STATE OF MICHIGAN

COURT OF APPEALS

BERO MOTORS, INC, Plaintiff-Appellant,	UNPUBLISHED October 2, 2001
v	No. 224190 Delta Circuit Court
GENERAL MOTORS CORPORATION, Defendant-Appellee.	LC No. 98-014256-CK

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

WHITBECK, J. *(concurring in part and dissenting in part).*

I concur in the majority opinion to the extent that it affirms the portion of the trial court's order granting summary disposition with respect to plaintiff Bero Motors' claims that defendant General Motors Corporation was negligent and breached its fiduciary duty. I respectfully dissent from the majority opinion to the extent that it reverses the portion of the trial court's order granting summary disposition with respect to Bero Motors' claims involving breach of oral contract and promissory estoppel. I would affirm summary disposition for those claims as well. They are the only claims I address in this opinion.

I. Basic Facts And Procedural History

General Motors' Year 2000 Plan, a national program designed to restructure and relocate General Motors dealerships, as well as take other steps to improve their competitiveness, precipitated this case. In the 1990s, there were three automobile dealerships in Delta County selling General Motors products and parts. Bero Motors sold the Pontiac and Buick product lines, Town and Country Motors sold Oldsmobile, Cadillac, and GMC vehicles,[1] and Coyne was the dealer for Chevrolets. Under the Year 2000 Plan, one dealership would sell Pontiac, Buick and GMC vehicles and the other would sell the Chevrolet, Oldsmobile, and Cadillac product lines. Thus, because Town and Country Motors intended to sell its business, this plan presented Bero Motors with an opportunity to pursue its longstanding goal of acquiring a GMC franchise. Though Bero Motors and Town and Country Motors engaged in negotiations, they were unable to reach an agreement on an appropriate purchase price.

[1] Town and County Motors also sold Toyota vehicles.

Representatives from Bero Motors and General Motors met in October 1996 to discuss the Year 2000 Plan. Allegedly, General Motors' representatives made an oral promise that Bero Motors would have the opportunity to match any offer other potential buyers made for Town and Country Motors. General Motors was in a position to allow this intervention into a transaction between Town and Country Motors and a third party because General Motors had a right of first refusal regarding any sale of Town and Country Motors' franchise, which it reportedly intended to allow Bero Motors to exercise in its stead.[2] Unbeknownst to Bero Motors, in December 1997, General Motors approved a sale between Town and Country Motors and a third party for the dealership's franchise, stock, and assets. Bero Motors, therefore, never had an opportunity to exercise General Motors' right of refusal with regard to that sale, contrary the alleged oral promise General Motors' representatives made.

In March 1998, Bero Motors sued General Motors, seeking recovery under four distinct legal theories: breach of oral contract, promissory estoppel, negligence, and breach of fiduciary duty. General Motors moved for complete summary disposition pursuant to MCR 2.116(C)(10). General Motors argued that the terms of its dealer sales and service agreement (dealer agreement) with Bero Motors was binding in this situation, and prevented Bero Motors from enforcing anything but a written agreement. General Motors also pointed to a December 11, 1997, letter between it and Bero Motors clarifying that their discussions were preliminary, that no agreements existed at that time, and that no agreements would exist unless written. The trial court concluded that "[t]he plain language of the contract unambiguously indicates that it is intended to regulate the entirety of the business relationship of the parties executing the [dealership] Agreement." Accordingly,

> [General Motors] properly relies on the last paragraph in Section 17.11 of the Agreement as being a prohibition on prospective oral promises as it expressly mandates that any changes must meet two conditions to be biding or enforceable. First, the change or addition must be in writing, and second, it must be signed by certain GM and Bero Motors representatives." The promise made in October, 1996 was not in writing nor was it signed.

The trial court also held that the dealer agreement controlled the promissory estoppel claim because it arose out of the same oral promise. Thus, the trial court held that summary disposition was appropriate for that claim as well.

II. Standard Of Review

Appellate courts review de novo whether a trial court properly granted or denied a motion for summary disposition.[3]

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[2] For purposes of the motion for summary disposition, General Motors accepted the allegation as true.

[3] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

III. Legal Standards

A motion for summary disposition under MCR 2.116(C)(10) tests the factual underpinnings of a claim other than an amount of damages, and the deciding court considers all the evidence, affidavits, pleadings, admissions, and other information available in the record.[4] The deciding court must look at all the evidence in the light most favorable to the nonmoving party, who must be given the benefit of every reasonable doubt.[5] Only if there is no factual dispute, making the moving party entitled to judgment as a matter of law, would summary disposition be appropriate.[6]

Of course, the nature of this appeal requires this Court to consider the effect the written dealer agreement had on the breach of oral contract and promissory estoppel claims. Thus, the standards this Court applies when construing contracts are also relevant:

> The primary goal of contract interpretation is to honor the intent of the parties. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). If the contract language is clear and unambiguous, then its meaning is a question of law for the court to decide. *Id*. "As a general rule, where terms having a definite legal meaning are used in a written contract, the parties to the contract are presumed to have intended such terms to have their proper legal meaning, absent a contrary intention appearing in the instrument." *Nationwide Mut Fire Ins Co v Detroit Edison Co*, 95 Mich App 62, 64; 289 NW2d 879 (1980); 17A Am Jur 2d, Contracts, § 362, pp 384-385.[7]

Further, to interpret a contract, courts may not look at small pieces of the agreement divorced from the context of the contract as a whole; rather, it is a "well-established principle that contracts are to be construed in their entirety."[8] Overall, these standards for contract construction ordinarily intersect with the analytical framework for summary disposition at the place where the court considering the motion must determine whether a question of material fact exists, that is, whether the contract is clear, binding, and dispositive of the claims at issue.[9]

IV. Binding Dealer Agreement

As the trial court recognized, the lengthy dealer agreement between Bero Motors and General Motors includes more than one section relevant to defining the scope of their business relationship, including the way in which they could enter other agreements. For instance, the parties took the wise step of memorializing the purpose of the dealer agreement. After

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[4] MCR 2.116(G)(5); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

[5] *Atlas Valley Golf & Country Club, Inc v Village of Goodrich*, 227 Mich App 14, 25; 575 NW2d 56 (1998).

[6] See *Auto Club Ins Ass'n v Sarate*, 236 Mich App 432, 437; 600 NW2d 695 (1999).

[7] *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 132; 602 NW2d 390 (1999).

[8] *Perry v Sied*, 461 Mich 680, 689; 611 NW2d 516 (2000).

[9] See *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

acknowledging the close relationship between General Motors' dealers, like Bero Motors, and its divisions,[10] like the Pontiac Division that worked with Bero Motors, the dealer agreement indicated that it

> (i) authorizes Dealer to sell and service Division's Products and represent itself as a Division dealer, (ii) *states the terms under which Dealer and Division agree to do business together*, (iii) *states the responsibilities of Dealer and Division to each other* and to customers; and (iv) reflects the mutual dependence of the parties in achieving their business objectives.[11]

While some may question the prudence of having such all-encompassing language in a dealer agreement, the plain language in this section purports to establish, without limitation, a binding framework for Bero Motors' whole relationship with General Motors.

The contract reflects its comprehensive nature in several sections of Article 4. Section 4.4.1, entitled "Facilities-Locations," limits Bero Motors to operating only from locations and facilities that General Motors approves. This provision granted General Motors significant authority concerning how Bero Motors established itself. Section 4.4.2, entitled "Facilities-Changes in Location or Use of Premises," states:

> If Dealer wants to make *any* change in location(s) or Premises, or in the uses previously approved for those Premises, Dealer will give Division written notice of the proposed change, together with the reasons for the proposal, for Division's evaluation and final decision in light of dealer network planning considerations. *No change in location or in the use of Premises, including addition of any other vehicle lines, will be made without Division's prior written authorization.*
>
> Before Division requires any changes in Premises, it will consult with Dealer, indicate the rationale for the change, and solicit Dealer's views on the proposal. If after such review with Dealer, Division determines a change in Premises or location is appropriate, the Dealer will be allowed a reasonable time to implement the change. Any such changes will be reflected in a new Location and Premises Addendum or other written agreement executed by Dealer and Division.
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> Nothing herein is intended to require the consent or approval of any dealer to a proposed relocation of any other dealer.[12]

These provisions clearly gave General Motors authority over future decisions concerning the Bero Motors dealership, even if those decisions were not specifically contemplated at the time

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[10] According to General Motors, "Division" refers to one of its internal divisions designated to administer the dealer agreement. Thus references to "Division" include General Motors itself.

[11] Emphasis added.

[12] Emphasis added.

the parties entered into the dealer agreement. Such an approach fit well with the purpose of the agreement as establishing an all-embracing contractual relationship between the parties.

Article 12, which addresses changes in management and ownership, only reinforced the overarching role the dealer agreement played in the relationship between General Motors and Bero Motors. Section 12.3.1, entitled "Right of First Refusal to Purchase-Creation and Coverage," states:

> If a Dealer submits a proposal for a change of ownership under Article 12.2, Division will have a right of first refusal to purchase the dealership assets regardless of whether the proposed buyer is qualified to be a dealer. If Division chooses to exercise this right, it will do so in its written response to Dealer's proposal. Division will have a reasonable opportunity to inspect the assets, including real estate, before making its decision.

This provision, which is likely standard in General Motors' agreements with its dealers, could have facilitated Bero Motors' purchase of Town and Country Motors. More importantly, this right of first refusal demonstrates the cradle-to-grave nature of the contract. Not only did the contract govern the formation of the dealership and its changes while in existence, the binding nature of the contract also persisted through its sale.

As the majority correctly observes, § 17.11 limits the scope of the dealer agreement to "matters covered herein." However, as the portions of the contract that I have referred to demonstrate, the dealer agreement covers a great many matters. Section 17.11 makes no attempt to specify what those matters are. In particular, the dealer agreement does not specify that it concerns only Bero Motors' business dealings concerning the Buick and Pontiac vehicle lines. In light of the contract read as whole, I conclude that Bero Motors and General Motors intended to bind themselves to the terms of the dealer agreement in their dealings with each other so long as the dealer agreement was effective. Thus, from my perspective, if the dealer agreement includes provisions relevant to the claims in this case, they must be applied as written. This can only be what the parties intended.

V. Breach Of Oral Contract And Promissory Estoppel

From my perspective, the dispositive issue concerning Bero Motors' breach of oral contract claim *and* promissory estoppel claim is whether the dealer agreement permitted the parties to enter into a binding agreement concerning the Town and Country Motors franchises without memorializing such an agreement in writing. Both oral contracts and oral promises enforceable on an estoppel theory require the existence of an oral pledge.[13] Consequently, it is possible to examine the dealer agreement for language that would prevent an oral pledge from being enforceable without distinguishing between whether the theory of liability at issue is breach of contract or promissory estoppel.[14]

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[13] See, generally, *Rood v General Dynamics Corp*, 444 Mich 107, 118-119; 507 NW2d 591 (1993); *State Bank of Standish v Curry*, 442 Mich 76, 83-86; 500 NW2d 104 (1993).

[14] See *State Bank of Standish, supra* at 87-88.

Given the comprehensive nature of the dealer agreement, it is not surprising that several of its provisions explicitly require General Motors' assent to certain decisions in writing, thereby excluding the possibility of binding oral promises. The most significant provision is § 17.11, entitled "Sole Agreement of Parties," which states:

> Except as provided in this Agreement, Division has made no promises to Dealer, Dealer Operator, or dealer owner and there are no other agreements or understandings, either oral or written, between the parties affecting this agreement or relating to any of the subject matters covered by this Agreement.
>
> Except as otherwise provided herein, this Agreement cancels and supersedes all previous agreements between the parties that relate to any matters covered herein, except as to any monies which may be owing between the parties.
>
> *No agreement between Division and Dealer which relates to matters covered herein*, and no change in, addition to (except for the filling in of blank lines) or erasure of any printed portion of this Agreement, *will be binding unless permitted under the terms of this Agreement or related documents, or approved in a written agreement executed as set forth in Division's Dealer Sales and Service Agreement*.[15]

This provision unambiguously requires agreements between Bero Motors and General Motors to be in writing. Either the agreement in dispute is in writing within the dealer agreement itself, or related documents, or the parties must render additional agreements in a new writing. This is a logical requirement given the complexities of a franchise relationship and the relative size of the parties. It requires no citation to authority to suggest that General Motors is an extraordinarily large corporation, with many agents, officers, and representatives. General Motors would have virtually no knowledge of or control over its operations if it did not require its agreements with dealers to be in writing. As this case proves, Bero Motors also has a significant business interest in having its agreement rendered in writing so that it can enforce its contractual rights against a corporation as large as General Motors. At a lesser level, Bero Motors also has an interest in writing its agreements because of the number of different individuals it may have to work with within General Motors' many divisions. For example, by having its agreements in writing, Bero Motors would have no problem proving to its different contacts in both the Buick and Pontiac divisions that it was permitted to take some action. There is nothing implicit in the nature of these two businesses and their workings that would contradict the requirement that other agreements be in writing.

Nevertheless, the majority holds that this writing requirement applies only to Bero Motors' dealings with General Motors concerning its Buick and Pontiac franchises because of the language referring to "matters covered herein." However, as I noted above, the dealer agreement covers many matters. In particular, § 4.4.2 prohibits Bero Motors from changing the location of its dealership or the way it used its premises, "including addition of any other vehicle lines," without first receiving General Motors'

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[15] Emphasis added.

permission in writing. This put to rest any question concerning whether the dealer agreement *solely* affected Bero Motors' relationship with General Motors concerning the Buick and Pontiac product lines. The dealer agreement, though initially drafted to guide Bero Motors' acquisition of Buick and Pontiac franchises, explicitly recognized and addressed what must happen if Bero Motors ever decided to expand or change its operations in a way that added a new product line to the dealership. In this regard, it is important to remember that Bero Motors's representatives were not meeting with General Motors' representatives solely because they wished acquire Town and Country Motors' franchises by exercising General Motors' right of first refusal. Bero Motors' representatives met with General Motors' representatives because they had to acquire General Motors' written permission to acquire those franchises. Thus, whether an agreement concerning Town and Country Motors had to be in writing was a "matter covered" in the dealer agreement.

Bero Motors has not provided any evidence that it received a written promise concerning the right to purchase Town and Country Motors' franchises, from which this Court could then also infer General Motors' assent to the transaction. In fact, the breach of contract and promissory estoppel theories Bero Motors advanced in its complaint rely on *unwritten* promises. Thus, I conclude that summary disposition of these claims was proper.

VI. The Michigan Dealer Act And *Pung*

To support their narrow view of the dealer agreement's scope, the majority looks to the Michigan dealer act[16] (MDA) and *Pung v General Motors*.[17] This, I submit, misconceives of our obligation to read contracts as a whole.[18] Additionally, I suggest that the majority misinterprets the MDA's[19] scope to stretch *Pung's* conclusion regarding standing to sue under the MDA to fit these very different circumstances.

I agree with the majority's implicit conclusion that General Motors is a "manufacturer" under the MDA.[20] I also agree with the majority's determination that, pursuant to *Pung* and the plain language of the MDA, Bero Motors is an existing "new motor vehicle dealer"[21] with

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[16] MCL 445.1561 *et seq*.

[17] *Pung v General Motors*, 226 Mich App 384; 573 NW2d 80 (1997).

[18] See *Perry*, *supra* at 689.

[19] The amendments of the Michigan dealer act took effect after the trial court granted summary disposition, making them irrelevant in this case. See 1998 PA 456. Thus, I cite the statutes as they appeared at the time relevant to this case.

[20] MCL 445.1564(2) ("'Manufacturer' means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative.").

[21] MCL 445.1565(2) ("'New motor vehicle dealer' means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, exchanging, or dealing in new motor vehicles and who has an

(continued…)

respect to its Buick and Pontiac vehicle sales, while it was concurrently a "proposed new motor vehicle dealer"[22] with respect to the GMC franchise it was attempting to acquire from Town and Country Motors. Nor do I have any quarrel with the majority's conclusion that the existing dealer agreement between Bero Motors and General Motors concerning the Buick and Pontiac vehicle lines is a "dealer agreement."[23] Consequently, the majority's conclusion that the MDA generally governed the business relationship between the parties does not disturb me in the least.

Nevertheless, the majority fails to explain what portion of the MDA limits the terms of a dealer agreement to the vehicle lines at issue when the parties executed the dealer agreement. MCL 445.1562(2) simply states that a "dealer agreement" is

> the agreement or contract in writing between a manufacturer, distributor, and a new motor vehicle dealer, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase and sale of new motor vehicles and accessories for motor vehicles.

This statute in no way attempts to define what those "legal rights and obligations" are, much less limit them to a particular product franchise. Rather, the parties must define those "legal rights and obligations." Here, General Motors and Bero Motors did just that, including the obligation to put their agreements in writing. If another provision within the MDA would create this limitation on the substance of a dealer agreement, the majority has not identified it.

The majority reaches out to *Pung* to fill this gap and impose a limit on the scope of the dealer agreement between General Motors and Bero Motors. *Pung* presents facts that are almost opposite from the circumstances in this case. In *Pung*, M&M Chevrolet, Inc., and Archie Oldsmobile/AMC, Inc., both of which held General Motors franchises, entered into an agreement whereby M&M would buy Archie's assets, essentially acquiring Archie's Oldsmobile franchise.[24] However, General Motors had a contractual right with respect to both franchisees to approve or disapprove the transaction.[25] When General Motors refused to approve the asset sale, M&M and Archie sued General Motors for violating a provision of the MDA that is not explicitly mentioned in the appellate opinion.[26] The sole issue concerning the MDA on appeal was whether M&M and Archie had standing to sue under the MDA.[27] This Court determined

(…continued)

established place of business in this state."); see also MCL 445.1565(3) ("'Person' means a natural person, partnership, corporation, association, trust, estate, or other legal entity.").

[22] MCL 445.1565(4) ("'Proposed new motor vehicle dealer' means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed motor vehicle dealer does not include a person whose dealer agreement is being renewed or continued.").

[23] MCL 445.1562(2).

[24] *Pung*, *supra* at 385.

[25] *Id*.

[26] *Id*. at 384-386.

[27] *Id*. at 386-388.

that M&M was acting as a "proposed new motor vehicle dealer" with respect to the assets it was attempting to acquire from Archie, and thus lacked standing to sue because MCL 445.1580(2) limited the right to sue to "new motor vehicle dealers."[28] In explanation of the distinction between existing and proposed dealers for the purposes of standing that it was acknowledging, the Court remarked:

> Such a distinction by the Legislature is reasonable. First, there is no right to be a dealer for defendant, or any other manufacturer for that matter. Unless defendant is engaging in discriminatory conduct prohibited by a civil rights statute, an issue not present here, defendant is free to decline to extend a dealership to an applicant. Simply put, defendant is not obligated to allow someone to sell its vehicles merely because the applicant desires to do so.
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> An existing dealership, on the other hand, is not quite in the same position. The existing dealership has made an investment, of both time and money, in an existing business. Furthermore, while the dealership is wholly dependent on the franchise from the manufacturer, the manufacturer can easily exist without any individual dealership. Because of this economic domination, the MDA is designed to protect dealerships.
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> However, because prospective dealerships have not yet made that investment, it is reasonable for the Legislature to determine that they do not need to be protected. *In other words, the MDA is designed to prevent a manufacturer from abusing those with whom it has chosen to do business, but does not abrogate the manufacturer's right to choose with whom to do business.*
>
> With respect to M & M in this situation, we believe that M & M must be treated as a prospective new dealership. The fact that it is an existing dealership has nothing to do with its proposed purchase of Archie Oldsmobile's assets. M & M would be in the same position that it otherwise would be had Archie Oldsmobile never decided to sell. Defendant's decision in no way restricts or impedes M & M's ability *to exercise and enjoy its existing franchise agreement*. The fact that it cannot expand its business by taking over the Archie Oldsmobile dealership is no different than if another company, not currently a vehicle dealer, sought to purchase Archie Oldsmobile and defendant declined to grant it the franchise. In short, the MDA provides no remedy to an unsuccessful proposed purchaser, regardless of whether it is an existing dealership or not.
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> In sum, because the transaction at issue here does not involve M & M's *rights under its existing dealership agreement* with defendant, its status as a new vehicle dealer under that existing dealership agreement is irrelevant to this case. Rather, it is in the same situation as any other prospective new vehicle dealer, a

[28] *Id*. at 386.

> group that has no standing under the MDA and to whom the MDA grants no remedies.[29]

I grant that the dealer-manufacturer relationship in *Pung* and this case appears similar. It is possible, if not probable, that the dealer agreements between General Motors and the dealerships in *Pung* and the dealer agreement in this case are substantially alike. However, there are sufficient distinctions between this case and *Pung* that lead me to conclude that *Pung* does not require this Court to interpret every dealer agreement into which General Motors enters as irrelevant to subsequent business transactions between General Motors and its franchisees.

First, and most obviously, this case does not involve a standing question related to the MDA. Bero Motors has not sued under the MDA, which is what happened in *Pung*. Second, unlike M&M and Archie, Bero Motors and Town and Country Motors never consummated an agreement. Therefore, here, General Motors was never presented with an opportunity to exercise its right to veto such an agreement.

Third, the *Pung* opinion does not reveal any provisions of the existing dealer agreement that were at issue in that case. Courts relying on the *Pung* opinion must take at face value the *Pung* panel's representations that M&M's existing dealer agreement "had nothing to do with its proposed purchase of Archie Oldsmobile's assets" and that General Motors' decision to veto the transaction "in no way restrict[ed] or impede[d] M&M's ability to exercise and enjoy its existing franchise agreement."[30] Yet, these assertions are telling in their own way. They revealed the central premise of the Court's reasoning in *Pung*. This premise was that M&M's rights under the specific terms of the existing dealer agreement for the Chevrolet franchise were not implicated in the attempted Oldsmobile asset sale. Presumably, had M&M's rights or General Motors' rights under the existing dealer agreement been implicated in the proposed asset sale, the Court would have concluded that those express terms controlled the outcome of the case, thereby recognizing M&M's standing under the MDA. Having reviewed the terms of the dealer agreement between Bero Motors and General Motors, I am convinced that there are terms in the dealer agreement that are relevant and applicable to this action because they address the circumstances presented. Consequently, I see no reason for this Court to look to the analysis in *Pung* while ignoring the terms of the dealer agreement in this case.

More importantly, if *Pung* does apply, it does so for a reason or in a way that the majority does not acknowledge. Specifically, in *Pung* this Court allowed General Motors to exercise veto power established in an existing dealer agreement over a transaction not directly related to the franchise granted in that agreement. In other words, M&M's existing dealer agreement in *Pung* evidently gave it the right to sell Chevrolet products while allowing General Motors to control its expansion into other product lines, like the Oldsmobile franchise Archie attempted to sell M&M. The *Pung* panel concluded that the Chevrolet franchise dealer agreement had no relationship to M&M's proposed move to selling Oldsmobile products. Nevertheless, the Court still allowed General Motors to exercise the veto right it had solely because it was established within the

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[29] *Id*. at 386-388 (emphasis added and citations omitted).

[30] *Id*. at 387.

context of the Chevrolet franchise dealer agreement and even though that veto right was exercised over the supposedly unrelated Oldsmobile transaction.

This is exactly what I perceive to be allowed under the plain language of the dealer agreement between Bero Motors and General Motors here. I grant that the issue in this case is whether General Motors can be bound by an oral pledge concerning expanding the vehicle lines Bero Motors could sell, not the ultimate approval or disapproval of a transaction. Yet General Motors' right to insist on written agreements appears in the portions of the dealer agreement that expressly give it authority over this sort of product line expansion by Bero Motors. This Court in *Pung* concluded that General Motors was entitled to summary disposition[31] because the existing dealer agreement gave it the "right to choose with whom to do business"[32] even when a product line franchise not created in the existing dealer agreement was at issue. I do not see how it can now limit General Motors' similar rights in this case. General Motors' right to insist that its agreement be in writing stems every bit as much from the existing dealer agreement with Bero Motors as its right to veto a product line expansion stemmed from the existing dealer agreement in *Pung*.

In summary, I cannot join the majority concerning breach of oral contract and promissory estoppel because the opinion: (1) ignores the controlling language in the existing dealer agreement between Bero Motors and General Motors, (2) has not explained which portion of the MDA would limit the rights of the parties to set the terms of existing dealer agreement so that it would govern their business relationship in a comprehensive manner, and (3) misapplies *Pung* to read such a limitation into the MDA.

VII. Conclusion

We live in a day and age in which business is so complex that a shake of the hand or a spoken promise is not enough to prevent confusion or misinterpretations, even when all parties act in good faith. Consequently, it makes perfect sense that General Motors and Bero Motors would choose to require that all agreements within the context of their business relationship as established in the original dealer agreement should be written. Had Bero Motors been in a position to insist that General Motors could not enforce the terms of an alleged oral pledge, I would be equally committed to what I perceive to be the simple enforcement of the parties' intent as clearly expressed in the dealer agreement. Thus, I would affirm the trial court's decision to grant summary disposition to General Motors on the breach of oral contract and promissory estoppel claims.

/s/ William C. Whitbeck

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[31] *Id*. at 388.

[32] *Id*. at 387.