

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ADIENT US LLC, ADIENT CLANTON
INC, ADIENT ELDON INC, and ADIENT
MEXICO AUTOMOTRIZ, S. DE RL DE
CV,

Plaintiffs,

Case No. 23-012996-CB

-v-

Hon. Annette J. Berry

AUTOKINOTON GLOBAL GROUP, L.P.,
L&W, LLC, and JAYTEC, LLC,

Defendants.

OPINION AND ORDER

At a session of said Court held in the Coleman A.
Young Municipal Center, Detroit, Wayne County,
Michigan,
on this: 3/15/2024

PRESENT: Honorable Annette J. Berry
Circuit Judge

This civil matter is before the Court on a motion to dissolve the Court's temporary restraining order ("TRO") filed by Defendants Autokinton Global Group, L.P., L&W, LLC, and Jatec, LLC ("AGG"). For the reasons stated below, the Court grants the motion.

I. BACKGROUND

Plaintiff Adient US, LLC is a tier I and tier II automotive supplier. Plaintiffs Adient Clanton, Inc, Adient Eldon, Inc, and Adient Mexico Automotriz, S.DE RL DE CV are subsidiaries of Adient US, LLC. All plaintiffs herein will be referred to collectively as "Adient."

Defendants Autokinton Global Group, L P, L&W, LLC, and Jaytec, LLC (hereinafter referred to collectively as “AGG”) comprise a group of companies that manufactures automobile component parts. Prior to 2020, AGG supplied various component parts to Adient. AGG supplied components to Adient pursuant to purchase orders. AGG also supplied active program parts to Adient. According to AGG, as of October 2020, it was manufacturing about six active program parts for Adient.

Adient alleges that it has requirements contracts with AGG and the requirements are for certain production and service parts that are “integral to the manufacture of seat components that Adient supplies to automotive manufacturers and other suppliers. Adient also claims that, on October 2, 2023, however, AGG informed Adient that it would immediately stop producing and delivering parts to Adient. Adient does not maintain an inventory of the required parts and “relies on regular shipments from AGG to meet its production needs.” Adient cannot complete its products without the parts supplied to it by AGG. A disruption in receipt of the parts can stop production at Adient plants and idle the workers at those plants.

Prior to the instant lawsuit, a dispute arose between Adient and AGG concerning damage claimed by Adient concerning parts manufactured by AGG, which is the so-called “Riser Claim.” On October 12, 2020, the parties then entered into a “Settlement and Supply Agreement” (“the Agreement”) which includes the following relevant provisions:

2. Settlement of Claims.

... For the purposes of this section, Excluded Claim means (a) claims for breach of this Agreement, and (b) future claims unrelated to the Riser Claim based on actions under contracts between the Parties. For clarity, the Parties are only releasing claims in connections with the Riser Claim.

3. Purchase and Supply of Component Parts. During the Term, Adient agrees to purchase from AGG, and AGG agrees to supply to Adient, 100% of Adient’s requirements for the programs and components described in Exhibit A to this Agreement, as well as all

substitutes, engineering changes and replacement component parts (collectively, the “Component Parts”), including all direct and indirect requirements and including service parts.

4. Term. The obligations set forth in this Agreement shall commence on September 21, 2020 (the “Effective Date”) and continue until concluding on October 1, 2023 (the “Term”).

6. Pricing. During the Term, Adient agrees to pay AGG the prices for all of the Component Parts as set forth in Exhibit A to this Agreement (which is expressly incorporated into this Agreement), except as modified or adjusted pursuant to this Agreement. For clarity, the price schedule set forth on Exhibit A reflects a productivity schedule price reduction of 1% on each of January 1, 2021, January 1, 2022, and January 1, 2023 for the pricing for the Component Parts. Future programs and/or other parts may be added to this Agreement and subject to productivity reductions on a part-by-part basis if agreed upon in writing signed by AGG and Adient. Should Adient award AGG \$10,000,000 or more in new business, Adient would be entitled to an additional 1% price reduction on its current book of business. Costs associated with Adient directed changes to Component Parts, including, without limitation, derivatives, engineering changes, or replacement parts, will be passed through 100% to Adient. AGG will continue to work with Adient to explore opportunities to improve the pricing of the Component Parts over the duration of the agreement, with mutually agreeable Value Add/ Value Engineering (VAVE) activities.

11. Priority and Entire Agreement. This Agreement and the terms and conditions attached to this Agreement as Exhibit B (the “POTCs”), but only to the extent such POTCs are not in conflict with this Agreement, represent the complete agreement between AGG and Adient concerning the subject matter of this Agreement. For sake of clarity, the Parties acknowledge and agree that in the event of any conflict or ambiguity between this Agreement and the POTCs, then the terms of this Agreement supersede and govern any conflicting terms set forth in such POTCs. The terms and conditions of any AGG quotation, offer, acknowledgement, invoice, or similar document, however designated, shall not apply.

[Counter-Complaint, Exhibit1] [Emphasis added].

In addition to the Agreement, each of the purchase orders provide in relevant part:

This purchase order is governed exclusively by Adient’s Terms and Conditions of Purchase (available at <https://www.adient.com/terms> and incorporated herein by reference} in effect on the date of this purchase order, with he (sic) understanding that the acceptance of

this purchase order by electronic means or by the processing and/or delivery of goods or providing services requested under this purchase order, will be considered as acceptance by the Supplier of said Terms and Conditions of Purchase. All other terms are rejected. Seller must comply with the Adient Supplier Standards Manual found at <https://www.adient.com/suppliers/supplier-expectations>. ...

[Motion to Dissolve TRO, Exhibit1] [Emphasis added].

Hence, any purchase orders are governed by Adient's Terms and Conditions of Purchase, which provides in relevant part:

3. Quantity; Material Releases; Delivery.

(a) Quantities listed in each Order as estimated are Buyer's best estimate of the quantities of Supplies it might purchase from Seller for the contract term ... (b) Unless otherwise expressly stated in the Order or an Agreement, if no other quantity is stated on the face of the Order or if the quantity is blank or states the quantity as zero "blanket," "see release," "as scheduled," "as directed," "subject to Buyer's production releases" or similar terms, then Seller will supply Buyer's requirements for Supplies in such quantities as identified by Buyer as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Releases") that are transmitted to Seller during the term of the Order, and Seller will supply all such Supplies on such dates and times, at the price and on the other terms specified in the Order. ...

20. Termination for Breach or Nonperformance. (a) Buyer may terminate all or any part of the Order, without liability to Seller, if Seller: (i) repudiates, breaches or threatens to breach any of the terms of the Order (including without limitation Seller's warranties and world-class supplier provisions); (ii) fails or threatens not to deliver Supplies or perform services in connection with the Order; (iii) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach ... (b) Seller acknowledges that Buyer is purchasing Supplies for use in a tiered supply chain, or under other circumstances in which timely manufacture and delivery is required, and that Buyer is relying upon Seller's agreement to timely manufacture and deliver to Buyer the Supplies pursuant to the Terms of the Order to allow Buyer to fulfill its contract to sell goods which incorporate the Supplies to Customer. Accordingly,

Seller may only terminate the Order before expiration if Buyer fails to pay the purchase price for Supplies which are thirty (30) or more days past due and material in amount, and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due (including the relevant Order and invoices numbers and dates) and Seller's intent to terminate the Order if the past due amount is not paid; and (ii) Buyer, within sixty (60) days of such notice, does not either: (A) pay the past due amounts, or (B) notify Seller that the amounts claimed to be unpaid are disputed by Buyer. Seller shall terminate under this Section by delivering a Termination Notice to Buyer. Seller may not terminate or cancel the Order for any reason except as permitted under this Section. Seller may not suspend performance of the Order for any reason.

21. Termination. In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may, at its option and in its sole discretion, terminate all or any part of the Order (other than the minimum quantities specified in Section 3) at any time and for any reason, and notwithstanding the existence of any event of force majeure under Section 23, upon written notice to Seller. ... Buyer will have no obligation for payment to Seller under this Section if Buyer terminates the Order or portion thereof because of a default or breach by Seller, and any termination shall be without prejudice to any claims which Buyer may have against Seller. In the event of a termination of the Order by Buyer as a result of Buyer ceasing to be a supplier to the Customer for the vehicle program in respect of which Buyer issued the Order, Buyer shall only be obligated to compensate Seller for any costs under this Section if, when and to the extent that the Customer reimburses Buyer for such costs.

[Plaintiff's Exhibit 2] [Emphasis added].

With respect to the instant action, on October 2, 2023, AGG sent a letter to Adient, terminating production and shipment of parts to Adient. The letter included the following:

... the Agreement pursuant to which AGG has been supplying Adient with all current production, per Paragraph 4 thereof, expired by its terms yesterday, October 1, 2023, AGG and Adient currently have no contract for continued supply to Adient of the foregoing parts and all current purchase orders, releases and/or other orders are null and void. Accordingly, be advised that as of today, AGG will not accept any further releases from Adient and will not ship any more parts pursuant to any outstanding purchase orders and/or releases. In addition, AGG is likewise ceasing production of service and replacement parts, which it has been contractually permitted to do for years.

...

Furthermore, since Adient failed to initiate any action to effect a transition of its supply from AGG to a new supplier prior to the expiration of the Agreement, Adient no longer has any right to demand same from AGG and the expiration of the Agreement relieves AGG of any obligations it may have had to provide a transition of supply. Specifically, pursuant to Paragraph 21 of Adient's applicable Terms and Conditions, AGG was only obligated to perform Transition Services "in connection with the termination or expiration of the Order by either party. . . ." Of course, that implies that Adient must have initiated a request for such prior to the expiration of the Agreement because once the Agreement expired, Adient no longer has any enforceable legal rights pursuant thereto since they expired.

...

Despite that, after Adient removes its service dies from AGG's facilities, AGG will continue to supply and ship parts for Adient while Adient transitions to its new supplier for a limited, reasonable period of time on a "spot buy" basis. In order to commence doing so, AGG will require a new purchase order for a definite time period that provides for such spot buy sales, but would like to discuss the term of such a purchase order prior to any action thereon. AGG does so without waiver of any of and/or with full reservation of all of its rights and/or remedies and shall not be construed as any acceptance of any new terms, conditions and/or obligations that are not expressly agreed to in writing, executed by both parties.

[Plaintiff's Emergency Motion, Exhibit 3] [Emphasis added].

To summarize, AGG notified Adient that it had ceased production and shipment of parts to Adient, but expressed its willingness to provide certain parts on a "spot buy" basis. Plaintiff's counsel then responded by stating in relevant part:

Given the ongoing industry turmoil, labor challenges, and economic uncertainty, AGG's actions can only be described as opportunistic, irresponsible, and unconscionable.

First, AGG has breached the terms of the parties' requirements contracts and agreements by refusing to ship parts. As you well know, AGG agreed to supply Adient's requirements for such parts by, among other things, commencing work pursuant to Adient's orders and accepting Adient's forecasts and releases. . . . nothing in that agreement allows AGG to stop supplying any and all parts to Adient, . . .

Second, AGG’s scheme has caused and will cause devastating and irreparable harm to Adient, its customers, and the industry as a whole. ... By refusing to ship parts, AGG knowingly and intentionally has chosen to bring the manufacturing process to a halt, which will cause cascading and potentially irreversible industry-wide effects.

Third, AGG has acted in bad faith and in an unconscionable manner. ... Yet, before sending its October 2 letter, AGG had given no indication to Adient, let alone notification or warning, that it would cease the shipment of parts based upon its undisclosed and baseless position that its supply obligations across all programs “expired” as of October 1, 2023. ...

... Indeed, AGG’s contingent and conditional suggestion that it “Will continue to supply and ship parts for Adient while Adient transitions to its new supplier for a limited, reasonable period of time on a ‘spot buy’ basis,” is nothing more than a thinly veiled attempt to extort an unjustified price increase and to impermissibly alter the terms of its existing contractual relationship and ongoing business dealings with Adient.

[Id, Exhibit 4] [Emphasis added].

In other words, Adient believes that the Agreement was not a complete expression of all obligations of the parties and only applies to the specific dispute that precipitated the settlement. After Adient’s response, AGG’s counsel replied in writing, and clarified AGG’s position as follows:

... Paragraph 11 of the Agreement expressly provides that “For the sake of clarity, the Parties acknowledge and agree that in the event of any conflict or ambiguity between this Agreement and the POTCs, the terms of this Agreement supersede and govern any conflicting terms set forth in such POTCs.” The terms of Paragraph 22 of Adient’s terms and conditions that you purport require AGG to continue shipping products, are in direct conflict with Paragraph 4 of the Agreement, which provides that AGG’s obligations to Adient “. . .continue until concluding on October 1, 2023,” -- any obligation claimed beyond that date is in direct conflict with Paragraph 4 and does not apply.

... Simply, once the parties’ Agreement expired, Adient had no contractual rights to enforce and cannot force a “transition” onto AGG. Especially in light of the fact that there is no language at all

in Paragraph 22 that provides that such obligations “survive the termination of” the Agreement—Adient cannot use Paragraph 22 to re-write the agreed upon Term of the parties’ now expired contract after the fact, ...

But even if Paragraph 22 did apply (which again, it does not), Adient has again failed to comply with it. That Paragraph provides only that AGG provide supply during the period_“reasonably needed by Buyer to complete the transition to an alternate supplier.”

...

Fourth, there is no harm threatened to Adient or the supply chain by AGG, irreparable or otherwise. That is because AGG has not “refused,” as your letter states over and over again, to ship parts. ...

... Rather, all AGG requested from Adient was a definite, defined period of time that Adient would like to continue supply so that AGG can assess the reasonability of such a request, the feasibility with its business plan, allocation of necessary resources and whether it is commercially viable—no price increase was demanded at all. Despite by my count four (4) different requests by AGG for Adient to provide that information, Adient has still as of this writing failed to do so. Instead, all Adient has done is make repeated vague demands that AGG continue to ship parts for some undetermined period of time

[Id, Exhibit 5] [Emphasis added].

Therefore, the letters between the parties reflect the same or similar arguments contained in the parties’ briefs in the instant matter before the Court. In addition to these letters, AGG has offered the affidavit of Bob O’Neill, who is Vice President of Sales for Autokiniton Global Group, L.P., L&W, LLC, and JayTec, LLC. In the affidavit, O’Neill makes the following relevant statements:

5. AGG and Adient’s supply relationship is comprised of several agreements including the Supply Agreement, Adient’s T&Cs, and the Parties’ purchase orders.

6. On October 12, 2020, AGG and Adient executed the Supply Agreement.

7. The Supply Agreement formalized the Parties’ supply agreement for a Term of September 21, 2020 to October 1, 2023.

8. The Supply Agreement expressly provided that all of AGG's "obligations" concluded on October 1, 2023.

...

10. Pursuant to Paragraph 11 of the Supply Agreement, the Supply Agreement superseded any conflicting terms in Adient's Terms & Conditions ("T&Cs").

11. AGG supplied Adient with parts consistent with the Supply Agreement during the Term of the Supply Agreement.

14. AGG looked to Adient for help because these increased costs made the parts AGG was producing not profitable.

15. On June 6, 2022, AGG raised these issues with Adient in a letter informing Adient that these "factors are driving extraordinary increases in operational costs across all sectors of our business," that AGG "has absorbed these costs to date" but AGG "can no longer sustain these costs alone" and AGG "requests that Adient enter in good faith discussions regarding production pricing adjustments to reflect the realities of our current economic environment," starting the negotiations at "updated pricing for all raw material not on resale or quarterly index and a 11.5% increase for all value add, purchased content, freight and expendable packaging."¹

16. Adient refused to adjust AGG's pricing.

17. AGG thereafter lived up to its contractual obligations and continued to supply Adient pursuant to the Supply Agreement for another 16 months, all the while continuing to absorb the "unprecedented" inflationary forces that made the relationship unprofitable.

...

19. In the email, AGG informed Adient that there was no current contract with Adient and it would no longer ship any parts.

...

21. AGG confirmed it would agree to a transition plan and "continue to supply and ship parts for Adient while Adient transitions to its new supplier for a limited, reasonable period of time on a "spot buy" basis."

¹ The referenced letter was sent via email dated June 6, 2022, which has been included in the exhibits attached to AGG's motion to dissolve the temporary restraining order. It is AGG's Exhibit 8, which is Exhibit 2 of AGG's response to Adient's "Emergency Motion for Temporary Restraining Order and Order to Show Cause why a Preliminary Injunction Should Not Issue."

22. AGG received Adient's October 3, 2023 response email, which simply demanded that AGG continue shipping parts and provided no transition plan.

...

25. Rather, Adient simply just demanded that AGG continue producing parts for an unexplained, indefinite time under the parties' expired Supply Agreement or produce parts for 30 days while the parties "talk about it," without any sort of committed end date.

...

28. In total, AGG has asked Adient for a transition plan in writing, on numerous occasions and offered to continue to ship parts on either a week-by-week basis or enter into a new, two year contract, which should give Adient plenty of time to find a new supplier.

[Motion to Dissolve TRO, Exhibit 3] [Emphasis added].

After AGG informed Adient of its intent to stop providing parts to Adient, on October 6, 2023, Adient filed a complaint against AGG alleging breach of contract (Count I) and repudiation (Count II). Adient also requests declaratory judgment (Count III) declaring that AGG is required to perform its obligations under the contracts to supply Adient with parts and that AGG required to supply parts and/or assist in the transfer of production to alternative suppliers. On the same day, Adient moved for a TRO and an order to show cause why a preliminary injunction should not issue, which was granted by the Court. A "show cause" hearing was held on October 18, 2023. The TRO entered by the Court on October 10, 2023 was extended several times. First, it was extended until and including November 17, 2023, then until December 15, 2023, then until December 22, 2023. On December 20, 2023, the Court entered another order extending the TRO until and including January 19, 2024.

Now before the Court is AGG's motion to dissolve the TRO. The Court heard oral arguments on the motion on January 18, 2024.

II. STANDARDS FOR TEMPORARY RESTRAINING ORDERS

“A temporary restraining order (TRO) is an order prohibiting or restraining a party from performing certain acts, in order to preserve the status quo until such time as the court can hear arguments and evidence as to whether a preliminary injunction should issue. A TRO is an emergency remedy of extremely brief duration, and may issue only in exceptional circumstances. It is issued primarily where it is necessary to prevent destruction of the subject matter of the controversy, or to prevent imminent and irreparable injury to the plaintiff, ...” § 71:5. Temporary restraining orders, 3 Mich. Ct. Rules Prac., Forms § 71:5

The requirements for obtaining a TRO are set forth in MCR 3.310(B), which provides, in pertinent part:

(1) A temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party's attorney only if

(a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued;

...

MCR 3.310(B)(1)(a).

Thus, under MCR 3.310(B)(1)(a), the facts alleged must indicate that the threatened harm is “immediate” and that the harm is irreparable. “If the plaintiff has an adequate remedy at law, or if the threatened harm can adequately be compensated for in the way of money damages, ex parte injunctive relief is not appropriate.” § 71:5. Temporary restraining orders, 3 Mich. Ct. Rules Prac., Forms § 71:5. Moreover, “economic injuries are not irreparable, as they can be remedied at law.” *Acorn Bldg Components, Inc v Local Union No 2194 of the Intern Union, United Auto, Aerospace & Agr Implement Workers of Am, UAW*, 164 Mich App 358, 366; 416 NW2d 442 (1987) [Citation omitted].

“A breach of the contract, by itself, does not establish that a party will suffer an irreparable injury. In order to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty. The injury must be both certain and great, and it must be actual rather than theoretical. A relative deterioration of competitive position does not in itself suffice to establish irreparable injury.” *Thermatool Corp v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998) [Citations omitted].

III. DISCUSSION

In support of its motion, AGG first asserts that the Court erred by issuing a TRO because it was procedurally defective. More specifically, it argues that Adient has not shown “specific facts” of an actual and identifiable irreparable harm. The Court agrees.

As indicated above, under MCR 3.310(B)(1)(a), the facts alleged must indicate that the threatened harm is “immediate” and that the harm is irreparable. Indeed, a breach of contract by itself cannot establish that Adient will suffer irreparable harm. *Thermatool, supra*. Even if there is an injury from a breach of contract, injunctive relief is inappropriate where there is a remedy at law. *Id.*

In response, Adient argues that AGG’s actions would have devastating effects on the entire supply chain and damage its reputation with Ford Motor Company and other automotive companies. As AGG asserts, the potential damage regarding Ford is not included in Adient’s complaint or in an affidavit.

Adient also argues that the Agreement concerns only the “Riser Claim.” In the Court’s view, this is an incorrect reading of the Agreement. Adient’s argument implicates the rules of contract interpretation.

“The primary goal of contract interpretation is to honor the parties' intent. When the contract is unambiguous, the parties' intent is gleaned from the actual language used.” *Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 57; 698 NW2d 900 (2005) [Citations omitted]. “A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*.” *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005) [Emphasis in original].

A contract will be susceptible to only one interpretation if it is clear and unambiguous, however inartfully worded or clumsily arranged. *Farm Bureau Mut Ins Co v Nikkel, et al*, 460 Mich 558, 566; 596 NW2d 915 (2003). On the other hand, a contract is ambiguous if its words may reasonably be understood in different ways. “When contractual language is unambiguous reasonable people cannot differ concerning the application of disputed terms to certain material facts, and summary disposition should be awarded to the proper party.” *Island Lake Arbors Condo Ass'n v Meisner & Assoc, PC*, 301 Mich App 384, 393; 837 NW2d 439 (2013) [Citations and quotation marks omitted].

Certain provisions of the Agreement clearly and unambiguously demonstrate that the parties' intent was to limit the period of time of the parties' obligations. For example, the following provisions demonstrate that the Agreement governs the parties' obligations to one another:

- “AGG agrees to supply to Adient, 100% of Adient's requirements for the programs and components described in Exhibit A to this Agreement, as well as all substitutes, engineering changes and replacement component parts ...”
- “The obligations set forth in this Agreement shall commence on September 21, 2020 (the “Effective Date”) and continue until concluding on October 1, 2023 (the “Term”).”
- “Future programs and/or other parts may be added to this Agreement and subject to productivity reductions on a part-by-part basis if agreed upon in writing signed by AGG and Adient.”
- “AGG will continue to work with Adient to explore opportunities to improve the pricing of the Component Parts over the duration of the agreement”

[Emphasis added].

Of utmost importance is Section 11, the integration clause, which provides: “This Agreement and the terms and conditions attached to this Agreement as Exhibit B (the “POTCs”), but only to the extent such POTCs are not in conflict with this Agreement, represent the complete agreement between AGG and Adient concerning the subject matter of this Agreement.” “... in the event of any conflict or ambiguity between this Agreement and the POTCs, then the terms of this Agreement supersede and govern any conflicting terms set forth in such POTCs.” [Emphasis added].

“When a contract contains ‘an explicit integration clause’ parol evidence is inadmissible to determine whether the contract was integrated.” *Barclae v Zarb*, 300 Mich App 455, 480; 834 NW2d 100 (2013).

Although a written contract may be modified orally if there is mutual assent, there must be clear and convincing evidence of affirmative conduct establishing a mutual agreement to waive the terms of the original contract. *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 454–55; 733 NW2d 766 (2006); *Quality Products & Concepts Co. v. Nagel Precision, Inc.*, 469 Mich 362, 373; 666 NW2d 251 (2003).

Here, no affirmative conduct establishes a mutual agreement by both parties that AGG would continue to supply parts indefinitely. The Agreement “supersedes” and governs any terms and conditions that conflict with Agreement. Hence, by way of the limited term of the Agreement, the Agreement ended on October 1, 2023. Section 20 of the POTCs, which states, “Seller may not suspend performance of the Order for any reason,” clearly conflicts with the Agreement. Therefore, the Agreement’s term of performance supersedes section 20.

As to propriety of dissolving the TRO, “[a] trial court has discretion to vacate or modify a previously entered temporary restraining order.” *Bowers v VanderMeulen–Bowers*, 278 Mich.

App. 287, 295; 750 NW2d 597 (2008). Adient, however, argues that the AGG's motion is not permitted under the Court Rules because MCR 3.310(B)(5) only permits a motion to dissolve a TRO when it was issued without notice. This is an illogical argument against terminating the TRO because the rule further states a court may extend the TRO "for good cause shown" or unless the party against whom the order is directed consents that it may be extended for a longer period." A TRO issued without notice terminates no later than 14 days after issuance. Here, the Court extended the TRO several times. Now, AGG requests that it be terminated in order to resolve the dispute between these parties.

At this time, the Court sees no demonstration of "irreparable harm" to Adient. Adient's claim that AGG's action will disrupt the entire supply chain and damage its relationship with Ford is merely speculative. "The injury must be both certain and great, and it must be actual rather than theoretical." *Thermatool Corp, supra*. As indicated above, as to Adient's contention that AGG's action have harmed its status with Ford, "[a] relative deterioration of competitive position does not in itself suffice to establish irreparable injury." *Id*. Indeed, "[a] breach of the contract, by itself, does not establish that a party will suffer an irreparable injury." *Id*. If, in fact, AGG is liable for a breach of contract, Adient has an adequate remedy at law which is compensable with money damages.

AGG also asserts that the Court should have ordered a bond as permitted by MCR 3.310(D)(1), which states:

Before granting a preliminary injunction or temporary restraining order, the court may require the applicant to give security, in the amount the court deems proper, for the payment of costs and damages that may be incurred or suffered by a party who is found to have been wrongfully enjoined or restrained.

The words of the rule indicate that the Court "may" require a bond when a party is wrongfully restrained. The word "may" indicates that a bond is not mandated. Here, the Court is

determining whether the restraint is proper. In addition, “the burden of justifying continuation of the order is on the applicant for the restraining order whether or not the hearing has been consolidated with a hearing on a motion for a preliminary injunction or an order to show cause.” MCR 3.310(B)(5). Hence, whether or not a hearing has been held in conjunction with an order to show cause or on a motion for a preliminary hearing, the burden is nevertheless on Adient to “justify” continuing the TRO. As noted, it has not done so. Hence, no bond is yet required.

AGG’s next argument is that, pursuant to *MSSC, Inc v Airboss Flexible Products*, 511 Mich 176; 999 NW2d 335(2023), purchase orders without a quantity term that only refer to subsequent releases do not form a “requirements” contract. *MSSC* ruled that such purchase orders form a “release-by-release” contract. Such contracts do not bind indefinitely. In response, Adient contends that, when purchase orders are for a buyer’s “requirements,” they are enforceable because a buyer’s “requirements” is a definite quantity term. To support this argument, Adient cites *Higuchi International Corporation v Autoliv ASP, Inc*, --- F Supp3d ---- (2023). Adient, however, does not completely explain the holding in *Higuchi*. The *Higuchi* court stated in relevant part:

As noted above, it provides:

This blanket contract is issued to cover Autoliv ASP, Inc.’s requirements of the parts listed below, for the period beginning 05/01/22 [or a different date, depending on the purchase order] and ending upon the termination of the vehicle platform ...

The first sentence states that the contract “*cover[s]* Autoliv[’s] *requirements* of the parts listed below,” and the second sentence adds that “[d]eliveries *shall* be made only in the quantities and at the time specified *in such requirements*.” Together, these sentences make clear that the orders intend for Higuchi to provide Autoliv with its *requirements* of the parts listed in the order (during the specified timeframe).

Id at *5 [Italics in original; underlining added].

The difference between the *Higuchi* purchase order is that it specifies a time frame, whereas here, no timeframe is provided, only the dates of each purchase order. Although there are differences, even if the *Higuchi* case could be construed as similar to the case at bar, it is not binding on this Court. “Although the decisions of lower federal courts are not binding precedents, federal decisions interpreting Michigan law are often persuasive.” *Adams v Adams (On Reconsideration)*, 276 Mich.App. 704, 715–716, 742 NW2d 399 (2007) [Citation omitted]. See also, *Linsell v Applied Handling, Inc*, 266 Mich App 1, 16; 697 NW2d 913 (2005), citing *Ryder Truck Rental, Inc v Auto–Owners Ins Co, Inc*, 235 Mich App. 411, 416; 597 NW2d 560 (1999) (“Although decisions of a federal district court interpreting Michigan law are not precedent binding on Michigan courts, courts may find the reasoning of the federal court persuasive.”).

The holding in *MSSC* governs the circumstances in the instant case. The court stated:

Contrary to the lower courts, we find that the parties entered into a release-by-release contract, which allowed Airboss to stop selling parts to MSSC.

MSSC, supra at 180.

Given our holding that the documents in this case lacked a quantity term and did not create a requirements contract under the UCC, we hold that the parties entered into a release-by-release agreement.

Id at 198.

The *MSSC* court defined the term “release-by-release” in footnote 2 of *MSSC*, which states:

While Michigan caselaw has not previously identified a release-by-release contract as a specific contract type, we adopt the term “release-by-release” to describe a contract with an umbrella agreement that includes general terms but which lacks a quantity term and which operates via releases issued by the buyer to the seller. ... Although this term might be “new,” the concept is not. We have found multiple cases describing these contracts by reference to what they are not - requirements contracts - without naming what they are called. See *Advanced Plastics Corp*, unpub. op. at 2-3 (describing a release-by-release contract and stating that the terms of the contract at issue in that case demonstrated that the parties “did not enter into a requirements contract”); *David Engineering Ca*,

LLC, unpub. op. at 2 (describing an agreement by which one contract “sets forth the terms and conditions for all purchase orders ... [but] is not itself, a purchase order”).

Hence, a “release-by-release” contract is one in which parties agree to purchase orders and general terms and conditions under a “blanket” agreement that does not specify any number of parts for supply. In a “release-by-release” arrangement, buyers issue production releases to specify their specific near-term supply needs. Under this type of contract, the *MSSC* court held that a supplier is obligated only to fulfill each release that is issued and that the supplier has accepted. This differs from “output” and “requirements” contracts, both of which specify quantities for supply.²

Here, each purchase order states “see release” for the quantity. Thus, this clearly fits the *MSSC* court’s description of what these parties’ blanket agreement is not – a requirements contract. Therefore, the blanket agreement cannot be enforced indefinitely and the parties’ Agreement governs.

IV. CONCLUSION

Adient has failed to demonstrate “irreparable harm” to justify another extension of the TRO. MCR 3.310(B)(5). Adient’s claim that AGG’s action will disrupt the entire supply chain and damage its relationship with Ford is merely speculative and theoretical. *Thermatool Corp, supra*. Adient’s alleged potential deterioration of its competitive position is insufficient to establish irreparable injury. *Id.* Even if AGG could be liable for a breach of contract, Adient has an adequate remedy at law which is compensable with money damages. Accordingly, continuation of the TRO is inappropriate and the Court grants AGG’s motion to dissolve the TRO.

For the reasons stated in the foregoing Opinion,

² The *MSSC* court specifically overruled *Great Northern Packaging, Inc v Gen Tire & Rubber Co*, 154 Mich App 777; 399 NW2d 408 (1986) in which the Court of Appeals had held that the term “blanket order” was an imprecise quantity term, but was sufficient to deem the agreement an enforceable requirements contract.

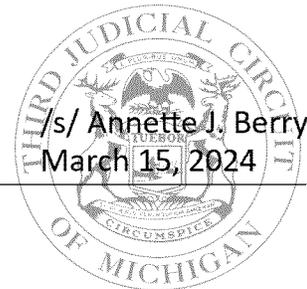
IT IS ORDERED that the motion to dissolve the Court's temporary restraining order filed by Defendants Autokinton Global Group, L.P., L&W, LLC, and Jatec, LLC is hereby **GRANTED**;

IT IS FURTHER ORDERED that this **DOES NOT RESOLVE** the last pending claim and **DOES NOT CLOSE** the case.

IT IS SO ORDERED.

DATED: 3/15/2024

Circuit Judge



/s/ Annette J. Berry
March 15, 2024