STATE OF MICHIGAN

COURT OF APPEALS

TAURUS MOLD, INC, a Michigan Corporation, Plaintiff-Appellant, v TRW AUTOMOTIVE US, LLC, a Foreign Limited Liability Company, Defendants-Appellees.	UNPUBLISHED January 13, 2009 No. 282269 Macomb Circuit Court LC No. 2007-001748-CK

Before: Murphy, P.J., and K.F. Kelly and Donofrio, JJ.

PER CURIAM.

In this breach of contract action, plaintiff, Taurus Mold, Inc., appeals as of right from the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10), in favor of defendant, TRW Automotive US, LLC. Because the trial court properly granted summary disposition in favor of defendant due to the existence of a valid integration clause in the parties' contracts, namely purchase orders, as well as by operation of the parol evidence rule, we affirm.

Plaintiff was in the business of providing molding and mold-building services, as well as servicing molds and molding machines operated by other entities. Plaintiff's molds were used to produce parts, typically made of plastic, for various industries including the automotive industry. Defendant was in the business of supplying automotive parts and systems to the automobile industry. In years 2003 through 2006, defendant ordered various mold products and services from plaintiff. In its complaint, plaintiff acknowledges that during this time period, it provided defendant with goods and services, and defendant would provide checks for payment of the services in accordance with purchase orders issued by defendant for those goods and services.

The purchase orders all contain the following language,

> THIS PURCHASE ORDER IS SUBJECT TO THE TRW AUTOMOTIVE TERMS AND CONDITIONS OF PURCHASE, AS REVISED OR AMENDED FROM TIME TO TIME (THE "TERMS AND CONDITIONS"). The Terms and Conditions, which are incorporated into this Purchase Order by reference, are located at https://vin.livmi.trw.com (the VIN website), and Supplier acknowledges receipt, review and acceptance of the Terms and Conditions. Commencement of any work, services, or delivery of goods under the Purchase Order shall constitute Supplier's acceptance of the Terms and Conditions.

Defendant's Terms and Conditions of Purchase provided in relevant part:

1. ACCEPTANCE: (A) SELLER WILL BE DEEMED TO HAVE ACCEPTED THIS ORDER WHEN SELLER ACKNOWLEDGES THIS ORDER OR BEGINS PERFORMANCE UNDER THIS ORDER. SELLER'S ACCEPTANCE IS LIMITED TO ACCEPTANCE OF BUYER'S TERMS. BUYER HEREBY OBJECTS TO AND REJECTS ANY PROPOSAL BY SELLER FOR ADDITIONAL OR DIFFERENT TERMS. IF SELLER PROPOSES ADDITIONAL OR DIFFERENT TERMS WHICH RELATE TO THE DESCRIPTION, QUANTITY, PRICE OR DELIVERY SCHEDULE OF THE GOODS, SELLER'S PROPOSAL WILL OPERATE AS A REJECTION OF BUYER'S OFFER; IN ALL OTHER CASES, SELLER'S PROPOSAL WILL BE DEEMED A MATERIAL ALTERATION OF BUYER'S TERMS, AND BUYER'S TERMS WILL BE DEEMED ACCEPTED BY SELLER WITHOUT SELLER'S ADDITIONAL OR DIFFERENT TERMS. IF THIS ORDER IS DEEMED AN ACCEPTANCE OF SELLER'S PRIOR OFFER, BUYER'S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON SELLER'S ASSENT TO BUYER'S TERMS.

   (B) BUYER AND SELLER AGREE THAT, NOTWITHSTANDING THE PRIOR OR SUBSEQUENT USE BY SELLER OF ANY ORDER FORM, INVOICE OR OTHER DOCUMENT CONTAINING PRINTED TERMS OR CONDITIONS, THEY ARE CONTRACTING SOLELY ON THE BASIS OF THIS ORDER, WHICH CONTAINS THE ENTIRE UNDERSTANDING OF THE PARTIES AND IS INTENDED AS A FINAL EXPRESSION OF THEIR AGREEMENT AND A COMPLETE STATEMENT OF THE TERMS THEREOF, AND MAY NOT BE AMENDED, MODIFIED OR OTHERWISE SUPPLEMENTED UNLESS SUCH AMENDMENTS, MODIFICATIONS OR SUPPLEMENTS ARE IN WRITING AND SIGNED BY BUYER'S AUTHORIZED REPRESENTATIVE. A PROVISION CONTAINED IN ANY ORDER FORM, INVOICE OR OTHER DOCUMENT USED BY SELLER (WHETHER PRIOR OR SUBSEQUENT TO THE DATE OF THIS ORDER) WHICH IS INCONSISTENT WITH THIS SUBPARAGRAPH WILL HAVE NO FORCE OR EFFECT AND WILL NOT BE BINDING ON THE BUYER UNLESS SUCH PROVISION IS CONTAINED IN AN ORDER FORM, INVOICE OR OTHER DOCUMENT DATED SUBSEQUENT TO THE DATE HEREOF AND IS SPECIFICALLY INITIALED BY BUYER'S AUTHORIZED REPRESENTATIVE.

