

STATE OF MICHIGAN
COURT OF APPEALS

AERO TAXI-ROCKFORD, INC., C & M
AIRWAYS, INC., CHERRY-AIR, INC.,
CONTRACT AIR CARGO, INC., IFL GROUP,
INC., MURRAY AVIATION, INC., RELIANT
AIRLINES, ROYAL AIR FREIGHT, INC.,
SPECIAL AVIATION SYSTEMS, INC.,
TRAFFIC MANAGEMENT CORPORATION,
d/b/a TMC AIRLINES, INC., and ZANTOP
INTERNATIONAL AIRLINES,

UNPUBLISHED
May 30, 2006

Plaintiffs-Appellants,

v

No. 259565
Wayne Circuit Court
LC No. 01-134096-CZ

GENERAL MOTORS CORPORATION,

Defendant-Third-Party Plaintiff-
Appellee,

and

DELPHI AUTOMOTIVE SYSTEMS,

Defendant,

and

KITTY HAWK CHARTERS, INC.,

Third-Party Defendant.

Before: Murphy, P.J., and O'Connell and Murray, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the well-reasoned decision of the trial court that Kitty Hawk Charters, Inc., is an independent contractor and not an agent of General Motors Corporation. As is customary in the airline transportation industry, Kitty Hawk is an airline broker, not an agent of General Motors. All the plaintiffs who did business with Kitty Hawk were aware that Kitty Hawk was an

airline broker and that if you wanted to transport General Motors' supplies it was necessary to deal directly with Kitty Hawk. It was not until Kitty Hawk filed for bankruptcy that the plaintiffs alleged that Kitty Hawk had metamorphosed into an agent of General Motors. I note that even the master agreement between General Motors and Kitty Hawk gives notice to all that Kitty Hawk is an independent contractor.

For the reasons stated above and the reasons stated by the trial court, I would affirm the trial court's decision that Kitty Hawk is not an agent of General Motors.

I concur with the balance of the lead opinion. As stated by the lead opinion, issues of fact still exist as to the promissory estoppel and unjust enrichment claim. Therefore, I would affirm in part and reverse in part.

/s/ Peter D. O'Connell