STATE OF MICHIGAN
IN THE 6TH CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TORCO SALES, INCORPORATED
a domestic profit corporation,

Plaintiff,

v.

Case No. 2022-195626-CB
HON. VICTORIA VALENTINE

PACE INDUSTRIES, INC.,
a foreign profit corporation,

Defendant.

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OPINION AND ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court held on the
28th day of December 2023 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant Pace Industries, Inc's ("Pace") Motion for Summary Disposition under MCR 2.116(C)(10), which seeks to dismiss Plaintiff Torco Sales Incorporated's ("Torco") claim under the Michigan Sales Representative Commission Act (MSRCA)

(MCL 600.2961), as well as Torco's claims for procuring cause, unjust enrichment, and promissory estoppel. The Court, having reviewed the briefs, having considered the merits, having heard oral argument, and being fully advised in the premises, GRANTS in Part and DENIES in part Defendant's motion under MCR 2.116(C)(10).

INTRODUCTION

Plaintiff Torco Sales Incorporated is a sales representative that entered into a 3-year Sales Representative Agreement ("SRA") with Defendant's predecessor, Metal Technologies, ("Metal"), which expired in July 2020.[1] In November of 2021, Defendant Pace purchased from Metal its Jackson Die Cast (JDC) division[2] pursuant to an Asset Purchase Agreement.[3] Torco filed this lawsuit against Pace, seeking commissions on 3 categories of parts, which Torco claims it procured:

- "Before sale work" or "before sale parts":
  - U-30922-301,
  - SS-CT1015-201,
  - SS-CT1016-201,
  - U-30442-301,
  - SS-CT1323-201.
- "After sale work" or "after sale parts":
  - XM-UT00I0-341,
  - XM-UT00I0-360,
  - SS-CP5172-340,
  - SS-CP5172-200,
  - SS- CK6117-360,
- Prototype after sale parts:
  - XS-Cl330-343 a/k/a SS-Cl330-343,

[1] Exhibit A attached to Defendant's MSD Brief: Sales Rep Agreement (SRA).
[2] The JDC division manufactured aluminum die cast products.
[3] Exhibit B attached to Defendant's MSD Brief: Asset Purchase Agreement (APA).

- XS-CT1657-343 a/k/a SS-CT1657-343-Dl argues it was NOT awarded this part.

For the reasons below, the Court DENIES Defendant's motion relating to the MSRCA for "before sale parts," denies Defendant's motion relating to Torco's claims for procuring cause and unjust enrichment and GRANTS Defendant's motion relating to Torco's claim of promissory estoppel.

ABBREVIATED FACT SUMMARY

- Torco is a sales representative that entered into a 3-year Sales Representative Agreement (SRA) with Defendant's predecessor, Metal Technologies, ("Metal").[4]
- The SRA:
  - appointed Torco as the exclusive sales representative of Metal's aluminum die cast products for the Vibracoustic business unit ("customer").[5]
  - was effective in July of 2017, and expired in July of 2020.[6]
  - provided for 2% commissions of net revenue "on all sales for which payment is actually received by Manufacturer for Products which are delivered to the Customer" beginning with the date of first production quantity shipment and continuing *for five years:*[7]

    6. Commission

    In consideration of the sales and promotional efforts of Representative, Manufacturer will pay Representative a commission on all sales for which payment is actually received by Manufacturer for Products which are delivered to the Customer if such deliveries are the result of firm orders or sales contracts signed by the Customer and Manufacturer during the term of this Agreement. Such commissions shall be two percent (2%) of the Net Revenues (as defined below) invoiced on sales of the Products to the Customer beginning with the date of the first production quantity shipment of the Product and continuing for five (5) years.

  - As to prototype parts it provides:[8]

    Commission on a tooling order whether production or a new prototype (no engineering changes) will be Two Thousand Five Hundred Dollars ($2,500.00), unless waived or reduced by mutual agreement. Engineering changes do not qualify for commission. This amount will be paid on the 10th of the month following the month in which the Customer makes payment to the Manufacturer.

[4] Exhibit A attached to Defendant's MSD Brief: SRA.
[5] Exhibit A attached to Defendant's MSD Brief: SRA ¶1.
[6] Exhibit A attached to Defendant's MSD Brief: SRA ¶2.
[7] Exhibit A attached to Defendant's MSD Brief: SRA ¶6.
[8] Exhibit A attached to Defendant's MSD Brief: SRA ¶6.

