STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CONCEPT INDUSTRIES, INC.,

Plaintiff,

Case No. 14-24-CK

v

FINDINGS OF FACT AND CONCLUSIONS OF LAW

WILLIAMSTON PRODUCTS, INC.,

Defendant.
_____/

At a session of said Court held on the 13th day of March, 2015, in the City of Lansing, County of Ingham, State of Michigan

PRESENT: Hon. Joyce Draganchuk
Circuit Judge

A non-jury trial was held in this case on March 5, 2015. Each side presented one witness. After the Plaintiff ("Concept") rested, the Defendant ("Williamston") moved for a directed verdict. The Court took the motion under advisement. At the conclusion of testimony, the Court took the entire case under advisement for issuance of written findings of fact and conclusions of law.

Concept manufactures and supplies parts to the automotive industry. Williamston manufactures interior trim components. In May 2010, Concept entered into a supply agreement with Toyota for the Lexus RX350 load floor. Under this agreement, Concept would supply a part that covers the spare tire in the rear of the vehicle. The part consisted of two outer shells, or skins, with a foam interior. Concept would produce the skins, but it contracted with Williamston to do the foaming and to manufacture tooling to be used in the

foaming process. Williamston was to place the skins in a tool and pour expanding foam into them. The skins would then be compressed for a set period of time producing a sandwich of skins with foam in the middle. The part was then shipped to Concept and Concept sent it to Vuteq. Vuteq covered the piece with carpeting using a compression process.

Williamston provided a quotation for the manufacture of tooling and foaming. The quotation provided that "cancellation of the program will require reimbursement of cancellation cost associated with tooling." Concept accepted Williamston's offer with a purchase order that was subject to Concept's own terms and conditions. The purchase order was expressly conditioned on Williamston agreeing to all of Concept's terms and conditions. Concept's terms and conditions included a termination provision that required 30 days' notice by Concept and an agreement to pay termination charges limited to the cost of labor and materials for producing goods up to the time that Concept notifies Williamston of termination.

At the hearing on Concept's motion for partial summary disposition, the Court ruled that pursuant to *Challenge Machinery C*o v *Mattison Machine Works*, 138 Mich App 15 (1984) and § 2207 of the Uniform Commercial Code, the express condition that Williamston agree to Concept's terms and conditions resulted in the entire contractual transaction being aborted. Because the parties engaged in a course of conduct evidencing a contractual relationship, the terms would be set only by the terms on which the parties' writings agreed. The

cancellation/termination clauses did not agree and hence were not part of the contract.

Issues began immediately with skins being too thick or thin, or too small or large. The product delivered by Williamston sometimes had foam bleed through or foam voids. The bleed through and voids were problematic because the part could not be properly covered by Vuteq. E-mails flew back and forth between Concept and Williamston about the problems with the skins and with bleed through and voids in the finished part.

Concept developed its own replication of the compression process used by Vuteq in order to test the parts prior to shipment to Vuteq. It found that many of the parts shipped from Williamston would not withstand the test. Starting in 2012, Concept began keeping track of how many parts it deemed defective.

By June 2013, Toyota discontinued the program. Concept stopped producing the skins in May 2013 and notified Williamston that the program was discontinued on June 20, 2013.

On October 1, 2013, Concept presented Williamston with a debit memo. The debit memo (Concept's Ex. 7) covered the cost of all parts with "defects caused by WPI" and totaled $113,453.92. The debit memo grouped the defective parts by year and covered 2012 and 2013. Within each year, it listed the type of defect and the total number of parts with the defect. There was no further description of which particular part was defective or the date of manufacture or receipt of the parts. According to the testimony of Davis Ellis,

Concept's Vice President and Chief Operating Officer, the parts represented in the debit memo were never made available to Williamston and no longer exist.

