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STATE OF MICHIGAN

COURT OF APPEALS

DEMMAK INDUSTRIES, LLC, doing business as IRIDIUM MANUFACTURING, Plaintiff/Counterdefendant-Appellant,	UNPUBLISHED November 18, 2026 2:33 PM
v	No. 377081 Washtenaw Circuit Court
JAC PRODUCTS, INC., Defendant/Counterplaintiff-Appellee.	LC No. 23-001093-CB

Before: M. J. KELLY, P.J., and RIORDAN and RICK, JJ.

PER CURIAM.

This contract dispute involves a complaint filed by plaintiff Demmak Industries, LLC, d/b/a Iridium Manufacturing ("Iridium"), against defendant JAC Products, Inc. ("JAC"), as well as a counterclaim filed by JAC against Iridium. The trial court dismissed Iridium's complaint under MCR 2.116(C)(8) and (C)(10), and granted summary disposition in favor of JAC on its counterclaim under MCR 2.116(I)(2). Iridium appeals that order as of right, arguing that the trial court erred in its contractual analysis and that Iridium, not JAC, should prevail in this case because JAC materially breached the parties' two related contracts. For the reasons set forth, we affirm the trial court in part, reverse in part, and remand to that court for further proceedings.

I. FACTS

JAC is an automotive-component supplier to companies such as Toyota and Stellantis, and Iridium is an automotive-parts manufacturer that contracts with suppliers such as JAC.[1] On March 19, 2019, JAC sent Iridium a letter informing Iridium of the following:

[1] While not clearly explained in the record, this relationship implies that JAC is a "Tier One" automotive supplier, i.e., a supplier directly to the original equipment manufacturer, and Iridium is a "Tier Two" automotive supplier, i.e., a supplier to Tier One.

> This letter is to inform you that JAC Products, Inc. (JAC) has awarded Iridium Manufacturing with the Toyota Tonneau program per the terms and conditions detailed below and subject to JAC Products' standard purchase order terms and conditions (available on www.jacproducts.com). . . .

The letter continued that JAC would supply certain basic materials to Iridium and, in turn, Iridium would manufacture the automotive parts required by JAC on a rolling basis:

> Subject to the JAC Products purchase orders and standard purchase order terms and conditions, Iridium Manufacturing will supply to JAC Products 100% of JAC Products' requirements for all products covered by this award letter for the production life of the Toyota Tonneau program at the pricing indicated in this award letter.
>
> * * *
>
> JAC will provide and deliver all aluminum extrusions for use in production of all parts to be supplied by Iridium, for no cost to Iridium FOB at Iridium's address in Sterling Heights, Michigan.

The letter estimated that JAC would require 31,496 units for 2019, 28,585 units for 2020, and 20,053 units for 2021. It was signed by a representative for Iridium the following day.[2]

On July 22, 2022, JAC sent Iridium another letter[3] informing Iridium of the following:

> This letter is to inform you that JAC Products, Inc. (JAC) has awarded Iridium Manufacturing with the Stellantis DS program as detailed below and subject to JAC Products' standard purchase order terms and conditions (available on www.jacproducts.com). . . .

The letter further provided:

> Subject to the JAC Products purchase orders and standard purchase order terms and conditions, Iridium Manufacturing will supply to JAC Products 100% of JAC Products' requirements for all products covered by this award letter for the production life of the Toyota Tonneau [sic: Stellantis DS] program at the pricing indicated in this award letter in accordance with the firm quantities and delivery schedules specific in the JAC Products' releases.
>
> * * *

[2] We hereinafter refer to this letter as the "Toyota Contract."

[3] We note that a near-identical version of this letter was signed in January 2022, but it appears that the July 2022 letter was intended to supersede and replace that earlier letter.

Weekly volume for Stellantis DS accounting for all parts will range from 2,200pcs a week min to 3,600pcs a week max.

The letter was signed by Iridium's representative the following day.[4]

The "Purchase Order Terms and Conditions" referenced in those two letters included the following relevant provisions:

> ¶ 7. . . . Deliveries shall be made strictly in accordance with both the quantities and times specified in this Purchase Order. If quantities and/or delivery schedules are not specified on this Purchase Order or if this Purchase Order is designated a "blanket purchase order", Seller shall deliver Products to Buyer (and Buyer shall only be responsible to purchase Products from Seller) in accordance with the firm quantities and at the times and locations specified on Buyer's delivery schedules issued in connection with this Purchase Order. . . . Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price for Products or Services covered by this Purchase Order. . . . From time to time, Buyer may provide Seller with, and Buyer's delivery schedules may contain, estimates, forecasts or projections of Buyer's future volume or quantity requirements for Products or Services and/or the term of a program to which such Products or Services relate. Such estimates, forecasts and projections are not binding on Buyer and Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such estimate, forecast or projection provided to Seller.
>
> * * *
>
> ¶ 10. **CHANGES:** Buyer reserves the right at any time, by providing written notice to Seller, to direct changes or cause Seller to make changes under this Purchase Order, including, without limitation, in any one or more of the following: (a) drawings, designs or specifications of the Products or Services; (b) increases or decreases in quantities; (c) method of shipping or packing; (d) inspection, testing and quality control; (e) delivery schedules; and (f) amount of Buyer-furnished property; and Seller agrees to promptly make such changes. . . .
>
> * * *
>
> ¶ 16. **TERMINATION FOR CONVENIENCE:** In addition to any other rights of Buyer to terminate this Purchase Order, Buyer may at its option immediately terminate all or any part of this Purchase Order, at any time and for any reason or no reason, by giving written notice to Seller. . . . Upon termination, Buyer shall pay to Seller the following amounts without duplication: (a) the Purchase Order price for all Services and Products which have been completed in

[4] We hereinafter refer to this letter as the "Stellantis Contract."

> accordance and compliance with this Purchase Order and not previously paid for, and (b) Seller's actual costs of work-in-process, parts and materials transferred to Buyer, to the extent such costs are reasonable in amount and properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Purchase Order. The foregoing amounts shall be Seller's sole and exclusive recovery from Buyer (without regard to the legal theory which is the basis for any claim by Seller) on account of such termination. . . . Except as provided in this Paragraph, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges and other consequential or incidental damages from termination of this Purchase Order. . . .

In August 2023, Iridium filed its complaint against JAC, alleging that "JAC has an outstanding balance of $428,252.10. This entire amount is for products that Iridium has already delivered to JAC." Thus, Iridium maintained three claims against JAC: Count I (breach of contract), Count II (unjust enrichment), and Count III (statutory conversion).

The following month, JAC filed a counterclaim against Iridium, alleging that "[d]uring the course of the contractual relationship between Iridium and JAC, Iridium repeatedly failed to provide timely delivery of quality parts" and that it had suffered damages in the approximate amount of $130,000.

In June 2025, JAC moved for summary disposition of Iridium's complaint pursuant to MCR 2.116(C)(8) and (C)(10). In its accompanying brief, JAC explained additional details of the parties' relationship. According to JAC, Iridium had deficient facilities and equipment, resulting in several issues such as a "busted door on Mill #1" and "down waterjets" in November 2022. JAC attempted to assist Iridium with production stability by, for example, providing Iridium with equipment and shifting some orders to another supplier with open capacity to reduce Iridium's backlog.[5] Unfortunately, these attempts were unsuccessful, and in April 2023, JAC invoked its right under ¶ 16 of the Purchase Order Terms and Conditions to terminate the parties' contractual relationship. The April 2023 termination e-mail from JAC to Iridium stated, in relevant part:

> Also, in order to recover the significant costs that JAC Products was forced to absorb since Iridium was not able to meet its obligated volumes, we are attaching an overview of these costs that JAC intends to short pay Iridium as a final matter of business and recover these costs.
>
> A summary of these costs is as follows:

[5] JAC acknowledged that at one point during the parties' relationship, JAC failed to timely deliver raw material to Iridium for a few months. However, JAC explained, it never sought to hold Iridium financially responsible for Iridium's resulting late delivery.

1. Iridium OT Charges - $28,000. This was the OT that JAC paid to Iridium to work weekends, and was not recovered from our customer.

2. Outside Processing Break in Charges - $60,000. This was $2,500 per occurrence from our coating supplier to break in to run the parts that Iridium was behind on, in order meet our customer requirements.