- Torco alleges that after the expiration of the Agreement in July 2020, it continued to work for Metal, Defendant's predecessor.
- Allegedly, as of October 2021, Torco and Metal were negotiating the terms of their relationship and exchanged drafts of a new agreement, which was signed by Torco but not countersigned by Metal.
- Torco alleges that unbeknownst to it, Metal had engaged in discussions with Defendant to sell its aluminum die cast division, "JDC," to Defendant.
- On November 5, 2021, pursuant to an Asset Purchase Agreement, Defendant Pace purchased Metal's aluminum die cast division.[9]
- Torco alleges that between July 2020 and November 2021, it provided quotes and participated in the process to obtain awards for tooling work and production contracts for Metal ("**after sale parts or after sale work").**
- Torco relies on the Affidavit of Andrew Skuza,[10] Director of Programing Purchases Americas for Vibracoustic, where Mr. Andrew Skuza averred that:
    - "while the work for Part Numbers XM-UT00I 0-341, XM-UT00I0-360, SS-CPSl 72-340, SS-CPSl 72-200, SS-CK6117-360 was awarded to Pace in 2022, after Ms. Hautau [of Torco] was no longer representing Metal and did not represent Pace, we relied upon the information, including quotes, she had previously provided in making the determination to award the work to Pace. We confirmed with Pace that the amounts previously quoted would still be honored. To my knowledge, the prices quoted were not renegotiated by anyone at Pace."[11]
    - "Part Numbers XM-UT0010-341, XM-UT0010-360, SS- CP5172-340, SS-CPS 172-200, SS-CK6 117-360 were awarded to Pace following the quotes provided by Ms. Hautau and/or Torco when she represented Metal. This work would likely have gone to Metal had they still been producing aluminum die cast products, due to Metal's competitive quotes provided by Ms. Hautau. However, the business was awarded to Pace because Pace had purchased Metal's aluminum die cast division and maintained the previous quotes provided by Ms. Hautau."[12]
- Allegedly, Torco received its "final" commission check from Metal, which was for commissions on certain "before sale parts" through November 2021.
- Torco claims that in November of 2021, Defendant began manufacturing for Vibracoustic the same parts Metal had been manufacturing on the same terms because the work was assigned to Defendant and include "***before sale work" or "before sale parts:"***

[9] Exhibit B attached to Defendant's MSD Brief: Asset Purchase Agreement.
[10] Exhibit 2 attached to Plaintiff's Response: Affidavit of Andrew Skuza.
[11] Exhibit 2 attached to Plaintiff's Response: Affidavit of Andrew Skuza, ¶11.
[12] Exhibit 2 attached to Plaintiff's Response: Affidavit of Andrew Skuza, ¶8.

    - See Affidavit of Andrew Skuza, who averred that after the purchase, Pace continued to produce these above parts with the same commercial terms, including the same piece price. "Vibracoustic continued to purchase these parts on the same commercial terms as it had from Metal. In other words, the supply of the parts was transitioned to Pace because of Vibracoustic's continued need for such parts."[13]

- Torco filed this lawsuit against Defendant seeking commissions and alleging:
    - Violation of the MSRCA (MCL 600.2961)
    - Procuring Cause
    - Promissory estoppel
    - Unjust enrichment
- Defendant files this motion and argues:
    - It did not assume Metal's liabilities under the Asset Purchase Agreement, including the commission Metal purportedly owed Torco and, therefore, the claim under the MSRCA fails.
    - It is not liable to Torco as the procuring cause of any sale.
    - Torco has not established promissory estoppel.
    - Torco's claim for unjust enrichment fails because Defendant did not make a misleading act.

STANDARD OF REVIEW

Summary disposition under MCR 2.116(C)(10) may be granted where "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). This motion tests the factual sufficiency of the complaint and "must specifically identify the issues as to which the moving believes there is no genuine issue as to any material fact." MCR 2.116(G)(4). The moving party bears the initial burden of supporting its position. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 (1999). "Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . when judgment is sought based on [MCR

[13] Exhibit 2 attached to Plaintiff's Response: Affidavit of Andrew Skuza, ¶6.

2.116(C)(10)]." MCR 2.116(G)(3)(b). "The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rest on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted." *Smith*, 460 Mich at 455 (citations omitted; emphasis added).

ANALYSIS

Whether Defendant assumed Metal's liabilities under the Asset Purchase Agreement (APA), including the commission Metal purportedly owed Torco.

Defendant relies on the following sections of the APA[14] to support its argument that it only assumed those liabilities expressly included in the APA. According to Defendant, because it did not expressly assume Metal's liability regarding JDC, Metal's aluminum manufacturing division, it is not liable under the MSRCA:

> **Section 2.03 Assumed Liabilities**. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform, and discharge only the following Liabilities of Seller (collectively, the "**Assumed Liabilities**"), and no other Liabilities:
>
> (b) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are (i) included in the Closing Working Capital or (ii) required to be performed after the Closing Date, were incurred in the Ordinary Course of Business, and do not relate to any failure to perform, improper performance, warranty or other breach, default, or violation by Seller on or prior to the Closing;

[14] Exhibit B attached to Defendant's MSD Brief: Asset Purchase Agreement.

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "**Excluded Liabilities**"). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities that they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date;

Torco, however, argues that under the APA, Defendant assumed the continuing obligation to pay commissions on the continuing "***before sale work" or "before sale parts"*** Defendant manufactured after the closing. Torco argues that Defendant agreed to pay for liabilities relating to the operation of the business and to the purchased assets that accrued *after the closing of the sale*,[15] when it began to actually manufacture the parts for Vibracoustic.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform, and discharge only the following Liabilities of Seller (collectively, the "**Assumed Liabilities**"), and no other Liabilities:

(e) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the Business and the Purchased Assets on or after the Closing.

Torco also argues that the APA recognizes that Torco's SRA related to the operation or ownership of the Purchased Assets because the APA defined a manufacture's representative agreement as a "Material Contract:"

[15] Exhibit B attached to Defendant's MSD Brief: Asset Purchase Agreement §2.03.

Section 4.07 Material Contracts.

(a) **Schedule 4.07(a)** lists each of the following Contracts in full force and effect as of the date of this Agreement (x) by which any of the Purchased Assets are bound or affected, or (y) to which Seller is a party or by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Contracts concerning the occupancy, management, or operation of any Owned Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed on **Schedule 4.10(a)** and all Intellectual Property Agreements set forth in **Schedule 4.11(b)** being "**Material Contracts**"):

(v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting, and advertising Contracts;

(b) Each Material Contract is valid and binding on Seller, and, to the Seller's Knowledge, is enforceable in accordance with its terms and is in full force and effect. None of Seller or, to Seller's Knowledge, any other party thereto is in material breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any written notice of any intention to terminate, any Material Contract. To the Seller's Knowledge, no event has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

Torco argues that Metal, as the Seller, guaranteed to Defendant Buyer that the manufacturer's rep agreement was in full force and effect at the time of sale and was necessary to the operation of the business or ownership. Therefore, Torco argues that Defendant is liable for Torco's commissions due under the SRA because, as part of the sale, Defendant assumed the obligation to pay Torco the commission, which is a liability relating to the operation of the business and purchased assets that became due after the closing. Alternatively, Torco argues that Defendant's position is inconsistent with Defendant's own general counsel's email where he acknowledged the following:[16]

[16] Exhibit 6 attached to Plaintiff's Response.

From: Steffan Sarkin <steffan.sarkin@paceind.com>
Sent: Tuesday, November 16, 2021 1:16 PM
To: Kevin King
Cc: Flavia Oneda; Vince Marino
Subject: Torco Sales - JDC Sales Rep

Hi Kevin,

During DD, we were provided a sales rep agreement for Torco Sales which as it turns out was a new agreement being negotiated but never executed. It was only after closing that we were made aware that there was a 'prior' agreement which terminated in July 2020. We were provided this agreement by JDC after closing. Upon reading this agreement and discussing with Flavia, while the agreement did expire, there may be post termination obligations to pay out commissions on sales to Vibracoustic that can last into 2024 (see email below from the rep)…and we are still determining our position.

The Court finds there is a question of fact as to the interpretation of the APA. Contracts must be construed as a whole. *Village of Edmore v Crystal Automation Sys, Inc*, 322 Mich App 244, 262 (2017). Courts must "give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468 (2003). A contract is ambiguous if its provisions may reasonably be understood in different ways. *Farm Bureau Ins Co v Nikkel,* 460 Mich. 558, 566 (1999).

The meaning of an ambiguous contract is a question of fact that must be decided by the trier of fact. A contractual term is ambiguous on its face only if it is equally susceptible to more than a single meaning. In addition, if two provisions of the same contract irreconcilably conflict with each other, the language of the contract is ambiguous. [*Kendzierski v Macomb Co*, 503 Mich 296, 311 (2019) (quotation marks and citations omitted).]

Here the Court agrees with Torco that there is a question of fact because the APA is subject to multiple interpretations–whether or not the APA excluded liability for Torco's contract with Metal. As Defendant argues, it is undisputed that under the APA, the expressly

disclaimed liabilities would not transfer to Defendant, the purchasing company, and that the excluded liabilities relate to the operation of the business or purchased assets to the extent such action relates to such operations *on or prior* to the closing date.[17]

Torco argues its SRA was not expressly disclaimed in the APA. Further, under the APA, Defendant agreed to assume liability for all obligations related to its operation of the Business *after the closing.*[18] Here, Torco's SRA with Defendant's predecessor entitled Torco to continuing commission on the production of the "before sale parts" from the time of the sale until 2024 (five years after the purchase orders were originally issued), which Defendant continued to manufacture *after the closing.* Because Defendant agreed to assume all liability related to Defendant's operation of the business and purchased assets *after the closing*, arguably it accepted liability to pay Torco its commissions on those "before sale parts' which it continued to manufacture *after the closing.* Therefore, Torco argues that Defendant's obligation to pay Torco commission on the before sale parts accrued after the closing, when it began to actually manufacture the parts for Vibracoustic.

Based on the above and because the APA can lead to multiple interpretations, the Court finds there is a material question of fact, which precludes granting Defendant's motion on Torco's claim under the MSRCA as relating the "before sale parts."

Procuring cause of any sale

In *KBD & Assoc, Inc v. Great Lakes Foam Technologies, Inc,* 295 Mich App 666, 673 (2012) the Court succinctly set forth the law regarding procuring cause:

[17] Exhibit B attached to Defendant's MSD Brief: Asset Purchase Agreement §§2.02 and 2.04(d).
[18] Exhibit B attached to Defendant's MSD Brief: Asset Purchase Agreement §§2.03 (e).

> "The law in Michigan is that sales agents are entitled to post-termination commissions for sales they procured during their time at the former employer." *Stubl v. T. A. Sys., Inc.,* 984 F. Supp. 1075, 1095 (E.D. Mich., 1997). In *Reed v. Kurdziel,* 352 Mich. 287, 294–295, 89 N.W.2d 479 (1958), the seminal case in Michigan discussing the procuring-cause doctrine, our Supreme Court stated:
>
> > It would appear that underlying all the decisions is the basic principal of fair dealing, preventing a principal from unfairly taking the benefit of the agent's or broker's services without compensation and imposing upon the principal, regardless of the type of agency or contract, liability to the agent or broker for commissions for sales upon which the agent or broker was the procuring cause, notwithstanding the sales made have been consummated by the principal himself or some other agent. In Michigan, as well as in most jurisdictions, the agent is entitled to recover his commission whether or not he has personally concluded and consummated the sale, it being sufficient if his efforts were the procuring cause of the sale. In Michigan the rule goes further to provide if the authority of the agent has been cancelled by the principal, the agent would nevertheless be permitted to recover the commission if the agent was the procuring cause. [*Id.* at 294–295, 89 N.W.2d 479] [Citations omitted.]
>
> The procuring-cause doctrine applies when the parties have a contract governing the payment of sales commissions, but the contract is silent regarding the payment of post termination commissions. See *id.*

Defendant's brief admits that "[s]imply put: Torco may have been a procuring cause for the parts awarded to Metal and assigned to Pace in the Asset Purchase Agreement." (Defendant's Br p 12). Therefore, defendant's motion is DENIED as to whether Torco is the procuring case of the "before sale parts".

As to the "after sale parts" Torco relies on the affidavit of Andrew Skuza, Director of Programing Purchases for Vibracoustic[19] to argue that Torco was the procuring cause of the after-sale parts. The Court has reviewed the detailed affidavit of Mr. Skuza, who is not a party

[19] Exhibit 2 attached to Plaintiff's Response: Affidavit of Andrew Skuza.

to this case. Rather, he is the Director of Purchasing for Vibracoustic, which purchased the parts at issue from Metal and then from Defendant. Based on his detailed affidavit the Court agrees with Torco that at the very least there is a question of fact as to whether Torco was the procuring cause of the after-sale parts.

Promissory estoppel

The four-prong test of the doctrine of promissory estoppel is as follows:

1. Was there a promise?
2. Was the promise one that the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee?
3. Did the promise induce such reliance or forbearance?
4. May injustice be avoided only by enforcing the promise?

Zaremba Equip v Harco Nat'l Ins Co, 280 Mich App 16 (2008); *Barber v SMH (US)*, 202 Mich App 366, 376 (1993). A promise must be clear and definite under the doctrine of promissory estoppel. *State Bank of Standish v Curry*, 442 Mich 76 (1993); *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381 (2004). A statement of opinion or a mere prediction of future events will not constitute the promise required for a party to successfully assert the doctrine of promissory estoppel. *Gore v Flagstar Bank, FSB*, 474 Mich 1075 (2006).

Defendant argues that this count should be dismissed because it fails to satisfy the required element that there be a clear and definite promise; an argument Torco fails to specifically address in its Response to Defendant's (C)(10) motion. Consequently, Torco abandoned this argument by failing to set forth the required promise by Defendant necessary to establish this count and/or by establishing a genuine issue of material fact as to this issue.

It is well-settled that "[t]rial courts are not the research assistants of the litigants" and that

"the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). "A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for [its] claims or give issues cursory treatment with little or no citation to supporting authority." *Wolfe v Wayne-Westland Community Schs*, 267 Mich App 130, 139 (2005). *See also Moses, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 417 (2006) ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned."). Therefore, this Count is dismissed.

Unjust Enrichment

The elements of a claim for unjust enrichment are (1) the defendant received a benefit from Torco and (2) it is inequitable for the defendant to retain the benefit. *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478 (2003); *Deschane v King*, __ Mich App __ (2022). "[T]he law will imply a contract in order to prevent unjust enrichment when one party inequitably receives and retains a benefit from another." *Martin v East Lansing School Dist.,* 193 Mich App 166, 177 (1992).

Defendant cites *Morris Pumps v Centerline Piping,* 273 Mich App 187, 196 (2006), quoting 66 Am Jur 2d, Restitution and Implied Contracts, § 32, p 628, and argues that a third party cannot be liable for unjust enrichment "when it receives a benefit from a contract between two other parties, where the party benefited has not requested the benefit or misled the other parties."

> A third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited has not requested the benefit or misled the other parties .... Otherwise stated, the mere fact that a third person benefits from a contract

> between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. Moreover, where a third person benefits from a contract entered into between two other persons, in the absence of some **misleading act by the third person**, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third person.... (emphasis added)

Defendant's Brief pp 13-14. (Emphasis added).

Here, however, there is, at the very least, a genuine issue of material fact as to whether Defendant requested the benefit and/or misled Torco. Emails indicate that Defendant was aware of Torco's relationship with Vibracoustic as early as October of 2021—before the APA was executed in November of 2021.[20] These emails also suggest that concomitant with Torco seeking assurances from Defendant for commissions owed on certain parts Torco sourced with Vibracoustic, Defendant was seeking Torco's assistance and information with regard to placed parts.[21] Defendant scheduled a meeting with Torco to discuss "Pace and Jackson Background information, Introduction, Customers, current parts, pending programs, next steps."[22] During this time, Defendant, while assuring Torco that it was their "intention to honor the terms of the contract,"[23] continued to seek more assistance and information from Torco. Defendant requested Torco provide a spreadsheet containing the following information: "part number, description, weight, SOP, EOP, contractual volume (average and max), end OEM, vehicle, platform and any additional historical comment for each one of the parts that may be relevant in future discussions,"[24] alloy for each one of the parts, current pricing for alloy, index used to

[20] Exhibit C and D attached to Defendant's MSD.
[21] See Exhibit 5, bates stamped documents Pace_000210-214, 000218-230, attached to Plaintiff's Response.
[22] See Exhibit D, bates stamped documents Pace_000173-174, attached to Defendant's MSD.
[23] See Exhibit 5, bates stamped documents Pace_000192-198, attached to Plaintiff's Response.
[24] See Exhibit 5, bates stamped documents Pace_000215-230, 000218-230, attached to Plaintiff's Response.

adjust pricing, billable weight, frequency and formula and any negotiated productivity or VA/VE reduction."[25]

Certainly, Defendant needed Torco's information to continue to run its purchased assets that was initially procured by Torco. It was confirmed by Andrew Skuza, Director of Programing Purchases for Vibracoustic that Defendant was awarded certain business because Torco initially and/or competitively quoted the parts, because Defendant maintained the previous quotes provided by Torco, and/or because Vibracoustic relied upon the information, including quotes Torco had previously provided.[26]

The Court finds that at the very least, there is a question of fact as to Torco's count of unjust enrichment—whether Defendant received a benefit that it would be inequitable for it to retain.

CONCLUSION

Based on the above, Defendant's motion for summary disposition under MCR 2.116(C)(10) is:

- DENIED as to the count for violations under the MSCRA.
- DENIED as to the procuring cause count.
- DENIED as to the unjust enrichment count.
- GRANTED as to the promissory estoppel count.

IT IS SO ORDERED.

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE OUT THE CASE.

[25] See Exhibit 5, bates stamped documents Pace_000209-214, attached to Plaintiff's Response.
[26] Exhibit 2 attached to Plaintiff's Response: Affidavit of Andrew Skuza ¶¶ 8 and 11.

/s/Victoria A. Valentine