

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| IN THE MATTER OF                   | ) |                       |
|                                    | ) |                       |
| MID-WEST SPRING AND STAMPING, INC. | ) | CASE NO. 00-31234 HCD |
| and MID-WEST SPRING MANUFACTURING  | ) | CHAPTER 11            |
| COMPANY,                           | ) |                       |
| DEBTORS-IN-POSSESSION.             | ) |                       |
|                                    | ) |                       |
|                                    | ) |                       |
| MID-WEST SPRING AND STAMPING, INC. | ) |                       |
| and MID-WEST SPRING MANUFACTURING  | ) |                       |
| COMPANY,                           | ) |                       |
|                                    | ) |                       |
| PLAINTIFFS/COUNTER-DEFENDANTS,     | ) |                       |
| vs.                                | ) | PROC. NO. 01-3163     |
|                                    | ) |                       |
| GENTEX CORPORATION,                | ) |                       |
|                                    | ) |                       |
| DEFENDANT/COUNTER-PLAINTIFF.       | ) |                       |

Appearances:

William I. Kohn, Esq., attorney for debtors, Schiff Hardin & Waite, 6600 Sears Tower, Chicago, Illinois 60606-6473;

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Brian Rees, Esq., attorney for defendant, Varnum, Riddering, Schmidt & Howlett LLP, Bridgewater Place P.O. Box 352, Grand Rapids, Michigan 49501-0352.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 31, 2004.

One year ago, on March 31, 2003, the court denied the summary judgment motions of the debtors Mid-West Spring and Stamping, Inc., and Mid-West Spring Manufacturing Company, operating jointly as Debtors-

in-Possession, and of the defendant Gentex Corporation. A two-day trial on the debtors' Complaint was held on August 25 and 26, 2003. Following the trial, the parties submitted findings of fact, conclusions of law, and supporting briefs. The debtors also filed Mid-West Spring's Motion for Expenses. At the conclusion of the briefing period, the court took the complaint under advisement.

### Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(A) and (O) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

Mid-West, a Delaware corporation with its principal assets in Mentone, Indiana, manufactures cold and hot form made springs, wire forms, and stamped products. It is one of the top ten largest spring manufacturers in the United States. Its manufacturing facility in Muskegon, Michigan, makes springs for Gentex, a Michigan corporation that manufactures specially designed rear view mirrors for automobiles and other vehicles. At issue in this lawsuit is a spring utilized by Gentex in its production of these rear view mirrors.

On April 3, 2000, the debtors filed a voluntary petition for a chapter 11 reorganization. They operated in joint administration as debtors-in-possession, and emerged from bankruptcy in the spring of 2001. On December 31, 2001, the debtors brought a Complaint against Gentex Corporation. According to the Complaint,

the spring manufactured by Mid-West for Gentex's rear view mirrors met the specifications supplied by Gentex's blueprint design. Over time, the blueprint was revised to meet or change Gentex's specifications. Gentex also designed and calibrated a test rig and, in July 1997, placed it in Mid-West's Muskegon facility to ensure that the spring met the specifications required by Gentex. Gentex monitored the test rig calibration periodically. Therefore, Mid-West asserted, although a blueprint existed setting forth certain specifications, the parties, by their actions, established that the spring was to be manufactured according to the specifications required by the test rig.

Mid-West's complaint also contended that, due to the unpredictable and immediate nature of its manufacturing demands, Gentex required that Mid-West retain an on-hand inventory of approximately an eight-week supply of the spring and other parts as an immediately available inventory. Between July 1997 and July 2000, Mid-West produced the spring in conformity with the specifications established by the test rig. Mid-West also maintained, pursuant to Gentex's forecasted needs, an immediately available inventory of the spring and other parts. During that three-year period, Mid-West shipped approximately 35,000 springs per week to Gentex.

Between July 17, 2000, and November 29, 2000, Gentex ordered and Mid-West sent 37 shipments of springs to Gentex. The total price of those shipments was \$33,418.55. According to Mid-West, the springs were manufactured in conformity with the specifications required by the test rig and were accepted by Gentex without timely revocation. Both Mid-West and Gentex tested the springs prior to shipment to ensure their conformity with the specifications established by the test rig. Customarily, Gentex would also promptly re-test the springs after their delivery to ensure their conformity with the standards established by Gentex. However, in December 2000, Gentex stated that it would not pay for the outstanding 37 invoices because the springs had not been manufactured to the specifications required by the original blueprint. Gentex also refused to purchase the springs and other parts that Mid-West maintained for Gentex's required immediately available inventory,

valued at \$61,574.51. Due to its specially manufactured nature, Mid-West maintained, the spring has no value on the open market and cannot be readily sold to another buyer except, if at all, for scrap or de minimis value.

