

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

OSIRIUS GROUP, LLC,

Plaintiff,

vs.

Case No. 2014-3308-CK

ABI SYSTEMS, INC. d/b/a AUTOBUILDERS INC.,

Defendant.

---

OPINION AND ORDER

Plaintiff has filed a motion for a preliminary injunction. Defendant has filed a response requesting that the motion be denied. Defendant also requests that the Court increase the bond Plaintiff has been required to post.

*Factual and Procedural History*

Plaintiff provides a range of engineering and consulting services to original equipment manufacturers and Tier 1 automotive suppliers. Automaker Renault is one of Plaintiff's largest customers. Plaintiff is under contract with Renault to, *inter alia*, re-design one of its plants in Columbia, South America. One portion of the re-design is known as the X52 Body Shop Project ("Project"). Pursuant to its contract with Renault, Plaintiff is required to design, build and deliver a re-designed body shop for the plant, including all of the necessary tooling and equipment so that Renault can launch its 2016 models by June 2015. The Project has strict delivery deadlines and a hard deadline for completion of September 5, 2014.

In February 2014 Plaintiff subcontracted with Defendant to make certain tooling and fixtures (collectively, the "Fixtures") for the shop (the "Contract"). The original terms of the

Contract called for a lump sum price of \$1.5 million. In April 2014 the parties modified the terms of the Contract, changing the lump sum price from \$1.5 to \$1.1 million dollars.

The parties now dispute the scope of work included within the purchase order and whether the \$1.1 million dollar price included all of the work Defendant has been asked to complete.

On August 26, 2014, Plaintiff filed its instant motion for a temporary restraining order and/or preliminary injunction. On the same day the Court entered a temporary restraining order requiring Defendant to allow Plaintiff to enter its premises to take the Fixtures, *inter alia* (the “TRO”). In addition, the TRO required Plaintiff to post a bond in the amount of \$55,000.00. After Plaintiff took possession of the Fixtures and other materials pursuant to the TRO, Defendant filed its objection to the amount of the bond. Specifically, Defendant contends that Plaintiff should be required to post a higher bond.

On October 1, 2014, the Court held a hearing in connection with the motion and request regarding bond and took the matter under advisement. The Court also permitted the parties to submit additional documents in support of their positions. The parties have each filed a supplemental brief, which have been reviewed by the Court.

#### *Arguments and Analysis*

In its response and supplemental pleadings, Defendant requests that the Court dissolve the TRO and order Plaintiff to return all “tooling, fixtures, related material, and design data” taken from Defendant’s facility on August 26, 2014. However, Plaintiff has made it clear that the materials have since been sent by them to Renault, who has likely used the Fixtures in connection with its business. Consequently, even if the Court were inclined to dissolve the TRO the logistics in enforcing any order requiring that the Fixtures be sent back to Defendant would

be extremely difficult at best. In addition, Defendant appears to concede that the value of the materials Plaintiff removed on August 26, 2014 is possible to calculate, as is evidenced by their request for an increased bond “to adequately protect Defendant’s interest in the tools, fixtures, and design data.” *See* Defendant’s Supplemental Brief at 10. Accordingly, the Court is convinced that the proper course on which to proceed is to allow Plaintiff, and by extension Renault, to retain possession of the items at issue pending this litigation. However, if it is determined that Plaintiff did not adequately compensate Defendant for all or some of the items Plaintiff will be liable for damages. For these reasons, the Court is convinced that Defendant’s request for an order requiring the items be returned to it must be denied.

The remaining issue before the Court is whether the \$55,000.00 bond Plaintiff previously posted is sufficient. The original bond amount was determined based on the \$55,000.00 balance Plaintiff asserts remains under the Contract. However, Defendant contends that Plaintiff has dramatically expanded the scope of work Defendant was to complete originally under the Contract.

The first category of costs allegedly not included in the \$1.1 million dollar price is design services Defendant allegedly provided to Plaintiff. Specifically, Defendant contends that Plaintiff was required to provide finished assembly drawing, but did not, which required Defendant to develop the design drawings itself, allegedly at a cost of \$472, 958.34.

Paragraph 4 of page 2 of Defendant’s initial quote (the “Quote”) provided that “[b]uyer will be responsible for providing finished assembly drawings with complete bill of material and detail drawing sets for all make items for each fixture. Where the detail drawing sets are not finished or buyer is unable to produce the necessary detail drawings [Defendant] will assist in the completion of the drawing sets according to the terms and conditions of this proposal.”

In its pleadings, Plaintiff contends that it provided 20 gigabytes of assembly drawings. However, Defendant asserts that the finished assembly drawings it has turned over to Plaintiff amounted to 89.4 gigabytes. In support of its position Defendant relies on the affidavit of Jon Ullom, it's President, in which he testifies that Defendant was required to provide \$472,958.34 worth of additional design due to Plaintiff's failure to provide the complete designs as contemplated by the quote. (*See* Defendant's Exhibit 1.) While Plaintiff appears to contest that additional design work was provided it has failed to provide any evidence contradicting Mr. Ullom's testimony. The Quote provides that any change not in writing will be paid on a time and material basis. (*See* Quote at 6.) The only evidence before the Court as to the value of the design work at issue is the testimony of Mr. Ullom. Accordingly, the Court is satisfied that the bond must be increased to reflect the value of the additional design work.

The next alleged change cited by Defendant is Plaintiff's request for pneumatic clamping rather than the manual clamping allegedly required by the Contract. Defendant contends that this alleged change increased the total price of materials alone by approximately \$240,000.00. In support of its position, Defendant relies on Mr. Ullom's testimony that the pneumatic clamps were not a part of the original purchase orders (*See* Exhibit 1 to Defendant's supplement). Defendant also relies on some change orders which include pneumatic components (*See* Exhibits 4-11 to Defendant's supplement); however, the change orders are not signed by Plaintiff, which creates an issue as to whether the terms of the changes were accepted.

In its supplemental response, Plaintiff argues that it has always required pneumatic clamping for some of the Fixtures. In support of its position, Plaintiff relies on the data it allegedly provided to Defendant prior to Defendant's quote submission (*See* Ex. 3 to Plaintiff's supplement), an email in which Defendant's agent noted that the pneumatic spec sheet had been

approved (*See* Exhibit 6 to Plaintiff's supplement), and Defendant's spreadsheet showing the pneumatic clamping was needed (*See* Exhibit 5 to Plaintiff's supplement).

After reviewing the materials submitted by the parties the Court is not persuaded that the bond posted in this case should be increased in connection with the pneumatic clamping issue. The issue of whether pneumatic clamping, in part, or as a whole, was required by the original purchase price agreed upon by the parties is disputed and the evidence at best creates an issue of fact.

With respect to the remainder of Defendant's motion to increase bond, the Court is satisfied that additional bonding is not necessary at this time.

*Conclusion*

For the reasons discussed above, Plaintiff's motion for a preliminary injunction consistent with the August 26, 2014 temporary restraining order is GRANTED. In addition, Defendant's request for an increased bond is GRANTED, IN PART, and DENIED, IN PART. Plaintiff shall post an additional \$472,958.34 within 21 days of the date of this Opinion and Order, which represents the alleged cost of the design work provided by Defendant beyond the scope contemplated by the parties' original contract. The remainder of Defendant's request for additional bonding is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

\_\_\_\_\_  
/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: November 3, 2014

JCF/sr

Cc: *via e-mail only*  
Michael C. Hammer, Attorney at Law, [mhammer@dickinsonwright.com](mailto:mhammer@dickinsonwright.com)  
Robert L. Stefani, Attorney at Law, [rob@stefani-law.com](mailto:rob@stefani-law.com)