sale of goods for more than $1,000, a court must endeavor to identify the "quantity term" in the contract to determine whether the contract is enforceable. When a contract fails to include a quantity term, parol evidence—that is, evidence outside the contract itself—"[cannot] be offered to supply a missing quantity term." *In re Frost Estate*, 130 Mich App at 559, 344 N.W.2d 331. In contrast, when a contract provides a quantity term but fails to express details sufficient to determine the specific or total quantity, "it may be explained or supplemented by parol evidence." *Id.* at 560, 344 N.W.2d 331, citing MCL 440.2202 (the UCC's parol evidence provision). [*Airboss*, 511 Mich at 181.]

Under MCL 440.2306(1) a contract's quantity term may be measured "by the output of the seller or the requirements of the buyer . . . ." The court in *Airboss* stated that MCL 440.2306(1) "allows for parties to enter into contracts that provide a quantity term but lack specificity as to the total of goods agreed upon." *Airboss*, 511 Mich at 182. The court discussed the types of contracts that fall under this provision including an output contract, which defines quantity by the supply provided by the seller and a "requirements contract" which is "a contract that defines quantity by reference to the buyer's requirements." *Id.* at 182.

The Court stated that requirements contracts:

> Are often created by an umbrella agreement, which is also referred to as a "blanket purchase order." This umbrella agreement sets forth the terms governing items such as price, length of the contract, warranty details, indemnification, and termination. . . . Most importantly, in a requirements contract, the terms of the blanket purchase order also dictate that the buyer will obtain a set share of its total need from the seller (such as "all requirements of the buyer"). This phrase satisfies the quantity term required by the statute of frauds. MCL 440.2306(1). To supplement this general term, the buyer will typically later issue "releases" to let the seller know its specific short-term requirements. [*Airboss*, 511 Mich at 183.]

The Michigan Supreme Court also described a "release-by-release" contract where the blank purchase order sets out overall contract terms but does not "set forth the share of the buyer's

need to be purchased from the supplier." *Id.* at 183-184. "Release-by-release contracts [are] structured so that their overarching terms are only enforceable once a firm quantity is stated, which happens only when a release is issued and accepted." *Id.* at 184 (quotation marks and citation omitted).

The Supreme Court then went on to distinguish requirements contracts from release-by-release contracts stating:

> The key difference between a requirements contract and a release-by-release contract rests in the level of mutual obligation between the parties and the risk each party bears. A requirements contract assures the seller that the buyer will be a customer for the length of the contract, but the seller cannot reject future orders for the length of the contract. In contrast, a release-by-release contract gives both parties the freedom to allow their contractual obligations to expire in short order by either not issuing or not accepting a new release. . . .The seller cannot be guaranteed future business from the buyer, but the seller can accept or reject any offer for future orders. [*Airboss*, 511 Mich at 185 (quotation mark and citations omitted.)]

The Michigan Supreme Court determined that the writings at issue in *Airboss* did not contain a quantity term. "Rather, the purchase order in this case only stated that [buyer] would issue releases; it made no reference anywhere to a quantity term."[6] *Id.* at 190. Accordingly, the

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[6] The *Airboss* court described the purchase order in that case as follows:

> That purchase order included specific terms and incorporated the general terms and conditions found on MSSC's website by reference. It also included the following language:
>
> > If this Purchase Order is identified as a "blanket" order, this order is valid and binding on seller for the lifetime of the program or until terminated pursuant to MSSC's Terms and Conditions.
>
> The purchase order further stated that "[a]nnual volume is an estimate based on the forecasts of MSSC's customers and cannot be guaranteed." The incorporated terms and conditions stated, in relevant part:
>
> > 2. BLANKET ORDERS: If this order is identified as a "blanket order", [MSSC] shall issue a "Vendor Release and Shipping Schedule" to [Airboss] for specific part revisions, quantities and delivery dates for Products. [MSSC] shall have the right to cancel, adjust or reschedule the quantities of Products shown in such "Vendor Release and Shipping Schedule," except that it may not cancel, adjust or reschedule the Products shown as "Firm Obligations" on such "Vendor Release and Shipping Schedule." [*Airboss*, 511 Mich at 186.]

documents between the parties created a release-by-release contract which bound the supplier only to each individual release accepted and did not constitute a promise to fulfill all future releases. *Id*.

In the instant case, the Purchase Orders state "[t]his order is for approximately 65%-100% of our requirements."[7] Kamax argues that the purchase order lacks a sufficient quantity term because the 65%-100% range is imprecise and not a commitment to obtain a "set share" of FCA's total need from Kamax. Therefore, it argues that the Agreements at issue are not requirements contracts, but release-by-release contracts.

In *Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, LLC*, 331 Mich App 416, 429; 952 NW2d 576 (2020) the Michigan Court of Appeals determined that the documents between the parties established the existence of a requirements contract. In *Cadillac Rubber* the terms and conditions, incorporated by reference in the purchase orders, stated that "Buyer shall purchase no less than one piece or unit of each of the Supplies and no more than one hundred percent (100%) of Buyer's requirements for the Supplies." *Id.* at 419-420, 430. Thus, under *Cadillac Rubber* the 65%-100% range stated on the Purchase Orders in this case qualifies as a quantity term sufficient to establish a requirements contract.[8]

Kamax argues that this Court should not follow *Cadillac Rubber* because it "irreconcilably conflicts with *Airboss*, and because *Airboss* was decided more recently and by a superior court, *Airboss* controls." This Court disagrees.

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[7] Motion, Exh 2, Example Purchase Order. Kamax states that "[f]or purposes of this motion, Kamax stipulates that the versions it received contain the contract provisions relevant here, and that each purchase order at issue contains the same relevant provisions. For conciseness, Exhibit 2 contains only a single exemplar purchase order in each format." Motion, p 3 n 5.

[8] Kamax asserts that an approximate range (i.e.- "approximately 65%-100%) too imprecise to state a quantity term sufficient to establish a requirements contract. However, this Court agrees with FCA that the use of the term "approximately" does not invalidate the range as a quantity term.

The Court in *Airboss* distinguished *Cadillac Rubber* stating "in *Cadillac Rubber*, the Court found the existence of a quantity term – 'a quantity between one part and 100%' – which therefore allowed it to use evidence of past practice (or parol evidence) to discern the parties' intent. Here the documents between [buyer] and [supplier] do not contain *such a quantity term*." *Airboss*, 511 Mich 194-195 (citation and footnote omitted) (emphasis added). Although the supplier in *Airboss* urged the Supreme Court to overrule *Cadillac Rubber* and to adopt *Acemo, Inc v Olympic Steel Lafayette, Inc*, unpublished per curiam decision of the Court of Appeals, issued October 27, 2005 (Docket No. 256638), the Supreme Court specifically declined to do so.[9] *Airboss*, 511 Mich 194 n 4.

This Court is bound to follow the decision in *Cadillac Rubber*. "[A] published decision of the Court of Appeals is controlling precedent for trial courts," *Michigan Educ Employees Mut Ins Co v Morris*, 460 Mich 180, 195; 596 NW2d 142 (1999) citing MCR 7.215(C)(2) and remains binding "until such time as a decision of the Supreme Court enters altering the lower court decision or questioning its rationale." *Straman v* Lewis, 220 Mich App 448, 451; 559 NW2d 405 (1996) (quotation marks and citation omitted). As was explained above, the Michigan Supreme Court specifically declined to overrule *Cadillac Rubber* or analyze its rationale.[10]

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[9] The Supreme Court stated:

> Airboss has urged us to overrule the holding in *Cadillac Rubber* that the purchase order's language providing for "a quantity between one part and 100%" constituted a proper quantity term for a nonexclusive contract under MCL 440.2201(1), thus allowing for the use of parol evidence to determine the parties' intent as to the existence of a requirements contract. Airboss urges us instead to adopt the position taken in *Acemco*, unpub. op. at 5, which held that a requirements contract cannot grant "complete discretion" to the buyer because " '[a]ny' quantity is in fact no quantity at all." We decline to address this apparent inconsistency today because, in this case, there was no quantity term set forth in the purchase order or in any other document. Whether *Cadillac Rubber* and *Acemco* can be reconciled and, if not, which is correct remain questions for another day.

[10] Kamax cites *Ultra Manufacturing (USA), Inc v ER Wagner Manufacturing Co*, __ F Supp3d __, 2024 WL 280515 (ED Mich, 2024) (Case No. 24-10025 signed January 25, 2024) in support of its argument that *Cadillac Rubber* is no longer good law after *Airboss.* However, this Court is not bound to follow opinions of lower federal courts. *Abela v*

Based on the foregoing the Court concludes that the Agreements alleged in this case are requirement contracts. Accordingly, Kamax's Motion for Summary Disposition on FCA's Complaint and to Dissolve the Preliminary Injunction is denied.

IV.

Summary Disposition on Defendant's Counter-Complaint

Conversion

Conversion is "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 497 Mich 337, 346; 871 NW2d 136 (2015).

Under MCL 600.2919a, a plaintiff "may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees" if that person is damaged as a result of "[a]nother person's stealing or embezzling property or converting property to the other person's own use." MCL 600.2919a(1)(a). Proof of common law conversion is necessary to establish a claim of statutory conversion. *Aroma Wines*, 497 Mich at 354-357. *See also Magley v M & M, Inc,* 325 Mich App 307, 314 n 3; 926 NW2d 1 (2018).

Kamax argues that because it had no contractual duty to deliver parts to FCA after February 24, 2024, FCA's exercise of dominion over the Goods was inconsistent with Kamax's rights to possess the property and sell it only on terms that it accepts. However, this argument fails as this Court has concluded that the alleged Agreements between the parties were requirement contracts. Summary Disposition is denied as to Kamax's Conversion Claims.

General Motors Corp, 469 Mich 603, 606; 677 NW2d 325 (2004). Additionally, the federal district court in *Ultra* was operating under a different mandate than this Court. *See Ultra Manufacturing*, at *4 (In a federal diversity case "if the Michigan Supreme Court has not spoken to a particular issue, [the federal court] must predict how the Michigan Supreme Court would rule if confronted with that issue.")

Unjust Enrichment

Under the equitable doctrine of unjust enrichment, the law "indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received to ensure that exact justice is obtained." *Kammer v Asphalt Paving Co, Inc v East China Twp Schs*, 443 Mich 176, 185-186; 504 NW2d 635 (1993) (quotation marks and citations omitted). "Because this doctrine vitiates normal contract principles, the courts employ the fiction with caution. . . ." *Id.* at 186.

> The essential elements of a quasi-contractual obligation, upon which recovery may be had, are the receipt of a benefit by a defendant from a plaintiff, which benefit it is inequitable that the defendant retain. Thus, in order to sustain a claim of quantum meruit or 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).

While the question of whether a claim for unjust enrichment can be maintained is a question of law, the question of whether a specific party has been unjustly enriched is generally a question of fact. *Morris Pumps*, 273 Mich App at 193.

Kamax argues that:

> There is no dispute that FCA received a benefit from Kamax when it received the parts it wanted to use to build vehicles at prices less than Kamax would willingly sell them for. FCA had no contractual right to those parts at those prices, so it is unjust for FCA to retain that benefit and for Kamax to be deprived of the benefit of the higher prices.[11]

Again, this argument fails where the Court has determined that the alleged Agreements are requirement contracts. Additionally, a determination of whether a specific party has been unjustly

[11] Motion, p 19.

enriched is generally a question of fact and, in any event, a motion under MCR 2.116(C)(10) on the issue of unjust enrichment is premature.

Based upon the foregoing, Kamax's motion is denied as to its unjust enrichment claim.

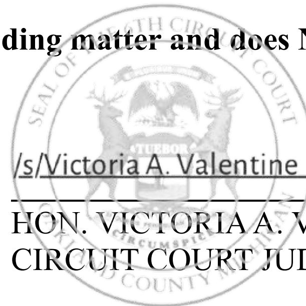
ORDER

Based upon the foregoing Opinion, KAMAX Inc.'s Motion for Summary Disposition and to Dissolve Preliminary Injunction is hereby **DENIED.**

Additionally, to the extent that FAC seeks judgment in its favor pursuant to MCR 2.116(I)(2) as both to its claims and Kamax's counterclaims, this Court finds that such a determination would be premature and therefore, FCA's request for judgment in its favor under MCR 2.116(I)(2) is hereby **DENIED**.

IT IS SO ORDERED.

This Order does NOT resolve the last pending matter and does NOT close the case.



/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 5/17/24