

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CA, INC, a Delaware corporation,

Plaintiff,

-v-

**GENERAL MOTORS HOLDINGS LLC, a
Delaware limited liability company; and
GENERAL MOTORS LLC, a Delaware
limited liability company,**

Defendants.

Case No. 23-015374-CB

Hon. Muriel D. Hughes

OPINION AND ORDER
GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court held in the Coleman A.
Young Municipal Center, Detroit, Wayne County,
Michigan,
on this: 5/13/2024

PRESENT: Muriel D. Hughes
Circuit Judge

This civil matter is before the Court on a motion for summary disposition filed by Defendants General Motors Holdings LLC (“GM Holdings”) and General Motors LLC (collectively “GM”). For the reasons stated below, the Court grants the motion.

I. BACKGROUND

On September 28, 2015, CA, Inc. (“CA”) and GM entered into an Amended and Restated Enterprise Software License Agreement (the “License Agreement”). The License Agreement

replaced and superseded a previous Software License Agreement dated July 15, 2003, between GM and CA, which is a successor-in-interest to Symantec Corporation. Under the License Agreement, Plaintiff licensed to GM certain computer software programs, support, and maintenance services. GM and third parties authorized by GM were permitted to submit written order[s] for software from CA.

On September 28, 2020, CA and GM entered into a Product Renewal Notification and Software Order Form, Quote #CPQ-570477 (the “Order Form”), pursuant to which CA licensed to GM various software and hardware. The Order Form was a three-year agreement, which provided that payments were to be made in advance of each year on September 28th of 2020, 2021, and 2022. On September 25, 2020, the same day that the Order Form was executed, GM issued a Purchase Contract - Spot Buy Number 4301118859 (the “Purchase Order”) to CA for a specific software purchase.

Two years later, on September 1, 2022, GM Holdings sent a termination letter to CA indicating that it was terminating the Order Form (Quote # CPQ-570477) and any purchase orders associated with the Order Form. [Complaint, ¶ 23]. In response to the termination letter, on September 9, 2020, CA explained to GM that “per the terms of the Order Form, if it was electing to terminate for convenience, it must also terminate the 2015 License Agreement as well as all other active order forms and/or ordering documents governed by 2015 License Agreement. This includes all order forms between CA and GM’s affiliates and subsidiaries governed by the 2015 License Agreement.” [Id, ¶ 24]. GM disagreed, asserting that it was entitled to terminate for convenience the Order Form and was not required to terminate all other agreements such as other order forms, order documents, and the License Agreement.

CA filed a Complaint alleging breach of contract (Count I) and requested declaratory judgment (Count II). In its declaratory judgment claim, CA requests that the Court declare that,

“[u]nder the plain language of Section 5.3 of the 2015 License Agreement, as amended by the Order Form, if GM chooses to terminate for convenience, it must terminate the entire Existing Agreement, including but not limited to” the 2015 License Agreement, the Order Form, all Purchase Orders, all order forms and other ordering documents. Plaintiff also requests that the Court declare that “GM is not entitled to terminate only the Order Form and Purchase Orders associated only with the Order Form” and that GM’s termination for convenience was ineffective and “must pay the balance owed under the Order Form.” [Complaint, ¶ 40].

Now before the Court is GM’s motion for summary disposition.

II. STANDARDS FOR DETERMINING MOTIONS FOR SUMMARY DISPOSITION

GM bases its motion on MCR 2.116(C)(8). MCR 2.116(C)(8) provides for summary disposition where “[t]he opposing party has failed to state a claim on which relief can be granted.” A motion for summary disposition under (C)(8) tests the legal sufficiency of the complaint. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). The trial court may consider only the pleadings in rendering its decision. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). All factual allegations in the pleadings must be accepted as true. *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). “A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019).

III. DISCUSSION

In support of GM’s motion, it argues that the Order Form’s “Termination for Convenience” clause establishes that GM Holdings can terminate less than all contracts with CA. In response, CA asserts that the unambiguous terms of the “Termination for Convenience” clause “establish

that GM was not permitted to terminate only a portion of its outstanding order forms and continue to use other products it had licensed.”

CA claims that GM has breached its contract. “A party claiming a breach of contract must establish by a preponderance of the evidence (1) that there was a contract, (2) that the other party breached the contract and, (3) that the party asserting breach of contract suffered damages as a result of the breach.” *AFT Michigan v Michigan*, 303 Mich App 651, 660; 846 NW2d 583 (2014), quoting *Miller–Davis Co v Ahrens Constr, Inc (On Remand)*, 296 Mich.App. 56, 71; 817 NW2d 609 (2012).

There is no dispute that the parties have contracts with one another. However, the fundamental question before the Court is whether GM may terminate one contract without terminating all other contracts it has with CA. The Court notes that, whether GM has breached the contract, depends upon the proper interpretation of those contracts.

A. The Language of the Termination for Convenience Clause

Here, three types of contracts govern the parties’ relationship: (1) the 2015 License Agreement; (2) the Order Form; and (3) associated Purchase Orders. All three contracts contain “termination for convenience clauses.” The instant dispute centers around the intent of the “Termination for Convenience” clause in the Order Form. The 2015 License Agreement is the main agreement between CA and GM. Section 5.3 of the License Agreement provides in relevant part:

5.3 Termination for Convenience. GM reserves the right to terminate this Agreement, in whole or in part, at any time without cause, upon thirty (30) calendar days prior written notice to Licensor. ... GM terminates for convenience during a Renewal Term of the Agreement, GM shall remain contractually bound to fulfill all GM obligations and responsibilities, including but not limited to any Fees that would be otherwise be owed and payable during the three year Renewal Term but for the termination.

[Defendants’ Exhibit 1, p. 14] [Emphasis added].

Thus, under Section 5.3 of the License Agreement, GM can terminate the agreement, “in whole or in part.”

Next, the Order Form, which is at issue here, contemplates three years of license offerings and the corresponding payments in advance of usage for each year. The Order Form also references two overarching agreements related to specific software including the 2015 License Agreement, which was for CA licensed software, and a separate 2003 Software License Agreement for Symantec branded licensed software. The Order Form contains a “Termination for Convenience” clause that “expressly supersedes both Section 5.3 of the CA Agreement and Section 5.3 of the Symantec Agreement.” [Defendants’ Exhibit 2, Order Form, p. 1]. Under the “Additional Terms” of the Order Form, the “Termination for Convenience” clause provides in pertinent part:

Termination for Convenience. GM may terminate the Agreement(s), this Order Form, together with each and all Purchase Orders, **or** any order forms **or** other ordering documents in effect as of the date of termination, (collectively, the “Existing Agreement”), without cause and without further Charge or expense at any time, immediately upon written notice to CA sent to usagereporting@broadcom.com.

In the event of a termination by GM pursuant to this provision, if the Existing Agreement is terminated without cause, **neither party shall have further obligations under the terminated portions of the (sic) this Agreement**, except for those provisions that survive termination under the Agreement by their terms. ...

[Defendants’ Exhibit 2, p. 7] [Emphasis added; bold type added].¹

The proper interpretation of contracts and the legal effect of contractual provisions are questions of law. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504

¹ The language contained in the Purchase Order is similar to the language in the Order Form in that portions of the order may be terminated without cause. Section 13 provides in pertinent part:

In addition to any other rights of Buyer to terminate this contract, **Buyer may, at its option, immediately terminate all or any part of this contract, at any time and for any reason, by giving written notice to Seller...**

[Defendants’ Exhibit 3, Purchase Order, p. 8].

(2012). “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) [Italics 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). In determining whether a contract provision is ambiguous, a court is to give the language used its ordinary and plain meaning, to see if its words may reasonably be understood in different ways. *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658–59; 651 NW2d 458 (2002) [Internal quotation marks and citation omitted]. “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].

The Court agrees with GM’s argument that the Order Form’s use of the disjunctive “or” to separate the listed contract documents in the termination clause allows GM to terminate one or more of the listed contract documents. The Termination Clause at issue here includes a list of documents including: “The Agreement(s), this Order Form, together with each and all Purchase Orders, or any order forms or other ordering documents[.]”

“The word ‘or’ typically indicates a disjunction or separation.” *Gavrilides Mgt Co, LLC v Michigan Ins Co*, 340 Mich App 306, 318; 985 NW2d 919 (2022) [Citation omitted]. When items in a list are joined by a comma with an “or” preceding the last listed item, the alternatives are

disjunctive. *Caldwell v Chapman*, 240 Mich App 124, 131; 610 NW2d 264 (2000). In addition, “[t]he word “or” is a disjunctive term used to express a choice between alternatives.” *Zwiker v Lake Superior State Univ*, 340 Mich App 448, 476; 986 NW2d 427 (2022) [Citation omitted].

Importantly, the parties herein use the word “or” to separate the listed contract documents in the clause indicating a choice between alternatives. In other words, the use of the word “or” coupled with the use of commas between the listed items in the termination clause clearly indicates that GM is afforded the choice between terminating any of the listed alternative contract documents.

“It is true that the words ‘or’ and ‘and’ are often used erroneously. But ‘the words are not interchangeable and their strict meaning ‘should be followed when their accurate reading does not render the sense dubious...’” *Taylor v Taylor*, 323 Mich App 197, 200; 916 NW2d 652 (2018), quoting *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 50; 575 NW2d 79 (1997) [Footnotes omitted] [Emphasis added]. Indeed, when determining if a contract provision is ambiguous, the Court gives the language used its ordinary and plain meaning to see if the words “may reasonably be understood in different ways.” *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 656–657; 550 NW2d 577 (1996).

If the parties had intended that, in order to terminate the Order Form, GM would be required to terminate all of the documents listed, then the parties would have used the conjunctive “and” instead of the disjunctive “or.” Again, the words “and” and “or” are not interchangeable. Hence, pursuant to the “Termination for Convenience” clause in the Order Form, the language contained therein may not be “reasonably understood in different ways.” *Id.* It is clear that the parties intended to provide GM with alternatives. Hence, the termination clause clearly provides that GM may terminate any or all of the listed order-related contracts it chooses to terminate.

Nevertheless, Plaintiff focuses on the language “together with each and all Purchase Orders” to support their interpretation that, under the Termination for Convenience clause, GM cannot terminate for convenience only the Order Form, or only a single purchase order or other order form, but requires GM to terminate all the agreements in the provision. The Court disagrees with this interpretation.

As indicated above, the first sentence of the Termination for Convenience clause states: “GM may terminate the Agreement(s), this Order Form, together with each and all Purchase Orders, **or** any order forms **or** other ordering documents in effect as of the date of termination, (collectively, the “Existing Agreement”).” [Emphasis added]. When looking at the Termination for Convenience clause as a whole, the “together with each and all Purchase Orders” refers to, and modifies, the document listed immediately before this phrase, being “this Order Form.” As such, to properly terminate the Order Form, GM must terminate each and all purchase orders under that Order Form.

Plaintiff CA also focuses on the parties’ definition of “Existing Agreement” in the termination clause. Plaintiff CA asserts that the term “Existing Agreement” is defined to encompass “the Agreement(s), this Order Form, together with each and all Purchase Orders.” CA argues that the use of the conjunctive “and” in this provision signifies the intent “to combine items,” as does the plain meaning of the phrase “together with.”

The Court disagrees with this reading of the language. Because the list of contract documents includes the disjunctive “or,” the “Existing Agreement” term cannot reasonably refer to all of the listed contract documents. Instead, “Existing Agreement” refers to a combination of the listed contract documents, since the list can change selectively based on which specific contracts GM wants to terminate under the termination clause. Furthermore, this interpretation is

also supported by the second paragraph immediately after the first paragraph of the Termination for Convenience clause, which states:

In the event of a termination by GM pursuant to this provision, if the Existing Agreement is terminated without cause, neither party shall have further obligations under the terminated portions of the [sic] this Agreement, except for those provisions that survive termination under the Agreement by their terms.

[Defendants' Exhibit 2, p. 7] [Emphasis added].

This paragraph specifically references the “terminated portions,” which indicates that “portions” of the “Existing Agreement” may be terminated. Again, this further supports GM’s interpretation.

The Court also agrees with GM’s argument, quoting *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 50; 664 NW2d 776 (2003), that contracts must be read “as a whole, giving harmonious effect, if possible, to each word and phrase.” See also *Bayberry Group, Inc v Crystal Beach Condo Ass'n*, 334 Mich App 385, 396; 964 NW2d 846 (2020).²

When the Order Form is viewed in its entirety, other terms in the Order Form support GM’s interpretation that it is able to terminate the Order Form and associated purchase orders without terminating the 2015 License Agreement under the termination for convenience clause. For example, the provision contained on page 5 of the Order Form demonstrates that the parties contemplated a scenario where some agreements terminate while others do not. This clause states, in relevant part:

Notwithstanding the immediately foregoing sentence or anything in the CA Agreement or this Order Form or any other orders forms, ordering documents or Purchase Orders (“Orders”) to the contrary, in the event that the CA Agreement and/or any Order is terminated

² “[W]hen several words are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.’ Specifically, ‘words grouped in a list should be given related meanings.’” *Bayberry Group, Inc v Crystal Beach Condo Ass'n*, 334 Mich App 385, 396–397; 964 NW2d 846 (2020), quoting *Atlantic Casualty Ins. Co v Gustafson*, 315 Mich App 533, 541; 891 NW2d 499 (2016).

prior to September 27, 2023, GM shall have the right to continue using the Unlimited Deployment Licensed Software, ...

[Defendants' Exhibit 2, Order Form, p. 5].

The use of the term “and/or” indicates that the Agreement or any Order, or both can be terminated, i.e., that all or a single order contract may be terminated. If the parties had intended that GM was unable to terminate one of these contracts without terminating all others, the parties would have simply used “and” instead of “and/or.”

Therefore, based on the plain language of the Order Form's Termination for Convenience clause, GM is able to terminate the Order Form without terminating all the agreements and documents between the parties, namely the 2015 License Agreement.

B. Breach of Contract

As to CA's breach of contract claim, the Court has determined that, under the Order Form, GM need not terminate the all the documents listed to have effectively terminated the Order Form. The Court now addresses whether CA has properly brought a claim for breach of contract.

As indicated above, “[a] party claiming a breach of contract must establish by a preponderance of the evidence (1) that there was a contract, (2) that the other party breached the contract and, (3) that the party asserting breach of contract suffered damages as a result of the breach.” *AFT Michigan, supra*.

There is no dispute that the parties have contracts with one another. The basis for CA's breach of contract claim is that the Termination for Convenience Clause requires GM to terminate the 2015 License Agreement, the Order form, all Purchase Orders, as well as any other order form or other ordering documents in effect as of the date of termination, and GM only terminated the Order Form, which CA claims was ineffective. The Court has already determined that the fundamental question before the Court, which is that, pursuant to the plain language of the

termination clause, GM may terminate the Order Form and associated purchase orders without terminating all other agreements including the 2015 License Agreement.

In its breach of contract claim, CA alleges that GM's ineffective termination of the Order Form and GM's refusal to pay the overdue balance constitutes a material breach of the contract. In its Complaint, CA alleges the following:

23. On September 1, 2022, Kelly K. Masters, the Global Director & Chief Contracting Officer — IT at GM Holdings, sent a so-called “termination letter” (the “Termination Letter”) via email to CA, claiming that GM Holdings was “hereby terminating that certain Product Renewal Notification and Software Order Form (Quote# CPQ-570477), dated September 28, 2020 . . . and any purchase orders associated With the Order Form.

[Complaint, ¶ 23].

As the Court has already determined, the Termination for Convenience Clause does not require GM to terminate all the contracts listed between the parties. Thus, GM could properly terminate the Order Form at issue here and its corresponding Purchase Orders.

CA concedes that GM provided notice that GM terminated the Order Form and the associated purchase orders. The Termination for Convenience Clause allows GM to do this without cause and at any time. Thus, GM properly and effectively terminated the Order Form and associated Purchase Orders before they were required to pay the associated fees due for the next time period of September 28, 2022 to September 27, 2023. [Defendants' Exhibit 2, Order Form, p. 1-2). Therefore, GM has not breached the Order Form when it did not pay the fees due on September 28, 2022, because it terminated the Order Form before those fees became due and owing. Accordingly, CA cannot maintain a claim for breach of contract.

C. Declaratory Judgment

As indicated above, CA requests that the Court declare that, “[u]nder the plain language of Section 5.3 of the 2015 License Agreement, as amended by the Order Form, if GM chooses to

terminate for convenience, it must terminate the entire Existing Agreement, including but not limited to” the 2015 License Agreement, the Order Form, all Purchase Orders, all order form and other ordering documents. CA also requests that the Court declare that “GM is not entitled to terminate only the Order Form and Purchase Orders associated only with the Order Form” and that GM’s termination for convenience was ineffective and “must pay the balance owed under the Order Form.”

For the same reasons that CA’s breach of contract claim fails, its declaratory judgment claim also fails.

D. CA’s Request to Amend its Complaint

In its response brief, CA also requests that this Court grant it leave to amend its Complaint to address any defects the Court determines are contained in its Complaint. Under MCR 2.116(I)(5), “[i]f the grounds asserted are based on subrule (C)(8), (9) or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.” “Leave to amend is generally a matter of right and should ordinarily be denied only for particularized reasons, including undue delay, bad faith, dilatory motive, or futility. *Green v Pontiac Pub Library*, __Mich App__; __NW2d__: 2024 WL 994950, at *3 (2024), citing *Bennett v Russell*, 322 Mich App 638, 647; 913 NW2d 364 (2018). “An amendment is futile, and thus can be denied, if, among other things, it is legally insufficient on its face.” *Wolfenbarger v Wright*, 336 Mich App 1, 21; 969 NW2d 518 (2021). [Citation omitted].

Here, any amendment to CA’s Complaint with regard to its breach of contract claim would be futile because, under the plain language of the Termination for Convenience clause, GM is able to terminate the Order Form and associated Purchase Orders without terminating the other listed documents, including the 2015 License Agreement. Therefore, any amendment would be futile

because the breach of contract claim is “legally insufficient on its face.” *Id.* Likewise, CA’s declaratory judgment claim fails for the same reasons.

IV. CONCLUSION

GM’s termination of the Order Form and related Purchase Orders on September 1, 2022 was effective. As such, GM did not breach the Order Form by failing to pay the fees for the 2023 term on September 28, 2022. Therefore, CA has failed to state a claim for which relief may be granted. MCR 2.116(C)(8). Accordingly, the Court grants Defendants’ motion for summary disposition.

For the reasons stated in the foregoing Opinion,

IT IS ORDERED that the motion for summary disposition filed by Defendants General Motors Holdings LLC and General Motors LLC is hereby **GRANTED**;

IT IS FURTHER ORDERED that the Complaint filed by Plaintiff CA, Inc is hereby **DISMISSED** in its entirety;

IT IS FURTHER ORDERED that the Court **DENIES** Plaintiff CA, Inc’s **REQUEST TO AMEND** its Complaint;

IT IS FURTHER ORDERED that this **RESOLVES** the last pending claim and **CLOSES THE CASE**.

IT IS SO ORDERED.

DATED: May 13, 2024

/s/ Muriel D. Hughes
Circuit Judge