***

21. Payments: Buyer will pay the prices stipulated on this Order for Goods delivered and accepted, less deduction, if any, as herein provided, but only (i) upon submission by Seller of an invoice or (ii) pursuant to other

> mutually agreed-upon arrangements. The prices for Goods will not be subject to any variation without the prior written consent of Buyer. Unless otherwise specified, Buyer will pay for partial deliveries accepted by the Buyer.

But plaintiff also alleges in its complaint that it invoiced defendant for only a portion of the work hours, goods, or services plaintiff actually provided to defendant during the time period at issue, because it expected payment for the balance of the unbilled work when defendant's budget allowed. Plaintiff alleges in its complaint that it engaged in this practice because defendant's agent, Sam Gill, "would limit the amount of (already rendered) services for which [plaintiff] could invoice [defendant] under the representation that the Purchase Orders and Checks that were issued in response to such invoices would be payment only for the hours, goods or services invoices, and that the balance of services rendered (i.e., the un-invoiced amounts) could and would be paid in subsequent periods, i.e., as [defendant's] budgeting allowed."

Defendant publicly announced in August 2005 that it would be ceasing operations at its Sterling Heights manufacturing facility by August 2006. Defendant thereafter implemented shut down procedures and closed its Sterling Heights facility according to its plan. Plaintiff alleges that in August 2006 and September 2006 it submitted invoices to defendant for the previously uninvoiced amounts defendant incurred between the period March 2003 and August 2006. Specifically, plaintiff submitted four separate invoices to defendant for payment: (1) an invoice dated August 8, 2006 for 6041 work hours incurred between July 1, 2005 through June 30, 2006 in the amount of $362,460; (2) an invoice dated August 18, 2006 for 5894 work hours incurred between June 1, 2004 and June 30, 2005 in the amount of $353,640; (3) a second invoice dated August 18, 2006 for 7968.75 work hours incurred between March 2003 and June 1, 2004 in the amount of $478,125; and (4) an invoice dated September 5, 2006 for storage and handling fees associated with the provision of services between April 2003 and August 2006 in the amount of $123,000.

After defendant did not pay the four invoices plaintiff submitted, plaintiff filed its complaint in this action. Plaintiff alleged breach of contract, unjust enrichment/quantum meruit; account stated; negligent and intentional misrepresentation; and lost future profits. Defendant answered denying all of plaintiff's allegations. Defendant also filed several general affirmative defenses including the defense that plaintiff's claims were barred by the express provisions of the purchase orders issued by defendant, as well as the defense that plaintiff's claims were barred by operation of defendant's payment of all amounts due under defendant's purchase orders.

Defendant then filed a motion for summary disposition arguing that plaintiff's claims were barred by the parol evidence rule relying on the integration clause found in Section 1.(B) of defendant's Terms and Conditions of Purchase. Defendant summarized its argument in its brief supporting its motion for summary disposition as follows:

> Plaintiff alleges that it entered into oral agreements with [defendant] under which Plaintiff agreed to sell goods and perform services specified in written purchase orders, but at a higher price than specified in the purchase orders. Each of the purchase orders, however, is a fully integrated agreement, specifically stating that the "parties are contracting solely on the basis of this order, which contains the

> entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof[.]" Plaintiff's allegations of separate oral agreements by [defendant] employees for additional payments should therefore not be heard by this Court. And because Plaintiff's claims cannot possibly succeed as a matter of law, the Court should grant defendant's motion for summary disposition and dismiss Plaintiff's complaint with prejudice.

Plaintiff responded that defendant's reliance on the parol evidence rule fails arguing specifically that "[n]either the purchase orders nor the never-before-revealed 'terms and conditions' were ever part of the contracts between [defendant] and [plaintiff]." Instead plaintiff asserted that the purchase orders did not constitute the agreements between the parties and that the agreements were already formed before defendant ever submitted its purchase orders for the work performed via written or oral work orders issued by Sam Gill on behalf of defendant.

