

STATE OF MICHIGAN  
IN THE OAKLAND COUNTY CIRCUIT COURT

LIVINGSTON SALES & MARKETING )  
LLC, a Michigan corporation, and BRIAN )  
LIVINGSTON, an individual, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
MPI PRODUCTS LLC, a Delaware )  
corporation, and MPI ENGINEERED )  
TECHNOLOGIES LLC, a Delaware )  
corporation, )  
 )  
Defendants. )

Case No. 2024-204794-CB  
Hon. Victoria A. Valentine

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OPINION AND ORDER REGARDING DEFENDANT MPI  
ENGINEERED TECHNOLOGIES, LLC'S MOTION TO DISMISS AND  
COMPEL ARBITRATION, OR ALTERNATIVELY, COMPEL  
ARBITRATION AND STAY ALL PROCEEDINGS

At a session of said Court held on the  
26 th day of March 2024 in the  
County of Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant MPI Engineered Technologies LLC's  
Motion to Dismiss and Compel Arbitration, or Alternatively Compel Arbitration and Stay All

Proceedings.<sup>1</sup> The Court has reviewed the court file, the motion, the response, and reply and heard oral argument on March 13, 2024. For the reasons set forth below, Defendant’s motion under MCR 2.116(C)(7) is GRANTED.

RELEVANT FACTS:

Parties:

- Plaintiff Livingston Sales & Marketing LLC is an independent sales representative.
- Defendant MPI Products LLC (MPI) is a part manufacturer.
- Non-party Tenneco Automotive Operating Company Inc provides automotive exhaust parts to Ford, GM, Chrysler, and Toyota as well as to aftermarket companies.
- Nonparty Turnspire Capital Partners LLC acquired Defendant MPI in January 2020, and formed a new entity, Defendant MPI Engineered Technologies LLC (MPI-ET), the moving party.

Evidently, Plaintiffs had a business relationship with nonparty Tenneco Automotive Operating Company (“Tenneco”). And, in October of 2015, Plaintiffs approached Defendant MPI Products LLC (MPI) about Plaintiffs becoming MPI’s independent sales rep for life-of-part commission.<sup>2</sup> As a result, Plaintiffs became the procuring cause of “Pre-2017 Sales” for vehicle exhaust parts between nonparty Tenneco Automotive Operating Company and Defendant MPI.<sup>3</sup>

Because of Plaintiffs’ business relationship with Tenneco, Plaintiffs acquired a large Request for Quote (RFQ) in 2017, which required a high degree of skill and experience to

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<sup>1</sup> Plaintiffs’ Complaint is filed against Defendant MPI Products LLC (MPI) and Defendant MPI Engineered Technologies LLC (MPI-ET). This motion is brought by *MPI-ET only*. The Court record does not reflect that Defendant MPI has filed an Answer to the Complaint or has been defaulted. It does reflect two filed proofs of service of the complaint relative to Defendant MPI. One indicates service on January 12, 2024, on MPI Products’ resident agent. Its Acknowledgement of Service, however, is not signed by Ann Sharp, the resident agent. Rather, it is signed by a Benjamin Kubiak on behalf of MPI Engineered Technology. The second filed proof of service indicates service on February 9, 2024, on Ann Sharp, MPI’s resident agent, and contains an unreadable acknowledgment of service.

<sup>2</sup> Complaint ¶12.

<sup>3</sup> Complaint ¶13.

manufacture.<sup>4</sup> Plaintiffs entered into discussions with Defendant MPI and negotiated commission terms that influenced Plaintiffs' decision to allow Defendant MPI to evaluate and estimate the 2017 Tenneco RFQ.<sup>5</sup> MPI represented to Plaintiffs that MPI had high quality manufacturing facilities in Mexico and possessed the expertise to administer the engineering required to build the tooling for the exhaust parts in the 2017 Tenneco RFQ.<sup>6</sup> Accordingly, Plaintiffs introduced the Tenneco quote to Defendant MPI.<sup>7</sup> Plaintiffs allege that relying on MPI's representations, they entered into a SRA with MPI Products LLC (MPI) in April of 2017.<sup>8</sup> On June 9, 2017, Tenneco nominated MPI as a supplier for 13 designated parts.<sup>9</sup>