On September 21, 2001, Mid-West demanded payment from Gentex, in the amount of \$94,993.06, for the 37 open invoices and for the immediately available inventory. Following Gentex's refusal to pay, on December 31, 2001 Mid-West filed this complaint against Gentex. It alleged that Mid-West and Gentex, by their actions, had established a contractual relationship whereby Mid-West would manufacture parts for Gentex that met the requirements established by the test rig. Gentex breached its contractual obligations to Mid-West by failing to pay for the 37 invoices that represented parts ordered and accepted by Gentex which were manufactured in conformity with the requirements established by the test rig. It also alleged that Gentex required Mid-West, as an additional aspect of their contractual relationship, to manufacture and hold for Gentex's exclusive use approximately eight weeks of immediately available inventory. Gentex breached its contractual obligations to Mid-West, it asserted, by failing to purchase the stock of immediately available inventory specially manufactured by Mid-West at Gentex's request and held exclusively for Gentex's purchase and benefit. The debtors, by their complaint, sought judgment in the amount of \$94,993.06 plus interest from July 17, 2000, consequential damages it may prove at trial, costs and attorney's fees.

In its Answer, Gentex admitted that, at one time, the blueprint dimensional specifications did not conform with Gentex's part performance specifications. However, by the end of 1999, the blueprint dimensional specifications were revised to conform with Gentex's part performance specifications. Gentex designed and calibrated the test rig to test the spring to ensure it met Gentex's part performance specifications. However, it denied the following allegations in the complaint:

- (1) that the parties, by their actions, established that the spring was to be manufactured according to the specifications required by the test rig.
- (2) that Gentex required that Mid-West retain an on-hand inventory of an eight-week supply of the springs.

(3) that Gentex and Mid-West maintained a relationship for three years whereby Mid-West produced the spring in conformity with the test rig specifications and maintained an immediately available eight-week supply inventory.

(4) that Gentex stated it would not pay for the outstanding 37 invoices because the spring had not been manufactured to the specifications required by the original blueprint.

(5) that Gentex refused to purchase the inventory held by Mid-West.

(6) that Gentex breached its contractual obligations to Mid-West.

In addition, Gentex asserted that Mid-West's claim was subject to a setoff or recoupment in the amount of the defendant's past payments for rejected springs. It counter-claimed that Mid-West had refused to return the test rig that Gentex owned, designed, calibrated, and placed in Mid-West's Muskegon manufacturing facility. It charged Mid-West with conversion of the test rig and asked for treble damages, costs, and attorney's fees. Mid-West answered the counter-claim by stating that the test rig was provided by Gentex for use in testing product manufactured by Mid-West and that Mid-West continued to hold the test rig because it asserted a possessory lien in the rig to secure payment due and owing from Gentex.

Both parties filed motions for summary judgment. In its Memorandum of Decision of March 31, 2003, the court denied both motions and set the matter for trial. It placed the parties on notice concerning the disputed issues on which the parties should focus. For example, the court stated in its Memorandum:

[T]he court determines that a few of the contentions have been narrowed. For example, the parties now agree that, between July 17, 2000, and November 29, 2000, Gentex accepted 37 shipments and only two of those shipments involved nonconforming springs that were rejected by Gentex. It is not clear to the court, however, when rejection of those shipments occurred. Mid-West apparently tested the springs with the Gentex-calibrated test rig, and they asserted that Gentex approved the springs before Mid-West shipped the springs to Gentex and tested the springs again upon receipt of any shipment. Gentex responded that it gave "conditional approval" for any shipment to Gentex. *See* R. 28 at 4. It claimed that it could reject a spring if, at a later testing during production runs, the spring did not conform to specifications. Mid-West claimed that "Gentex has never rejected the Springs." R. 25 at 8. However, Gentex stated that it "communicated to Mid-West that it would not pay for the open invoices because Gentex had paid for and properly rejected several shipments of Springs." R. 28 at 5. This is a genuine issue of material fact central to the case.

It also appears to the court that the parties disputed what measurement was appropriate in determining whether the springs were manufactured in conformity to Gentex's specifications. Mid-

West used the test rig results; Gentex asserted that Mid-West had to meet the blueprint as well as the test rig specifications. The court notes that, in Gentex's own summary judgment motion, it stated that it did not base its motion on any rejection of the parts for failure to meet the dimensional requirements in Revision G to the blueprint, because Mid-West disputed agreeing to meet those requirements. The court finds, however, that the conformity issue is essential to the breach of contract claims. It cannot make a summary judgment determination without its resolution.

R. 34 at 9-10. At the two-day trial, held August 25 and 26, 2003, Mid-West presented the testimony of its President and CEO, Jeffrey Lynn Ellison, and its General Manager, William Leroy Eidson. Gentex's witnesses were Wayne Brummitt, its Buyer; Ray Beerhorst, its Manager of Products Reliability and Testing; and Daniel Pullen, its Quality Supervisor. The testimony of all the witnesses made clear that the parties enjoyed a longstanding close working relationship for more than a decade but that Gentex stopped purchasing springs from Mid-West in December 2000.<sup>1</sup>

#### Discussion

Before the court are the two damage claims raised by the debtors in their breach of contract complaint: the claim for \$61,574.51 for finished products and raw materials that Mid-West held in inventory for Gentex; and the claim for \$33,418.55 for 37 invoices for parts that Gentex ordered and that Mid-West shipped to Gentex. The court will review the invoice claim first.

##### *A. Mid-West's Unpaid Invoice Claim, Gentex's Setoff Claim*

###### (1) The Issues As Set Forth Prior to Trial

Between July 17 and November 29, 2000, Mid-West made 37 shipments of parts to Gentex pursuant to Gentex's purchase orders. According to Mid-West, the springs, which made up only two of the 37 invoiced

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<sup>1</sup> In its Order denying summary judgment, this court found that the parties had agreed that Michigan law applies to this dispute. See R. 34, p.12, n.2. It is clear that all the pertinent events in this case occurred in Michigan and that the facts are in most intimate contact in Michigan. See *Nucor Corp. v. Aceros Maquilas de Occidente, S.A.*, 28 F.3d 572, 581 (7th Cir. 1994). Each party cited provisions of the Michigan Uniform Commercial Code concerning the acceptance and rejection of goods and the enforceability of contracts. The court finds that Michigan is the appropriate choice of law.

orders, were manufactured in conformity with the specifications established by the test rig and were tested on the test rig by Mid-West and Gentex to verify their conformity. Customarily, Gentex also re-tested the springs after delivery. Gentex accepted all the parts sent in the 37 shipments. However, in December 2000, it notified Mid-West that it had replaced Mid-West as a vendor and that it would not pay for the 37 invoices because the spring had not been manufactured to the specifications required by the blueprint.

Mid-West argued, in its summary judgment motion, that it fulfilled its contract by shipping the goods to Gentex and that Gentex accepted the 37 shipments and continued to retain the shipped parts without paying Mid-West for them, in breach of the contract between them. Mid-West's damage claim was \$33,418.55.

Gentex admitted that it had not paid for the invoices. Its defense was that it paid for all the springs it ordered, including nonconforming springs, and was entitled to set off or recoup the amounts paid for rejected springs, \$51,315.87, against the unpaid invoices in the amount of \$33,418.55.<sup>2</sup> Gentex declared that the nonconforming springs were not safe because they were not built in compliance with Gentex's specifications. It acknowledged that Mid-West regularly tested a sample of springs from each lot, using a test rig provided by Gentex. In addition, after Gentex revised the spring blueprint in December 1999 ("Revision G"), Mid-West redesigned the spring by reverse engineering and set up dimensions that would meet the part requirements of the Revision G blueprint. Mid-West also signed a Part Submission Warrant ("PSW") for revision G, *see* Gentex Ex. D, warranting that it would meet the requirements of Revision G: (a) the dimensional requirement, (b) the functional (install and detach load) specifications, and (c) the statistical process requirement that springs have a Cpk of 1.33 or greater.<sup>3</sup> Nevertheless, Gentex's receiving inspection supervisor, Dan Pullen, stated by affidavit

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<sup>2</sup> With respect to 35 of the 37 invoices for which Mid-West is seeking payment, Gentex admits that it used those parts, that they were good parts, or that Gentex has not rejected the parts.

