

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

MANUFACTURING DYNAMICS, CO.,

Plaintiff/Counter-Defendant,

Case No. 23-200165-CB
Hon. Victoria A. Valentine

v

M5 ENGINEERING INC.,

Defendant/Counter-Plaintiff.

**OPINION AND ORDER REGARDING
PLAINTIFF/COUNTER-DEFENDANT MANUFACTURING DYNAMICS CO.'S
MOTION FOR SUMMARY DISPOSITION REGARDING COUNTERCLAIM**

At a session of said Court, held in the
County of Oakland, State of Michigan
November 27, 2024

HONORABLE VICTORIA A. VALENTINE

This matter is before the Court on the Plaintiff/Counter-Defendant Manufacturing Dynamics Co.'s Motion for Summary Disposition Regarding Counterclaim. This Court has reviewed the pleadings filed by the parties and the motion, response, and reply brief. Oral argument was held on the above-entitled motion on November 27, 2024.

OPINION

I.

Overview

This dispute arises out of a supply contract between the parties for the production of five tooling jig fixtures (the “Tooling Jigs”) that will ultimately be used in aerospace manufacturing. Plaintiff/Counter-Defendant Manufacturing Dynamics Co. (“Manufacturing Dynamics”) is a Michigan corporation with its principal place of business in Madison Heights, Michigan.¹ Manufacturing Dynamics is a Tier 2 supplier that designs and manufactures specialized “turnkey” tooling for its Tier 1 customers in the aerospace, defense, and automotive industries.² Defendant/Counter-Plaintiff M5 Engineering Inc. (“M5”) is a Michigan corporation with its principal place of business in Macomb Township, Michigan.³ M5 is a Tier 1 supplier that engineers specialized tools for its customers in the aerospace industry.⁴

In 2022, M5 contracted with Piper Aircraft, Inc. (“Piper”) to design and coordinate the fabrication of the five Tooling Jigs.⁵ M5 then designed the Tooling Jigs and sent a request for quotation to Manufacturing Dynamics to build the Tooling Jigs.⁶ In October 2022, Manufacturing Dynamics issued four quotes to M5 for the five Tooling Jigs, and on November 8, 2022, M5 issued a purchase order for all five Tooling Jigs with a total price of \$80,149.⁷ Manufacturing Dynamics sent its first invoices for fifty percent of the contract price to M5 on November 8, 2022, which M5 paid on December 5, 2022.⁸

Manufacturing Dynamics alleges that M5 issued specifications for higher quality and more expensive materials than what was included in the quotes, which led to longer lead times than

¹ Complaint ¶ 1.

² *Id.* ¶¶ 6-7.

³ *Id.* ¶ 2.

⁴ *Id.* ¶ 8.

⁵ *Id.* ¶ 12.

⁶ *Id.* ¶ 13.

⁷ *Id.* ¶¶ 14-15.

⁸ *Id.* ¶ 18.

anticipated.⁹ Manufacturing Dynamics also alleges that M5’s designs were flawed which required a redesign of the Tooling Jigs, leading to further delay.¹⁰

M5 alleges that the parties agreed that “time was of the essence” and that the Tooling Jigs would be delivered on or before December 31, 2022.¹¹ M5 further alleges that Manufacturing Dynamics failed to keep the project “within specifications.”¹² M5 picked up the Tooling Jigs on January 9, 2023 “in an attempt to salvage the project,” and then “spent significant time and resources finishing the Tooling Jigs.”¹³ The completed Tooling Jigs were delivered to Piper on February 3, 2023.¹⁴ The same day, Manufacturing Dynamics invoiced M5 for the remaining fifty percent of the supply contract (\$40,074.50), but M5 rejected the invoice.¹⁵

Manufacturing Dynamics filed the instant suit against M5 in May 2023 alleging breach of contract (Count I) and unjust enrichment (Count II). M5, in turn, filed a counterclaim against Manufacturing Dynamics in June 2023 alleging that it was Manufacturing Dynamics that breached the contract (Count I). Manufacturing Dynamics now seeks summary disposition of the counterclaim pursuant to MCR 2.116(C)(10). M5 also seeks summary disposition of the counterclaim in its favor pursuant to MCR 2.116(I)(2).

II.

Standard of Review

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Accordingly, “[i]n evaluating a motion for summary disposition

⁹ *Id.* ¶¶ 16-17.

¹⁰ *Id.* ¶¶ 19-21.

¹¹ Counterclaim ¶¶ 7, 10.

¹² *Id.* ¶¶ 11-12.

¹³ *Id.* ¶¶ 16-17.

¹⁴ *Id.* ¶ 19.

¹⁵ Complaint ¶ 32-34.

brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion.” *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999); *Quinto*, 451 Mich at 358.

The moving party “must specifically identify the issues” as to which it “believes there is no genuine issue” of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4). Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party’s evidence is insufficient to establish an essential element of the non-moving party’s claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden “then shifts to the opposing party to establish that a genuine issue of disputed fact exists.” *Id.* at 362. If the moving party fails to properly support its motion for summary disposition, the non-moving party has no duty to respond and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575; 619 NW2d 182 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion. *Maiden*, 461 Mich at 120-121 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Rather, summary disposition pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving

party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019)(citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

III.

M5's Breach of Contract Counterclaim

A. The Law of Contracts

Under Michigan law “[a] party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach.” *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). A court’s “goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself.” *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143-144; 881 NW2d 95 (2016). “[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts.” *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312; 931 NW2d 604 (2019) (emphasis in original) (“A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be *enforced as written*” and a court “will not create ambiguity where the terms of the contract are clear”).

“The rights and duties of parties to a contract are derived from the terms of the agreement.” *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 62; 664 NW2d 776 (2003). “A party’s expectations do not supersede the language of an unambiguous contract.” *Zwiker v Lake Superior State Univ*, 340 Mich App 448, 478; 986 NW2d 427 (2022), appeal denied, 10 NW3d 456 (Mich 2024). Accordingly, courts will “enforce only those obligations actually assented to by the parties.” *Wilkie*, 469 Mich at 63.

B. Analysis

i. The Contract Consists of the Quotations and Purchase Order

In its Counterclaim, M5 alleges that Manufacturing Dynamics breached the contract by failing to deliver the completed Tooling Jigs on or before December 31, 2022.¹⁶ According to M5, this was not only a breach of the contract, but a material breach.

It is important to first determine which documents form the parties’ contract before determining whether a breach occurred. At the most basic level, the formation of a contract requires an offer, acceptance, and consideration. *Kirchhoff v Morris*, 282 Mich 90, 95; 275 NW 778 (1937). Because the UCC does not define what constitutes an “offer,” “courts may look to sources such as the common law and the Restatement of Contracts for the definition.” *Foamade Indus v Visteon Corp*, unpublished per curiam opinion of the Court of Appeals, issued Mar. 4, 2008 (Docket No. 271949), p 4 (quoting 1 Williston, Sales (5th ed), § 7:10, p 282)). Under Michigan law, an offer “is defined as ‘the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.’” *Kloian v Domino’s Pizza LLC*, 273 Mich App 449, 453; 733 NW2d 766 (2006) (citation omitted).

¹⁶ Counterclaim ¶ 27.

“[A]n acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests an intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for that purpose.” *Id.* at 453-454. An offeree may indicate acceptance of an offer by issuing a purchase order where the purchase order is responsive to a price quotation and is a “definite and seasonal expression of acceptance.” *Challenge Mach Co v Mattison Mach Works*, 138 Mich App 15, 22; 359 NW2d 232 (1984).

The contract documents in this case consist of quotes issued by Manufacturing Dynamics on October 28, 2022 and October 31, 2022 (the offer), and the purchase order issued by M5 on November 8, 2022 (the acceptance). The quotes issued by Manufacturing Dynamics contained the following notes regarding timing:

Tool delivery based on date of completed engineering received.
Tool need by or before December 31, 2022. Quotation based on data
received 10-26-22.¹⁷

The purchase order accepting these quotes is silent as to the deadline for delivery of the completed Tooling Jigs.¹⁸ The purchase order does, however, specifically reference the Manufacturing Dynamics quotes which contained the December 31, 2022 deadline. Thus, the purchase order’s acceptance of the quotes includes an acceptance of the language regarding the tool delivery being dependent on the “completed engineering received.”¹⁹

¹⁷ Plaintiff/Counter-Defendant Manufacturing Dynamics Co.’s Motion for Summary Disposition Regarding Counterclaim, Exhibit 1.

¹⁸ Defendant/Counter-Plaintiff’s Response to Motion for Summary Disposition and Request for Summary Disposition on its Counterclaim, Exhibit E.

¹⁹ M5 contends that Mike McMillan’s cover email sending the purchase order to Manufacturing Dynamics, which references a December 30th deadline, is also a part of the contract. This would vary the terms of the express agreement between the parties. M5 does not offer any legal support for its position that this document is a part of the contract. The argument is therefore abandoned. “Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute.” *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008). “A party abandons a claim when it fails to make a meaningful argument in support of its position.” *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).

ii. *Completed Engineering was a Condition Precedent, and the Fulfillment of the Condition Precedent is a Genuine Issue of Material Fact*

Manufacturing Dynamics argues that the receipt of completed engineering functioned as a condition precedent for the December 31, 2022 delivery of the Tooling Jigs. “A ‘condition precedent’ is a condition that must be met by one party before the other party is obligated to perform” *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 411; 646 NW2d 170 (2002). “A condition is distinguished from a promise in that it creates no right or duty in and of itself but is merely a limiting or modifying factor.” *Knox v Knox*, 337 Mich 109, 118; 59 NW2d 108 (1953). “If the condition is not fulfilled, the right to enforce the contract does not come into existence.” *Id.* “Whether a provision in a contract is a condition the nonfulfillment of which excuses performance depends upon the intent of the parties, to be ascertained from a fair and reasonable construction of the language used in the light of all the surrounding circumstances when they executed the contract.” *Id.*

Based on a review of the contract documents, the receipt of completed engineering plans does function as a condition precedent to the delivery of the Tooling Jigs by December 31, 2022. Although the parties agreed that M5 and its customer “needed” the Tooling Jigs by December 31, 2022, the contract also explicitly recognized that the tooling delivery was based on the completed engineering received. The parties have submitted conflicting evidence as to the date when Manufacturing Dynamics “received” the completed engineering.

According to Manufacturing Dynamics, M5 continued to send updated or revised engineering, including:

- **November 3, 2022:** Kyle Allor of M5 sent the first CAD revisions which varied from the original information Manufacturing Dynamics used to submit its quotes.²⁰
- **November 9, 2022:** M5 sent the Piper Aircraft Outsourced Tooling Design and Build Requirements to Manufacturing Dynamics.²¹
- **December 8, 2022:** Manufacturing Dynamics requested the “hole and machine drawing for the 3 welded bases.” M5 provided the requested drawings on December 9, 2022.²²
- **December 27, 2022:** M5 provided Manufacturing Dynamics a copy of the Piper prints for the first time.²³ Christopher Urbanczyk, a consultant for M5, testified that Manufacturing Dynamics would need the engineering design drawings to build the tools, noting “You got to have prints to check with what Piper wants. You have to have all the stuff that was approved by Piper. Of course you do. You can’t just go build to a model. You don’t know what the tolerancing is.”²⁴
- **December 29, 2022:** Manufacturing Dynamics sought detail drawings for the plates, which M5 provided on January 2, 2023.²⁵
- **January 7, 2023:** Kyle Allor, an M5 engineer, sent an additional CAD model which updated the “pin and keeper details.”²⁶

Manufacturing Dynamics alleges that M5’s designs and engineering requirements for the project were changing throughout November and December of 2022 (and even later). It further alleges that a critical component for completion of the project (the Piper prints) was not even provided until December 27, 2022. Because the contract provided that the estimated completion date of December 31, 2022 was based on the “completed engineering” provided by M5, but the engineering subsequently changed multiple times, Manufacturing Dynamics alleges that the condition precedent for the December 31, 2022 completion date was not met.

²⁰ Plaintiff/Counter-Defendant Manufacturing Dynamics Co.’s Motion for Summary Disposition Regarding Counterclaim, Exhibit 4.

²¹ *Id.*, Exhibit 7.

²² *Id.*, Exhibit 8.

²³ *Id.*, Exhibit 9.

²⁴ *Id.*, Exhibit 19, p. 68.

²⁵ *Id.*, Exhibit 10.

²⁶ *Id.*, Exhibit 6.

In contrast, M5 argues that Manufacturing Dynamics had everything it needed to build the Tooling Jigs on November 3, 2022. M5 cites the following evidence in support of its argument:

- The testimony of Manufacturing Dynamics' corporate representative, Randall Tamm, who stated that after Manufacturing Dynamics received the "Build Data" and general notes on November 3, 2022, it did not need anything else to begin building the Tooling Jigs.²⁷
- The testimony of John Bowman, Piper's corporate representative, who stated that a manufacturer could build tooling using just the CAD models and the general note standards.²⁸
- The testimony of Kyle Allor, an M5 engineer, that the Piper prints provided on December 27, 2022 were not needed to complete the Tooling Jigs.²⁹
- The testimony of Christopher Urbanczyk, M5's consultant, in which he stated that all that was needed to build the Tooling Jigs was the CAD model and the general notes, which had the tolerancing information.³⁰

In short, the parties have submitted conflicting testimony about when the "completed engineering" was received, and thus, whether the condition precedent for the December 31, 2022 delivery date was met. It is well settled that credibility is an issue that must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615, 625; 739 NW2d 132 (2007). Additionally, "courts 'may not resolve factual disputes or determine credibility in ruling on a summary disposition motion.'" *Id.*, quoting *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004), and citing *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005). Consequently, whether the condition precedent for the December 31, 2022 delivery was met must be determined by resolving underlying issues of fact, and so summary disposition in favor of either party is not warranted.

²⁷ Defendant/Counter-Plaintiff's Response to Motion for Summary Disposition and Request for Summary Disposition on its Counterclaim, Exhibit I at 172:8-16.

²⁸ *Id.*, Exhibit B at 32: 11-18.

²⁹ *Id.*, Exhibit V at 174:9-176:23.

³⁰ *Id.*, Exhibit W at 5:22-6:6.

iii. *Manufacturing Dynamics’ Alleged Failure to Complete the Build Also Depends on Genuine Issues of Material Facts*

M5’s counterclaim also alleges that Manufacturing Dynamics failed to complete the Tooling Jigs, and that the Tooling Jigs were less than 50% completed when M5 picked them on January 9, 2023.³¹ The Tooling Jigs were ultimately completed and were delivered to Piper on February 3, 2023.³² Consequently, it appears that the essence of M5’s allegation is that Manufacturing Dynamics failed to complete the Tooling Jigs on its own.

Manufacturing Dynamics argues, however, that after the Tooling Jigs were removed from its facility on January 9, 2023, it was impossible for Manufacturing Dynamics to complete its obligations under the contract. “A promisor’s liability may be extinguished in the event his or her contractual promise becomes objectively impossible to perform.” *Roberts v Farmers Ins Exch*, 275 Mich App 58, 73–74, 737 NW2d 332 (2007).

In contrast, M5 argues that it was permitted to cancel the contract and remove the Tooling Rigs from Manufacturing Dynamics’ facility because the products were not delivered by the agreed upon date. See *Surefil, LLC v Bonne Bell, LLC*, opinion of the United States District Court for the Western District of Michigan, issued Aug. 4, 2010 (Case No. 1:09-CV-379), p 4. Again, this argument presupposes that Manufacturing Dynamics breached the contract by failing to deliver the completed Tooling Rigs by December 31, 2022. As noted above, the December 31, 2022 delivery date was “based on date of completed engineering received.”³³

Whether Manufacturing Dynamics’ alleged failure to complete the Tooling Rigs prior to M5’s seizure of the materials constituted a breach depends on underlying issues of fact, specifically

³¹ Counterclaim ¶¶ 25-26.

³² Plaintiff/Counter-Defendant Manufacturing Dynamics Co.’s Motion for Summary Disposition Regarding Counterclaim, Exhibit 15.

³³ *Id.*, Exhibit 1.

whether the condition precedent for the December 31, 2022 delivery date (completed engineering received) was met. Accordingly, summary disposition is not warranted.

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Plaintiff/Counter-Defendant Manufacturing Dynamics Co.'s Motion for Summary Disposition Regarding Counterclaim is DENIED.

IT IS FURTHER ORDERED that M5's Request for Summary Disposition in its Favor Pursuant to MCR 2.116(I)(2) is DENIED.

This Order DOES NOT resolve the last pending matter and DOES NOT close the case.

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 11/27/24