

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,	)	
vs.	)	PROC. NO. 01-3163
	)	
GENTEX CORPORATION,	)	
	)	
DEFENDANT.	)	

Appearances:

William I. Kohn, Esq., attorney for plaintiffs, Sachnoff & Weaver, 29th Floor, 30 South Wacker Drive, Chicago, Illinois 60606;

Mark J. Adey, Esq., attorney for plaintiffs, Barnes & Thornburg, 600 First Source Bank Center, 100 North Michigan, South Bend, Indiana 46601-1632; and

Bryan R. Walters, 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, 2003.

Before the court are the cross summary judgment motions of the debtors Mid-West Spring & Stamping, Inc., and Mid-West Spring Manufacturing Company (“Mid-West” or “debtors”), operating jointly as Debtors in Possession (“debtors”), and of the defendant Gentex Corporation (“Gentex”), each filed on August 30,

2002. Each party has filed Statements of Material Facts, affidavits, memoranda of law, and supplementary briefs. For the reasons that follow, the court denies the summary judgment motions of both parties.

### 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) 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 is a privately held Delaware corporation with its principal assets in Mentone, Indiana. It manufactures a complete line of cold and hot form made springs, wire forms, and stamped products. It is among the top ten largest spring manufacturers in the United States, with manufacturing facilities located in four states, including a facility in Muskegon, Michigan.

Gentex is a Michigan corporation that manufactures specially designed rear view mirrors for automobiles and other vehicles. Since the 1980s, Mid-West has been manufacturing and selling to Gentex a spring utilized by Gentex in its production of these rear view mirrors. It is identified as Gentex Part 335-0045-0000 (“Spring”).

On April 3, 2000, the debtors filed a voluntary petition for a chapter 11 reorganization. They now operate in joint administration as debtors-in-possession. On December 31, 2001, the debtors brought a Complaint

against Gentex Corporation. The Complaint focused on the Spring manufactured by Mid-West for Gentex's rear view mirrors. It described in detail the circumstances that led to this breach of contract action.

According to the Complaint, the Spring was manufactured to meet the specifications supplied by a blueprint designed by Gentex. Over time, however, it became apparent to both parties that the blueprint no longer represented the specifications required by Gentex. Therefore, Gentex designed and calibrated a testing rig which was designed to test the Spring manufactured by Mid-West to ensure that the part met the specifications required by Gentex. In July 1997, the Test Rig was placed at Mid-West's Muskegon manufacturing facility, at Gentex's request, and its calibration was monitored by Gentex representatives 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 explained that, due to the unpredictable and immediate nature of their manufacturing system, 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 shipped 37 shipments of the Spring 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.

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, which represented the amounts owed for the 37 open invoices and for the immediately available inventory. On December 31, 2001, it 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 has breached its contractual obligations to Mid-West 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 set forth in the blueprint. 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 affirmative defenses: The complaint failed to state a claim; Mid-West failed to mitigate its damages; and the plaintiff's claim is subject to a partial or total setoff by the amount of the defendant's counter-claim.

Gentex also filed a counter-claim. It claimed that Mid-West had refused to return the Test Rig that it owned, designed and 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 then filed motions for summary judgment.

#### Discussion

The issue before the court is whether Mid-West's breach of contract claim should be determined by means of summary judgment. This court renders summary judgment only if the record shows that "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056; see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. See *Celotex*, 477 U.S. at 323. If the moving party satisfies its initial burden, then the nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)). The court neither weighs the evidence nor assesses the credibility of witnesses. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). When, as in this case, the parties have filed cross motions for summary judgment, the court must examine the evidence and "construe all inferences in favor of the party against whom the motion under consideration is made." *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 692 (7th Cir. 1998) (citing *Andersen v. Chrysler Corp.*, 99 F.3d 846, 855 (7th Cir. 1996); *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 774 (7th Cir. 1996)). Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

#### A. Plaintiffs' Motion for Summary Judgment

Mid-West, in its Plaintiffs' Motion for Summary Judgment, asserted that there are no material facts in dispute in this case and that it is entitled to judgment as a matter of law against Gentex in the amount of \$94,993.06. It listed the undisputed facts:

- A. Mid-West and Gentex had a long-standing requirements contract requiring Mid-West to produce a Spring and other parts utilized by Gentex in its production of its specialized rear view mirrors;

B. The Spring forming part of the subject of this dispute is designated Gentex part No. 335-0045-0000 (the “Spring”);

C. Beginning on July 17, 2000, and continuing until November 29, 2000, Mid-West, pursuant to Gentex’s purchase orders, made 37 shipments of parts to Gentex, with a total purchase price of \$33,418.55;

D. Gentex refuses to pay for the 37 shipments despite due demand;

E. Gentex also refuses, despite due demand, to purchase the eight-week supply of inventory, with a value of \$61,574.51, Gentex required Mid-West to keep on hand to satisfy the terms of the parties’ requirements contract;

F. As a proximate result of Gentex’s breach of the parties’ contract, Gentex has suffered \$94,993.06 in damages.

R. 24. In its brief in support of its motion for summary judgment, Mid-West presented a statement of material facts. *See* R. 25. It listed 31 material facts. Gentex, in its response brief opposing the plaintiffs’ summary judgment motion, contested many of those facts. *See* R. 28. The court examined each disputed factual issue.

(1) The parties disagreed about the controlling blueprint. Mid-West stated that “it became apparent to both parties that the blueprint no longer represented the specifications required by Gentex.” R. 25, ¶ 7. Gentex corrected that statement: “Rather, it became apparent that parts manufactured by Mid-West to meet Gentex’s past performance requirements often did not meet the dismissal specifications in the blueprint.” R. 28 at 1. Mid-West also stated: “To reflect Gentex’s changed needs, the original blueprint was amended various times. The most recently amended blueprint was created in December of 1999 by reverse-engineering the Spring as designed and produced by Mid-West to accommodate Gentex’s needs.” R. 25, ¶¶ 8, 9. Gentex asserted that the amendment history of the blueprint was not material to the dispute. It pointed out that “Revision G to the blueprint took place in November and December of 1999 to change the dimensional requirements for the Spring, such that a Spring manufactured to the dimensional requirements should fall within the install and detach load ranges on the blueprint.” R. 28 at 2.

(2) A significant disagreement arose with respect to Mid-West's statement that, "[n]otwithstanding the existence of any blueprint setting forth the Spring's specifications, the parties established that the Spring was to be manufactured according to the specifications required by the Test Rig." R. 25, ¶ 14. Mid-West relied on the affidavit of Lee Eidson, General Manager of Mid-West, for that understanding of the parties' agreement. *See* R. 26. Gentex disagreed with that contention:

To the contrary, it is undisputed that as of Revision G to the blueprint on December 20, 1999, Mid-West warranted that among the requirements of Gentex and General Motors that Mid-West would meet were the following: (1) the performance requirements, specifically the minimum and maximum install and detach loads, on the part blueprint; and (2) the "statistical process package" required by General Motors, meaning that through sampling a certain amount of parts from each shipment, Mid-West would demonstrate that the parts in each shipment were statistically proven to meet the install and detach load ranges set forth in the blueprint by obtaining a Cpk of 1.33 or higher. . . .

R. 28 at 2. Gentex also disputed Mid-West's statement that it "manufactured the Springs in conformity with the specifications required by the Test Rig." It responded that the "Test Rig merely measures install and detach loads and does not 'require specifications' in and of itself. More importantly, . . . the Springs were not manufactured in accordance with Gentex's requirements." R. 28 at 3.

(3) The parties also disagreed about whether "Gentex required that Mid-West keep an on-hand inventory of approximately an eight (8) week supply of the Spring and other parts." R. 25, ¶ 15. Gentex denied that any oral communications on this issue took place. It also asserted that its purchase order did not require Gentex to pay for such inventory and that there was no documentation of a modification of that purchase order. *See* R. 28 at 3.

(4) The parties disagreed about the amount of testing of the Springs. Mid-West stated that both parties "tested the Springs prior to shipment to ensure their conformity with the specifications established by the Test Rig." Gentex admitted that Mid-West tested a sample of Springs — to ensure their conformity with Gentex's part performance specifications, it commented — and that Gentex would re-test those same sample Springs. However, according to Gentex, its testing stopped:

[B]y early 2000 Mid-West was producing a significantly larger volume of Springs than Gentex was releasing under its blanket purchase order. These Springs were not being tested by Gentex or, to Gentex's knowledge, by Mid-West. As such, the Springs that Mid-West claims are part of the so-called 'Immediately Available Inventory' have never undergone even sample testing by Gentex.

R. 28 at 3. The plaintiffs also asserted that "Gentex would verify Mid-West's test results on their test machine and would fax back a signed copy of Mid-West's paper work acknowledging the Spring's acceptance and approval." R. 25, ¶ 22. Gentex responded that it had a two-step testing process:

Gentex did verify Mid-West's test results for the sample set of Springs on its own test machines before authorizing shipment from Mid-West to Gentex. However, this is not the end of the testing/approval process for Gentex. Gentex also tests five Springs per hour during Gentex's actual production process. If any of these Springs are of questionable conformity to Gentex's requirements, Gentex then conducts a second test of a random sample of Springs from the lot of Springs actually being used in production. If this second sample proves to be statistically unreliable, Gentex would then revoke its conditional acceptance of those Springs.

R. 28 at 4. In addition, Gentex claimed that Mid-West's statement "All Springs were approved prior to shipment" was misleading. It explained that it provided conditional approval for any shipment of Springs but that it continued to test the Springs, approximately five Springs per hour, during the production runs. Gentex asserted that, "[i]n its purchase order, Gentex reserved the right to reject/revoke acceptance of the Springs should Gentex later determine that the Springs were non-conforming under the parties' contract. This is what happened with the Springs at issue in Gentex's setoff claim." R. 28 at 4.

(5) According to Mid-West, "Gentex accepted all parts sent in the thirty-seven (37) shipments made beginning on July 17, 2000, and continuing until November 29, 2000, without timely revocation." R. 25, ¶ 25. Gentex agreed — It found that only 2 of the 37 were nonconforming shipments that were rejected by Gentex.

(6) Mid-West stated that Gentex notified Mid-West that "it would not pay for the outstanding thirty-seven (37) invoices . . . because the Spring had not been manufactured to the specifications required by the original blueprint." R. 25, ¶ 26. Gentex disagreed. 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, the value of which exceeded the amount of the invoices at issue. Gentex told Mid-West it rejected those Springs because the Springs

did not meet the specifications required by Revision G to the blueprint and the Part Submission Warrant entered into by Mid-West, warranting that Mid-West would produce parts that met, among other things, Gentex's part performance requirements and statistical process package." R. 28 at 5.

(7) Mid-West also stated that "Gentex refused to purchase . . . the Springs and other parts that Mid-West maintained for Gentex's required Immediately Available Inventory." Gentex responded that it denied requiring any Immediately Available Inventory. It offered to purchase the Springs that met Gentex's specifications, but Mid-West did not respond to that proposal, Gentex reported.

After reviewing Mid-West's statement of material facts and Gentex's disagreements with those facts, the 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.

There is a sharp disagreement concerning whether Gentex required Mid-West to keep an inventory on hand. Mid-West has not provided evidence of the long-standing requirements contract upon which it bases the requirement for immediately available inventory. However, the court notes that Wayne Brummitt, Gentex's buyer, stated in a letter to plaintiffs' counsel that "Gentex only authorizes suppliers to run product included in our release schedules. Normally this is 8 weeks prior to our build schedule." R. 28, Ex. 2. That comment lends credence to Mid-West's statement that Gentex required an 8-week inventory.

The parties disagree, as well, about whether Gentex's faxed signed copy of Mid-West's paper work, acknowledging the Spring's acceptance and approval, was acceptance or "conditional acceptance." These are genuine issues of material fact. There are others in Mid-West's motion and supporting documents and Gentex's objections, but these are blatantly important factual disputes that preclude summary judgment in this case.

#### *B. Gentex's Motion for Summary Judgment*

In its Motion for Summary Judgment and Brief in Support of Motion for Summary Judgment, Gentex asserted that it was entitled to summary judgment on Mid-West's claim for unpaid orders because its setoff claim exceeded the value of Mid-West's open invoice claim. *See* R. 20 at 2. It paid for \$51,315.87 of nonconforming Springs, which was the cost of ten lots of Springs that failed to meet Gentex's requirements for install and detach loads, as measured by the statistical Cpk measurement.<sup>1</sup> According to Gentex, it was undisputed that the

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<sup>1</sup> Gentex defined Cpk in its Statement of Material Facts:

(continued...)

shipments were nonconforming, that Gentex had the right to reject the Springs, and that Gentex paid for them. Gentex therefore asserted that it had a valid setoff claim exceeding the value of Mid-West's unpaid invoice claim.

Gentex contended that it did not lose its right of setoff as a result of Mid-West's bankruptcy filing. It admitted that some of its pre-petition setoff claims might be barred by the bankruptcy filing. But, with respect to seven of the ten lots of Springs that were rejected after Mid-West's bankruptcy case was filed, it claimed that the weight of authority allowed a setoff claim under § 553. Therefore, Gentex asserted, it had a valid setoff claim for \$36,204.75 for the nonconforming Springs that were rejected post-petition. *See id.* at 3-4.

Gentex also argued that it did not waive its right to reject the Springs because it paid for the Springs. Under the Uniform Commercial Code, payment for goods does not waive the right to reject or to revoke acceptance of the goods. *See Mich. Comp. Laws* § 440.2602; § 440.2608.<sup>2</sup> Under the contract, as well, "payment prior to inspection shall not be deemed a waiver of Buyer's rights to inspect and reject." *Id.* (citing R. 22, Ex. 2, Purchase Order, ¶ 5). Nor did it lose its right of setoff as a result of any failure to timely reject the Springs, Gentex stated. Gentex communicated its rejection of the Springs to Mid-West in a timely fashion. In fact, it said, Midwest was immediately notified of the rejection of the specific lots through Gentex's verbal

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<sup>1</sup>(...continued)

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 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.

R. 22, ¶ 11.

<sup>2</sup> Pursuant to the choice of law provision in the parties' contract, Michigan law applies to this dispute. Mid-West, like Gentex, has cited numerous provisions of the Michigan Uniform Commercial Code concerning the acceptance and rejection of goods and the enforceability of a requirements contract. The court does not reach those legal issues because of the significant number of disputed facts, however.

notification and faxed nonconforming material reports and corrective action reports. However, it pointed out that whether Gentex gave timely notice of its rejection of the goods was immaterial, because its damages for breach of warranty upon acceptance of nonconforming goods are exactly the same as Gentex could recover for rejecting goods in a timely manner — \$36,204.75. *See* R. 20 at 6.

Gentex contended that it was entitled to summary judgment on Mid-West’s inventory claim because Gentex was not contractually responsible for paying for any excess inventory created by Mid-West. According to Gentex, it was undisputed that it never ordered the parts included in Mid-West’s inventory claim. *See id.* at 6. Gentex’s contract with Mid-West stated that Gentex was not responsible for inventory unless it was manufactured in response to a specific purchase order release by Gentex. Paragraph 6 of the purchase order provided that Gentex agreed to pay for completed items and work in progress, less salvage value, if the particular parts at issue had been ordered by Gentex and Gentex cancelled the particular order without cause prior to delivery. Moreover, the contract provided that “Buyer’s obligations contained in the paragraph shall not apply in the case of the termination on account of a breach by Seller.” *Id.* at 7 (citing R. 22, Ex. 2, Purchase Order at ¶ 6). Gentex stated that it terminated its business relationship with Mid-West because of a breach by Mid-West of its express warranty to produce parts in conformance with the drawings and specifications provided by Gentex to Mid-West. *See id.* (citing R. 22, Ex. 2, ¶ 4 (“all goods, supplies and /or work performed pursuant to the Purchase Order . . . shall conform with all applicable drawings, specifications, descriptions and samples furnished to, or supplied by, Buyer shall be free from defects in material or workmanship, patent and latent, and shall be of merchantable quality and fit for the intended purpose within the meaning of the Uniform Commercial Code. . . .)). In this case, Gentex argued, the contract was clear and must be enforced according to its terms, without looking to extrinsic evidence. The contract did not require Gentex to pay for any inventory Mid-West held at the time Gentex decided to terminate its relationship with Mid-West. There was no purchase order release by Gentex

associated with this inventory and materials. For that reason, summary judgment must be entered in favor of Gentex on this issue, it contended. *See id.* at 8.

It was Gentex's position, as well, that there was no oral agreement between the parties that modified the purchase order and somehow obligated Gentex to pay for the inventory at issue. Gentex did not agree to such a modification, it stated. Moreover, any alleged oral agreement between the parties concerning payment for inventory would have been superceded by the new purchase order for the Spring issued on December 30, 1999. In any case, an oral modification to the purchase order would have been invalid as a matter of law under the Uniform Commercial Code. *See id.* at 8-9.

Finally, Gentex asserted that it was entitled to summary judgment on its claim for return of the Test Rig. It insisted that there was no dispute that the Test Rig was the property of Gentex, that Gentex demanded the return of the Test Rig, and that Mid-West refused to return it on the basis that Gentex did not pay the amounts alleged in Mid-West's law suit. *See id.* at 9-10.