3. Premium Freight Due to Iridium capacity shortfall - 989 Hinges - $27,930. Expedites within our supply chain to prevent customer shutdowns for Toyota

4. Premium Freight Due to Iridium capacity shortfall - $15,000. Expedites within our supply chain to prevent customer shutdowns for Stellantis

Total - $130,930

Iridium responded to the April 2023 termination e-mail a few weeks later, stating:[6]

I am writing to respond to your email of April 11. I dispute that Iridium "was not able to meet its obligated volumes" as you write in your email. In fact, it is JAC that did not perform under the agreements. After review of the material that I have on the floor, and an account of my records, the following payments are owed by JAC and are to be corrected.

Amounts owed to Iridium:

Balance of Iridium's Accounts Receivable: $121,284.19

Value of WIP on Iridium's floor: $31,973.69

Balance of Iridium's investment in the DS program that has not yet been repaid: $141,994.52

Loss of Sales for May and June 2022 due to JAC's inability to keep Iridium stocked with material, or understand JAC's own releases: $27,618.88

Iridium's overtime charges for September, October, November and December 2022, incurred to help get JAC caught up on its releases, which overburdened Iridium: $35,158.29

JAC Chargeback for freight of mini-mill to Iridium: $1,800.00

Mini-mill design, and manufacture of fixturing for DS program: $5,500.00

[6] The formatting of the Iridium e-mail has been slightly modified for readability.

3rd Shift support and managing for 2 weeks in ___ month: $4,615.00

Michigan Unemployment Expenses incurred due to JAC's wrongful stoppage of work: $9,408.22

Finance Fees, charges, late fees, adjustments due to breach of contract and Iridium's need to request emergency deferment on all major equipment loans that directly support JAC output production: $38,172.31

Missed rent payments to date due to JAC's breach of contract and wrongful termination of programs: $10,700

Amount Total: **$428,252.10**

Concerning the merits of the litigation, JAC noted that of the $428,252.10 in damages sought by Iridium, only $121,284.19 (the first line item in the Iridium e-mail quoted above) related to products in its possession for which it did not pay Iridium. JAC argued that under the ¶ 16 of the Purchase Order Terms and Conditions, which expressly limits recoverable damages, only the first two line items in the Iridium e-mail were theoretically recoverable by Iridium, while the remaining nine line items were not recoverable. As to Count I (breach of contract), JAC argued that it was entitled to terminate the parties' contractual relationship under that same paragraph and that "Iridium's claimed damages for lost profits, lost sales, overtime charges, alleged unemployment expenses, loan deferment charges, missed rent payments, and similar indirect or consequential losses are squarely foreclosed by the plain language of [¶ 16]. The total amount of *recoverable costs* that Iridium alleges as part of its damages is $121,284.19. . . . Iridium cannot recover for its WIP which inexplicably it refused to sell to JAC." (Emphasis in original.) JAC added that Iridium committed the first material breach in the parties' contractual relationship by "repeatedly fail[ing] to deliver those parts within the required timeframes" and that it was entitled to offset its $130,930 in damages against Iridium's accounts-receivable claim for $121,284.19. Further, as to Count II (unjust enrichment), JAC argued that Iridium's claim is precluded by the existence of a valid written contract, and as to Count III (statutory conversion), JAC argued that the claim is barred by the economic-loss doctrine, among other reasons. Thus, JAC requested that the trial court dismiss Iridium's complaint in its entirety or, at a minimum, "grant partial judgment in JAC's favor to limit the scope of Iridium's damages claim pursuant to the express terms of the parties' agreements and the applicable Terms and Conditions governing the parties' business relationship."

The same day, Iridium moved for summary disposition of JAC's counterclaim under MCR 2.116(C)(10). In its brief, Iridium asserted that "[a]s a result of the delays and the lack of a production schedule, the Toyota Contract, which was initially supposed to be completed in 2021, continued throughout 2022 and was still ongoing when JAC terminated Iridium in April 2023." According to Iridium, one of those delays included a six-month period from about January to August 2022 in which JAC wrongfully failed to deliver required raw material to Iridium that Iridium used to manufacture the final product. Iridium added that JAC subsequently demanded an excessively high quantity of products for the Toyota Contract, which placed unreasonable strain on its equipment. Further, with regard to the Stellantis Contract, Iridium asserted that "JAC never got the [Stellantis] Contract off the ground, and by the time JAC issued its illegal termination letter

in April 2023, the [Stellantis] Contract had been delayed for approximately one year." Accordingly, given these assertions, Iridium argued that JAC materially breached the parties' two contracts and, as a result, JAC's counterclaim should be dismissed because "a party that commits the first material breach of a contract relieves the non-breaching party of further performance and prevents the breaching party from relying on the contract to enforce any additional rights."[7]

Each party responded to the other party's motion for summary disposition. JAC responded that "Iridium fails to point to any provision of the parties' written agreements that JAC breached. Its complaint identifies only an alleged failure to pay for delivered goods. Of course that claim, not paying for goods delivered, is singularly a question of whether JAC's [sic] had the right to offset." Iridium responded that JAC materially breached the parties' two contracts because, as previously explained, "JAC failed to deliver any raw materials to Iridium for the first six months of 2022, while JAC's delay of the [Stellantis] Contract was even worse." Iridium claimed that as a result of these material breaches, it was "entitled to a judgment in the total amount of damages that JAC caused it to incur."

At the motion hearing, the trial court heard the parties' respective arguments and ultimately ruled in favor of JAC, stating that "I'm going to grant the motion for summary disposition of JAC Products for all the reasons articulated by JAC Products that was procedural," "[a]nd the substantive reasons under MCR 2.116(C)(8) and (C)(10) finding that there is not a . . . breach of . . . the contract." The trial court added that "for those reasons as well . . . I'm granting it in favor of JAC Products under . . . MCR 2.116(I)(2), finding that the opposing party is entitled to summary disposition."

This appeal followed. On appeal, Iridium argues that the trial court erred by implicitly assuming that the parties' two contracts were "requirements contracts" that did not bind JAC to purchase the quantities identified therein, and that JAC materially breached the parties' contracts.

II. STANDARD OF REVIEW

"Appellate review of a motion for summary disposition is de novo." *Gyarmati v Bielfield*, 245 Mich App 602, 604; 629 NW2d 93 (2001). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. 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; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*. (quotation marks and citation omitted). "When deciding a motion brought under this section, a court considers only the pleadings." *Id*. at 119-120.

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint." *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). "The court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id*. "The

[7] Iridium's motion for summary disposition, unlike JAC's motion for summary disposition, was not supported by documentary evidence sustaining the assertions therein.

motion is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id*. at 29-30.

Under MCR 2.116(I)(2), "[s]ummary disposition is properly granted to the opposing party if it appears to the court that that party, rather than the moving party, is entitled to judgment." *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996). "The proper interpretation of a contract and the legal effect of a contractual clause are questions of law that we review de novo." *Sherman-Nadiv v Farm Bureau Gen Ins Co of Mich*, 282 Mich App 75, 78; 761 NW2d 872 (2008). We review issues of statutory interpretation de novo as well. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009).

III. DISCUSSION

Article 2 of the Uniform Commercial Code (UCC), MCL 440.2101 *et seq*., "governs rights and remedies for commercial sales and applies exclusively to transactions in goods." *Funk v Hover Trucking Co*, 221 Mich App 268, 271; 561 NW2d 479 (1997) (quotation marks and citation omitted). The parties do not dispute that Article 2 governs this case.

With regard to requirements contracts, MCL 440.2306(1) of Article 2 provides as follows:

> A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

Comment 3 to MCL 440.2306 explains that "[i]f an estimate of output or requirements is included in the agreement, no quantity unreasonably disproportionate to it may be tendered or demanded. . . . [T]he agreed estimate is to be regarded as a center around which the parties intend the variation to occur."[8]

With regard to damages, MCL 440.2719(1)(a) of Article 2 provides that "the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article," and MCL 440.2719(3) provides that "[c]onsequential damages may be limited or excluded unless the limitation or exclusion is unconscionable." Further, MCL 440.2719(2) provides that "[w]here circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act." Simply put, MCL 440.2719 provides that a contractual limitation on damages generally is enforceable, but "if the limitations placed on the recovery are unconscionable, or fail in their essential purpose or operate to deprive either party of the substantial value of the bargain,

[8] Some courts have held that under UCC 2-306, "unreasonably disproportionate decreases are permissible so long as the buyer has acted in good faith, but that unreasonably disproportionate increases are impermissible." *Simcala, Inc v American Coal Trade, Inc*, 821 So2d 197, 202 (Ala, 2001). Other courts have held that UCC 2-306 prohibits unreasonably disproportionate decreases even if the buyer acted in good faith. *Id*. at 203.

the parties may be relieved of their strictures." *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 356; 480 NW2d 623 (1991). See also *Kelynack v Yamaha Motor Corp, USA*, 152 Mich App 105, 114-115; 394 NW2d 17 (1986).

As noted, Iridium raises two arguments on appeal. First, Iridium argues that the trial court erred by assuming that both of the contracts between the parties were "requirements contracts," i.e., "a contract that defines quantity by reference to the buyer's requirements." *MSSC, Inc v Airboss Flexible Prods Co*, 511 Mich 176, 182; 999 NW2d 335 (2023). According to Iridium, the contracts instead imposed a duty upon JAC to purchase the quantities identified therein and, because JAC failed to do so, JAC is liable for the shortfall in purchases. Second, Iridium argues that the alleged six-month delay by JAC in performing under the Toyota Contract and the alleged one-year delay by JAC in performing under the Stellantis Contract constituted "material breaches" of contract by JAC, such that JAC is precluded from suing Iridium for any alleged breach of contract by Iridium.

We decline to address the first argument raised by Iridium for two reasons. First, Iridium never asked the trial court to decide whether the parties' contracts were "requirements contracts." Second, Iridium actually alleged in its complaint that "[b]oth of these contracts were exclusive requirements agreements: that is, JAC agreed to purchase all parts from Iridium and Iridium agreed to manufacture all parts ordered by JAC, via the periodic issuance of purchase orders." Therefore, Iridium's argument is waived on appeal both because it was never raised below, see *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008), and because it is contrary to Iridium's position below, see *Fed Deposit Ins Corp v Garbutt*, 142 Mich App 462, 472; 370 NW2d 387 (1985).[9]

[9] Regardless, we briefly note that the parties' contracts were "requirements contracts," as that term is defined by statute, see MCL 440.2306(1), and caselaw, see *MSSC*, 511 Mich at 182. The Toyota Contract listed annual product quantities in a chart titled "EAU." The term "EAU" means "estimated annual usage, *i.e.*, the quantity to be shipped." *BBS Power Mod, Inc v Prestolite Elec, Inc*, 71 F Supp 2d 194, 196 (WDNY, 1999). The Stellantis Contract stated that Iridium would supply products to JAC "in accordance with the firm quantities and delivery schedules specified in the JAC Products' releases." Thus, both contracts indicated that Iridium would supply products to JAC at JAC's discretion. Moreover, the Purchase Order Terms and Conditions stated that "Buyer may provide Seller with, and Buyer's delivery schedules may contain, estimates, forecasts or projections of Buyer's future volume or quantity requirements for Products or Services and/or the term of a program to which such Products or Services relate. Such estimates, forecasts and projections are not binding on Buyer . . . ." This further indicates that the parties' contracts were "requirements contracts" and did not specify a fixed quantity of purchases by JAC. See generally, *Cyril Bath Co v Winters Indus*, 892 F2d 465, 467 (CA 6, 1989) ("[A] contract to furnish only part of the buyer's requirements along with an approximate number of the identified goods is sufficient to be a requirements contract under UCC 2-306(1).").

We acknowledge the possibility that, during the course of the parties' relationship, JAC ordered an "unreasonably disproportionate" low quantity of products for the purposes of MCL 440.2306(1). However, that issue was not argued below and is not clearly articulated on appeal, so we decline to address it. See *Walters*, 481 Mich at 387.

With regard to Iridium's second argument, "[t]he rule in Michigan is that one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform." *Able Demolition v Pontiac*, 275 Mich App 577, 585; 739 NW2d 696 (2007) (quotation marks and citation omitted). "However, the rule only applies if the initial breach was substantial," i.e., material. *Id*.

Here, Iridium has failed to explain how the material-breach doctrine applies to this case. As previously noted, this case is governed by Article 2 of the UCC. See *Funk Co*, 221 Mich App at 271. Article 2 contains its own statutory provisions governing contractual breaches and damages that may be inconsistent with common-law defenses such as material breach. See, e.g., *Impact Finishing, Inc v Wild Card, Inc*, 713 F Supp 3d 322, 348 (ND Tex, 2024) ("The Court concludes that the only affirmative defense asserted by [the buyer] that is barred by the UCC is prior material breach. Under the UCC, a buyer is required to pay for the goods he accepts; thus, even when the seller has otherwise breached, a buyer must nevertheless pay if the buyer accepts goods."). Iridium has not argued, for example, that JAC's alleged breaches caused the limitation-of-damages provision to "fail of its essential purpose" under MCL 440.2719(2). Instead, Iridium summarily asserts that "a party that commits the initial material breach of a contract relieves the non-breaching party from further performance and prevents the breaching party from relying on the contract to enforce any additional rights," a proposition that generally is true under the common law but has limited application to Article 2.[10] Without any such argument relating to Article 2 on appeal, we are unable to afford Iridium relief for any alleged "material breach" of contract committed by JAC. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) ("The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.") (quotation marks and citation omitted).

Nonetheless, we are unable to affirm the trial court in its entirety. The trial court dismissed Iridium's complaint under MCR 2.116(C)(8) and (C)(10). The complaint sought $428,252.10 in damages from JAC. Of this amount, documentary evidence indicates that $121,284.19 was for products manufactured by Iridium and delivered to JAC, but for which JAC did not pay Iridium. The trial court also granted summary disposition in favor of JAC on its counterclaim under MCR 2.116(I)(2). The counterclaim sought damages from Iridium in the amount of approximately $130,000, which was later refined to $130,930.00.

Critically, however, the record indicates that JAC conceded that it failed to pay Iridium $121,284.19 for delivered products, but argued that withholding payment for that amount was

[10] We note that the material-breach doctrine, as applied to sales of goods not governed by the UCC, would hypothetically allow Iridium to rescind the parties' contracts. See *Walter N Kelley Co v Auto Body Co*, 219 Mich 486, 490; 189 NW 188 (1922) ("Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer.") (citation modified). However, Iridium has not explained how rescission would aid its case.

justified as an offset of its damages.[11] As a result, the trial court's order disposing of this case seemingly granted JAC a windfall of $121,284.19. In other words, JAC received a judgment under MCR 2.116(I)(2) for its claimed $130,930.00 in contractual damages, and it also was able to retain, without paying for them, $121,284.19 in delivered products for its claimed offset. This was error. See *Impact Finishing*, 713 F Supp 3d at 348 ("Under the UCC, a buyer is required to pay for the goods he accepts; thus, even when the seller has otherwise breached, a buyer must nevertheless pay if the buyer accepts goods."). Accordingly, we remand this case to the trial court for further proceedings to eliminate such double recovery.

IV. CONCLUSION

We affirm the trial court's dismissal of Iridium's complaint under MCR 2.116(C)(8) and (C)(10). However, we reverse the trial court's grant of summary disposition in favor of JAC on JAC's counterclaim under MCR 2.116(I)(2), and remand this case to that court for further proceedings consistent with our opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Michael J. Riordan
/s/ Michelle M. Rick

[11] For example, on page two of JAC's July 30, 2025 response brief, JAC stated that "it is true that JAC used its contractual offset provision and that Iridium's claim that JAC did not pay for $121,184.19 of product is in a simple sense true." Similarly, on pages 14 to 15 of JAC's June 18, 2025 brief in support of its motion for summary disposition, JAC acknowledged its "decision to withhold further payment pending resolution of the $130,930.00 offset amount . . . ." And, during the August 6, 2025 motion hearing, JAC's counsel explained that "[t]he complaint says that we failed to pay for goods. . . . That is true in a sense that when JAC exercised its rights to terminate the contract it also offset about a hundred and twenty thousand dollars in damages that it had as a result of late deliveries which have not been contested. So in the truest sense of the word there's a hundred and twenty thousand dollar product which we didn't pay for because we offset the last set of receivables."