But, in May of 2018, Tenneco cancelled its contract with MPI and sourced the parts elsewhere.<sup>10</sup> Plaintiffs allege that MPI admitted that it did not have the technical expertise to build the tooling or to manufacture the parts.<sup>11</sup>

Thereafter, in January 2020, nonparty Turnspire Capital Partners acquired Defendant MPI.<sup>12</sup> Thereafter, in November of 2020, Plaintiffs signed a new SRA with Defendant MPI Engineered Technologies (MPI-ET), which is allegedly nearly identical to Plaintiffs' 2017 SRA with Defendant MPI.<sup>13</sup> The 2020 SRA with Defendant MPI-ET:<sup>14</sup>

- contains the following arbitration clause:<sup>15</sup>

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<sup>4</sup> Complaint ¶19.

<sup>5</sup> Complaint ¶21.

<sup>6</sup> Complaint ¶22.

<sup>7</sup> Complaint ¶23.

<sup>8</sup> Complaint ¶30.

<sup>9</sup> Complaint ¶32.

<sup>10</sup> Complaint ¶41.

<sup>11</sup> Complaint ¶43.

<sup>12</sup> Complaint ¶46.

<sup>13</sup> Complaint ¶¶ 47 & 48.

<sup>14</sup> Defendant's MSD Exhibit A.

<sup>15</sup> Defendant's MSD Exhibit A, ¶ 8.

Arbitration. It is mutually agreed that any dispute between "LSM" and "Principal", arising under this Agreement **shall** be submitted to arbitration in accordance with the then current and applicable rules and regulations of the American Arbitration Association (hereinafter "AAA").

- o Provides for compensation as follows:<sup>16</sup>

(5) Compensation

- a) The "Principal" shall compensate "LSM" in accordance with the terms of this agreement and Exhibit A of the same. Compensation will be paid against invoiced "Gross Sales Amount" for production and or service parts. This agreement does not include compensation to "LSM" on "Principal" invoiced tooling. For the purpose of this agreement, "Gross Sales Amount" shall mean the "Total amount invoiced"- Customer contracted production piece price shipped and invoiced, less amounts included in the invoice for shipping charges, insurance charges for products and products returned resulting in Customer debit and payment discounts.
- b) Commission percentage will be **Three Percent (3%)** or as defined per program, against the total production piece price. Commission percentage may be negotiated but must be communicated in writing and agreed upon by both "LSM" and "Principal" then added to the Exhibit A accordingly.
- c) Occasional there will be opportunities to add additional revenue to the original estimated piece price and tooling price. When such opportunities occur "Principal" & "LSM" shall split the additional revenue 55%/45% respectively on piece price and 50%/50% on tooling or as defined by program and will be communicated in writing and added to Exhibit A accordingly. Any rebates required to be awarded business will be taken off the top of any additional tooling revenue before splitting of the additional revenue occurs.
- d) With each payment, "Principal" shall present as a commission report which shall include Customers, products, total invoiced amount paid by Customers, invoiced numbers paid and date of invoiced numbers and commission calculation relating to such commission payment. "Principal" shall maintain complete and accurate records of products sold to Customer. "LSM", at its own expense, shall have the right to review all purchase orders and payments received from Customer(s) introduced by "LSM", during reasonable hours and upon reasonable notice, or have an arbitrator from the American Arbitration Association, of its own selection to review such records.

Allegedly in May of 2023, "Defendant," by right of contract, stopped paying Plaintiffs life-of-part commissions on pre-2017 sales, and, by email dated 5/12/2023, cancelled the 2020 SRA.<sup>17</sup> Accordingly, Plaintiffs filed their Complaint against Defendants MPI and MPI-ET alleging:

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<sup>16</sup> Defendant's MSD Exhibit A ¶ 5 (emphasis added).

<sup>17</sup> Complaint ¶¶ 52 & 53.

- Count I-Violation of SRCA against Defendants.
- Count II-Fraudulent Misrepresentation and Concealment against Defendant MPI.
- Count III-Breach of Contract against Defendants.
- Quantum Meruit/Unjust Enrichment against Defendant MPI.

