

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

FISCHER AMERICA, INC.,

Plaintiff,

vs.

Case No. 2013-4435-CZ

NJT ENTERPRISES, LLC d/b/a

MAYCO INTERNATIONAL,

Defendant.

OPINION AND ORDER

Plaintiff has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant has filed a response and requests that the motion be denied. Plaintiff has also filed a reply brief in support of its motion.

Factual and Procedural History

This matter involves a contract dispute between two automotive suppliers. Plaintiff is a tier-2 supplier of a storage bin previously used in the Jeep Grand Cherokee. Defendant is a tier-1 supplier. The storage bin produced by Plaintiff was comprised of multiple parts, each of which were acquired from other suppliers and then combined by Plaintiff to create the bin. One such part was a wire harness produced overseas, which had a 22 week lead time, meaning that it took 22 weeks for the part to arrive once ordered (“Harness”).

On November 10, 2009, the parties executed a purchase order containing terms and conditions governing the parties’ relationship (“First Contract”). The First Contract’s terms and conditions required Defendant, upon termination without cause, to reimburse

Plaintiff for “reasonable costs it has incurred in performance of the contract.” (*See* Plaintiff’s Exhibit 1, First Contract.)

On April 27, 2011, Defendant emailed Plaintiff a new set of terms and conditions, which purported to govern the parties’ relationship moving forward (“Second Contract”). The Second Contract provides that Defendant must reimburse Plaintiff for “[i]tems which are the subject of firm release orders submitted by [Defendant] and reasonable raw material and work in process expense which [Defendant] directly authorizes [Plaintiff] to incur.” (*See* Plaintiff’s Exhibit 2, Second Contract.)

On or around January 17, 2012, Plaintiff was informed that the price of each Harness was increasing by \$.23 each. Plaintiff then informed Defendant’s commodity manager, Betty Weller, that the price had increased, and requested guidance as to whether Chrysler was accepting the increase and whether it should proceed with purchasing the Harnesses. After exchanging multiple emails, Plaintiff elected to proceed with ordering the Harnesses allegedly needed to satisfy the May 2013 shipments.

Due to a redesign of the Jeep Cherokee, the storage bin previous utilized became obsolete. As a result, Defendant terminated its relationship with Plaintiff in January 2013. Plaintiff then sought reimbursement for \$198,270.04 in raw materials it had on hand to produce the storage bins, \$179,479.82 of which represented the Harnesses. Defendant refused to reimburse Plaintiff the requested costs. Consequently, on November 4, 2013, Plaintiff filed its complaint in this matter seeking to recover the costs Defendant has refused to pay.

On December 22, 2014, Plaintiff filed its instant motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant has filed a response and requests that the motion be denied. Plaintiff has also filed a reply in support of its motion.

On January 20, 2014, the Court held a hearing in connection with the motion and took the matter under advisement.

Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

The parties' sole dispute, for the purpose of the instant motion, is whether Defendant authorized Plaintiff to order the Harnesses in the January 17, 2012 email exchange. The email exchange in question provides:

Plaintiff: I have just been notified by our wire harness supplier that Yazaki has increased the cost of the Chrysler directed connector by - \$.23 each. These components have up to a 22 week lead time and need to be ordered immediately to meet May shipments. Please advise that Chrysler is aware and accepting of the increase. Are you seeing similar increases from Yazaki?

Defendant: Is this Chrysler directed component? I would not know if Chrysler is aware. Yazaki is not a Mayco supplier.

Plaintiff: This is the connector that was specified by Chrysler Engineering as the mating part to the IP Harness for the lighting of the bin. Also, this is a specific connector and there are no known generic substitutes. How would you like to proceed?

Defendant: [Plaintiff] needs to protect the WK builds. We can pass this on to Chrysler but I'm not confident that they will accept a price increase.

Plaintiff: [Plaintiff] cannot cover this. It sounds like we need to get Chrysler Purchasing involved as soon as possible.

(See Defendant's Exhibit 5.)

In its motion, Plaintiff contends that Defendant's representative's statements in the above email exchange amount to a direct and explicit authorization to order the Harnesses. However, the Court is convinced that whether Defendant's statements amounted to an authorization is a genuine issue of material fact which precludes summary disposition. Indeed, this conclusion is supported by Plaintiff's last email in which it states that it cannot cover the cost and that they need to contact Chrysler. The need to consult with Chrysler prior to placing the order evidences that Defendant had not agreed to cover the additional cost of the Harnesses, and that additional discussions needed to take place to determine whether the order should be placed.

While Plaintiff also relies on Ms. Weller's deposition as evidence that she authorized Plaintiff to order the parts, such evidence merely speaks to her subjective belief, which was not articulated in the email or prior to this litigation. Although the trier of fact may ultimately determine that the Defendant's actions amounted to an authorization that ultimately requires it to reimburse Plaintiff, the Court is satisfied that

the issue must be resolved by the trier of fact at trial. See *Freed v Salas*, 286 Mich App 300; 780 NW2d 844 (2009)(Holding that issues of material fact and credibility are to be left for the trier of fact.) For these reasons, Plaintiff's motion for summary disposition must be denied.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion for summary disposition is DENIED. In compliance with 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: January 22, 2015

JCF/sr

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