

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

OAKLAND STAMPING, LLC,

Plaintiff,

vs.

Case No. 2014-870-CK

DEL PLASTIC TECHNOLOGIES, LLC a/k/a
DEL TECHNOLOGIES,

Defendant.

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OPINION AND ORDER

Plaintiff has filed a motion for an ex parte temporary restraining order and for possession of property pending final judgment pursuant to MCR 3.105(E). Defendant has filed a response and requests that the motion be denied.

The parties dispute who is entitled to possession of two molds currently in Defendant's possession. Defendant has previously used the molds to produce plastic cams for Plaintiff, which Plaintiff then used to manufacture automotive parts for General Motors ("GM"). It appears undisputed that GM owns the 1st mold. With respect to the 2nd mold, the mold was developed by Defendant pursuant to a contract with Axis Engineering ("Axis"), which is an assumed name of L&W Inc. (*See* Plaintiff's Exhibit 5.) Plaintiff now seeks an order granting it possession of the molds on the basis that GM owns the molds and has authorized them to possess and use the molds. Defendant disputes that GM owns the molds and that Plaintiff has a right to possess them.

MCR 3.105(E) governs motions for possession pending final judgment. MCR 3.105(E) provides:

(1) Motion for Possession Pending Final Judgment. After the complaint is filed, the plaintiff may file a verified motion requesting possession pending final judgment. The motion must

- a. Describe the property to be seized, and
- b. State sufficient facts to show that the property will be damaged, destroyed, concealed, disposed of, or used as to substantially impair its value, before final judgment unless the property is taken into custody by court order.

(3)(b) At the hearing [on the motion], each party may present proofs. To obtain possession before judgment, the plaintiff must establish

- (i) That the plaintiff's right to possession is probably valid; and
- (ii) That the property will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before trial.

With regards to the 1st element, i.e. that Plaintiff's right to possession is probably valid, the Court, at the April 14, 2014 hearing held in connection with this motion, held that the 1st mold is owned by GM. Indeed, Defendant has conceded that GM owns the 1st mold. In addition, GM has authorized Plaintiff to possess the mold on their behalf. (*See* Plaintiff's Exhibit 1.) Accordingly, the Court is satisfied that Plaintiff's right to possess the 1st mold is probably valid.

With respect to the 2nd mold, it is undisputed that the 2nd mold was initially ordered by Axis and that Defendant was to bill Axis for that mold. However, the purchase order indicated that the mold was to be shipped to Plaintiff. Moreover, the purchase order was later amended by Plaintiff. Nevertheless, GM, Axis/L&W and Plaintiff all agree that GM owns the 2nd mold. (*See* Plaintiff's Exhibits 1 and 5.) While Defendant contends that it should not be required to turn over the 2nd mold to GM, through Plaintiff, as it does not have a contract with GM, the Court is convinced that the letters and affidavit submitted by Plaintiff establishes that GM owns the 2nd

mold and that GM has authorized Plaintiff to possess the 2nd mold. Accordingly, Plaintiff has satisfied the first element under MCR 3.105(E).

The 2nd element of MCR 3.105(E) requires Plaintiff to show that the molds will be damaged, destroyed, concealed, disposed of, or used so as to substantially impair its value, before trial. In connection with this element, Plaintiff maintains that the molds have a limited useful life and that recovering the molds prior to trial is needed in order to prevent the molds' value from substantially diminishing. Defendant has not challenged Plaintiff's position. Consequently, the Court is satisfied that Plaintiff has met its burden under the 2nd element. As a result, Plaintiff has satisfied both elements of MCR 3.105(E) and is entitled to possession of the molds pending final judgment.

Conclusion

For the reasons set forth above, Plaintiff's motion for possession pending final judgment is GRANTED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: May 1, 2014

JCF/sr

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