

Federal Court Denies Emergency Injunctive Relief in Semiconductor Supply Litigation



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On April 16, 2021, in the midst of the global semiconductor shortage, Judge Stephanie Dawkins Davis, District Court Judge for the Eastern District of Michigan, denied a temporary restraining order sought by a tier one supplier against lower tier suppliers to secure a supply of circuit boards on the basis of *force majeure* and impracticability. The Court's order provides valuable insight into the treatment of requests for temporary restraining orders in the context of automotive supply disputes.

Factual Background and the Nature of the Litigation

JVIS sells center stack assemblies to Mayco International, LLC, who ultimately supplies Stellantis N.V. JVIS contracted with Futaba Corporation of America to purchase printed circuit board assemblies, key part in JVIS's "center stack assemblies." Futaba in turn purchases semiconductors from NXP Semiconductors USA, Inc. through NXP's distributor Avnet, Inc. Due to the global shortage of semiconductors, NXP has been unable to manufacture enough semiconductors to supply its various customers.

JVIS sued Futaba, NXP, and Avnet for breach of contract, specific performance, tortious interference, and a declaratory judgment. JVIS sought a temporary restraining order requiring Futaba, NXP, and Avnet to supply its required printed circuit board assemblies. The Court denied the motion, finding JVIS could not satisfy any of the factors necessary to merit injunctive relief.

Extraordinary Circumstances Excuse Performance under the UCC

As an initial matter, the Court held that JVIS was unlikely to succeed on the merits of any of its claims. Notably, the Court found that any breach by Futaba was excused by either the *force majeure* provision of the parties' contract or the defense of impracticability under the Uniform Commercial Code Article 2. JVIS sought the extraordinary relief of a TRO based **solely** on naked allegations in the complaint that its suppliers reallocated parts to preferred suppliers—it did not verify the complaint or submit a supporting affidavit based on personal knowledge. Futaba, on the other hand, presented record evidence that the Covid-19 pandemic and a 100-year ice storm in Texas caused unforeseen shutdowns. JVIS's bare allegations were not enough to overcome the

evidence that external events prevented Futaba “from securing supplies necessary to [its] performance.”

The Court also relied on similar evidence of impracticability to find JVIS unlikely to succeed on the merits of its tortious interference claim against Avnet and NXP. Again, JVIS relied solely on unsupported allegations. The Court found any disruption of the relationship between JVIS and Futaba as a result of Avnet or NXP’s failure to supply parts was due to the exigent circumstances outside their control, and not any unsupported allegations of wrongful conduct.

Non-Shipment of Parts Results in “Calculable and Compensable” Damages, Not Irreparable Harm

In assessing the harm to JVIS, to the defendants, and to the public, the Court ruled against JVIS on each factor. As an initial matter, the Court found that JVIS suffered only a “specific shortfall of several thousand printed circuit board assemblies.” This harm resulted in “calculable and compensable” damages, especially where Futaba did not have a supply of parts to satisfy JVIS’s demands.

The Court also found that JVIS could not establish any loss of goodwill or reputational harm. Here, again, JVIS relied solely on unsupported allegations, failing to submit an affidavit or other evidence. The Court was influenced by defendants’ record evidence of the global nature of the semiconductor shortage, finding “no evidence that [JVIS’s] relationships will be permanently impacted or impacted any differently than other suppliers experiencing the same shortfall in supply.”

For these same reasons, the balance of harms weighed in favor of Futaba and the other suppliers. An order in favor of JVIS would put defendants in an impossible position: the Court refused to “order defendants to take action that they are simply unable to take, based on circumstances entirely outside their control.”

Though this case involved unique circumstances—a global pandemic and a 100-year storm contributing to the ongoing semiconductor shortage—the shortage may persist for another year. Regardless, the lessons to be learned apply more broadly. Temporary restraining orders in the supply chain interruption context should not be considered a guarantee for the aggrieved supplier, even where the result is a total shutdown. The movant must put forth affidavits or other record evidence to support each of the injunction factors, including the balancing of the harms. Moreover, courts will give weight to available contractual defenses such as the doctrine of impracticability, particularly in unique circumstances like these. As the semiconductor shortage drags on, we can expect to see similar efforts to secure injunctive relief. Plaintiffs will be well served by reviewing JVIS’s recent losing effort and putting forth the evidence to adequately justify injunctive relief.