Concept filed a three count Complaint alleging breach of contract (Count III), which acknowledged that Concept did not pay $42,159.56 worth of invoices but offset the debit memo against that amount and requested judgment for Concept for the resulting balance of $71,294.35. Count I made a demand for return of the tooling and Count II requested declaratory relief in the form of a ruling that Williamston is not entitled to cancellation and/or termination fees.

Williamston filed a Counterclaim alleging breach of contract (Count I) for the $42,159.56 in unpaid invoices, early termination costs (Count II) of $439,609.16, and unjust enrichment (Count III) for the $42,159.56 in unpaid invoices. Count II of the Counterclaim was dismissed on the motion for partial summary disposition discussed above.

Motion for Directed Verdict

Williamston moved for a directed verdict at the close of Concept's proofs. The basis for the motion was that Concept had not made a proper rejection of the parts under § 2602 of the Uniform Commercial Code. Williamston also argued throughout the trial that the return of the tooling was not an issue because Williamston was willing to return it at any time, or more accurately, as soon as Concept pays the $42,159.56 in outstanding invoices.

MCL 440.2602 provides:

> (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

> (2) Subject to the provisions of the 2 following sections on rejected goods (sections 2603 and 2604),
>
> (a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
>
> (b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of section 2711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but
>
> (c) the buyer has no further obligations with regard to goods rightfully rejected.
>
> (3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (section 2703).

Concept's response to § 2602 is that it was forced to make a business decision to hold off on rejection of the parts and instead present the debit memo after the Lexus program ended. If it had rejected the parts during the course of the contract, it risked Williamston's refusal to ship additional parts. That would have devastating impact on Concept's business relationship with Toyota in particular and perhaps even with the automotive industry in general.

Concept's reasoning is understood by the Court but not supported by the Uniform Commercial Code. Concept was required to seasonably notify Williamston if it was rejecting any of the parts. No parts were produced after May 2013. It was not until October 1, 2013 that Concept notified Williamston that it was rejecting parts from as far back as 2012. Concept's rejection was not seasonable.

Even if Concept had somehow seasonably notified Williamston (which it did not), Concept proceeded to dispose of the rejected parts. The UCC would not allow such action. If Concept had seasonably rejected parts, Williamston was entitled to have an opportunity to take possession of them. Williamston never had such an opportunity.

A directed verdict is properly granted to Williamston as to Count III of the Complaint. The debit memo was not a seasonable rejection of goods.

A directed verdict for Williamston is not appropriate as to Count II, claim and delivery of the tooling.

Count II: Claim and Delivery

The only issue with respect to return of the tooling is resolution of the debit memo. The testimony at trial was that Williamston was retaining the tooling until Concept paid the $42,159.56 in outstanding invoices and, of course, Concept was maintaining that the debit memo offset the invoice balance.

Mr. Nigam Tripathi, the owner of Williamston, testified that internal communications at Williamston confirmed their belief that the tooling belonged to Toyota and Williamston probably did not have a right to make return contingent on payment from Concept. Williamston was correct in their belief. The Court understands that the tooling probably has little value since the Lexus no longer uses the exact part the tooling was made to produce. Nevertheless, Williamston had no right to retain it and should have returned it upon demand by Concept. They cannot now claim it is a non-issue because Concept can easily have it back if it only paid the invoices.

IT IS HEREBY ORDERED that judgment for Plaintiff Concept Industries, Inc. shall enter on Count I of the Complaint for claim and delivery.

IT IS FURTHER ORDERED that Defendant's motion for directed verdict as to Count III of the Complaint is granted.

IT IS FURTHER ORDERED that judgment for Defendant Williamston Products, Inc. shall enter in the amount of $42,159.56, plus whatever interest, costs, and attorney fees it may be legally entitled to, on Count I of the Counterclaim.

/s/

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Hon. Joyce Draganchuk
Circuit Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the above Order upon the attorneys of record by placing said Order in sealed envelopes addressed to each and depositing same for mailing with the United States Mail at Lansing, Michigan, on March 13, 2015.

/s/

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Michael G. Lewycky
Law Clerk/Court Officer