

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN AUTOCOAT, INC.,

Plaintiff-Appellee,

v

MACDONALD'S INDUSTRIAL PRODUCTS,
INC.,

Defendant-Appellant.

UNPUBLISHED
November 8, 2007

No. 267036
Kent Circuit Court
LC No. 04-001170-CK

Before: Whitbeck, C.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Defendant MacDonald's Industrial Products, Inc. (MIP) appeals as of right from the trial court's order granting judgment in favor of plaintiff American Autocoat, Inc. on its breach of contract claim against MIP. We affirm.

I. Basic Facts And Procedural History

Sometime in 2002-2003, MIP and Lear Corporation entered a contract that required MIP to supply Lear with handle assemblies for the rear lift gate of the Cadillac SRX. The contract required MIP to mold a plastic handle, paint it, and then assemble it. But MIP did not have the expertise or facilities required to paint the handles, so it approached American Autocoat to do the painting portion of the project. American Autocoat's facility was equipped with a robotic, electrostatic paint-application process.

According to American Autocoat President and CEO Scott Skoog, he realized from his first meeting with Robert MacDonald, Sr., the owner of MIP, that the parts posed "a variety of challenges" but that the project presented future "opportunities" for American Autocoat. Skoog testified that the handles, which were rectangular with many sharply angled surfaces, were inherently difficult to paint. One of the most significant problems with painting handles with that design was a condition known as the "Farady Cage" effect. When the electrostatically-charged paint is applied to such a part, the paint builds up on the flat surfaces and is repelled from the angled surfaces. Overall, the process results in heavy paint and a condition called "orange peel," an unacceptably textured surface, on the flatter surfaces, and "light," "dry," or "under" spray on the angled surfaces.

Skoog further explained that major defects with the raw molded parts included “flow lines where the mold is not fully—you can actually see seams in the part,” and glass fiber on the face of the part, which made the surface very porous. Skoog stated that these defects were “enhanced by the paint process.” Skoog confirmed that such “defects with the raw molded handle make it difficult to paint it to a good cosmetic finish.” Skoog also noted that some parts had a “significant flash line[,]” which he explained as follows:

When the resin is injected into the mold, it actually separates to remove the part and it can cause you a lot of problems because it’s a gap in the mold, and it’s—if the mold is overly pressurized, or, in fact, if there’s a lot of glass resin it’ll find its way into that crack and create a real flash. And so it’s something that you’ve really got to be—you’ve gotta have process control in the mold and you’ve gotta certainly be able to control the flow of glass fiber at the surface if you’re gonna be successful and have a paintable grade molding. So this is an example of a very early state we found ourselves in terms of the quality of molding that we were doing.

MIP and American Autocoat engaged in a prototyping period before launching the program, during which MIP supplied American Autocoat with sample handles. After MIP supplied American Autocoat with the sample handles, MIP Vice President Scott MacDonald met with Skoog to discuss American Autocoat’s ability to properly paint the handles. Skoog circulated a Process Study that informed MIP and Lear that American Autocoat would have a “high” rate of success in painting the handles using a process called “Alternative Process 4,” which was ultimately used to paint the handles throughout the duration of the project. Alternative Process 4 was a multi-step process to robotically apply the paint and to mask poor surface quality on the raw molded handle. Skoog explained that Alternative Process 4 involved first washing, drying, priming, and baking the part, then a base coat and a clear coat were applied, and the part was cured. After that, the part was “finessed,” which involved sanding the part with very fine sandpaper to “knock down” any flash line or glass fiber defects. The parts were then “reracked” on the line and another base coat and another clear coat were applied. Skoog testified that of the five different processes tested, Alternative Process 4 was the “most promising.” Skoog further testified that by giving Alternative Process 4 a “high” rating for success American Autocoat intended to convey to MIP that “[b]y double processing and finessing the parts that we had good success in terms of getting to a cosmetic finish that would be acceptable.” Skoog confirmed that he did not intend to guarantee that there would no problems with painting the handles. Indeed, he stated:

It was common knowledge in discussions with Lear involved that we were dealing with a molding—molding conditions that were significant and open issues that couldn’t be addressed in a short time period prior to launch of this particular program. So it was an effort of establishing a production process that would band-aid the fact that the mold was what the mold was gonna be and it was time to make vehicles.

The Process Study identified the following “Open Issues” with respect to the handles:

- Looking at alternative resin solution
- Current moldings may require MEK soak

- High parting line on inside needs to be addressed
- Gas assist hole may require mask sticker
- APOP's parts for colors other than black

Skoog explained each issue. According to Skoog, MIP proposed to look into an alternative resin solution that would improve the quality of the mold. An MEK soak was a pre-painting procedure that would swell the surface. The high parting line on the inside was similar to the flash line that Skoog described on the outside of the handle—Lear was concerned that customers could feel “the rib” on the inside of the handle. The gas assist hole was a concern because it could allow water from washing the part to become trapped inside the part, turn to steam during the curing process, and then cause the part to pop apart.

Skoog testified that he contacted DuPont for advice on the project. According to Skoog, “the reaction was overwhelming from DuPont that this would be a real challenge and they really didn’t have—beyond their traditional primers they really didn’t have primers that could overcome this. . . . The solution was multiple layers of paint, sandpaper and reprocessing.”

Lyn Gunderman, a DuPont employee acting as a paint quality consultant to American Autocoat testified that Skoog approached her during the prototype stage regarding American Autocoat’s ability to paint the handles, and she told him that American Autocoat “probably didn’t want the job” because the design of the part posed challenges that would make it hard to paint. Gunderman also testified that some of the samples that Skoog showed her, which did not exhibit paint defects, appeared to have been hand sprayed. However, Skoog explained that all of the sample handles and all of the handles painted during the program were painted with robotic applicators and electrostatically-charged paint. He denied that anyone from DuPont ever told him not to paint the handle. Skoog stated that he could not recall asking Gunderman specifically whether American Autocoat could paint the handles.

Robert MacDonald, Sr., testified that neither Skoog nor anyone else from American Autocoat ever told him about the inherent painting problems. Robert MacDonald, Sr., testified that “there was never a question in [his] earlier dealings with American Autocoat that that they weren’t capable of painting the handle.” Skoog testified that he could not recall whether he informed MIP about the inherent problems expected to occur when painting the handles. However, Skoog also testified that the existence of certain painting defects were general knowledge in the industry.

On May 19, 2003, MIP issued a blanket purchase order to American Autocoat for the painting of the handles. American Autocoat has never disputed that the purchase order is the controlling contract document. By its terms, the purchase order was a completely integrated contract and acceptance of its terms and conditions was expressly effectuated by acknowledgement and acceptance by the seller or commencement of the work. The purchase order further provided as follows:

3. **QUALITY** - All material delivered hereunder by Seller must conform to the specifications set forth herein (or incorporated herein by reference) and/or samples required to be furnished by Seller under this purchase order, and will be subject to Buyer’s inspection within a reasonable time after delivery. Buyer may reject any material not conforming to such specifications and/or samples. Buyer

shall advise Seller of such rejection by either written notice or return of the rejected material, at Seller's risk and expense, within a reasonable time after such rejection. In the event of rejection by written notice, Buyer may thereafter either return the rejected material to Seller or [sic] Seller's risk and expense or hold the same for Seller at Seller's risk and expense.

* * *

7. DEFAULT - Upon the occurrence of any one of the following events, Buyer shall have the unrestricted right, upon written notice, to terminate this purchase order and, upon the delivery or mailing of such notice to Seller at its address shown herein, every obligation of the Buyer hereunder shall immediately terminate: . . . (iv) Seller's failure to comply with any of the provisions, terms and conditions of this purchase order

If Buyer cancels this purchase order as hereinabove provided, Seller shall compensate Buyer for all losses sustained by it by reason of such default and cancellation.

8. TERMINATION – Buyer may, at any time, upon reasonable notice in writing, terminate this purchase order in whole or in part, even though Seller is not then in default. Such notice shall state the extent and effective date of termination and upon the mailing or delivery thereof to Seller, Seller will, in accordance with such notice, terminate work hereunder and under any orders . . . outstanding hereunder, place no further orders . . . hereunder, and take all steps necessary to protect material and/or property in Seller's possession in which Buyer has or may acquire and [sic] interest. Upon such termination, Buyer's obligation to Seller shall be limited to payment for (i) the material completed in accordance with the terms hereof and not previously paid for (ii) the actual costs incurred by Seller which are properly allocable under recognized commercial accounting practices to the terminated portion of the contract . . . (but excluding any charge for interest or materials which may be diverted to other orders), plus (iii) a reasonable profit on work performed by Seller before termination and for which Buyer has not paid, provided, however, that the total payments which Buyer is obligated to make hereunder shall not exceed the purchase order price of material to which such termination applies. Termination by Buyer hereunder shall be without prejudice to any claims which Buyer may have against Seller.

9. WARRANTIES AND INDEMNIFICATION - Seller warrants that (i) all material delivered hereunder shall conform to the specifications herein and to any samples approved by Buyer as herein provided, (ii) all material delivered hereunder will be of the highest quality and free from defects

American Autocoat began regular production of painted handles in June 2003. Skoog testified that during the first month or two of the project the major defects with the raw molded handles sent to American Autocoat by MIP were flow lines, glass fiber, and flash lines. Skoog testified, however, that in August 2003 the unit price was reduced "because processing overall ha[d] gotten somewhat better." However, Skoog stated that

up until maybe the last month or two we were dealing with commonplace where they couldn't order certain colors at 350 because either there were difficulties in getting us that many moldings or there were other issues relating to supply, so it was—whether it was molding issues or even just the raw handles on site, we were forced to process smaller runs per MacDonald's request.

MIP admitted that during the first few months of production there were problems with the molding process, namely glass fiber on the surface of the part. In response to the problems attributed to MIP's molding of the handles, MIP pursued measures to improve the structural quality of the handles. To this end, MIP retained Bob Jones, an independent expert in the molding industry. Jones testified that "[i]nitially the raw handles were not very good" but that the molding flaws were satisfactorily reduced by early September 2003. Skoog confirmed that Jones made improvements in the program. Specifically, Skoog stated that "the molded product in November/December was superior than what it was in July and August." Although Skoog conceded that in late August 2003 he stated in an email that the need to finesse the handles had been virtually eliminated, he also explained that that improvement was short-lived. He explained that "each shipment that came in took its strides forward and backward[.]" He stated that at the time the project was terminated he was seeing a lot of glass fiber problems again.

Skoog denied that American Autocoat was responsible for screening incoming raw handles and rejecting any that could not be properly painted. However, he explained that American Autocoat would perform an "intermittent" spot check audit of incoming material. Skoog testified that, during the course of the seven-month project, American Autocoat rejected and returned to MIP 5,340 raw handles with molding issues so severe that they could not be painted. Skoog also confirmed, however, that only 74 of the total 5,340 rejected handles were shipped back between August 22, 2003, and January 2004. Skoog did not disagree that, from September through December, American Autocoat was receiving far more good raw handles from MIP than painted handles it was shipping back. Skoog also testified that some handles were scrapped even after painting due to either molding or painting defects. Skoog explained that, because American Autocoat was frequently asked to paint raw molded handles that were of such poor quality, MIP agreed that American Autocoat could invoice MIP for those scrapped parts at the invoice rate. American Autocoat, however, did not keep track of how many post-painting parts were scrapped for molding versus painting defects. Skoog also testified that American Autocoat incurred "overtime" costs because it had to hire extra help to deal with the combination of increasing release requirements and "massive mold fallout" issues, which required finessing and repair of handles.

Colin McKillop, Lear platform manager for the luxury group of the GM division, testified that, from the start of the MIP/American Autocoat program, Lear noticed different types of molding defects showing through the painted components. However, he also testified that he received word from the "quality people" that the molding issues had been corrected in late August 2003. McKillop also described various painting defects, such as defects from air contamination, scratches, bubbles, water contamination, underspray, and excessive paint. McKillop testified that Lear probably rejected between 500 to 1000 handles from MIP for paint-related issue.

During the project, MIP frequently advised American Autocoat that excess paint on the legs, bubbles, light coats and underspray, dirt, scratches, off color, orange peel, and water spots

were defects that repeatedly appeared in the handles. Skoog explained that the light coats and underspray was a paint-related issue, but he also testified that the overall design of the handle and glass fiber issues in the mold made it more difficult to get paint into the interior of the handle. Skoog testified that American Autocoat took steps to minimize the Faraday Cage/light spray effect. Skoog explained that the alleged bubbles in the paint were actually a result of the parting line from the mold. Skoog admitted that dirt contamination was inherent in the painting process; however, Skoog explained that the category of “dirt” defects actually also included other types of surface irregularities. Skoog stated that any scratches would have been post-painting defects, and he stated that sometimes flow lines were referred to as “scratches.” Skoog admitted that the orange peel was a painting-related defect. Skoog stated that water spots were related to the gate hole in the handle design, and he explained that American Autocoat took steps to minimize the problem. Skoog admitted that the excessive paint on the legs of the handles was a paint-related issue, but he also testified that the legs were a non-visible part of the handle and not held to the same specifications as other visible parts of the handle. According to McKillop, the excess paint on the legs of some handles was a problem because it affected the functioning of the handles. Skoog testified that American Autocoat made efforts to modify its tooling to relieve the excessive paint problem.

MIP Quality Manager Lisa Lange testified that she was receiving “very high quantities” of handles with painting defects. Out of the total 27,346 painted handles shipped to MIP from American Autocoat, the total number of defective material returns for paint defects was 2,630.

In late December 2003, Bob Jones met with Skoog and informed him that MIP “might want to take th[e] program to another facility[.]” Jones stated that he told Skoog that MIP was going to move the work to another painter because of American Autocoat’s inability to meet the requirements of the contract. According to Jones, Skoog agreed, noting that the move was “a good idea because [the job] was really challenging for his company and that it really should go to a company that maybe had a hand paint operation[.]” Skoog denied that Jones told him that MIP was terminating the contract.

By written notice dated January 6, 2004, MIP terminated the contract with American Autocoat due to the numerous and continual painting defects in the handles. Skoog responded by letter on January 13, 2004, stating in pertinent part that “[t]he issues for this program were both the lack of raw molding quality and the challenge of our paint application technology to support the complex geometry demands of this handle.”

American Autocoat filed a complaint against MIP, alleging that, without warning, MIP wrongfully terminated the contract. American Autocoat alleged that it painted the handles in accordance with the purchase contract for months, yet MIP failed to pay a number of invoices. American Autocoat claimed that, at the time of the alleged wrongful termination, it had handles and materials in inventory that were of no other value than to fulfill the MIP purchase order. American Autocoat also claimed that it possessed certain specialized tooling,¹ which MIP,

¹ Skoog explained that the tooling consisted of customized racks to hold the parts during the washing and paint application process.

contrary to the terms of the purchase order, never reimbursed. American Autocoat also claimed damages for expedited freight, repackaging expenses, overtime, and repurchase of parts. American Autocoat asserted one count of breach of contract and one count of account stated. American Autocoat claimed that the total amount due from MIP for unpaid invoices, inventory, materials, and tooling, but not including interest, was \$99,013.86.

MIP counterclaimed for costs incurred due to the alleged painting defects. MIP alleged that American Autocoat breached the purchase order terms by failing to comply with the quality standards and specifications. MIP then moved for summary disposition of American Autocoat's complaint, arguing that American Autocoat was not entitled to recover any damages on the contract due to its breach of the contract terms; that, alternatively, American Autocoat was in substantial breach of the contract; or, alternatively, that American Autocoat fraudulently induced MIP to enter the contract. More specifically, MIP argued that the evidence demonstrated that American Autocoat repeatedly shipped defective handles to MIP in violation of § 9 of the purchase order and, thus, MIP was entitled to terminate the contract under § 7.

The trial court denied MIP's motion for summary disposition on American Autocoat's complaint, ruling that there were genuine issues of material fact regarding the extent to which the claimed defects constituted a material breach of the contract, and even if the contract was breached, whether the breach meant that *all* of MIP's obligations were immediately terminated.

Following trial, the trial court found that, although the quality of the raw molded handles improved by September 2003, problems with the raw molded handles continued into December 2003. The trial court found that American Autocoat "produced a number [of handles] with defects including heavy paint on legs, bubbles in the clear coat, dirt and contamination, scratches, orange peel and light clear coat" but nevertheless concluded that the proofs were "conflicting as to whether these problems are the result of molding deficiencies at MacDonald's, painting defects at American Autocoat, or some combination of the two." The trial court noted that MIP frequently asked American Autocoat to paint poor quality raw molded handles and that MIP agreed that American Autocoat could invoice it for those scrapped parts at the invoice rate. Based on these findings of fact, the trial court concluded that MIP acquiesced to American Autocoat's painting defects. The trial court concluded that

Any failure on the part of American Autocoat to send parts that met the cosmetic requirements of the applicable standard were either caused by problems with the raw molded handle provided by MacDonald's to American Autocoat, or were sufficiently minimal as to not constitute a substantial breach of the agreement by American Autocoat.

Accordingly, the trial court concluded that MIP's termination of the contract was without cause and governed by § 8 of the contract, but that MIP did not give American Autocoat reasonable notice before terminating the contract. The trial court concluded that MIP owed American Autocoat \$59,272.20 for unpaid invoices. The trial court concluded that American Autocoat was entitled to recover "setup charges of \$32,882, tooling of \$8,200, and processing charges of \$10,982.90, in process inventory of \$7,137.66 and paint supply of \$22,684.00." The trial court also concluded that American Autocoat was entitled to recover \$505.18 for overtime charges. In total, the trial court awarded American Autocoat \$153,254.52, including statutory interest and taxable costs. The trial court concluded, however, that American Autocoat failed to

establish its entitlement to recover its alleged “lost profits.” The trial court also concluded that MIP was not entitled to any of the damages asserted in its counterclaim and that American Autocoat did not fraudulently induce MIP to enter the contract.

II. Breach Of Contract

This Court may not set aside a trial court’s findings of fact unless clearly erroneous.² A trial court’s findings of fact are clearly erroneous only if “the reviewing court is left with a definite and firm conviction that a mistake has been made.”³ If a contract’s language is clear, its construction is a question of law that this Court reviews de novo.⁴ When presented with a contractual dispute, a court must read the contract as a whole with a view to ascertaining the intention of the parties, determining what the parties’ agreement is, and enforcing it.⁵ Absent ambiguity, the court must construe a contract to adhere to its plain and ordinary meaning.⁶ The court must avoid technical and constrained constructions.⁷

As can be seen from the recitation of facts above, the record evidence was conflicting regarding the true cause of the various alleged paint defects; therefore, we are not left with a definite and firm conviction that the trial court’s resolution of the factual disputes related to the cause of the defects was mistaken. The clear error standard is highly deferential to the trial court and requires that regard be given to the trial court’s special opportunity to judge credibility.⁸ Accordingly, we affirm the trial court’s apparent conclusion that American Autocoat breached § 9 of the contract, which provides: “Seller warrants that (i) all material delivered hereunder shall conform to the specifications herein and to any samples approved by Buyer as herein provided, (ii) all material delivered hereunder will be of the highest quality and free from defects . . . [,]” *but* that MIP acquiesced to any defects in the materials that were delivered. In other words, to the extent that MIP argues that even a single defective part supported termination of the contract, we reiterate that the evidence was conflicting regarding the cause of the defects—that is, whether they were MIP’s fault, American Autocoat’s fault, or a combination of the two. And MIP’s recognition of its own persistent molding defects and its agreement to pay for certain scrapped parts demonstrates that MIP acquiesced to less than absolute compliance with the terms of § 9. Upon discovery of a breach, the allegedly injured party to the contract must insist on

² MCR 2.613(C).

³ *People v Johnson*, 466 Mich 491, 497; 647 NW2d 480 (2002).

⁴ *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002); *Hafner v DAIIE*, 176 Mich App 151, 156; 438 NW2d 891 (1989).

⁵ *Perry v Sied*, 461 Mich 680, 689; 611 NW2d 516 (2000), citing 3 Corbin, *Contracts*, § 549, pp 183-186 (contracts are to be interpreted and their legal effects determined as a whole); *Detroit Trust Co v Howenstein*, 273 Mich 309, 131; 262 NW 920 (1935); *Whitaker v Citizens Ins Co*, 190 Mich App 436, 439; 476 NW2d 161 (1991).

⁶ *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998).

⁷ *Id.*

⁸ MCR 2.613(C); *People v McSwain*, 259 Mich App 654, 683; 676 NW2d 236 (2003).

forfeiture at once—by permitting the breaching party to continue performance, the injured party acquiesces to the past breach.⁹

Based on the trial court’s finding that American Autocoat breached § 9 of the contract but that MIP acquiesced to any defects in the material that was delivered, we conclude that the trial court did not err in concluding that MIP’s termination of the contract was without cause and governed by § 8 of the contract, rather than by § 7, as argued by MIP. And, as a result, we conclude that the trial court did not err in concluding that American Autocoat was entitled to recover various damages. Section 8 provides that

[u]pon . . . termination, Buyer’s obligation to Seller shall be limited to payment for (i) the material completed in accordance with the terms hereof and not previously paid for (ii) the actual costs incurred by Seller which are properly allocable under recognized commercial accounting practices to the terminated portion of the contract . . . (but excluding any charge for interest or materials which may be diverted to other orders), plus (iii) a reasonable profit on work performed by Seller before termination and for which Buyer has not paid[.]”

Therefore, the trial court did not err in concluding that MIP owed American Autocoat for unpaid invoices, setup charges, tooling, processing charges, in process inventory, paint supply, and overtime. We find no error in the trial court’s conclusion that American Autocoat failed to establish its entitlement to recover its alleged “lost profits.”

MIP does not challenge on appeal the amount of damages awarded. Therefore, we need not address that portion of the trial court’s ruling.

III. Fraudulent Inducement and MIP’s Entitlement To Recovery Of Damages

MIP argues that American Autocoat had no right to recover anything from MIP because American Autocoat fraudulently induced MIP to enter into the contract. MIP also argues that it was entitled to recovery of various monetary damages.

An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims,¹⁰ nor may he give issues cursory treatment with little or no citation of supporting authority.¹¹ An appellant must support its argument by citation to appropriate authority or policy.¹² An appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue.¹³

⁹ *Schnepf v Thomas L McNamara, Inc*, 354 Mich 393, 397; 93 NW2d 230 (1958).

¹⁰ *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

¹¹ *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

¹² MCR 7.212(C)(7); *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

¹³ *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Because MIP has merely announced a cursory position on these issues, failed to cite any supporting authority, and, in sum, utterly failed to address the merits of these issues, we conclude that MIP has abandoned these issues.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood