

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**DETROIT MANAGEMENT SERVICES, LLC,**

**Plaintiff,**

**v**

**Case No. 24-210218-CB  
Hon. Michael Warren**

**MYCO ENTERPRISES, INC.,**

**Defendant.**

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**OPINION AND ORDER GRANTING  
THIRD-PARTY DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**

**At a session of said Court, held in the  
County of Oakland, State of Michigan  
September 25, 2025**

**PRESENT: HON. MICHAEL WARREN**

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**OPINION**

**I  
Overview**

The present cause of action arises out of a dispute regarding a contractual business relationship in which Plaintiff Detroit Management Services, LLC (the “Plaintiff” or “DMS”) would produce certain material handling equipment, Defendant Myco Enterprises Inc. (the “Defendant” or “Myco”) would sell the equipment to automotive customers, and the parties would split the revenue according to a specified allocation. The Plaintiff alleges that the Defendant has failed to remit its share of revenue from

various orders. In particular, the Plaintiff alleges Breach of Contract (Count I), Unjust Enrichment (Count II), and Promissory Estoppel (Count III).

The Defendant subsequently filed a Third-Party Complaint against Third-Party Defendants Anthony Pinho (“Pinho”) and HMP Industries, LLC (“HMP”)<sup>1</sup> (together, the “Third-Party Defendants”) alleging that the Third-Party Defendants tortiously interfered with Myco’s contract and business relationship with DMS.

Before the Court is the Third-Party Defendants’ Motion for Summary Disposition of the Myco’s Third-Party Complaint (Count I - Tortious Interference with a Business Expectancy and Count II - Tortious Interference with a Contract). Oral argument is dispensed as it would not assist the Court in its decision-making process.<sup>2</sup>

At stake is whether summary disposition of the Myco’s Third-Party claims is warranted because the Third-Party Complaint is improper under MCR 2.204. Because Myco, the Third-Party Plaintiff, has failed to allege that the Third-Party Defendants are liable for some or all of DMS’s original claims, the answer is “yes” and summary disposition under MCR 2.116(C)(8) is warranted.

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<sup>1</sup> HMP’s Resident Agent is Anthony Pinho. Myco’s Third-Party Complaint, ¶ 3.

<sup>2</sup> MCR 2.119(E)(3) provides courts with discretion to dispense with or limit oral argument and to require briefing. MCR 2.116(G)(1) specifically recognizes application of MCR 2.119(E)(3) to summary disposition motions. Subrule (G)(1) additionally authorizes courts to issue orders establishing times for raising and asserting arguments. This Court’s Scheduling Order clearly and unambiguously set the time for asserting and raising arguments, and legal authorities to be in the briefing – not to be raised and argued for the first time at oral argument. Therefore, all parties have been afforded due process as they each had notice of the arguments and an opportunity to be heard by responding and replying in writing, and this Court has considered the submissions to be fully apprised of the parties’ positions before ruling. Because due process simply requires parties to have a meaningful opportunity to know and respond to the arguments and submissions which has occurred here, the parties have received the process due.

## II Background

In 2011, DMS and Myco began to do business together. DMS would produce material handling equipment known as Lift Assist (the “Lift Assist Equipment”), and Myco would sell that equipment to automotive manufacturers.<sup>3</sup> The parties verbally agreed that the revenue split between them would equal 90% of revenue allocated to DMS and 10% of revenue allocated to Myco.<sup>4</sup> Myco coordinated the sale of the Lift Assist Equipment, received payments from the respective customers, and provided DMS with its agreed upon portion of the revenue.<sup>5</sup>

The parties continued to do business together for several years, and as time went on, the parties agreed to expand the kinds of equipment produced by DMS and sold by Myco.<sup>6</sup> DMS began to produce an additional kind of material handling equipment known as “Cart Work Equipment,” and as a result of narrower profit margins, the parties agreed on July 31, 2013, that, for the Cart Work Equipment sold, the revenue allocation would be 97% to DMS and 3% to Myco.<sup>7</sup>

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<sup>3</sup> *Id.* ¶ 8.

<sup>4</sup> *Id.* ¶ 10.

<sup>5</sup> *Id.* ¶ 11.

<sup>6</sup> *Id.* ¶ 13.

<sup>7</sup> *Id.* ¶ 14.

Business continued as usual until 2021, when Myco began to miss payments owed to DMS for equipment produced and sold.<sup>8</sup> Specifically, Myco failed to pay DMS for work associated with seven different orders in 2021, totaling \$59,030.00.<sup>9</sup>

In April of 2024, DMS began work producing project specific Cart Work Equipment to be sold by Myco, entitled the “Lake Orion Battery Cart Program Equipment.” DMS produced the Lake Orion Battery Cart Program Equipment and contends that Myco sold this equipment but failed to remit the required revenue allocation to DMS.<sup>10</sup> Myco allegedly sold the Lake Orion Battery Cart Program Equipment produced by DMS for \$274,605.00, thereby entitling DMS to \$266,366.85.<sup>11</sup> DMS made numerous requests for payment of the outstanding revenue from Myco, albeit unsuccessful.<sup>12</sup> On September 3, 2024, DMS formally notified Myco of its repeated requests for payment, advising that if payment was not made within ten days, DMS would pursue legal action to recover the unpaid revenue allocation from Myco.<sup>13</sup> Myco failed to remit payment, and as a result, on October 8, 2024, DMS filed this action for payment of the outstanding amounts owed by Myco.<sup>14</sup>

On January 10, 2025, Myco filed a Third-Party Complaint against the Third-Party Defendants alleging that they tortiously interfered with Myco’s contracts and business

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<sup>8</sup> *Id.* ¶¶ 16-17.

<sup>9</sup> *Id.* ¶ 18.

<sup>10</sup> *Id.* ¶¶ 20-21.

<sup>11</sup> *Id.* ¶¶ 22-23.

<sup>12</sup> *Id.* ¶ 24.

<sup>13</sup> *Id.* ¶ 25.

<sup>14</sup> *Id.* ¶ 27.

relationship with DMS. Specifically, Myco claimed the “business relationship between Myco and DMS flourished, until DMS, Pinho, Brian C. Harrison and others yet unknown to Myco, usurped the exclusive business opportunities established between Myco and DMS, resulting in Pinho and/or HMP usurping all, or substantially all of the business expectancies otherwise established between Myco and DMS.”<sup>15</sup>

The Third-Party Defendants filed the instant Motion for Summary Disposition pursuant to MCR 2.116(C)(8), contending that Myco’s Third-Party Complaint fails to state a claim upon which relief can be granted because: (i) it does not seek indemnification from the Third-Party Defendants on DMS’s claims against Myco, (ii) or otherwise allege that the Third-Party Defendants are liable for some or all of DMS’s claims.

### **III The Arguments**

The Third-Party Defendants argue that Myco’s Third-Party Complaint does not seek indemnification from the Third-Party Defendants on DMS’s claims against Myco or otherwise allege that the Third-Party Defendants are liable for some or all of DMS’s claims, and therefore, the Third-Party Complaint is improper, fails to state a claim upon which relief can be granted, and should be dismissed pursuant to MCR 2.116(C)(8).

Myco argues that it has alleged proper third-party claims regarding HMP and Pinho’s intentional, tortious interference with Myco’s business and contractual

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<sup>15</sup> Myco’s Third Party Complaint ¶ 10.

relationships with DMS because HMP and Pinho's wrongful conduct is the proximate cause of DMS's alleged damages in the initial complaint. Myco contends this Court should not dismiss its Third-Party Complaint merely because it does not technically allege a derivative liability claim, since the claims are related to and intertwined with DMS's claims against Myco. Even assuming *arguendo* that Myco's claims cannot be asserted as third-party claims, Myco asserts that it should be allowed to pursue its claims against Pinho and HMP as counter-defendants based on MCR 2.207. Alternatively, Myco requests that it be given the opportunity to amend its Third-Party Complaint to plead how Pinho and HMP may be liable to Myco for any damages Myco allegedly owes DMS.

#### **IV Standard of Review**

A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, not whether the complaint can be factually supported. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160 (2019); *Pawlak v Redox Corp*, 182 Mich App 758 (1990). A motion for summary disposition based on the failure to state a claim upon which relief may be granted is to be decided on the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603 (2013); *Parkhurst Homes, Inc v McLaughlin*, 187 Mich App 357 (1991). Exhibits attached to pleadings may be considered under MCR 2.116(C)(8) because they are part of the pleadings pursuant to MCR 2.113(C). *El-Khalil*, 504 Mich at 163. Matters of public record may also be considered. MCR 2.113(C)(1)(a). See also *Dalley*

*v Dykema Gossett*, 287 Mich App 296, 301 n 1 (2010) (court documents are matters of public record that may be considered on a motion under MCR 2.116(C)(8)).

“All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119 (1999); *Wade v Dep’t of Corrections*, 439 Mich 158, 162 (1992). Summary disposition is proper when the claim is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Parkhurst Homes*, 187 Mich App at 360; *Spiek v Dept of Transportation*, 456 Mich 331, 337 (1998).

“[T]he mere statement of a pleader’s conclusions, unsupported by allegations of fact, will not suffice to state a cause of action.” *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395 (1994).

## V The Third-Party Complaint Is Improper

### A The Allegations

In its Third-Party Complaint, Myco states as follows:

#### COUNT I TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY

12. Myco and DMS established an economic relationship as of March 2011, through September 2024, wherein Myco enjoyed a probability of future economic benefit in the form of various equipment sales to automotive manufacturers.

13. Third Party Defendants Pinho and HMP became aware of the business relationships on or about January 2022 and began to act in concert with Brian C. Harrison, DMS and/or either one of them, to usurp the business opportunities, and/or to disrupt the business opportunities of Myco, without the knowledge of Myco's owner, Frank Firek.

14. That as a result of the intentional interference initiated by HMP, Pinho, and other [sic] yet unknown to Myco, Myco's business was severely disrupted, and all orders stopped abruptly with little or no prior business downturn.

15. The economic harm to Myco is directly attributable to the intentional acts of HMP, Pinho and others yet unknown to Myco, which disrupted the business operations of Myco and did cause economic harm to Myco's business.

16. Myco's owner, although suspicious of DMS, Pinho and Brian C. Harrison, did not become fully aware of the intentional interference until Mr. Firek was inadvertently copied on an email from Mr. Pinho to Brian C. Harrison, wherein Mr. Pinho inquired "do you think he [Firek] is getting wise to us?"

17. It was at this time that Myco confirmed DMS, HMP and others were placing orders for materials handling equipment with Myco customers, by usurping the long-term exclusive business relationship between Myco and DMS.

18. The actions of Pinho, HMP and/or others yet unknown to Myco, were all intentional and designed with the intention of disrupting the business relationship between DMS and Myco.

19. Upon information and belief, DMS, Pinho, HMP and others yet unknown to Myco intentional sought business orders from Myco customers, to be filled by HMP and/or DMS, in direct violation of the exclusive business agreement between DMS and Myco.

20. Upon information and belief, DMS, Pinho, HMP and others yet unknown to Myco have benefitted financially from intentionally disrupting the business expectancy between DMS and Myco.



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COUNT II  
INTENTIONAL INTERFERENCE WITH A CONTRACTUAL  
RELATIONSHIP

22. Myco and DMS established a contract as of March 2011, through September 2024, wherein Myco enjoyed an exclusive contract relationship with DMS to sell materials equipment products to automotive manufacturers, which equipment orders were to be placed exclusively with Myco from DMS.

23. Third Party Defendants Pinho, HMP and others yet unknown to Myco, were fully aware of the contractual relationship between Myco and DMS.

24. Third Party Defendants Pinho, HMP and others yet unknown to Myco, knowingly interfered with the contract between Myco and DMS.

25. Upon information and belief, Third Party Defendants Pinho, HMP and others yet unknown to Myco, intentionally placed orders with DMS, in violation of DMS' exclusive contract to manufacture and distribute materials handling equipment solely with and through the network of Myco customers and automotive contacts.

26. Upon information and belief, the conduct of Third Party Defendants Pinho, HMP and others yet unknown to Myco, was improper, in that Third Party Defendants' actions were fully undertaken to damage the business contract Myco built with DMS, and to usurp all or substantially all of the contractual opportunities that would otherwise flow to Myco, arising from the business relationship with DMS.

27. Third Party Plaintiff Myco has suffered damages in excess of \$25,000 arising from the intentional and improper motives, and actions of Pinho, HMP and others yet unknown to Myco.

## **B**

### **1**

#### **The Law on Third-Party Claims**

MCR 2.204 governs third-party practice and, in pertinent part, provides, “[A]ny time after commencement of an action, a defending party, as a third-party plaintiff, may serve a summons and complaint on a person not a party to the action *who is or may be liable to the third-party plaintiff for all or part of the plaintiff’s claim.*” MCR 2.204(A)(1) (emphasis added). “[T]hird-party complaints are not appropriate when a defendant is not seeking reimbursement for the plaintiff’s claim against the defendant but is seeking to add a ‘third party’ for another purpose; for example, as an additional defendant to a counterclaim.” 2 Longhofer, Michigan Court Rules Practice (7th ed.), 2204.2 n 1.

### **2**

#### **The Law on Amendments**

MCR 2.116(I)(5) provides that, “[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.” See also *Weymers v Khera*, 454 Mich 639, 658 (1997) (“If a court grants summary disposition pursuant to MCR 2.116(C)(8), (9), or (10), the court must give the parties an opportunity to amend their pleadings pursuant to MCR 2.118, unless the amendment would be futile”).

## C Analysis

As set forth expressly in MCR 2.204(A)(l), a defendant may implead, as a third-party defendant, only a person “who is or may be liable to the third-party plaintiff for all or part of the plaintiff’s claim.” Accordingly, third-party practice under MCR 2.204(A)(l) is confined to claims of secondary or derivative liability (e.g., where the defendant seeks indemnification from a third-party for its potential liability to the plaintiff), as distinguished from direct liability.<sup>16</sup> In the instant case, on the contrary, the claims in Myco’s Third-Party Complaint self-evidently seek to impose direct liability on Pinho and HMP for their alleged wrongdoing vis-a-vis Myco instead of secondary or derivative liability. This is not the purpose of a proper third-party complaint.

The Third-Party Complaint alleges that Pinho and HMP tortiously interfered with Myco’s alleged contracts and business relationship with DMS (Count I - Tortious Interference with a Business Expectancy; Count II - Tortious Interference with a Contract). In its Complaint, DMS seeks monetary damages for Myco’s breach of the Parties’ contracts by failing to perform its obligations of providing DMS with the agreed upon portion of revenue generated from: (i) Myco’s sale of Lift Assist Equipment and Cart Work Equipment produced by DMS (Unpaid 2021 Orders) and (ii) Myco’s sale of

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<sup>16</sup> See e.g., *Komis v Basehart-Gaetano*, unpublished per curiam opinion of the Court of Appeals, issued March 4, 2021 (Docket No. 351287), p 5 (where “[d]efendants’ claims against [a third-party defendant] do not stem from [the third-party defendant’s] liability for any portion of the claims against defendants,” such claims “[are] not properly pleaded third-party claims”).

the Lake Orion Battery Cart Program Equipment also produced by DMS.<sup>17</sup> Third-Party Defendants Pinho and HMP could not be liable to Defendant Myco for all or part of DMS's claims against Myco, regarding equipment manufactured by DMS and sold by Myco for which Myco seemingly received payment for. MCR 2.204 allows only limited third-party claims which seek to recover for the third-party defendant's derivative liability to the third-party plaintiff for its liability on the original plaintiff's claims. Here, the Third-Party Complaint contains no claims for derivative liability. Because the Third-Party Complaint does not contain a claim for derivative liability or seek indemnification from Pinho and/or HMP on DMS's claims against Myco, or otherwise allege that Pinho and/or HMP are liable for some or all of DMS's claims, the Third-Party Plaintiff's claims (Count I and II) against Pinho and HMP are improper under MCR 2.204.

Furthermore, Myco's argument that MCR 2.207 precludes dismissal based on the improper joinder of parties is unavailing, as Myco fails to consider the court rule in its totality. Although the rule provides that the misjoinder of parties is not a ground for dismissal of an action, it expressly applies "in the determination of a counterclaim or cross-claim." MCR 2.207. MCR 2.207 clearly applies to counterclaims and cross-claims, and it does not address the third-party practice at issue here.

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<sup>17</sup> Complaint, ¶ 32.

Additionally, Myco's citation to *Farm Bureau Gen Ins Co v Susin*, unpublished per curiam opinion of the Court of Appeals, issued March 10, 2016 (Docket No. 322017) is equally unavailing, as the case is inapposite, factually and legally.<sup>18</sup>

Lastly, regarding the proposed amendment of its Third-Party Complaint, Myco does not divulge what additional facts may exist to support its position that the amendment would not be futile. Without any particulars as to how it would amend its Third-Party Complaint to properly plead its Third-Party Claims against Pinho and HMP, the Court declines the request to amend at this time.

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<sup>18</sup> The case was an interpleader action, in which defendant Esther Susin sought dismissal of co-defendant Lake Credit Union's third-party complaint bringing non-party R-Value into the litigation. R-Value had claims against Susin related to the reconstruction of her home, which was the basis for the interpleader action. Contrarily, the instant case is not an interpleader action, and Myco, HMP, and Pinho do not share liability to DMS. Of further contrast, and unlike R-Value – which was brought in on account of its claims against defendant Susin – HMP and Pinho have no claims against DMS. And unlike *Susin*, the inclusion of the third-party claims in the instant case does not promote the convenient administration of justice. DMS's claims for breach of contract, unjust enrichment, and promissory estoppel arise from a different set of facts than Myco's claims of tortious interference against HMP and Pinho. Specifically, DMS's claims relate to Myco's alleged failure to pay for the production and sale of certain equipment, while Myco brings tort claims against HMP and Pinho that make no reference whatsoever to the equipment for which DMS pursues payment.

## **ORDER**

In light of the foregoing Opinion, Third-Party Defendants' Motion for Summary Disposition is **GRANTED**. The Third-Party Plaintiff's claims for Breach of Contract (Count I) and Unjust Enrichment (Count II) are **DISMISSED**. Any request to amend must be made by motion, to be heard no later than October 29, 2025 or be deemed abandoned.

/s/ Michael Warren

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**HON. MICHAEL WARREN**  
**CIRCUIT COURT JUDGE**

