STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PRIDGEON & CLAY INC.,

Plaintiff/Counter-Defendant,

v.

BENTELER AUTOMOTIVE CORPORATION,

Defendant/Counter-Plaintiff,
_____/

Case No. 23-05509-CBB

Hon. Curt A. Benson

OPINION AND ORDER

INTRODUCTION

After the court issued an Opinion and Order on January 31, 2025, both parties moved for reconsideration. On September 22, 2025, the court issued an opinion and order resolving Benteler Automotive Corporation's motion. This opinion addresses Pridgeon & Clay, Inc.'s motion.

STANDARD OF REVIEW

A party moving for reconsideration must establish that (1) the trial court made a palpable error and (2) a different disposition would result if the court corrects the error. MCR 2.119(F)(3); *Luckow v Luckow*, 291 Mich App 417, 426; 805 NW2d 453 (2011). "Palpable" is defined as easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, or manifest. *Luckow*, 291 Mich App at 426.

Generally, "a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." MCR 2.119(F)(3); *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). However, the trial court retains discretion to provide parties a "second chance" even if the motion for reconsideration presents nothing new for the court to consider. *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012).

A brief description of P&C's motion

In its January 31, 2025 Opinion & Order (the "Order"), this Court held that all but one of the Scheduling Agreements ("SAs") between Pridgeon & Clay, Inc. ("P&C") and Benteler Automotive Corporation ("Benteler") violate the UCC's statute of frauds. The Court held that one contract, called the "Group 2 contract" or SA number U550003400, satisfied the statute of frauds. P&C seeks reconsideration of the Court's Order with respect to its ruling on the Group 2 contract.

P&C argues that the Group 2 contract contains three conflicting provisions that render it ambiguous. According to P&C, the ambiguity must be resolved against Benteler, the drafter of the agreement.

The three clauses in issue

Under the topic, "Special Term - Invoicing; Payment and Price (Paragraph 2 of Standard Terms For Purchase of Goods or Service)" is the following language:

> Further, Benteler agrees, for the time period that this Agreement is in effect and has not been terminated, to purchase approximately sixty to one hundred percent (60%-100%) of the Parts it requires from Supplier.

As the Court of Appeals recently affirmed, that sentence, standing alone, satisfies the UCC's statute of frauds:

> [C]onsistent with *Cadillac Rubber*, the Court in *Airboss* recognized that "[a] requirements contract can be nonspecific as to the quantity, but it must still have a quantity term that can be evaluated further using parol evidence." *Airboss*, 511 Mich at 191, 999 N.W.2d 335. Under *Cadillac Rubber*'s reasoning, a specified range - as in this case, 65% to 100% - may be nonspecific, but it is a quantity that can be evaluated further using parol evidence. See *id.* at 194, 999 N.W.2d 335 (distinguishing *Cadillac Rubber* on this basis).

FCA US LLC v. Kamax Inc., No. 371234, 2025 WL 1420392, at 4 (Mich. Ct. App. May 14, 2025)(Published)\

But P&C contends that this "special term" irreconcilably conflicts with another paragraph found in the same contract. Under the heading "Special Term – Capacity," the contract states the following:

> Benteler does not guarantee, nor shall it be implied by the execution of this Agreement, that Benteler will buy any minimum quantity of Parts from Supplier during any specific time period or during the Life of the Program.

This provision appears to disclaim any enforceable obligation on Benteler to purchase any minimum amount of parts from P&C, potentially negating the commitment made in the requirements provision above.

Additionally, P&C points to a third clause under "Procurement Conditions", which states:

> Buyer shall not be liable for payment for goods delivered in excess of the quantities or after the times specified in Buyer's delivery instructions to Seller.

P&C claims that this language plainly states that Benteler is only liable to pay for the quantities in its releases, not for any portion of Benteler's requirements. For this additional reason, the Group 2 contract lacks a precise and explicit quantity term.

The "Procurement Conditions" do not conflict with the "Special Term - Invoicing" and the "Special Term - Capacity."

Without offering any evidence or even an explanation, P&C simply announces that "shipping instructions" are "releases." And according to its interpretation of the clause, Benteler is only liable to pay for the quantities in its "releases."

The "Procurement Conditions" cited above do not conflict with the "Special Term - Invoicing" and the "Special Term - Capacity." The "Procurement Conditions" clause means that the Buyer is not responsible for paying for any goods that the Seller delivers in excess of the quantities specified in the Buyer's delivery instructions. Similarly, the Buyer is not obligated to pay for any goods that are delivered after the times specified in those instructions. In other words, the Buyer has no liability for over-shipments or late deliveries. The Seller assumes the risk if it delivers more than what was ordered or delivers it outside the agreed-upon timeframe. This provision protects the Benteler from unexpected costs and helps ensure that deliveries are made in accordance with their stated requirements.

The clause suggests that somewhere, at some time, Benteler orders a specified quantity of parts, and will not pay for parts that exceed the quantity ordered. But as the court noted in its September 22, 2025, opinion and order denying in part Beneler's motion for reconsideration, the parties have only asked this court to review certain scheduling agreements the parties organized into 3 groups. "Delivery instructions," if they exist, are not a part of the record and will not be considered.

"Special Term - Invoicing" and the "Special Term - Capacity" conflict with one another.

The true conflict lies between the two "Special Terms."

The section of the contract entitled "Special Term – Invoicing,"(hereafter, "Provision One") states:

> "Further, Benteler agrees, for the time period that this Agreement is in effect and has not been terminated, to purchase approximately sixty to one hundred percent (60%-100%) of the Parts it requires from Supplier."

This language, as noted above, reflects a "requirements contract," wherein the buyer agrees to source a defined percentage of its actual needs, in this case, "approximately 60%-100%," from the seller for the duration of the agreement. Though the term "approximately" introduces some flexibility, the provision nonetheless contemplates a binding obligation on Benteler to source a substantial portion of its actual requirements from P&C during the term of the agreement.

The second provision, "Special Term – Invoicing," (Provision Two), reads as follows:

> "Benteler does not guarantee, nor shall it be implied by the execution of this Agreement, that Benteler will buy any minimum quantity of Parts from Supplier during any specific time period or during the Life of the Program."

This clause disclaims any obligation to purchase a minimum quantity of parts from the P&C. On its face, it suggests that Benteler is under no enforceable duty to procure any parts whatsoever, whether during a specific period or throughout the life of the contract.

These two provisions, when read together, create an inherent tension. Provision One obligates Benteler to purchase a substantial portion of its "requirements" from the Supplier, while Provision Two appears to reserve Benteler's right to forego purchases altogether. The first imposes a duty based on Benteler's actual needs; the second disclaims any duty to purchase any parts, regardless of need.

This contradiction gives rise to an ambiguity. *Cole v. Auto-Owners Ins. Co.,* 272 Mich. App. 50, 53, 723 N.W.2d 922, 924 (2006). Under settled principles of contract interpretation, courts must strive to read contractual provisions in harmony and to give effect to all parts of the agreement. *See Restatement (Second) of Contracts § 203(a).* However, where two provisions are reasonably susceptible to differing interpretations and cannot be reconciled without extrinsic evidence, there is an ambiguity. *See Klapp v. United Ins. Grp. Agency, Inc.,* 468 Mich. 459, 472–73, 663 N.W.2d 447, 455–56 (2003)

Accordingly, the court concludes that the agreement is ambiguous with respect to Benteler's purchasing obligations. The ambiguity concerns whether the contract creates a binding requirements relationship, or whether Benteler retained full discretion not to purchase any parts despite the apparent commitment to source 60%-100% of its requirements from the Supplier. Resolution of this ambiguity may depend on extrinsic evidence of the parties' intent at the time of contracting.

An ambiguous contract does not justify dismissal; and the doctrine of contra proferentem is only used as "a last resort."

P&C, having identified an ambiguity in the contract, declares that "[i]t is an elementary rule of construction of contracts that in case of doubt, a contract is to be strictly construed against the party by whose agent it was drafted." *Shay v Aldrich*, 487 Mich 4 648, 673; 790 NW2d 629 (2010); *Stroud v Glover*, 120 Mich App 258, 261; 327 NW2d 462 (1982). This however is an oversimplification of contra proferentem[1]:

> The "contra proferentem" rule has been described as being applicable only as a last resort, when other techniques of interpretation and construction have not resolved the

[1] ***contra proferentem*** (kon-trə prof-ə-ren-təm) [Latin "against the offeror"] (17c) The doctrine that, in the interpretation of documents, ambiguities are to be construed unfavorably to the drafter. See *Black's Law Dictionary* (12th ed. 2024)

question of which of two or more possible reasonable meanings the court should choose.

Klapp v. United Ins. Grp. Agency, Inc., 468 Mich. 459, 472–73, 663 N.W.2d 447, 455–56 (2003)

After ruling that "[i]t is well settled that the meaning of an ambiguous contract is a question of fact that must be decided by the jury," the *Klapp* court elaborated on contra proferentem as follows:

> In sum, the jury can consider relevant extrinsic evidence as an aid in interpreting a contract whose language is ambiguous. However, if, after the jury has applied all other conventional means of contract interpretation and considered the relevant extrinsic evidence, the jury is still unable to determine what the parties intended, the jury should then construe the ambiguity against the drafter. That is, the rule of contra proferentem is only to be applied if the intent of the parties cannot be discerned through the use of all conventional rules of interpretation, including an examination of relevant extrinsic evidence.

Id., at 474.

The contract in Group 2 is ambiguous. It is for the finder of fact at trial to determine its meaning.

IT IS ORDERED.

P&C's motion for reconsideration is GRANTED, in part.

This opinion modifies the court's January 31, 2025, Opinion and Order.

This order does not resolve all pending matters before the court and does not resolve the case.

Dated: September 30, 2025
at Grand Rapids, Michigan.

Honorable Curt A. Benson