

AirBoss II: Michigan Court Awards Automotive Supplier \$3.5 Million Based On “Unjust Enrichment”

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On December 13, 2024, an Oakland County, Michigan trial court awarded AirBoss Flexible Products Co. nearly \$3.5 million dollars on an unjust enrichment counterclaim asserted against MSSC, Inc., a tier one U.S. automotive supplier.[1] The ruling is the latest in a protracted battle between the two companies, which reached its well-known apex in July 2023 when the Michigan Supreme Court reversed a Court of Appeals opinion holding that blanket purchase orders lacking a written quantity term were unenforceable under the UCC Statute of Frauds.[2]

AirBoss, a supplier of rubber-based products, entered into a contract whereby it would provide MSSC, a supplier of parts for vehicle suspension systems, with components for ultimate use by an OEM.[3] The agreement between AirBoss and MSSC was set forth in a blanket purchase order that specified the parts to be supplied and the prices, but not the quantity.[4] The purchase order stated, “If this order is identified as a ‘blanket order’, [MSSC] shall issue a ‘Vendor Release and Shipping Schedule’ to [AirBoss] for specific part revisions, quantities, and delivery dates for Products. . . .” MSSC would therefore place orders for specific quantities of products through periodic releases as is common in the automotive industry.[5]

In mid-2019, AirBoss determined that it was experiencing financial losses on several of the parts it supplied MSSC and requested price increases.[6] MSSC did not respond, so AirBoss sent a notice that it was rejecting any future releases unless the parties reached an agreement on revised pricing.[7] MSSC, in turn, stated it would not agree and that it expected AirBoss to meet its contractual obligations.[8] AirBoss promptly notified MSSC that it was terminating their agreement and would stop supplying parts after the current release was filled.[9]

Shortly thereafter, in February 2020, MSSC sued AirBoss in Michigan for anticipatory breach of contract and moved for an injunction requiring specific performance by AirBoss.[10] The Oakland County Circuit Court granted the injunction and summary disposition in favor of MSSC on the grounds that the term “blanket order” expressed a quantity term sufficient to create an enforceable requirements contract under the Statute of Frauds in Michigan’s Uniform Commercial Code.[11] The Court of Appeals affirmed.[12]

The Michigan Supreme Court, however, reversed the decisions in July 2023.[13] The Court held that the blanket purchase order did not contain a quantity term and therefore could not satisfy the Statute of Frauds so as to create an enforceable requirements contract.[14] MSSC and AirBoss instead had a “release-by-release” business arrangement whereby AirBoss was bound by the terms of the blanket purchase order only to the extent that MSSC issued releases for specific quantities of products and AirBoss accepted those releases.[15] That being so, AirBoss was within its rights to reject future releases when MSSC would not agree to revised pricing. The case was then remanded to the trial court.[16]

Upon return to the Oakland County Circuit Court, only a counterclaim by AirBoss for unjust enrichment remained for adjudication.[17] AirBoss asserted that MSSC was unjustly enriched because the lower courts had erroneously ordered it to supply MSSC with parts at a substantial loss.[18] AirBoss sought as damages the difference in sales at prices it wanted to charge MSSC and those ordered by the lower courts—a total of \$3,483,899.85.[19]

MSSC argued that AirBoss could not recover damages under an unjust enrichment theory because the sales were governed by contracts between the parties—*i.e.*, individual releases under the blanket purchase order.[20] The Oakland County Circuit Court dismissed this argument because the releases were not entered voluntarily but rather through coercion of its “predecessor” court and the Michigan Court of Appeals.[21] The court equated the decision of AirBoss to enter the releases to that of Johnny Fontane in *The Godfather*:

MICHAEL

Well, when Johnny was first starting out, he was signed to this personal service contract with a big band leader. And as his career got better and better, he wanted to get out of it. Now, Johnny is my father’s godson. And my father went to see this band leader, and he offered him \$10,000 to let Johnny go. But the band leader said no. So the next day, my father went to see him; only this time with Luca Brasi. And within an hour, he signed a release, for a certified check for \$1,000.

KAY

How’d he do that?

MICHAEL

My father made him an offer he couldn’t refuse.

KAY

What was that?

MICHAEL

Lucas Brasi held a gun to his head, and my father assured him that either his brains – or his signature – would be on the contract.

The court then stated that “MSSC is decidedly not a mobster, and Judge Alexander and the Court of Appeals are the furthest things from gunmen.” But the court nevertheless recognized “the cold hard reality that the Supreme Court found that there was no contract and no obligation to sell parts under

the releases” and that AirBoss only supplied MSSC at the prices in the blanket purchase order “under pain of contempt of court.”[22]

MSSC further argued that it would be inequitable to apply the Michigan Supreme Court decision retroactively.[23] The court found this claim baseless, stating that, “perhaps there is a parallel universe, but traditionally when a party in Michigan wins a lawsuit, they actually win the lawsuit and are awarded the relief requested.”[24] Thus, AirBoss, in a reversal of fortunes, was awarded full damages.[25]

The *AirBoss* saga is a cautionary tale about the dangers of a buyer misunderstanding a release-by-release business arrangement with its supplier to be a requirements contract. A supplier in such an arrangement is entitled to stop accepting release orders and demand a price increase. A buyer that stands its ground and seeks court intervention on the mistaken belief it has a requirements contract would be throwing good money after bad. The courts will eventually find in favor of a supplier if a buyer has imposed contract terms at odds with UCC. In fact, *AirBoss* may encourage a supplier that is a party to an unfavorable long-term agreement to test the waters by demanding a price increase. It would therefore be prudent for buyers to conduct audits of their “requirements contracts” to confirm they include a quantity term sufficient to satisfy the Statute of Frauds, and any other requirements under the applicable governing law.

[1] *MSSC, Inc. v. AirBoss Flexible Products Co.*, No. 20-179620-CB, at *16 (Mich. Cir. Ct., Dec. 13, 2024).

[2] *MSSC, Inc. v. AirBoss Flexible Products Co.*, 511 Mich. 176, 180, 999 N.W.2d 335 (Mich. 2023).

[3] *MSSC, Inc. v. AirBoss Flexible Products Co.*, 338 Mich. App. 187, 979 N.W.2d 718 (Mich. Ct. App. 2021).

[4] *MSSC, Inc. v. AirBoss Flexible Products Co.*, No. 20-179620-CB, 2020 WL 10964218, at *1-3 (Mich. Cir. Ct., July 17, 2020).

[5] *Id.* at *3.

[6] *Id.*

[7] *Id.*

[8] *Id.* at *1.

[9] *Id.*

[10] *Id.*

[11] *Id.* at *6.

[12] *MSSC, Inc. v. AirBoss Flexible Products Co.*, 338 Mich. App. 187, 979 N.W.2d 718 (Mich. Ct. App. 2021).

[13] *MSSC, Inc. v. AirBoss Flexible Products Co.*, 511 Mich. 176, 180, 999 N.W.2d 335 (Mich. 2023).

[14] *Id.* at 198.

[15] *Id.*

[16] *Id.* at 180.

[17] *MSSC, Inc. v. AirBoss Flexible Products Co.*, No. 20-179620-CB, at 3 (Mich. Cir. Ct., Dec. 13, 2024).

[18] *Id.*

[19] *Id.* at 3-4.

[20] *Id.* at 9.

[21] *Id.* at 9-10.

[22] *Id.* .

[23] *Id.* at 14.

[24] *Id.* at 14-15.

[25] *Id.* at 16.

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National Law Review, Volume XV, Number 48

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