Gentex filed a Statement of Material Facts. *See* R. 22. It described the Spring in detail and explained the importance of manufacturing it according to the blueprint requirements so that it would be neither too tight (which, in an impact, might cause the rear view mirror to fail to detach and then to tear the airbag) nor too loose (which, during normal driving conditions, might cause the mirror to rattle or fall off). Therefore, General Motors required Gentex to obtain a guarantee from Mid-West, through its Part Submission Warrant ("PSW"), that Mid-West would produce Springs that met the blueprint requirements. The Spring proved difficult for Mid-West to manufacture consistently. To assist Mid-West in producing the Spring, Gentex designed and calibrated the Test Rig that allowed Mid-West to measure the amount of force necessary to install and detach loads on sample Springs. The Test Rig was placed at Mid-West's Muskegon facility, but it remained the property of Gentex.

In November and December 1999, Gentex and Mid-West were involved in Revision G of the blueprint for the Spring. Revision G changed the dimensional requirements for the Spring, but did not change the minimum

and maximum install and detach load requirements for the Spring. On December 20, 1999, Gentex obtained from Mid-West a new PSW, under which Mid-West warranted that they would manufacture parts pursuant to Revision G to the Spring blueprint; would meet the performance requirements on the blueprint; and would meet the statistical process package required by General Motors. To meet the statistical process package, Mid-West would sample a certain number of parts from each shipment and would demonstrate that they were statistically proven to meet the install and detach load ranges set forth in the blueprint. To so prove, Gentex contended, the part must obtain a Cpk of 1.33 or higher.<sup>3</sup> *See id.*, ¶ 11. Several of the shipments of Springs failed to meet the part performance Cpk requirements, Gentex insisted. The Statement listed ten shipment lots that failed to meet the requirements. They were rejected between December 28, 1999, and August 16, 2000. The reasons given for their failure to meet the requirements were that their maximum install force was too high or their minimum detach force was too low. The value of those rejected parts was listed as \$51,315.87. Of those rejected Springs, \$36,204.75 of them were rejected after Mid-West filed bankruptcy. Gentex paid for each of those shipments, it stated, and it has not been refunded by Mid-West. In fact, Gentex stated, it was in possession of over 200,000 nonconforming Springs. Gentex notified Mid-West, verbally and by faxed reports, that those particular lots were defective. In addition, at their meeting on July 31, 2000, 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. *See id.*, ¶ 16.

Gentex claimed it never required Mid-West to keep an immediately available inventory of Springs on hand for Gentex and never agreed to pay for inventory for which it did not issue a purchase order release. The contract between Gentex and its suppliers, including Mid-West, required Gentex to pay only for parts actually ordered under the blanket purchase order between Gentex and Mid-West. Gentex did not issue a purchase order release for any of the parts included in Mid-West's inventory claim. *See id.* at ¶¶ 17-21.

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<sup>3</sup> *See* n.1 *supra* for an explanation of Cpk.

The court, having reviewed the parties' briefs in support of and in opposition to summary judgment, and having examined the documentary exhibits, notes the paucity of legal argumentation in those filings. It is clear that the parties' disagreements are fundamentally factual as well as legal in nature. In this breach of contract dispute, the parties do not focus on a contract about which there was agreement and meeting of the minds before there was a breach.

The court determines that there remain numerous genuine issues of material fact. The parties disagree about the testing procedures for the Springs, Mid-West's manufacturing procedures (whether it followed the blueprint specifications with respect to both dimensions and performance), and Gentex's acceptance or rejection procedures. Significant issues of material fact include these: (1) whether only two shipments of Springs to Gentex were nonconforming; (2) whether Mid-West changed the dimensional requirements for the Springs after the Revision G blueprint required it; (3) whether the Springs were tested prior to shipment by both Mid-West and Gentex; (4) whether the testing was done solely on the Test Rig; (5) whether Gentex verified the test results upon receipt of the Springs; (6) when Gentex accepted or rejected a shipment of Springs — upon receipt of the Springs, upon a re-testing of the Springs, or at another time; (7) whether Gentex properly and timely rejected the shipments; and (8) whether Gentex was required to purchase the immediately available inventory of Springs and parts. The court emphasizes that this is not an exclusive list of genuine issues. These are a sampling of the unresolved facts that the court believes are material. Because the court renders summary judgment only if the record shows that there is no genuine issue as to any material fact, the court finds that, with respect to the motions of both parties, summary judgment is not appropriate.

#### Conclusion

For the reasons presented above, the motions for summary judgment brought by the plaintiff Mid-West and the defendant Gentex are denied. The court will set this complaint for a pre-trial conference by separate order.

SO ORDERED.



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