<sup>3</sup> In his Affidavit, Dan Pullen explains that "Cpk is a measure of how well the manufacturing process can produce parts that comply with specification requirements. It is a measure of statistical reliability — the higher the number, the more statistically likely that the parts will meet the requirement being measured. A Cpk of 1.33 is required (continued...)"

that 10 shipments of springs in 2000 were nonconforming. *See* Mid-West Ex. 30. The “Affidavit of Dan Pullen” listed the 10 lot numbers, the date each was rejected, the quantity of springs rejected, the value of those rejected springs, and the reason for the rejection. Gentex asserted that it had rejected all of the springs in the 10 lots, a total of 310,587 springs, and it deserved a setoff of the total value of those rejected springs, \$51,315.87. Gentex found these flawed springs either by retesting the same sample of springs that Mid-West had tested or by testing springs during the production process. It quarantined the rejected springs. Gentex also stated that a quality technician immediately communicated the existence of a defect to Mid-West, by telephone or through a written notification. However, because Gentex sometimes kept springs in inventory for several months before using them, it did not identify some defective springs for months. Gentex added that it did not ask Mid-West for replacement springs because they would have been flawed, as well.

Mid-West responded that neither the 1995 nor the 1999 Part Submission Warrant mentioned the requirement of a Cpk of 1.33. Moreover, it noted that, before 1999, if springs manufactured to the dimensional specifications at times did not meet the warrant’s requirements, Gentex regularly accepted the lots and worked with Mid-West for replacement parts. In light of the 1995 warrant and the parties’ actual course of dealing since 1995, Mid-West claimed that Gentex overemphasized Mid-West’s obligation under the 1999 warrant to satisfy a particular Cpk requirement with respect to both the dimensions and install/detach forces of the spring.

Prior to trial, the court relied on Dan Pullen’s sworn statement and chart, both as the basis of Gentex’s set-off claim and as the justification for the court’s rejection of Mid-West’s summary judgment motion.

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<sup>3</sup>(...continued)

by General Motors because the Spring is important to vehicle safety due to the relationship between the mirror detaching and successful airbag deployment. A Cpk of 1.33 indicates that only 30 parts per million produced will fail to meet the install and detach load ranges set forth on the blueprint. In other words, it must be statistically demonstrated that 99.997 percent of the parts will meet the install and detach load ranges set forth in the blueprint in order for a shipment to be conforming under the contract.” Mid-West Ex. 30 at 3 ¶ 10.

(2) The Issues As Set Forth At Trial

On the Friday afternoon before trial was scheduled to begin Monday morning, Gentex's counsel faxed to Mid-West's counsel a new chart in which he said he "added some columns not on Mr. Pullen's affidavit to assist the parties and the court in organizing the information relating to each of the logs of springs at issue." R.61 at Ex.A. It was prepared by Gentex quality technicians, who did not testify at trial, and was not reviewed by Pullen. The new chart, Gentex Exhibit F, stated that 212,066 springs were rejected and that their total value was \$31,788.69. On the basis of those figures, Gentex admitted that it owed Mid-West \$1,629.86. The number of rejected springs was much lower in Exhibit F (212,066) than in the Pullen Affidavit (310,587), and many of the dates of rejection differed from the dates Pullen used in his Affidavit. Brummitt and Pullen both testified at trial that they felt confident that the information on the new chart, Exhibit F, was correct.

At trial, the factual basis of Pullen's Affidavit unraveled. Wayne Brummitt, Gentex's buyer for 20 years, testified that many of the springs reported as "rejected" in Pullen's Affidavit were not rejected, but in fact were put into mirrors and sold to GM. For example, Brummitt testified that, for lot 535, Pullen reported that 34,631 springs were rejected, but Gentex Exhibit F reported that only 22,066 were rejected. *See* Tr. 275; *see also* Tr. 205-07. All in all, the evidence showed that tens of thousands of springs from those lots were used in mirrors and that Gentex was paid for the mirrors. In addition, Pullen's testimony on cross examination revealed that he himself did not collect the information in his Affidavit and did not verify it for accuracy (despite the fact that he knew it was being submitted to the court).

