STATE OF MICHIGAN

IN THE 20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET
414 Washington Street
Grand Haven, MI 49417
616-846-8315
* * * * *

MULTI-LAB, LLC, a Michigan limited liability company,
Defendant/Third-Party Plaintiff,

v

EPC COLUMBIA, INC., a Michigan Corporation,
Third-Party Defendant.
_____/

OPINION AND ORDER REGARDING CROSS MOTIONS FOR SUMMARY DISPOSITION
File No: 2022-7099-CB

Hon. Jon A. Van Allsburg

Defendant/Third-Party Plaintiff, Multi-Lab, LLC (hereinafter MLC), a Tier II auto parts supplier, became a party to this action when it was sued by Marquis Industries, Inc., for breach of contract and account stated after it failed to take delivery of, and pay for the bolts that Marquis manufactured at MLC's request. MLC purchased the parts to incorporate into a cup assembly that it regularly sold to EPC Columbia, Inc. (hereinafter EPC), a Tier I auto supplier. In response to Marquis' complaint, MLC sued third-party defendant EPC alleging that it was responsible for the breach with Marquis. MLC and Marquis settled their dispute after mediation, and Marquis was dismissed from the case on June 18, 2024. On May 24, 2024 and May 31, 2024, this Court heard arguments from the remaining parties on cross motions for summary disposition pursuant to MCR 2.116(C)(10). The court concludes that third-party party defendant EPC is not liable to MLC, and its motion is GRANTED. MLC's motion is DENIED and judgment is entered in favor of EPC.

I. Undisputed Facts

EPC was a Tier I supplier of auto parts to Chrysler Stellantis (hereinafter Stellantis) MLC is a Tier II supplier that manufactures component parts, some of which it sold to EPC. In this particular case, MLC manufactured a cup and bolt assembly for EPC that EPC incorporated into a part that Stellantis used to secure spare tires in certain Chrysler vehicles. MLC sourced bolts from a Tier III supplier.[1] With additional components that it manufactured itself from raw materials,

[1] For much of the relationship between MLC and EPC, the bolts were sourced from Marquis. As will be discussed below, when MLC first began manufacturing for EPC, the bolts were sourced from Accument and its subsidiaries.

MLC incorporated the bolts into the cup and bolt assemblies that it sold to EPC. When Stellantis ended the program that required these parts, MLC's excess inventory led to the current dispute.

The relationship between MLC and EPC began in late 2018 after the president of MLC, Mark Deal, purchased assets from Westside Manufacturing, which previously manufactured the cup and bolt assemblies for EPC. Westside introduced Mark Deal to Bob Bachman, the Vice President of Sales and Program Management for EPC. Mr. Deal was also introduced to Kathy Freeman, EPC's office manager and primary purchaser. At some point in late 2018, MLC provided a quote to EPC to manufacture the cup and bolt assemblies for EPC.

After communications over the phone and by email, the parties agreed to a price for the cup and bolt assemblies as well as specifications for its production. Because the production would remain the same as it did with Westside, no additional approval from Stellantis was required at the time.[2] Rather than any written contract, the parties agreed, or at least mutually understood, that the transactions would be dictated by purchase orders issued by EPC to MLC.

Mark Deal described the process between EPC and MLC at his deposition: EPC would issue a purchase order that included several weeks' worth of parts at a time. Each week was a separate line item on the purchase order and included the number of parts and an expected delivery date for that particular line. When EPC provided a purchase order to MLC, MLC created a Sales Order which was an internal document that started production of the parts and helped to regulate the internal supply chain. Once the parts were shipped, MLC generated an invoice for the line item shipped and sent it to EPC for payment. According to Mr. Deal's deposition testimony, "[t]he supply contract was the purchase orders."[3] Kathy Freeman sent EPC's first purchase order (order #95409) to MLC on December 30, 2018. The purchase order included five line items of parts for five weeks of deliveries at 7,000 assemblies each.

EPC's purchase order, and every purchase order thereafter, incorporated by reference its "Standard Purchase Order Terms and Conditions."[4] Until this action, Mr. Deal and MLC failed to

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[2] Mr. Deal explained at deposition that when any aspect of manufacture changed, Stellantis was provided with a PPAP, which showed specifications for the parts to ensure it met the requirements.

[3] Mark Deal Dep. Transcript, p. 54, Line 25. This is consistent with the Uniform Commercial Code, specifically MCL 440.2201(1), which states in relevant part, "A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing."

[4] Exhibit 2, Third-Party Defendant EPC's Brief in Support of its Second Motion for Summary Disposition. MCL 440.2201(2) states, "Between merchants, if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against the party unless written notice of objection to its contents is given within 10 days after it is received." The terms and conditions of the purchase orders were therefore part of the contract between the parties.

review or acknowledge the contract terms incorporated into each purchase order by reference.[5] Those contract terms and conditions included the following:

> **7.0 TERM:**
> **The term of any Order shall be determined by the period of performance as defined by the delivery schedules contained in an Order, as may be modified from time to time.**
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> **11.0 TERMINATION FOR CONVENIENCE:**
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> **(A) Notwithstanding any other provision of these Terms, the Buyer may, at any time by written notice, terminate for its convenience the whole or any part of an Order. Upon receipt of such notice, the Seller must immediately cease work, including but not limited to the manufacture and procurement of materials for the fulfillment of the terminated portion of an Order.**
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> **(B) In the event of termination pursuant to Clause 10 (A) above, Buyer and Seller will agree upon an adjustment of the Order price, provided that: (i) such adjustment shall not exceed the Order total price; (ii) except as otherwise provided herein, no amount will be allowed for profit on the terminated portion of the Order, regardless of whether the work on the terminated portion has been performed; (iii) except as otherwise provided herein, in the event of a partial termination no adjustment will be made on the price of the remaining portion of the Order, i.e., that portion which has not been terminated; (iv) the Buyer will pay the Order price for completed Goods delivered and accepted pursuant to paragraph (C) below; (v) the Seller and Buyer will agree on the amount of payment for manufacturing materials delivered and accepted pursuant to paragraph (C) below; (vi) Seller's written intent to file a claim for adjustment is received within twenty-one (21) calendar days from the effective date of termination; (vii) Seller's final claim is received within ninety (90) calendar days from the date that intent to claim is filed. Seller shall have no other remedies after this period; and (viii) Seller must continue the work not terminated.**
>
> **20.0 INVOICING:**
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> **Seller shall issue a separate invoice for each separate shipment. Each invoice shall include: (i) the Purchase Order number; (ii) Buyer's part numbers; and (iii) quantities shipped. Undisputed amounts shall be paid within 90 days of receipt and acceptance of goods or services and a correct invoice. Delays in receipt of goods or services, acceptance of goods or services, or a correct invoice will be just cause for Buyer to withhold payment without losing discount privileges.**

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[5] The general rule is "that one who has executed a contract will not be heard to say that he did not read it." *Otto Baedeker & Assoc v Hamtramck State Bank*, 257 Mich 435, 438; 241 NW 249 (1932). "[O]ne who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms." *Shay v Aldrich*, 487 Mich 648, 680-681; 790 NW2d 629 (2010) (citation omitted). While Mr. Deal disputes the validity and enforceability of the contract throughout his deposition (see Mark Deal Dep. Transcript, P. 29, lines 1-25, and P. 30, lines 8-14), that issue was not timely raised (see MCL 440.2201(2)), and no argument is made by counsel for MLC that the contract as determined by the purchase orders is invalid or unenforceable. The terms of the contract are not inconsistent with MLC's position that the purchase orders formed the contract, and the "Entire Terms" clause of the contract excludes MLC's position that a course of performance between the parties formed a new contract providing that EPC would purchase excess parts and material (which the court addresses further below).

36.0 ENTIRE TERMS:
The Terms stated herein and the terms on the face of an Order or in any attachments thereto and incorporated therein, constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof and are binding on Buyer and Seller, and their respective heirs, devisees, administrators, executors, trustees, receivers, successors and permitted assigns, and supersede all prior representations and understandings, whether oral or written. However, nothing herein is construed as a limitation or exclusion of any right or remedy available to Buyer by law.

For the entire three-year relationship between the parties, MLC completed timely deliveries. MLC understood that if it failed to meet a delivery request for EPC, it would shut down the Stellantis production lines dependent on those parts. This was the case even though EPC often placed purchase orders that required delivery on very short notice, sometimes with only a day or two of lead time before EPC expected delivery. There were also instances where every line item on a purchase order had been fulfilled, but EPC needed more product and, for whatever reason, was unable to generate a written purchase order.[6] In those cases, Kathy Freeman would typically call or email and request that additional line items be added to an existing purchase order. MLC always accommodated the requests and written purchase orders for the additional parts were later generated. Even when the order was made informally by phone or email, MLC considered the requests purchase orders. Mr. Deal made that very clear at his deposition when he said that MLC was "not shipping without a purchase order."[7]

Undoubtedly, MLC was very accommodating to EPC. While MLC repeatedly requested purchase orders that covered longer periods of time, ideally twelve weeks, it continued to accept purchase orders from EPC for much shorter time periods. While those purchase orders often included four to six weeks' worth of product, they were sometimes for much shorter windows of time. Occasionally, EPC provided MLC with forecasts based on forecasts that EPC received from Stellantis for expected needs, but these were only estimates, not guarantees.

MLC also accommodated a Tier III supplier change when the price for the component bolt increased from $1.41 to $1.71 shortly after MLC took over production from Westside. According to Mr. Deal, MLC began its search for a more affordable supplier before EPC brought MLC concerns about the increase. Sometime around May 2019, EPC contacted MLC and informed MLC that if MLC could not stock the bolt at a reduced price, it would have to take its business elsewhere.[8] MLC was already prepared to offer the bolt at a reduced price and discussed the option with EPC. Both parties knew that using the new supplier, Marquis, would create twenty-week lead

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[6] Mr. Deal noted that EPC had an issue with its machinery that created a lot of "junk" or scrap inventory that needed to be rapidly replaced to allow EPC to stay on track in its fulfillment of orders to Stellantis.

[7] Mark Deal Dep. Transcript, page 28. Indeed, this was necessarily the case because the purchase order was the start of the entire internal supply process at MLC as described herein.

[8] MLC qualified these discussions as "threats" by EPC to take production elsewhere. While it is ultimately irrelevant to the Court's decision in this matter, the Court doubts this characterization and assumes that the discussions were nothing more than typical business negotiations.

times for the bolts because they would be sourced from Taiwan. The parties also understood that the price for the bolt was based on a year-long estimate of demand. Despite this, the parties agreed to use the new supplier for the bolts and EPC placed its first purchase order, which would include bolts from the new supplier on June 11, 2020 (PO #95635).

With Marquis as the new bolt supplier, the relationship between EPC and MLC continued through January 2022. Throughout the COVID-19 pandemic especially, EPC's demand fluctuated due to shutdowns at Stellantis and computer chip shortages in the automobile market. While MLC regularly shipped 7,000 assemblies per week throughout much of the parties' relationship, there were times that EPC only needed 4,000 parts in a week, or where MLC held product altogether because EPC had excess inventory.

Ultimately, EPC placed its last purchase order with MLC in January 2022. Thereafter, in February 2022, EPC informed MLC that Stellantis ended the program and that EPC would no longer need the cup and bolt assemblies and that MLC should end production. At the time, MLC had $82,292.83[9] in finished goods and raw materials intended for future EPC purchase orders. Marquis had $40,238.52 in bolts intended for MLC to incorporate into assemblies for EPC. On MLC's behalf, EPC submitted an obsolescence claim to Stellantis for reimbursement of the loss. Stellantis denied the claim as incomplete.[10]

MLC refused to accept the $40,238.52 of bolts from Marquis, which gave rise to the instant suit. In return, MLC sued EPC, on the basis that EPC was ultimately at fault because it refused to accept the surplus cup and bolt assemblies and refused to pay an invoice for $82,292.83 for the same. MLC and Marquis resolved their dispute with MLC paying $32,500 to Marquis. Marquis also retained the bolts for which MLC refused to accept delivery.

The dispute between MLC and EPC includes three counts: breach of contract, account stated, and an alternative count of promissory estoppel. EPC requests that MLC's suit against it be dismissed pursuant to MCR 2.116(C)(10) because there is no genuine issue of material fact that no contract existed for the surplus cup and bolt assemblies, that EPC did not acquiesce to payment for the spare cup and bolt assemblies through an account stated, and that EPC never promised to pay for excess inventory.

MLC largely agrees that there is no genuine issue of material fact and also moves for summary disposition in its favor pursuant to MCR 2.116(C)(10). However, MLC believes that the undisputed facts show that a contract existed for the additional parts through the parties' course of

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[9] There is some suggestion in the pleadings that EPC also had about $80,000 of inventory on hand at the time that Stellantis ended the program.

[10] There is some evidence that Bob Bachman of EPC exaggerated the lengths that MLC went to in order to have the obsolescence claim fulfilled by Stellantis. Bob Bachman's candor toward MLC and Mark Deal is of no consequence in the resolution of this action.

performance, and that EPC acquiesced to the invoice for remaining parts through an account stated. Because MLC views the promissory estoppel claim as an alternate claim, it makes no argument for summary disposition of that claim.

II. Analysis

A motion for summary disposition based on MCR 2.116(C)(10) tests the factual support for a claim and must be supported by affidavits, depositions, admissions, or other documentary evidence. The moving party must specifically identify the undisputed factual issues and support its position with evidence. The trial court must consider the submitted evidence in the light most favorable to the nonmoving party but may not make findings of fact or weigh credibility in deciding the motion. If the moving party fulfills its initial burden, the party opposing the motion then must demonstrate with supporting evidence that a genuine and material issue of disputed fact exists.[11]

"When properly challenged, plaintiff must establish that he has a case on the law and that there are some evidentiary proofs to support his allegations as to any material fact."[12] Under MCR 2.116(G)(4), a party opposing a motion for summary disposition is required to respond with affidavits or other evidentiary materials to show the existence of a factual dispute, rather than relying on the allegations or denials in the pleadings.[13] Generally, the nonmoving party may not rest on mere allegations or denials, but must proffer evidence of specific facts.[14]

"The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion. A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules."[15] A genuine issue of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[16]

A. Breach of Contract

In this case, it is undisputed that a contract existed between the parties for every part manufactured by MLC through the final purchase order in January 2022. Specifically at issue in

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[11] *Reed v Reed*, 265 Mich App 131, 140–41; 693 NW2d 825, 833 (2005).

[12] *Durant v Stahlin*, 375 Mich 628, 638; 135 NW2d 392 (1965).

[13] *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284, 287 (1991).

[14] *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2000).

[15] *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).

[16] *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

this case is whether the parties also agreed that EPC would purchase excess inventory at the end of Stellantis' program. "The question regarding the existence of a contract is governed by general contract principles found in state law."[17]

Under Michigan law, contracts for the sale of goods—including supplier contracts—are governed by the Uniform Commercial Code (the UCC), MCL 440.1101 *et seq.* The UCC contains a statute-of-frauds provision that governs which agreements must be in writing.[18] "The statute of frauds applies to all contracts for the sale of goods and requires that a contract be in writing and signed by the party against whom enforcement is sought if its value exceeds $1,000."[19] However, "quantity is the only *essential* term required by the statute of frauds."[20] MCL 440.2201 (1) states:

> Except as otherwise provided in this section, a contract for the sale of goods for the price of $1,000 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing.

MCL 440.2201 (3)(a) creates the exception to the quantity requirement for specialty goods:

> A contract that does not satisfy the requirements of subsection (1) but is valid in other respects is enforceable…[i]f the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement.

Oral contracts are also allowed for the sale of goods under the Uniform Commercial Code ("UCC") so long as the contract meets the requirements of the UCC. If the goods are specialty goods exempt from the statute of frauds, then parole evidence may define the contract's terms. MCL 440.1303 provides, in part:

> (1) For purposes of this act, a "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if both of the following are met:

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[17] *Kauffman v The Chicago Corp.*, 187 Mich App 284, 287; 466 NW2d 726 (1991).

[18] *MSSC, Inc. v Airboss Flexible Products Co.*, 511 Mich 176, 180; 999 NW2d 335 (2023).

[19] *Woodland Harvesting, Inc. v Georgia Pacific Corp.*, 693 F. Supp. 2d 732 (ED Mi., 2010) (No. 09-10736).

[20] *MSSC, Inc. v Airboss Flexible Products Co.* at 181.

> (a) the agreements of the parties with respect to the transaction involves repeated occasions for performance by a party.
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> (b) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

It is EPC's position that the contract between the parties was a release-by-release contract as recently recognized by the Michigan Supreme Court in *MSSC, Inc. v Airboss Flexible Products Co.*[21] In a release-by-release contract, there is a blanket purchase order that sets out the terms, "and the buyer issues subsequent releases that set forth the specific quantity the buyer needs."[22] EPC opines that because there is no "release" or purchase order for the cup and bolt assemblies at issue, there was no breach of contract.

MLC makes no claim about the type of contract that exists between the parties. If it did, to sustain its position, MLC would necessarily need to rely on an "output contract," which is "a contract in which a seller promises to supply and a buyer to buy all the goods or services that a seller promises during a specified period and at a set price."[23] There is absolutely no evidence from either party to support this and MLC makes no claim that there is.

Instead, MLC claims a specialty goods exception that creates a contract between the parties for the surplus parts. While the Court need not even reach that analysis where the undisputed evidence makes clear that the parties were engaged in a release-by-release contract, it will briefly comment on it in the interest of completeness. Viewed in a light most favorable MLC, and accepting as true that the *only* contract between the parties were the purchase orders themselves and not the incorporated terms and conditions, the course of performance between the parties was for EPC to send a purchase order and for MLC to fulfill that purchase order. Although MLC was lenient with EPC's requests for products on short notice, and often allowed verbal or email releases that were later followed up with written purchase orders, there is absolutely zero evidence to support that MLC *ever* shipped product or, perhaps more importantly, that EPC ever *paid* for product outside of a request for those products. There is also no evidence that EPC ever indicated that it would pay for parts outside of purchase orders.

MLC argues that EPC knew that MLC would have to keep excess inventory due to long lead times and a need for on-demand supply and that this created a course of performance binding EPC to purchase excess inventory. It is true that at her deposition, Kathy Freeman testified that MLC did not need to wait for a purchase order to start manufacturing and that Bob Bachman and Mark Deal emailed about the twenty-week lead times. However, MLC actually had no contractual

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[21] *MSSC, Inc. v Airboss Flexible Products Co.*, 511 Mich 176; 999 NW2d 335 (2023).

[22] *Id.* at 182-183.

[23] *Id.* at 182.

obligation to meet EPC's production goals, nor did EPC ever expressly promise to pay for excess parts and materials, which Mark Deal acknowledged at deposition.[24] In fact, MLC does not even argue that EPC ever represented, through oral agreement, that it would pay for excess parts or materials. The fact that EPC intended to take its business elsewhere if MLC could not lower the cost and that MLC found a cheaper supplier in Marquis is undisputed. In other words, the only expectation between the parties, as was acknowledged by Mark Deal at deposition, was that MLC fulfill purchase orders. The inescapable conclusion is that MLC assumed the risk of having excess inventory in the event of a cancellation of the program by Stellantis.

To the extent that MLC relies on language in the Court's September 11, 2023 Order on EPC's first motion for summary disposition to pigeon-hole the Court's decision here, the Court *only* indicated that if there was a pattern of shipping parts unattached to a purchase order that *may* "reasonably show that a contract existed between the parties for the bolts at issue" by way of course of performance. At that time, the Court had very little information about the facts of this case and discovery had not been completed. MLC's pleadings suggested that MLC shipped 7,000 parts per week as a matter of course, regardless of any sort of communication from EPC, which could certainly have indicated an output contract. With discovery now complete, it is undisputed that that is not the case and that no amount of further factual development could create a genuine issue of fact on which reasonable minds could differ. MLC's own president testified that the contract between the parties was the purchase order, and that MLC *never* shipped without a purchase order.

The primary purpose of the statute of frauds is to protect parties from *unfounded* parol assertions of contractual obligation.[25] MLC's claim in this case that the parties had a contract for the surplus parts is exactly that: unfounded. "Although parol evidence can be used to determine the specific total of an imprecise quantity in a requirements or output contract under the UCC, it cannot be used to determine the existence of a quantity term itself."[26] The evidence is clear that the parties had a release-by- release contract with a blanket order created by the parties discussions and agreement to move forward after MLC purchased assets from Westside, and purchase orders or releases for specific quantities thereafter. Because there is a release-by-release contract, the specialty goods exception does not apply because the quantity is not missing. As such, parol evidence through the specialty goods exception of the UCC cannot be used to create a quantity term where there is not one. EPC's motion for summary disposition of the breach of contract claim is GRANTED and MLC's motion DENIED.

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[24] Mark Deal Dep. Transcript (Page 104, lines 5-8). Q: Did anyone from EPC say we will – up through February 2022 say that we will pay for unordered bolts? A: No one said that.

[25] *Roth Steel Prods. v Sharon Steel Corp.*, 705 F2d 134, 142 (6th Cir. 1983).

[26] *MSSC, Inc. v Airboss* at 195.

B. Account Stated

MLC also claims that EPC agreed to pay $82,292.83 through an account stated because it did not dispute an invoice that MLC sent for the same on April 28, 2022 (Invoice #4282022). "An account stated 'is a contract based on assent to an agreed balance, and it is an evidentiary admission by the parties of the facts asserted in the computation and of the promise by the debtor to pay the amount due'…An account stated, like all contracts, requires mutual assent. Specifically, '[a]n account stated requires the manifestation of assent by both parties to the correctness of the statement of the account between them.'"[27] "The parties to an account stated need not expressly assent to the sum due, as there are instances when assent may be inferred from a party's inaction…the debtor's new promise to pay is a matter of express or implied contract, depending on the conduct of the parties."[28] "No matter the method of assent, the debtor in an account stated action has received goods or services without having paid for them, and an action exists when the price of those goods or services is greater than the sum paid."[29]

It is EPC's position that because it never accepted the inventory, EPC did not receive a benefit and has no obligation to MLC. Additionally, EPC argues that it made clear that EPC would only pay if Stellantis accepted the obsolescence claim. For its part, MLC alleges that EPC never disputed the amount due and that its actions, specifically working with Stellantis on the obsolescence claim, established assent to the amount due.

As a threshold matter, the Court must consider whether an account stated claim is even tenable here where EPC did not actually receive any product from MLC. The Court finds that it is not. *Fisher Sand and Gravel,* on which MLC heavily relies in its briefs, makes clear that "the debtor in an account stated action has received goods or services without having paid for them, and an action exists when the price of those goods or services is greater than the sum paid."[30] While it may be true that MLC needed to maintain these parts to fulfill anticipated orders from EPC, EPC never actually received them because they never actually ordered them. MLC offers no precedential support for its position that an itemization of unused goods like the purported invoice here can be the basis for an account stated claim.

The Court must also note that while MLC again attempts to rely on this Court's September 11, 2023 Order to bind the Court to a favorable decision, the Court made no guarantees about how

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[27] *Fisher Sand and Gravel Co. v Neal A. Sweebe, Inc.*, 494 Mich 543, 557; 837 NW2d 244 (2013) (internal citations omitted).

[28] *Id.* at 558.

[29] *Id.* at 559.

[30] *Id.*

it would rule in the future. It simply highlighted factual disputes that existed at that time and contemplated different outcomes based on those unresolved facts.

Now that discovery is complete, and there is wide agreement regarding the facts of the case, the Court finds that an account stated claim is untenable here where EPC did not receive any goods or services it did not pay for. As EPC suggests in its briefings to this court, one cannot simply send a random bill, unattached to any purchase, to another and bind that person to payment because the person failed to respond. Even if an account stated claim could exist in this case, Mark Deal acknowledged in an affidavit dated July 10, 2023, that "EPC stated that it would seek payment on the obsolescence claim for Stellantis, and pay to Multi-Lab any amount EPC recovered from Stellantis." In other words, there was never any assent by EPC itself to pay the claim and no amount of factual development will change that. EPC's motion for summary disposition of the account stated claim is GRANTED and MLC's motion is DENIED.

C. Promissory Estoppel

Finally, MLC made an alternate claim of promissory estoppel if the Court did not find that a contract between the parties for the excess inventory existed, which is indeed the case here. EPC moves for dismissal of the promissory estoppel claim on grounds that there was an express contract between the parties that dictated the transactions and because there was no promise to pay for the leftover parts. In defense, MLC alleges that EPC's conduct implied a promise to pay and that there is at least a genuine issue of material fact whether such a promise existed.

Promissory estoppel "protect[s] the ability of individuals to trust promises in circumstances where trust is essential."[31] It is "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promise or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires."[32] The reliance on the promise must be reasonable and the promise must be "clear and definite."[33] However, whether a promise is clear and definite is a question of fact:

> A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made…[A] promise may be stated in words, either orally or in writing, or it may be inferred wholly or partly from conduct…Both language and conduct are to be understood in the light of the circumstances, including course of performance, course of dealing, or usage of trade…Variables such as the nature of the relationship between the parties, the clarity of the representation, as well as the

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[31] *State Bank of Standish v Curry*, 442 Mich 76, 83-84; 500 NW2d 104 (1993).

[32] *Id.* at 83.

[33] *Id.* at 85.

> circumstances surrounding the making of the representation, are important to the determination of whether the manifestation rises to the level of a promise. Both traditional contract and promissory estoppel theories of obligation use an objective standard to ascertain whether a voluntary commitment has been made. To determine the existence and scope of a promise, we look to the words and actions of the transaction as well as the nature of the relationship between the parties and the circumstances surrounding their actions.[34]

As the Court has already mentioned herein, MLC was under no obligation to continue to work with EPC and meet its demands for product on short notice. The Court has also already discussed that the course of performance between the parties was for EPC to place purchase orders and for MLC to fulfill those purchase orders.

MLC does not argue that there is an express promise, but relies on EPC's "threat" to change suppliers as well as its knowledge that the increased lead times to accommodate lower prices would necessitate higher inventory stocks to create an implied promise. In *Charter Tp. Of Ypsilanti v General Motors Corp.*,[35] the township created tax incentives for General Motors to operate two plants in the township. The agreement was for a twelve-year tax incentive with the benefit to the township of maintaining jobs for its residents. General Motors consolidated the plants and closed them prior to the twelve-year expiration of the tax incentive. The township sued on the basis of promissory estoppel alleging that General Motors was obliged to operate for the duration of the approved incentive period. The Court of Appeals, among other things, explained that "the fact that a manufacturer uses hyperbole and puffery in seeking an advantage or concession does not necessarily create a promise. For example, statements such as 'we're partners' and 'we look forward to growing together' were found not to constitute a promise…"[36]

The fact that Bob Buchanan told Mark Deal they would look elsewhere if MLC could not lower the price of the Tier III component bolt is not disputed. But this was also merely a negotiation tactic that could not reasonably be considered a promise. Beyond that, MLC was already searching for new Tier III bolt suppliers before EPC ever approach MLC about the price increase. MLC provides no evidence of a clear and definite promise that EPC would cover the cost of excess inventory procured by MLC on its behalf, even by implication. Even Mark Deal testified that it was merely "understood" to be so.[37] EPC's motion for summary disposition of the promissory estoppel claim is GRANTED.

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[34] *Id.* at 85-87.

[35] *Charter Tp. of Ypsilanti v General Motors, Corp.*, 201 Mich App 128, 506 NW2d 556 (1993).

[36] *Id.* at 135.

[37] Mark Deal Dep. Transcript, P. 104, Line 2.

Conclusion

EPC's motion for summary disposition is GRANTED in its entirety and the case is dismissed.

IT IS SO ORDERED. This is a final order resolving all claims and closes the case.

Dated: July 19, 2024

Hon. Jon VanAllsburg, Circuit Judge