

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PLASTECH ENGINEERED PRODUCTS,

Plaintiff/Counter Defendant-  
Appellant/Cross-Appellee,

V

GRAND HAVEN PLASTICS, INC.,

Defendant/Counter Plaintiff/Third-  
Party Plaintiff/Appellee/Cross-  
Appellant,

and

JOHNSON CONTROLS, INC.,

Third-Party Defendant/  
Cross-Appellant/Cross-Appellee.

UNPUBLISHED

March 31, 2005

No. 252532

Ottawa Circuit Court

LC No. 02-043614-PD

---

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

In this interlocutory appeal of the parties' contract dispute, plaintiff/counter-defendant Plastech Engineered Products (Plastech) appeals by leave granted the trial court's denial of its motion for summary disposition. Defendant/counter-plaintiff/third-party plaintiff Grand Haven Plastics (GHP) and third-party defendant Johnson Controls, Inc. (JCI) cross appeal. We affirm in part, reverse in part, and remand.

I. Background

This case arises from a dispute between Plastech and GHP, both competitor-suppliers to JCI, which produces and supplies molded plastic components for the automotive industry. In 2001, JCI outsourced control of its supply contracts to Plastech, which included JCI's purchase orders (PO's) placed with GHP. When GHP refused to accept new PO terms and conditions imposed by Plastech, Plastech cancelled all production PO's issued to GHP. Plastech subsequently filed an action against GHP for claim and delivery of production tooling held by GHP. GHP filed a counterclaim alleging, among other claims, breach of contract (Count I).

GHP also filed a third-party complaint against JCI, alleging, among other claims, breach of contract (Count III), “breach of contract-interference of contractual relations” (Count IV), and “breach of contract-third party beneficiary” (Count V).

This Court granted Plastech leave to appeal the October 23, 2003, order of the trial court, denying Plastech’s motion for summary disposition of the breach of contract counterclaim. GHP cross-appeals the trial court’s determinations concerning GHP’s contracts with JCI and the trial court’s grant of summary disposition in favor of JCI with respect to GHP’s breach of contract, tortious interference of contract, and third-party beneficiary claims against JCI. JCI cross appeals the grant of summary disposition, seeking affirmance on various grounds.

## II. Standard of Review

This Court reviews de novo a trial court's grant of summary disposition pursuant to MCR 2.116(C)(10).<sup>1</sup> *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is properly granted when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The court considers the pleadings, affidavits, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

“[A] party faced with a motion for summary disposition brought under MCR 2.116(C)(10) is, in responding to the motion, required to present evidentiary proofs creating a genuine issue of material fact for trial. Otherwise, summary disposition is properly granted.”<sup>2</sup> *Smith, supra* at 455-456 n 2. A party moving for summary disposition has the initial burden of supporting its motion by affidavits, depositions, admissions or other documentary evidence. *Id.* at 455. The opposing party then has the burden of showing by evidentiary proofs that a genuine issue of material fact exists. *Id.* “Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.” *Id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

---

<sup>1</sup> Although the trial court did not specifically articulate which subrule it relied on in deciding the motions, the court relied on matters outside of the pleadings. Therefore, review is properly under MCR 2.116(C)(10) rather than subrule C(8). *Maiden v Rozwood*, 461 Mich 109, 118-120; 597 NW2d 817 (1999); *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997).

<sup>2</sup> GHP bases its arguments on an incorrect standard of review, relying on a former standard that was overruled in *Smith, supra*. The test is not “whether the record which might be developed ... results in a genuine issue upon which reasonable minds might differ.” *Id.* at 455 n 2.

### III. Factual Context

The parties' dispute arises from an ongoing contractual relationship between GHP and JCI, which was subsumed by Plastech under a Sourcing Agreement entered between JCI and Plastech on October 5, 2001.<sup>3</sup> Before the Sourcing Agreement, for more than twenty years, GHP contracted directly with JCI, and previously with JCI's predecessor, Prince Corporation, to supply plastic parts to JCI. GHP was considered a "partner molder," a supplier that was given preferential consideration by Prince, a relationship that allegedly continued with JCI as a "key preferred provider." Likewise, Plastech, a designer and manufacturer of interior trim components for automotive applications, was also parts supplier to JCI.

The standard course of dealing between GHP and JCI was that, when JCI wished to have GHP fabricate a specific component, JCI issued a Request for Quotation (RFQ) to GHP, which contained the specifications for the part. GHP would then analyze the specifications and provide JCI a formal quotation, which indicated that it could produce the part for JCI at a specific cost over a specific period of time. If JCI wished to accept the quotation, it responded to GHP with a purchase order. Over the course of their relationship, GHP had produced parts for JCI through a succession of purchase orders. Additionally, GHP and JCI had negotiated other agreements concerning their business together through various written communications.

In that regard, in Count I of GHP's countercomplaint, GHP alleged that in 2000 it was under contract with JCI to produce plastic component parts under the program titles "Windstar side panels" and "GM-270 panels," amongst others. Further, in November 2000, GHP and JCI entered into discussions regarding the cancellation of these two product orders and the movement of manufacturing work for these products from GHP to a plant controlled by JCI. According to GHP, as partial compensation for canceling the panel orders, JCI committed in writing not to pull future business from GHP. The writing referenced by GHP is a letter written on JCI letterhead, dated January 9, 2001, and signed by Matthew Ahearn, "Purchasing – Petro Chemical Commodity." This letter contained the following pertinent text:

The purpose of this letter is to formally address the issue of moving business from Grand Haven Plastics. I hope this helps clarify and answer any open questions or issues.

Johnson Controls recently has targeted business from all key preferred and non-preferred suppliers to fill the current capacity void at the JCI Holland campus. As you are aware, Johnson Controls has targeted the GMX 270 and WindStar programs from Grand Haven Plastics to fill open capacity at the Lakewood facility. We very much appreciate how Grand Haven Plastics has helped Johnson Controls work through this very difficult situation.

---

<sup>3</sup> The facts are stated herein for purposes of this interlocutory appeal, and they are not intended to be dispositive of any disputed factual issues on remand.

To bring closure to the GMX/WindStar tooling moves, Johnson Controls is committing not to pull any future business from Grand Haven Plastics to fill internal capacity needs. It is our hope to grow the business at Grand Haven Plastics in the very near future.

On October 5, 2001, JCI and Plastech entered into a “Plastic Components Sourcing Agreement.” This agreement obligated Plastech to “manage the design, the engineering, the production and the supply of certain injection molded and blow molded component parts for JCI . . . .” It also allowed Plastech to manage JCI’s current suppliers or “to terminate relationships with some or all of those suppliers in order to manufacture the Products itself.” According to GHP, JCI notified GHP of this agreement on November 29, 2001.

Following the transfer of control of GHP’s supply contracts from JCI to Plastech, disputes arose between GHP and Plastech concerning new terms and conditions imposed by Plastech for the contracts. In March 2002, GHP informed Plastech that the new purchase order terms and conditions were unacceptable to GHP and that GHP considered JCI still bound to its contractual obligations to GHP, including the agreement to exempt current products from future price down requests, the agreement not to pull work to fill internal capacity, and the agreements with respect to GHP’s expansion that was done at JCI’s request on the basis of JCI’s representations regarding future work.

Plastech informed GHP by letter dated June 20, 2002, that it would be canceling at a future date to be determined “all production purchase orders,” including “all business placed by Plastech with GHP including, but not limited to, all JCI business that had previously been placed with GHP under purchase orders issued by JCI.” Additionally, by this same letter, Plastech demanded a return of JCI’s tooling and equipment used by GHP. This action followed.

#### IV. Breach of Contract

Although the parties present numerous issues on appeal, there are two key questions for this Court’s decision with regard to breach of contract. First, did the trial court err in determining that GHP has a meritorious breach of contract claim, and therefore err in denying Plastech’s motion for summary disposition? Second, if GHP has a viable breach of contract claim, did the court err in ruling that liability rests only with Plastech and not with JCI, and therefore err in granting JCI’s motion for summary disposition? We hold that the trial court properly denied Plastech’s motion for summary disposition, although certain determinations were erroneous, as discussed below. We further hold that the trial court’s grant of JCI’s motion for summary disposition on the basis of an assignment to Plastech was improper.

#### A

It is undisputed that the breach of contract claim, based on the purchase order, is governed by the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.* Under the UCC, a contract for sale may be made in any manner sufficient to show agreement, even though the writings of the parties do not otherwise establish a contract. 21 Michigan Civil Jurisprudence, Sales and Leases under the UCC, § 11, p 201. In those cases, 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 the Code. *Id.*

Count I of GHP's countercomplaint against Plastech and Count III of GHP's third-party complaint against JCI allege identical factual allegations underlying the breach of contract. A key question in the parties' dispute is whether the JCI PO, covering the parts orders terminated by Plastech, constitutes an integrated agreement. It is undisputed, as the trial court found, that the PO's at issue contain an integration clause, which states:

This purchase order ... contains the final and entire contract between Purchaser and Seller, and no agreement or other understanding purporting to add to or modify the terms and conditions herein (sic ["hereof"]) shall be binding upon Purchaser unless agreed to by Purchaser in writing on or subsequent to the date of this purchase order.

However, the integration clause was contained only in JCI's PO, presumably the "acceptance" in this case, and not in GHP's quotation, presumably the "offer." Unlike cases in which the parties' agreement is contained in a single writing, which includes an integration clause to which both parties unquestionably agreed, in this case, it is disputed whether the clause becomes part of the contract. Consequently, the parties disagree whether the breach of contract claim is governed exclusively by the terms and conditions of the purchase order or whether other agreements between JCI and GHP also apply, specifically the Ahearn letter.

The trial court resolved this issue by stating as an initial matter that the contract at issue was the "panels contract," under which GHP produced parts known as "Windstar side panels" and "GM-270 panels." Applying a "battle of the forms" analysis, MCL 440.2207, the court then concluded that the PO was an integrated agreement because although the integration clause was an additional term, it did not materially alter the terms of the quotation, and it therefore became part of the contract, MCL 440.2207(2). The court further concluded that a genuine issue of material fact existed with regard to whether the Ahearn letter modified the panels contract. On reconsideration, the court rejected Plastech's claim that it interpreted the wrong contract, explaining that GHP's countercomplaint "pleads that Plastech breached the panels contract, as amended by the Ahearn letter, by 'pulling work' from GHP . . . ."

## B

On appeal, Plastech and JCI argue that the trial court erred in analyzing the contract claim in the context of the "panels contract," which was terminated by JCI before it entered into the sourcing agreement with Plastech.<sup>4</sup> We agree.

The trial court determined that the integration clause in the purchase order did not bar consideration of the January 9, 2001, Ahearn letter because the letter postdates the last PO for the "panels contract," which is dated August 7, 2000, and therefore, there was a question of fact

---

<sup>4</sup> GHP argues that this issue is unpreserved; however, it was raised before and addressed by the trial court on reconsideration.

whether the Ahearn letter modifies the panels contract as an agreement subsequent to the integrated purchase order. However, the “panels contract” was terminated long before the contracts at issue in this action were terminated by Plastech. It is undisputed that the panels contract tooling was returned to JCI pursuant to the termination agreement at the time. The termination and demand for tooling now at issue involves PO’s other than the panels contract. We agree with Plastech that the dates of panels contract PO’s are not a proper context for resolving the question of integration for subsequent PO’s.

GHP argues that the trial court did not err in basing its decision on the panels contract because the Ahearn letter modified the panels contract and the obligations of the Ahearn letter were operative at the time of the Sourcing Agreement. Nonetheless, subsequent PO’s contained the integration clause, which, if operative, would preclude evidence of the so-called modified panels contract. The issue in this case is whether Plastech and JCI breached the contract by terminating the subsequent PO’s. For purposes of the integration analysis, the date of the panels contract is irrelevant.

### C

The next consideration is whether the later PO contracts terminated by Plastech were nevertheless integrated and therefore preclude consideration of the Ahearn letter.<sup>5</sup> We agree with the trial court that this question is properly resolved under MCL 440.2207, “as a battle of the forms.” Section 2207 provides, in relevant part:

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. [MCL 440.2207.]

The acceptance, JCI’s PO, contains an additional term. In this case, only subdivision (b) is applicable, and therefore, the additional term, the integration clause, becomes part of the parties’ contract unless it materially alters the contract. The trial court did not analyze whether the integration clause materially alters the parties’ agreement, but merely stated that it did not.

---

<sup>5</sup> The parties do not identify the specific dates of the PO’s that were terminated by Plastech, although from the arguments, it appears that the PO’s postdate the Ahearn letter, and therefore the matter of integration may be dispositive.

We find no Michigan case that has addressed whether an integration clause is considered a material alteration. The general rule for determining whether an additional term is a material alteration is whether the alteration “‘results in surprise or hardship if incorporated without the express awareness by the other party.’” *American Ins Co v El Paso Pipe & Supply Co*, 978 F2d 1185, 1189 (CA 10, 1992), quoting Official Comment 4 to UCC 2-207. The majority of the courts reviewing whether an additional term is a material alteration hold that it depends on the unique facts of each particular case. *American Ins Co*, *supra* at 1190.

The determination whether a term results in surprise or hardship requires a factual evaluation of the parties’ position in each case. *Id.* Courts should determine whether a nonassenting party knew or should have known that such a term would be included. *Id.* at 1191. Courts should consider many factors in determining whether a party was unreasonably surprised by an additional term, such as prior course of dealing; the number of confirmations exchanged; absence of industry custom; whether the addition was clearly marked; and whether the addition is contained within the party’s own standard contract. With regard to hardship, “the analysis of the existence of hardship focuses on whether the clause at issue ‘would impose ‘substantial economic hardship’ on the nonassenting party.’” *Id.* (citations omitted).

Given the analysis required in assessing whether an additional term is a material alteration and the fact that the court failed to apply this analysis, we remand this case to the trial court to address this analysis in the first instance, which provides the parties opportunity for argument on this point.

#### D

The merit of the parties’ remaining arguments hinge to a certain extent on the trial court’s preliminary determinations. We briefly address key arguments to the extent that they will bear on the ultimate determination in the trial court following this appeal.

#### 1

The parties dispute whether the PO constitutes a “requirements contract.” JCI’s PO states: “Scheduled Purchase Order to cover 100% Johnson Controls requirements.” Under the UCC, a contract for sale may be established even though the price is not settled. 21 Michigan Civil Jurisprudence, Sales and Leases under the UCC, § 13, p 202. Likewise, a contract for sale may measure the quantity by the output of the seller or the requirements of the buyer, measuring such output or requirements as may occur in good faith. *Id.* at § 14, p 203.

GHP argues that the PO contracts are requirements contracts, which impose a duty on behalf of the parties to act in good faith and that this duty of good faith “undermines JCI’s position that it could, without reason, warning or liability, terminate a requirements contract at will.” We conclude that GHP’s argument has merit and warrants further consideration in the trial court.

MCL 440.2306 provides:

(1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

In applying Michigan law, the court in *Gen Motors Corp v Paramount Metal Products Co*, 90 F Supp 2d 861, 873 (ED Mich, 2000) stated:

Comment 2 to the statute reads: “Under this Article, a contract for output or requirements is not too indefinite since it is held to mean the actual good faith output or requirements of the particular party. Nor does such a contract lack mutuality of obligation since, under this section, the party who will determine quantity is required to operate his plant or conduct his business in good faith and according to commercial standards of fair dealing in the trade so that his output or requirements will approximate a reasonably foreseeable figure.” “‘A promise to buy of another person or company all *or some of* the commodity or service that the promissor may thereafter need or require in his business is not an illusory promise and such a promise is a sufficient consideration for a return promise.’ Corbin, 1A Corbin on Contracts § 156 (1963).” *Precision Rubber Products Corp v George McCarthy, Inc*, 872 F2d 187, 188 [(CA 6, 1989)] (emphasis added).

The court in *Gen Motors Corp, supra*, concluded that under Michigan’s version of the UCC, pursuant to Comment 2, the plaintiffs owed a contractual duty to execute the purchase order in good faith and according to commercial standards of fair dealing in the trade. *Id.* at 873; see also *Fashion House, Inc v K Mart Corp*, 892 F2d 1076, 1085 (CA 1, 1989). “If, in bad faith or inconsistent with commercial standards of fair dealing, the plaintiffs exercised a unilateral right not to purchase seat frames or to terminate the purchase orders, the plaintiffs would be subject to liability for breach of contract.” *Gen Motors Corp, supra* at 873.

Plastech asserts that a requirements contract must obligate the buyer to buy goods exclusively from the seller and must obligate the buyer to buy all of its requirements for goods of a particular kind from the seller. However, in *Gen Motors Corp, id.*, the court concluded that MCL 440.2306 expresses a legislative intent to enforce both exclusive and non-exclusive requirements contracts. Also contrary to Plastech’s assertion, the PO provision that it was terminable at will does not preclude a finding that the PO was a requirements contract.

Plastech also argues that the PO’s were not requirements contracts because they lacked a minimum quantity requirement. However, Comment 3 to MCL 440.2306 states: “If an estimate of output or requirements is included in the agreement, no quantity unreasonably disproportionate to it may be tendered or demanded. Any minimum or maximum set by the

agreement shows a clear limit on the intended elasticity. In similar fashion, the agreed estimate is to be regarded as a center around which the parties intend the variation to occur.” In this case, the communications between the parties allegedly contained estimates of output or requirements.

If the PO’s constituted requirements contracts, then Plastech’s unilateral termination of the PO’s may constitute a breach of contract, independent of the Ahearn letter. Further, the finding of a requirements contract also imposes standards with regard to the duration of the contract, thereby affecting the analysis of the duration issue and whether the parties’ contract was terminable at will.

With regard to duration of the contract and whether it was terminable at will, the trial court found that ¶ 7 in the purchase order, that indicated that the contract could be terminated at any time, conflicted with terms in the quotations that stated different prices for the panels for five different years.<sup>6</sup> The court determined that pursuant to § 2207, these different terms “knock each other out,” and that as a result, the contract became silent as to duration. The court then applied the “gap filler” found in MCL 440.2309(1) and concluded that the duration of the panels contract was for a “reasonable time.” The court noted that what constituted a reasonable time was generally a question of fact and therefore the duration of the contract constituted a question of fact.

MCL 440.2309 provides:

- (1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.
- (2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.
- (3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

We disagree with the arguments of Plastech and JCI that on the basis of GHP’s pleadings and arguments, the PO provision stating that the PO was terminable at will governs despite any evidence in the quotations to the contrary. As noted above, the quotations presumably were an offer and the PO was an acceptance. Accordingly, the two documents must be considered together and § 2207 is applicable. In any event, we conclude that legal and factual questions preclude any determination by this Court with regard to whether the contract was terminable at will.

---

<sup>6</sup> While it does not appear that this analysis would be different viewing a contract other than the panels contract, the trial court’s analysis was specific to the panels contract and, therefore, may be subject to reconsideration on remand if a difference exists.

## E. Statute of Frauds

JCI argues that the Statute of Frauds applies to bar GHP's claims and that there was no writing to support a claim to "life of the part" damages. GHP responds that there are numerous documents to support its claims pursuant to MCL 440.2201(1). We are unpersuaded by JCI's argument.

MCL 440.2201 provides:

(1) Except as otherwise provided in this section, a contract for the sale of goods for the price of \$1,000.00 or more is not enforceable by way of action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in the writing.

(2) Between merchants, if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract that does not satisfy the requirements of subsection (1) but is valid in other respects is enforceable in any of the following circumstances:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement.

(b) If the party against whom enforcement is sought admits in his or her pleading or testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this section beyond the quantity of goods admitted.

(c) With respect to goods for which payment has been made and accepted or that have been received and accepted under [MCL 440.2606].

It is noteworthy that MCL 440.2606(2), addressing acceptance, states that acceptance of any part of a commercial unit is acceptance of that entire unit. Further, an oral agreement may become enforceable through performance. *Power Press Sales Co v MSI Battle Creek Stamping*, 238 Mich App 173, 179; 604 NW2d 772 (1999). Accordingly, we are unconvinced that JCI was entitled to summary disposition on the alternative ground that the statute of frauds is not met. Nonetheless, given the limited record in this interlocutory appeal, should the facts or law warrant

further consideration of this issue, the determination is properly made by the trial court on remand.

## V. Assignment

GHP argues that the trial court erred in ruling that the Sourcing Agreement assigned to Plastech JCI's rights and obligations under the contracts and therefore JCI was not liable to GHP for breach. Given the arguments and evidence, we agree.

As GHP notes, under the UCC, MCL 440.2210(1), an assignment does not necessarily relieve JCI of liability. MCL 440.2210, entitled "Delegation of performance; assignment of rights," provides, in part:

(1) A party may perform that party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having that other party's original promisor perform or control the acts required by the contract. *No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.*

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on the other party by that other party's contract, or impair materially the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

\* \* \*

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract. [Emphasis added.]

The trial court did not address the import of § 2210. The arguments of Plastech and JCI on appeal do not indicate whether § 2210 is applicable to the assignment in this case. Resolution of the assignment issue is critical to a proper consideration of other issues presented in this case.<sup>7</sup>

---

<sup>7</sup> For example, GHP argues that if an assignment occurred, then Plastech "stands in the shoes" of JCI, and Plastech's action of reassigning GHP's contract work to Plastech would violate the commitment of the Ahearn letter. Likewise, if an assignment and delegation occurred, then the parties' positions with respect to GHP's tortious interference of contractual relations arguably changes. A question arises whether JCI could then be liable on a theory of tortious interference since it is technically not a party to the contract.

Given the limited argument and authority cited, we agree with GHP that the court erred in finding that JCI had no liability in light of its assignment under the Sourcing Agreement. Absent authority or facts to the contrary on remand, under § 2210(1) JCI is not relieved of liability to GHP by the assignment.

#### VI. Third-Party Beneficiary

GHP argues that the trial court erred in determining that the assignment by JCI to Plastech of the contract between GHP and JCI did not create any third-party beneficiary rights in GHP for which JCI is liable. We disagree.

MCL 600.1405 provides in relevant part:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.

Only intended third-party beneficiaries, not incidental beneficiaries, may enforce a contract under § 1405. *Koenig v South Haven*, 460 Mich 667; 680, 694; 597 NW2d 99 (1999); *Greenlees v Owen Ames Kimball Co*, 340 Mich 670, 676; 66 NW2d 227 (1954); “A third person cannot maintain an action upon a simple contract merely because he would receive a benefit from its performance or because he is injured by the breach thereof.” *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 190; 504 NW2d 635 (1993), quoting *Greenlees, supra*. “Third-party beneficiary status requires an express promise to act to the benefit of the third party; where no such promise exists, that third party cannot maintain an action for breach of the contract.” *Dynamic Const Co v Barton Marlow Co*, 214 Mich App 425, 428; 543 NW2d 31 (1995). Whether the parties to the contract intended to make a third person a third-party beneficiary should be examined under an objective standard. *Id.* at 427.

Contrary to GHP’s argument, the record does not support a conclusion that GHP was an intended beneficiary of the Sourcing Agreement. GHP has produced no admissible proofs to show that the Sourcing Agreement was not intended for the benefit of Plastech and JCI and that the benefit to GHP, if any, was incidental.

#### VII. Tortious Interference of Contractual Relations

GHP argues that the trial court erred in granting summary disposition of its claim of breach of contract-tortious interference of contractual relations against JCI (Count IV of the third-party claim against JCI). Although the resolution of this question in part hinges on the final resolution of other issues in this case, such as assignment, we find no error given our determination that the trial court improperly granted JCI’s motion for summary disposition on the basis of the Sourcing Agreement.

The trial court concluded that JCI was not liable for breach of contract following the assignment. Accordingly, GHP validly contends that a claim for tortious interference is viable because JCI is not a party to the contract that was breached: “Either JCI is a party to the contract and is responsible for the breach, or it is not a party to the contract and is responsible for tortious interference causing the breach.”

Although the trial court erred in granting summary disposition of GHP’s tortious interference claim on the basis of the assignment, it nonetheless reached the right result. To maintain a cause of action for tortious interference, a plaintiff must establish that the defendant was a “third party” to the contract or business relationship. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). GHP’s claim, based on the original contracts between GHP and JCI, provide no basis for a claim of tortious interference against JCI. This Court may affirm a trial court’s ruling when it reaches the right result but for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).

### VIII. Conclusion

This interlocutory appeal raises numerous issues that are not properly resolved without further argument by the parties and reconsideration by the trial court in the proper context. We therefore reverse the trial court’s erroneous rulings on the essential issues and remand for further proceedings consistent with this opinion.

With regard to Plastech’s appeal, we affirm the denial of Plastech’s motion for summary disposition of GHP’s counterclaim for breach of contract. Although the trial court erred in deciding the issues in the context of the panels contract, genuine issues of material fact preclude the grant of summary disposition in favor of Plastech.

With regard to GHP’s cross-appeal, we reverse the grant of summary disposition in favor of JCI with regard to GHP’s third-party claim against JCI for breach of contract on the basis of an assignment. As with Plastech, genuine issues of material fact preclude the grant of summary disposition in favor of JCI. We affirm the grant of summary disposition in favor of JCI with regard to GHP’s claim for breach of contract-tortious interference of contractual relations. We affirm the trial court’s grant of summary disposition in favor of JCI with regard to GHP’s breach of contract claim on a third-party beneficiary theory.

With regard to JCI’s cross-appeal, as noted above, genuine issues of material fact remain concerning JCI’s liability for breach of contract. JCI is therefore not entitled to summary disposition on the alternative grounds presented.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Janet T. Neff  
/s/ Jessica R. Cooper