Affidavits are offered in support of motions for summary judgments to show that there is no genuine issue as to any material fact. Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056. The rule further requires:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

Fed. R. Civ. P. 56(e). At trial, Pullen testified that his Affidavit was not based on his personal knowledge. Pullen also admitted at trial that he did not understand that he was under oath when he signed his purported Affidavit. Nor did he recall that he signed the Affidavit before a notary public. The court finds that the Pullen Affidavit fails to comply with Rule 56(e). A court must not consider parts of an affidavit that were not based on personal knowledge. *See Cooper-Schut v. Visteon Automotive Systems*, \_\_\_ F.3d \_\_\_, 2004 WL 515622 (7th Cir. 2004). If an affidavit is not based on personal knowledge, it should not thwart a summary judgment motion. *Payne v. Pauley*, 337 F.3d 767, 772 (7th Cir. 2003). The court finds, however, that Pullen's Affidavit was central to the Gentex defense and that it did affect the court's decision to deny Mid-West's motion for summary judgment.

Mid-West asserts that it is entitled to recover its expenses from Gentex pursuant to Rule 56(g). It claims that the Pullen Affidavit created fact issues where none really existed, forced Mid-West to develop legal arguments that were unnecessary, and required Mid-West to prepare for a trial on issues on which Mid-West would have been entitled to judgment as a matter of law. It contends, as well, that Gentex had an independent obligation to assure the legitimacy and accuracy of the Pullen Affidavit before submitting it to the court and to Mid-West.

Rule 56(g), which is made applicable in bankruptcy proceedings under Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides:

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits present pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Fed. R. Civ. P. 56(g). Courts are understandably reluctant to impose such a harsh sanction. However, if an affidavit has been presented in bad faith or solely to delay the proceedings, the rule is mandatory rather than precatory, and the court *shall* order sanctions. *See, e.g., Feltner v. Partyka*, 945 F. Supp. 1188, 1191-92 (N.D.

Ind. 1996) (denying Rule 56(g) sanctions); *Warshay v. Guinness PLC*, 750 F. Supp. 628, 640 (S.D.N.Y. 1990) (granting Rule 56(g) sanctions).

The court finds that Pullen's allegedly sworn statements contained misleading representations of fact. His statement that Gentex rejected ten entire lots of springs is false. In fact, it accepted many of the springs from the lots listed. Moreover, Gentex misled Mid-West by describing the newly created chart that was sent to Mid-West the day before trial as simply adding some columns to help the parties and the court to organize the information. Gentex's attempt to minimize the discrepancies in Dan Pullen's Affidavit as "the result of a legitimate mistake," one that "did not prejudice Mid-West . . . as Gentex reduced the amount of its setoff claim," R.66 at 1, were reflective of Gentex's own bad faith. The court finds incredible Gentex's claim that it discovered, years after these lots were rejected and right before trial, that some of the springs (actually, thousands of springs) were used from the lots because "General Motors had no other way to go, had no other source of springs at the time." *Id.* at 2. Gentex cannot cover up Pullen's false and misleading information about the 10 lots by claiming that Pullen simply had made an "erroneous assumption" that all the springs were rejected and that counsel for Gentex cleared up the problem as "soon as the discrepancy in the number of springs rejected by Gentex was identified." *Id.* at 4. The court is unable to conclude, from these facts, that Gentex accidentally overstated its setoff claim or made an honest mistake. Indeed, the court finds that Gentex's failure to present a forthright clarification of the misrepresentations in Pullen's Affidavit directly to the court is egregious conduct indicative of its own bad faith. The court will not ignore the misleading nature of this Affidavit by excusing Pullen's alleged inability to recall the circumstances surrounding the signing of his Affidavit.

At the heart of this lawsuit is the question whether Mid-West's workmanship for Gentex had so deteriorated sometime in 2000 that Gentex had to find a new supplier, or whether Gentex had other reasons for changing suppliers without advance notice to Mid-West. In his Affidavit, Pullen stated that General Motors had required Gentex to obtain a guarantee from Mid-West that it would manufacture its springs according to the

Revision G blueprint requirements. Pullen indicated that, despite Mid-West's warranting that it would comply, 10 lots of Mid-West's springs were of such poor quality that the entire lots were rejected. Pullen's Affidavit stated that, as a consequence, "Gentex confirmed that it had rejected several shipments from Mid-West and was discontinuing business with Mid-West because of ongoing concerns about Mid-West's failure to meet Gentex's requirements." Mid-West Ex. 30 at 5. Now the court is told that, after using these rejected lots as the purported reason for stopping Gentex's business with Mid-West, General Motors actually used some number of the defective springs (indeed, it could have been almost 100,000 springs) because it had no other source of springs at the time. It appears to the court that Gentex said it stopped purchasing Mid-West's springs for safety concerns but still sold Mid-West's defective, rejected springs to General Motors because those springs were the only ones available. Without pointing out the obvious irony in that explanation from Gentex, the court concludes that both Pullen and Gentex have presented Pullen's Affidavit in bad faith. Pursuant to Rule 56(g), therefore, the court grants Mid-West Spring's Motion for Expenses and awards to Mid-West its reasonable fees and expenses in defending itself against the Pullen Affidavit. *See SMS Assocs. v. Clay*, 868 F. Supp. 337, 344 (D.D.C. 1994), *aff'd*, 70 F.3d 638 (D.C. Cir. 1995) (granting plaintiff costs and fees upon court's review of plaintiff's submission of expenses).

The court finds, furthermore, that Gentex cannot base its setoff claim on either the Pullen Affidavit or Exhibit F. At trial, Exhibit F was not proven to be a reliably correct tabulation of the number of springs rejected and remaining unused. Beerhorst testified that quality technicians prepared the chart and that he reviewed it. At one point, he stated that he put in the information in numerous columns. Later, when he was unsure about shipment dates and rejection dates, he said that he may have only supervised the figures. No one knowledgeable about the chart, no one who compiled the information, testified.

The court finds that the evidence of Gentex's setoff claim consists of Pullen's false or misleading affidavit and a substitute chart, prepared on the eve of trial, the validity of which was not demonstrated to the

court's satisfaction. As a result, the court finds that Gentex has no reliable evidence to prove that it has a setoff claim. Moreover, the testimony of Brummitt, Beerhorst, and Pullen was equivocal and less than helpful on this point. For example, Beerhorst testified at first that Pullen assisted him in preparing Exhibit F. But, when told that Brummitt testified that Pullen did not contribute to Exhibit F, Beerhorst agreed with Brummitt's testimony and clarified that the numbers were put on the chart while Pullen was on vacation. The more credible evidence before the court demonstrates that Gentex accepted the 10 lots, paid for 8 or 10 of them, used some of the springs in at least 6 of the lots, did not seek replacement springs or discuss problems about the lots with Mid-West, failed to communicate a timely revocation to Mid-West, and continued to order springs from Mid-West. *See Mich. Comp. Laws §§ 440.2606, 440.2607.* The court finds that Gentex's setoff claim fails and that Gentex must pay for the goods in the ten lots. In addition, the court determines that Gentex does not dispute the validity of the 37 invoices or its nonpayment of 2 of them. The court grants Mid-West its claim for non-payment of Mid-West's invoices.

*B. Mid-West's Inventory Claim*

Mid-West claimed that Gentex refused to purchase the springs and other parts that Mid-West maintained for Gentex's inventory. The value of that inventory was \$61,574.51. Mid-West pointed out that it maintained an inventory for Gentex for ten years. It needed six to eight weeks to manufacture springs and other parts. There were times, the evidence showed, when Gentex gave Mid-West only five days to ship certain parts. On other occasions, Gentex would ask Mid-West to supply parts immediately, and Mid-West would drive the parts over to Gentex. Gentex's customer in Mexico or Brazil also at times requested several hundred thousand more springs than it had ordered and said it needed the order right away. Mid-West pointed out that Gentex's expediter, Scott Jacobusse, relied on Mid-West to have enough parts in inventory to be able to satisfy that customer. Brummitt testified that he knew, over the years, that Mid-West kept an inventory to keep ahead of the purchase orders and to satisfy Gentex's needs. Such orders were not part of Gentex's regular written forecasts or

scheduled reports. Gentex did not tell Mid-West to keep or not to keep an inventory; that was a business decision of Mid-West's, not Gentex's. They discussed inventory levels, however, whenever Gentex placed unscheduled large orders that had the effect of depleting the inventory. Gentex indicated that the minimum inventory levels that Gentex desired Mid-West to maintain was eight weeks. Based on conversations and on its course of dealing with Gentex over the years, Mid-West understood that it needed to keep a minimum of an eight-week inventory of parts. *See* Mid-West Ex. 7 (letter of September 27, 2001, from Brummitt: "Gentex only authorizes suppliers to run product included in our release schedules. Normally this is 8 weeks prior to our build schedule.").

However, Gentex contended that it had ordered springs only through its weekly faxes of scheduled shipments and had paid for all lots of springs but two, lots 538 and 539. Gentex also asserted that there was no written documentation or verbal promise that Gentex had agreed to pay for any springs not ordered through a scheduled release. Gentex insisted that it never issued a purchase order for the remaining inventory of the springs and other parts.<sup>4</sup> Furthermore, it never told Mid-West to keep an inventory on hand for periodic requests from its South American customer, Metagale. Despite Gentex's attempt to avoid any responsibility for Mid-West's

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<sup>4</sup> Gentex based the contractual relationship between the parties on the blanket purchase order for the springs. *See* Gentex Ex. B. The terms and conditions of the contract were found on that blanket purchase order at paragraphs 4, 5, 6, and 16. Gentex asserted that Mid-West never objected to those terms and conditions. Pursuant to the blanket purchase order, Gentex ordered springs by faxing to Mid-West a schedule of released shipments about once a week. *See* Mid-West Ex. 11. It never ordered springs or parts in inventory.

Mid-West responded that there was no evidence that Mid-West ever received or saw the blanket purchase order. Brummitt testified that Gentex did not receive any response from Mid-West about Exhibit B and that the terms and conditions were never discussed. Moreover, the court finds that Gentex Ex. B is an incomplete document which does not contain a reverse side and therefore fails to present all the terms and conditions that Gentex claimed were imposed on Mid-West. There is no purchase order signed by both parties in evidence. Instead, Mid-West asserts, the terms and conditions were modified by the parties' course of conduct. *See Minkus v. Sarge*, 83 N.W.2d 310, 313 (Mich. 1957) (a written contract can be modified or waived by a course of conduct). The court agrees that there is no signed written contract between these parties in evidence and that their contractual relationship was established by a course of conduct.

inventory, Eidson responded that, as a practical matter, Mid-West could not simply decline to have parts available for shipment to Gentex.

The court finds, from the evidence at trial, that Gentex received its springs for rear view mirrors only from Mid-West until sometime in 2000 and that it counted on Mid-West's supply for shipments scheduled and unscheduled. The evidence at trial clearly demonstrated that Gentex was aware that Mid-West was maintaining an inventory and that Gentex expected Mid-West to keep an approximately eight-week supply of parts for its use and delivery. Based on the course of conduct between the parties, the court finds, Mid-West's retention of an eight-week inventory of raw materials and finished products was reasonable and practical. The court notes that, because the spring is manufactured specially for Gentex's rear view mirror, it has no value on the open market and cannot be sold readily to another buyer except for scrap value.

The evidence is clear that Gentex did not give Mid-West advance notice of its decision to change suppliers and to terminate its business relationship with Mid-West. Nor did Brummitt notify Mid-West that General Motors was changing to a new mirror and would not need the spring at issue. Its ten-year business relationship required advance notice of such information. Given Gentex's knowledge of Mid-West's inventory of the spring and other parts, it was incumbent on Gentex to share that information with Mid-West in a timely fashion. The record is devoid of evidence that Gentex informed or warned Mid-West. The court finds that Mid-West is entitled to payment from Gentex in the amount of \$61,574.51 for the inventory items listed on Mid-West Exhibit 9.

*C. Gentex' Counterclaim for Test Rig*

Gentex states that the test rig in Mid-West's possession is Gentex's property. Gentex demands the immediate return of the test rig. Mid-West admits that the test rig was placed on Mid-West property by Gentex.

However, it responds that Gentex is not entitled to the return of the test rig unless and until Gentex satisfies the judgment entered against it.

The court finds that Gentex has not attempted to prove its allegation that Mid-West has converted its property to its own use. Nor has Gentex established a value for the test rig. The court notes that Mid-West has stated that it intends to return the test rig upon Gentex's satisfaction of any judgment against it.

On the ground that Gentex has failed in its burden of proving its counterclaim for conversion, the court denies Gentex's counterclaim.

#### Conclusion

For the reasons presented in this Memorandum, the court grants the Complaint of the debtors. It grants judgment in favor of Mid-West and against Gentex on the debtors' claims and awards damages (plus interest from July 17, 2001) of \$61,574.51 as payment for the inventory items and \$33,418.55 as payment for the invoices. The court denies the counterclaim of Gentex.

The court also grants Mid-West Spring's Motion for Expenses. It awards to Mid-West its reasonable attorneys' fees and costs incurred in defending Mid-West against the Pullen Affidavit. The court orders counsel for the debtors to submit an affidavit detailing the debtors' expenses specifically resulting from its responses to the Pullen Affidavit.

SO ORDERED.

  
JS01  
HARRY C. DEES, JR., CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT

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