Defendant *MPI-ET* files this motion for summary disposition under MCR 2.117(C)(7), MCR 2.602(B) and MCL 691.1687(6), arguing that this complaint should be dismissed by virtue of the arbitration provision contained in the SRA. The Court notes that only Counts I and III of Plaintiffs' Complaint relate to *Defendant MPI-ET*. Therefore, this Opinion only addresses those Counts of the Complaint pertaining to Defendant MPI-ET.

#### STANDARD OF REVIEW

Summary disposition under MCR 2.116(C)(7) may be granted where “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of . . . an agreement to arbitrate or to litigate in a different forum.” A party is not required to submit any material in support of a motion under MCR 2.116(C)(7); the motion can be evaluated on the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). “The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” *Id.* “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” *Maiden*, 461 Mich at 119.

#### ANALYSIS

“The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” MCL 691.1686(2). “This threshold question of whether a dispute is subject to arbitration is for a court to determine. As we have said, a party cannot

be required to arbitrate an issue which [it] has not agreed to submit to arbitration.” *Lichon v Morse*, 507 Mich 424, 437 (2021) (internal citations and quotations omitted).

Recently, the Court of Appeals in its published opinion of *Legacy Home Builders v Rogers*, \_\_Mich App\_\_; 2023 WL 1870446 \* 3-4 (rel’d 2/9/2023) reiterated Michigan’s law regarding arbitration.

Arbitration is a matter of contract. *Altobelli v Hartmann*, 499 Mich. 284, 294-295, 884 N.W.2d 537 (2016). A valid agreement must exist for arbitration to be binding. *Ferndale v Florence Cement Co*, 269 Mich App 452, 460, 712 N.W.2d 522 (2006). In *Lichon v Morse*, 507 Mich. 424, 437, 968 N.W.2d 461 (2021), our Supreme Court recognized that “[a] party cannot be required to arbitrate an issue which [it] has not agreed to submit to arbitration.” (Alterations in original.) “The existence of an arbitration agreement and the enforceability of the terms are judicial questions for the court, not the arbitrators. *Fromm v Meemic Inc Co*, 264 Mich App 302, 305, 690 N.W.2d 528 (2004)

“[W]hen interpreting an arbitration agreement, we apply the same legal principles that govern contract interpretation.” *Altobelli*, 499 Mich. at 295, 884 N.W.2d 537 (citation omitted). “Our primary task is to ascertain the intent of the parties at the time they entered into the agreement, which we determine by examining the language of the agreement according to its plain and ordinary meaning.” *Id.* (citation omitted).

The general policy of this State is favorable to arbitration. The burden is on the party seeking to avoid the agreement, not the party seeking to enforce the agreement. In deciding the threshold question of whether a dispute is arbitrable, a reviewing court must avoid analyzing the substantive merits of the dispute. If the dispute is arbitrable, the merits of the dispute are for the arbitrator. [*Id.* at 295-296, 884 N.W.2d 537 (quotation marks and citations omitted).]

Ascertaining the arbitrability of an issue requires a court to consider whether the parties’ contract contains an arbitration provision, whether the disputed issue *arguably* comes within the arbitration clause, and whether the dispute is expressly exempted from arbitration by the contract. *Fromm*, 264 Mich App at 305-306, 690 N.W.2d (citation omitted). (Emphasis added).

**The First Prong-- the parties' contract contains an arbitration provision.**

Here, the language of 2020 Sales Rep Agreement<sup>18</sup> specifically includes a mandatory arbitration provision by the use of the word “shall.” See *Liggett v City of Pontiac*, 260 Mich App 127, 138 (2003).

Section Arbitration. It is mutually agreed that any dispute between “LSM” and “Principal”, arising under this Agreement **shall** be submitted to arbitration in accordance with the then current and applicable rules and regulations of the American Arbitration Association (hereinafter “AAA”).<sup>19</sup>

**The Second Prong--whether the disputed issue arguably comes within the arbitration clause.**

This second prong appears to have been limited by the Michigan Supreme Court in its recent opinion of *Lichon v Morse*, 507 Mich 424, 444 (2021). There, the Court found that whether a disputed issue is “arguably” within an arbitration clause is limited to collective bargaining agreements. The Court held:

As a general matter, Michigan's public policy favors arbitration. *Altobelli*, 499 Mich. at 295, 884 N.W.2d 537. But this general position favoring arbitration does not go so far as to override foundational principles of contractual interpretation. In *Kaleva*, in the context of collective bargaining agreements, we held that it was appropriate to apply United States Supreme Court precedent regarding the National Labor Relations Act (NLRA), 29 USC 151 *et seq.*, to contracts entered into under the state's public employment relations act (PERA), MCL 423.201 *et seq.* *Kaleva*, 393 Mich. at 590-591, 227 N.W.2d 500. That holding seems to have expanded in application in the lower courts beyond collective bargaining agreements to a more general rule that parties are bound to arbitration if the disputed issue is “arguably” within the arbitration clause. See, e.g., *Rooyakker & Sitz, P.L.L.C. v. Plante & Moran, P.L.L.C.*, 276 Mich. App. 146, 163, 742 N.W.2d 409 (2007); *Fromm v. MEEMIC Ins. Co.*, 264 Mich. App. 302, 305-306, 690 N.W.2d 528 (2004). This is not a rule we have adopted outside of the context of collective bargaining

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<sup>18</sup> Defendant’s MSD Exhibit A.

<sup>19</sup> Defendant’s MSD Exhibit A, ¶8.

agreements, and we decline to do so now. Our general practice of looking to federal precedent discussing the NLRA to interpret the PERA is simply inapplicable here because the PERA is not at issue. In no way does this signal a judicial hostility to arbitration; rather, we simply recognize that agreements to arbitrate should be read like any other contract. *Altobelli*, 499 Mich. at 295, 884 N.W.2d 537.

*Lichon v Morse*, 507 Mich at 437-438.

Therefore, the *Lichon* Court held that when making the threshold determination of whether a claim is subject to an arbitration agreement, the courts are to analyze whether the action could be maintained without reference to the contract or relationship at issue. *Lichon v Morse*, 507 Mich at 440. “This analysis functions as a tool to determine a key question of arbitrability—whether the parties agreed to arbitrate the question at issue.” *Lichon v Morse*, 507 Mich at 440 (2021). (Internal citations and quotations omitted).

Here, the language of the arbitration provision provides that “[a]ny dispute between “LSM” and “Principal” arising under this Agreement shall be submitted to Arbitration . . . .”<sup>20</sup> The Court finds that Plaintiffs’ claims against Defendant MPI-ET cannot be maintained without reference to the contract or relationship at issue. See *Lichon v Morse*, 507 Mich at 440. Plaintiffs’ Count I of its Complaint (Violation of the Michigan Sales Representative Commission Act) specifically refers to the parties’ 2020 SRA (“On May 12, 2023, Defendants, by right of *contract*, sent Plaintiff an email terminating Plaintiff’s 3<sup>rd</sup> Party Sales Representative status and canceling the *2020 Sales Representative Agreement*”).<sup>21</sup> And, there can be no dispute that Plaintiffs’ Count III for Breach of Contract could not be maintained without reference to that contract.

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<sup>20</sup> Defendants’ MSD Exhibit A, ¶8. (Emphasis added).

<sup>21</sup> Complaint, ¶53. (Emphasis added).

**Third Prong--whether the dispute is expressly exempted from arbitration by the contract.**

As to the third prong, the Court finds that the dispute is not *expressly* exempt from arbitration by the terms of the Agreement. Plaintiffs argue that the language of the SRA specifically limits its scope to “any” dispute “arising under” the Agreement. Accordingly, Plaintiffs argue that because compensation on Principals’ “invoiced tooling” is specifically excluded from the Agreement, it does not “arise” “under” Section 5(a) of the agreement. Plaintiffs’ argument, however, overlooks Section 5(c) of the Agreement that speaks to “opportunities to add “additional” revenue” to the original estimated piece price and *tooling price*.”<sup>22</sup> It also overlooks the Exhibit A attached to the SRCA that addresses “Tooling Commission” on certain designated part numbers.

Based on the above, Defendant MPI-ET’s motion to compel arbitration is GRANTED. As a result, Plaintiffs’ Complaint against Defendant MPI-ET is Dismissed.

**IT IS SO ORDERED.**

**This is not a Final Order and does not close the case.**



DATED: 3/26/24

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<sup>22</sup> Defendants’ MSD Exhibit A, ¶8. (Emphasis added).