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Michigan Federal Court Holds That an Automotive Supply Contract With an “Imprecise Quantity Term” Does Not Create a Requirements Contract

Client Alert

2.2.2024

On January 25, 2024, in *Ultra Mfg. U.S.A. Inc. v. ER Wagner Mfg. Co.*, the Federal District Court for the Eastern District of Michigan became the first court to answer an important question left open by the Michigan Supreme Court’s July 2023 decision in *MSSC, Inc. v. Airboss Flexible Products Co* (“*Airboss*”). *Airboss* held that a contract in which the seller was required to supply all of buyer’s requirements but the buyer promised only to purchase quantities for which it chose to issue a release was not a requirements contract. The court determined that such a contract was only a “release by release” contract, which the seller could terminate once it satisfied current releases. *Airboss* was discussed in a previous Butzel Client Alert, but *Airboss* did not decide an important related question – whether a contract in which the buyer’s only promise was to purchase some (i.e., more than zero) of its requirements, while having the right to purchase up to all of its requirements, was an enforceable requirements contract.

The new *Ultra* case found that such a contract, which it labeled an “imprecise quantity” contract, did not create an enforceable requirements contract. The facts in *Ultra* were commonplace – as a result of a pricing dispute, seller (Wagner) stopped supplying parts to buyer (Ultra). Ultra sued, seeking a preliminary injunction to force Wagner to continue shipping. Wagner argued that under *Airboss*, it had no contractual obligation to ship and thus should not be forced to do so. The contract required the buyer (Ultra) to purchase “some portion or all of [buyer’s] requirements,” while the seller (Wagner) was required to supply whatever quantities buyer chose to order. The federal court reasoned that “some portion or all” of Ultra’s requirements was not a “set share of its total need,” as it believed was required by *Airboss*. Instead, it found that “some portion or all” is an

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“imprecise quantity term, essentially committing to ‘whatever [buyer] order[s],’ [and] does not satisfy the statute of frauds under the reasoning of *Airboss*.” The court specifically recognized that “[a] contract may leave the final or total quantity ambiguous or unspecified in a requirements contract, but it may not state an imprecise quantity term.”

Ultra is a subtle, but potentially important, extension of the *Airboss* case. In *Airboss*, buyer promised nothing, other than to pay for what it chose to buy – it could choose to purchase all of its requirements from another supplier without breaching its contract, so long as it did not issue a release. In *Ultra*, the buyer promised to purchase at least “some portion,” albeit an unquantified portion, of its requirements, so the buyer would be in breach if it purchased zero. *Ultra* recognized that “some portion” is such an imprecise promise, that it could not create a requirements contract.

At the same time, there are a number of important questions about the application of *Airboss* that have not yet been addressed by the courts. In addition, *Ultra* is one decision of a federal court that does not bind state courts. Thus, *Ultra* is not the last word on what a buyer must promise in order to form an enforceable requirements contract. In Butzel’s experience, contracts with imprecise quantity terms are not uncommon, and for those contracts, *Ultra* matters a great deal.

Ultra, like *Airboss*, does not call into question the enforceability of a properly drafted requirements contract, but it does make clear the consequences of failing to have a properly drafted contract. However, Butzel strongly recommends that in the wake of *Airboss* and *Ultra*, both buyers and sellers carefully review their contract portfolios to identify the new risks and opportunities. Butzel’s Automotive Team has decades of experience in supply chain contracting, will continue to carefully monitor the developing case law in this area, and stands ready to assist you in that evaluation.

Please feel free to contact the authors of this Client Alert or your Butzel attorney for more information.

Sheldon H. Klein

248.258.1414

klein@butzel.com

Mitchell Zajac

313.225.7059

zajac@butzel.com