After entertaining oral argument on the motion, the trial court granted summary disposition in defendant's favor pursuant to MCR 2.116(C)(10). The trial court held as follows in its opinion and order:

> The Court is satisfied that each Purchase Order clearly and unambiguously incorporated defendant's Terms and Conditions, which, in turn, clearly and unambiguously stated that the parties were contracting solely on the basis of each respective order, which included the parties' complete understanding. In this regard, Paragraph 1(B) plainly prohibited any amendments, modifications, or supplements unless they were in writing and signed by defendant. Pursuant to Paragraph 21, defendant was to pay the prices stipulated on each Purchase Order, which would not be subject to change without defendant's written consent.
>
> The Court finds that parol evidence of any alleged prior agreements is not admissible inasmuch as the parties included an integration clause in their agreements and inasmuch as there is no evidence of fraud.
>
> ***
>
> The Court is not convinced by plaintiff's argument that the Terms and Conditions were "secret" and "hidden" since they were on defendant's website, as plainly stated under each Purchase Order. Neither is the Court persuaded that defendant failed to pay the amounts due on the written Purchase Orders that were separate and distinct from the alleged work performed pursuant to the purported oral agreements. Finally, the Court finds no merit to plaintiff's argument that the Terms and Conditions altered the parties' agreements. To the contrary, plaintiff is the party attempting to alter the parties' agreements by raising the alleged oral contracts.

It is from this order that plaintiff now appeals.

We review a trial court's grant of summary disposition de novo. *Nesbitt v American Community Mut Ins Co*, 236 Mich App 215, 219; 600 NW2d 427 (1999). A motion for summary

disposition pursuant to MCR 2.116(C)(10) "tests the factual support of a claim and requires this Court to consider the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact warranting a trial exists." *Elezovic v Ford Motor Co*, 274 Mich App 1, 5; 731 NW2d 452 (2007). As the Court in *Nesbitt, supra*, explained:

> Where the moving party has produced evidence in support of the motion, the opposing party bears the burden of producing evidence to establish that a genuine question of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994), citing MCR 2.116(G)(4). 'Summary judgment should only be granted when the plaintiff's claim is so clearly unenforceable as a matter of law that no factual development can possibly justify a right to recovery.' *Young v Michigan Mut Ins Co*, 139 Mich App 600, 603; 362 NW2d 844 (1984). [*Nesbitt, supra* at 219-220.]

This case also involves the interpretation of a contract that this Court similarly reviews de novo. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). Our Supreme Court recently reiterated:

> In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law. However, if the contractual language is ambiguous, extrinsic evidence can be presented to determine the intent of the parties. [*Smith, supra* at 24 (internal footnotes and citations omitted.)]

Plaintiff first argues on appeal that the trial court erred as a matter of law when it failed to recognize that defendant's attempt to use an adoptive reference in a post-performance document that played no role in contract formation to import the "Terms and Conditions" from its website was barred by the preexisting duty rule. In explaining this contention in its brief on appeal, plaintiff alleges that the contracts between the parties regarding the services plaintiff performed existed prior to defendant's issuance of its purchase orders, and therefore, any additional terms set forth in the later-issued purchase orders would be void for lack of consideration under the preexisting duty rule. Defendant counters that the trial court properly found that as a matter of law, plaintiff's claim of alleged prior agreements is barred by the parol evidence rule because the purchase orders were clear on their faces and were fully integrated.

Generally, the parol evidence rule stands for the proposition that "'a written instrument is open to explanation by parol or extrinsic evidence when it is expressed in short and incomplete terms, or is fairly susceptible of two constructions, or where the language employed is vague, uncertain, obscure, or ambiguous, and where the words of the contract must be applied to facts ascertainable only by extrinsic evidence, a resort to such evidence is necessarily permitted.'" *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 470; 663 NW2d 447 (2003), quoting *Edoff v Hecht*, 270 Mich 689, 695-696; 260 NW 93 (1935). A contract is ambiguous when its

terms are susceptible to more than one meaning. *Coates v Bastian Brothers, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007).

An integration clause, also called a merger clause, determines the applicability of the parol evidence rule to a contract.

> Recitations to the effect that a written contract is integrated, that all conditions, promises, or representations are contained in the writing and that the parties are not to be bound except by the writing, are commonly known as merger or integration clauses. By stipulating the fact of integration, such clauses purport to contractually require application of the parol evidence rule to the parties' agreement. [11 Williston on Contracts § 33:21 (4th ed 2006) (internal footnotes omitted.)]

This Court has held that "when the parties include an integration clause in their written contract, it is conclusive and parol evidence is not admissible to show that the agreement is not integrated except in cases of fraud that invalidate the integration clause or where an agreement is obviously incomplete 'on its face' and, therefore, parol evidence is necessary for the 'filling of gaps.'" *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 502; 503 NW2d 411 (1998), quoting in part 3 Corbin, Contracts, § 578, p 411. The Court continued, "the merger clause made it unreasonable for [the plaintiff] to rely on any representations not included in the . . . agreement." *Id*. at 504.

In order to support its argument, plaintiff only attempts to set a factual backdrop for the business practices it claims plaintiff and defendant followed throughout their relationship regarding the multiple purchase orders at issue in this case. Plaintiff states in the "Background" section of its brief on appeal the following:

> On numerous occasions, after the work was completed, [defendant] (through one of its vice presidents, Sam Gill), would only authorize payment for part of the hours provided claiming that [defendant]'s budget was tight and that [defendant] would "make it up to" [plaintiff] later. As a result, [defendant] would issue an after-the-fact "purchase order" for only a part of the hours of service provided, and [plaintiff] would then provide and invoice for the amount of the authorized partial payment (which, pursuant to Sam Gill's instructions, would be backdated almost two months so that [plaintiff] would not have to wait a full sixty days for its partial payment.

But while plaintiff relies on these allegations to support its claims regarding the preexisting duty rule, plaintiff in no way establishes, or even alleges for that matter, that "fraud" existed thus justifying the admission of the extrinsic evidence it seeks to introduce despite the existence of the integration clause. *UAW-GM Human Resource Ctr*, *supra* at 502. After reviewing the purchase orders both parties reference, we agree with the trial court's conclusion that parol evidence is not admissible here because the purchase orders are plain and contain an integration clause. Thus, the existence of the integration clause in the purchase orders conclusively bars plaintiff from seeking to explain its actions or intentions while contracting with defendant via the introduction of any parol evidence. Therefore, because the purchase orders are

fully integrated and no fraud is alleged, we conclude that plaintiff's argument regarding the existence of prior agreements and the application of the preexisting duty rule[1] which is wholly buttressed on the introduction of impermissible parol evidence, fails. *Id*.

Plaintiff's next argument regarding the common law mirror image rule and MCR 440.2207[2] likewise fails due to the application of the parol evidence rule and the integration clause in the purchase orders. Plaintiff's argument centers on its contention that the purchase orders constituted only "part of the contract formation process" and plaintiff seeks to offer evidence regarding what it believes constituted the offers and acceptances on the part of the parties in the matter. Plaintiff's premise is flawed from its inception because as we mentioned

---

[1] The "preexisting duty" rule stands for the proposition that doing what one is legally bound to do is not consideration for a new promise. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 158; 719 NW2d 553 (2006).

[2] MCL 440.2207 is identical to UCC § 2-207 and states as follows:

> (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.
>
> (2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:
> (a) the offer expressly limits acceptance to the terms of the offer;
> (b) they materially alter it; or
> (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.
>
> (3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.

In *Challenge Machinery Co v Mattison Machine Works*, 138 Mich App 15, 22; 359 NW2d 232 (1984), this Court explained that,

> At common law, the failure of the responding document to mirror the terms of the offer would have precluded the formation of a contract. The UCC, however, altered this "mirror-image" rule by providing that the inclusion of additional or different terms would not prevent the acceptance from being operative unless the acceptance was made conditional on the assent of the other party to those additional or different terms. MCL 440.2207(1).

above, the integration clause in the written purchase orders is conclusive and parol evidence is not admissible to show that the agreement is not integrated. *UAW-GM Human Resource Ctr*, *supra*, at 502. Thus, plaintiff cannot use parol evidence to attempt to modify the agreements in the face of the integration clauses.

Finally, the trial court did not err when it held that plaintiff's remaining counts in its complaint "arise from and are closely intertwined with the breach of contract claim" and dismissed the remaining claims. Plaintiff's unjust enrichment claim fails because where a written agreement governs the parties' transaction, a contract will not be implied under the doctrine of unjust enrichment. *King v Ford Motor Credit Co*, 257 Mich App 303, 327-328; 668 NW2d 357 (2003). Plaintiff's misrepresentation claim fails as well. To prevail on its misrepresentation claim, plaintiff was required to show reliance on any misrepresentations, and a valid integration clause renders reliance on representations that are not included in the contract unreasonable. *UAW-GM Human Resource Ctr*, *supra* at 504; *Hamade v Sunoco, Inc (R & M)*, 271 Mich App 145, 171; 721 NW2d 233 (2006). Any other claims including lost future profits, account stated, or claims involving storage and handling fees are barred by operation of the parol evidence rule.

Affirmed.

/s/ William B. Murphy
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio