STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

BENTELER AUTOMOTIVE CORP.,

Plaintiff,

vs.

TG MANUFACTURING, LLC d/b/a
AIM INDUSTRIES,

Defendant.
_____/

Case No. 21-00482-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER RESOLVING DISPUTE
CONCERNING REQUIREMENTS CONTRACT

Although this supply chain dispute has been on the specialized business docket for just a few weeks, the parties' positions have evolved significantly as they prepare for the termination of their commercial relationship. Plaintiff Benteler Automotive Corp. ("Benteler") filed a complaint and a motion for injunctive relief on January 15, 2021, asserting a legitimate concern that Defendant TG Manufacturing, LLC d/b/a AIM Industries ("AIM") would stop sending automotive engine parts that Benteler requires to manufacture and supply intake manifold runners to FCA US, LLC. The Court immediately convened an emergency status conference on that date, and the parties worked out their most pressing disagreement and drafted a stipulated order that the Court signed that evening. As the parties continued to negotiate in an attempt to reach a long-term solution, they eventually concluded that they should end their relationship, but the terms of completion and re-sourcing presented issues. Although AIM agreed to supply parts to Benteler for several more weeks, the parties could not agree on the terms governing the creation of an inventory bank. This opinion resolves all of the issues that concern Benteler's need for an inventory bank created by AIM.

For several years, Defendant AIM supplied parts to Plaintiff Benteler, and their relationship was dictated by scheduling agreements Benteler sent to AIM, which furnished parts under what may be described as a requirements contract. Cadillac Rubber & Plastics, Inc v Tubular Metal Systems, LLC, 331 Mich App 416, 426-431 (2020). Therefore, AIM satisfied Benteler's weekly requirements, ordinarily by shipping approximately 10,000 parts per week. Less than two years ago, Benteler sent a new scheduling agreement to AIM *via* e-mail on May 28, 2019. See Benteler Letter Brief (Feb 1, 2021), Exhibit B. That scheduling agreement not only prescribed a price change, but also included "Benteler Automotive Corporation Procurement Conditions," see id., Exhibit A, which apparently are Benteler's terms and conditions for its suppliers. AIM, however, did not signify its acceptance by countersigning the scheduling agreement. Instead, AIM just continued shipping parts to Benteler in volumes sufficient to satisfy Benteler's requirements.

In seeking to enforce its "procurement conditions" against Defendant AIM, Plaintiff Benteler points out that the very first "procurement condition" (entitled "Formation of Contract") makes clear that the "Seller's acceptance of these terms shall be conclusively presumed by Seller's signature on this Order ***or by Seller's shipment of the goods or performance of the service requested under this Order***." See Benteler Letter Brief (Feb 1, 2021), Exhibit B (Scheduling Agreement at page 4 of 7) (emphasis added). Accordingly, argues Benteler, AIM's simple act of continued shipment of parts amounted to acceptance of the "procurement conditions" set forth in the scheduling agreement. The Michigan version of the Uniform Commercial Code ("UCC") includes a statute of frauds that usually requires any "contract for the sale of goods for the price of $1,000.00 or more" to be "signed by the party against whom enforcement is sought[.]" See MCL 440.2201(1). But our Court of Appeals has adopted the reasoning that the UCC's statute of frauds is satisfied in the context of a requirements

contract by periodically issued "material releases" coupled with "automotive supply 'contracts [that] are typically entered into with little or no negotiation and are primarily made up of carefully drafted boilerplate language.'" Cadillac Rubber, 331 Mich App at 427-429. Therefore, the Court concludes that the "procurement conditions" in the scheduling agreement drafted by Benteler are binding upon AIM. See id.

Section 20(b) of the "procurement conditions," which addresses the "transition of supply," obligates Defendant AIM to "provide a sufficient bank of goods covered by the Order to ensure that the transition to any alternative seller chosen by [Benteler] will proceed with an uninterrupted supply of goods." See Benteler Letter Brief (Feb 1, 2021), Exhibit B (Scheduling Agreement at page 6 of 7). Moreover, section 20(b) notes that "a six week parts inventory bank will be deemed sufficient to accomplish the transition." Id. Finally, section 20(b) states that the transitional "'six week parts bank will be calculated using the releases of [Benteler] from the six weeks immediately preceding the termination/expiration of this Order[.]" Id. Consequently, the Court concludes that AIM must provide Benteler with an inventory bank in an amount commensurate with the releases from the six-week period immediately preceding the termination of the parties' contractual relationship.

The Court's conclusions thus far leave three questions unanswered. First, does the insistence upon an inventory bank prescribed by the "procurement conditions" contravene the UCC provision that, when the parties enter into a requirements contract, "no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be . . . demanded"? See MCL 440.2306(1). Applying Michigan law, the United States Court of Appeals for the Sixth Circuit has ruled (in an unpublished decision) "that 'safety stock'" may be "included in the volume requirement" of a requirements contract. See

Whitesell Corp v Whirlpool Corp, 496 Fed Appx 551 (6th Cir Aug 23, 2012). Thus, the inventory bank required by section 20(b) of Plaintiff Benteler's "procurement conditions" is a permissible term of the parties' requirements contract, notwithstanding the language of MCL 440.2306(1).

The second unanswered question involves Defendant AIM's assertion that the obligation to provide a six-week parts supply as an inventory bank is "unconscionable" under the UCC, see MCL 440.2302(1), and therefore unenforceable. "[I]n order for a finding of unconscionability to be made both substantive and procedural unconscionability must be present." Northwest Acceptance Corp v Almont Gravel, Inc, 162 Mich App 294, 302 (1987). "Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term." Clark v DaimlerChrysler Corp, 268 Mich App 138, 144 (2005). Here, AIM and Plaintiff Benteler are both quite sophisticated business entities that routinely engage in supply chain transactions, so the Court cannot find that this dispute involves any procedural unconscionability. "Substantive unconscionability exists where the challenged term is not substantively reasonable." Id. Under Michigan law, "a contract or contract provision is not invariably substantively unconscionable simply because it is foolish for one party and very advantageous to the other." Id. Instead, a contract or contract provision "is substantively unreasonable where the inequity of the term is so extreme as to shock the conscience." Id. By that measure, the requirement of a six-week inventory bank readily passes muster because it makes good sense for both sides to take the steps necessary to ensure a smooth transition within a supply chain.

The third unanswered question pertains to the price per part that Defendant AIM can charge Plaintiff Benteler for the creation of the six-week inventory bank. The price per part is prescribed by the most recent scheduling agreement, but AIM insists that it will incur extraordinary costs if it must dramatically step up production over the next several weeks to simultaneously meet Benteler's

ongoing requirements and create the inventory bank. If creation of the inventory bank does not force AIM to incur any extraordinary costs, then it stands to reason that the price per part in the scheduling agreement is all that AIM may charge Benteler to furnish the inventory bank. But if AIM must incur extraordinary costs to create the inventory bank, then the Court will entertain an argument from AIM that its extraordinary costs may warrant a price enhancement as a matter of recoupment or setoff if Benteler pursues cover costs from AIM. See McCoig Materials, LLC v Galui Construction, Inc, 295 Mich App 684, 694-696 (2012). Having addressed all of the outstanding questions, the Court hereby orders AIM to produce an inventory bank for Benteler in conformity with the terms of section 20(b) of Benteler's "procurement conditions," albeit with the possibility that AIM may use any enhanced costs of production as a setoff against any effort by Benteler to obtain cover costs from AIM.*

IT IS SO ORDERED.

Dated: February 3, 2021

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

* The Court's references to "cover costs" flow from MCL 440.2712(1), which provides that, after a breach of contract by the seller of goods, "the buyer may 'cover' by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller."