UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL NO. 19-968(DSD/ECW)

Architectural Busstrut Corporation
d/b/a busStrut,

Plaintiff,

v. **ORDER**

Target Corporation,

Defendant.

Arthur G. Boylan, Esq. and Anthony Ostlund Louwagie Dressen & Boylan P.A., 90 South 7th Street, Suite 3600, Minneapolis, MN 55402, counsel for plaintiff.

Quin C. Seiler, Esq. and Winthrop & Weinstine, PA, 225 South 6th Street, Suite 3500, Minneapolis, MN 55402, counsel for defendant.

This matter is before the court upon the parties' cross motions for summary judgment. Based on a review of the file, record, and proceedings herein, and for the following reasons, plaintiff's motion is denied, and defendant's motion is granted in part.

BACKGROUND

This business dispute arises out of a contract between plaintiff Architectural busSTRUT Corporation, d/b/a busSTRUT and defendant Target Corporation, under which busSTRUT agreed to provide heavy duty track lighting for use in Target stores at a

fixed price for three years. busSTRUT is a family owned and operated company that manufactures and supplies various proprietary lighting products to national retailers. Target is a Minnesota-based retailer with stores throughout the country. The dispute centers on whether Target and busSTRUT entered into a requirements contract, i.e., whether Target agreed to purchase all of its required heavy duty track lighting from busSTRUT during the life of the contract.

I. The Supplier Qualification Agreement

Target first purchased busSTRUT lighting in early 2015 through a third party. Robinson Decl., ECF No. 114, Ex. 3; Trankel Dep. at 97:8-99:17. Target was apparently satisfied with busSTRUT's product and, in September 2015, indicated that it wanted to enter into a more formal vendor arrangement with busSTRUT.

Target requires all prospective vendors to execute a document titled Supplier Qualification Agreement for Goods and Services (SQA). McBride Decl. Ex. 4, at 3-4. Vendors cannot negotiate the terms of the SQA. Graham Dep. at 19:15-20:13. James Warner, who managed sourcing and procurement for Target, sent the SQA to Michael Gellert, busSTRUT's vice president of sales. McBride Decl. Ex. 4, at 3. Gellert responded that "busSTRUT is more than happy to fill out all of the forms required." Id. at 2. Gellert submitted the signed SQA to Target on September 30, 2015. See McBride Decl. Ex. 3, at 16. Gellert did not review the SQA before

he signed it and does not recall if he gave it to anyone else at busSTRUT to review, including busSTRUT's in-house counsel.[1] M. Gellert Dep. at 31:2-23, 37:2-24.

The SQA is a necessary precursor to possible subsequent "program agreements" and related purchase orders. McBride Decl. Ex. 3 § 1.1. But the SQA does not obligate Target to enter into a program agreement or to order products from busSTRUT. Id. The SQA broadly defines the "Agreement" between the parties to include "the SQA and all applicable Program Agreements, Orders, and any other document or communication sent by Target to [busSTRUT] relating to the [lighting products]." Id. If a conflict should arise between any documents constituting the Agreement, "the order of document precedence is as follows: (i) a Program Agreement, (ii) [the] SQA, (iii) the Scope of Work/Specifications or Statement of Work attached to that Program Agreement, and (iv) an Order." Id. § 1.2. Further, "a provision or term in a document will only have an overriding effect if that document specifically states that it (a) overrides an identified provision or term in a document higher in the order of precedence or (b) it adds a new provision or term that does not exist in a document with a higher precedence[.]" Id.

[1] busSTRUT also signed a non-disclosure agreement that does not appear to be relevant to the dispute. See McBride Decl. Ex. 2, at 1.

Target may terminate the SQA without cause with thirty days written notice or immediately if busSTRUT breaches "any provision of the Agreement." Id. § 2.2. The termination provision in the SQA applies if the applicable program agreement contains no such provision. Id. § 2.3.

The SQA includes an integration clause establishing that all "prior and contemporaneous negotiations and agreements, whether oral or written, between the parties with regard to the subject matter of [the] Agreement are expressly superseded[.]" Id. § 24. The SQA also defines the parties' agreement to include "all exhibits, schedules, and other documents specifically referenced in [the SQA]." Id.

II. The Program Agreement

Effective November 19, 2015, the parties entered into a Program Agreement for Goods and Services (Program Agreement). McBride Decl. Ex. 2, at 1. The Program Agreement expired on December 31, 2016, or under the terms set forth in the SQA. Id.; id. § 5.2. The Program Agreement "documents the specific business terms pursuant to which Target may issue Orders to [busSTRUT] for the purchase or Goods and/or Services" and includes and scope of work, specifications, and fee schedule applicable to any orders. Id. § 1; id. at 1; id. Exs. A-B. As with the SQA, the Program Agreement did not obligate Target to purchase any goods from busSTRUT. See id. § 1; see also id. § 10 ("Target's obligation to

purchase arises only if and when Target or its affiliate issues an Order to [busSTRUT].").

Target ultimately purchased heavy duty track lighting from busSTRUT in 2015 and 2016 for numerous stores and was satisfied with the product and busSTRUT's service. See Trankel Dep. at 99:14-23, 170:21-171:19.

III. Request for Proposal

On September 28, 2016, Target invited busSTRUT to participate in a request for proposal (RFP) to provide heavy duty track lighting for over 1,500 Target stores scheduled to be remodeled.[2] Robinson Decl. Ex. 6. Target stated that it was "looking to sign a 2 (two) year contract, but would be open to extending the contract." 2d Robinson Decl., ECF No. 157, Ex, 35, at 2. The RFP does not state that Target would award the heavy duty track lighting to more than one vendor. See id. It does state, however, that busSTRUT's bid would be a "binding commitment" with respect to price, product specifications, and "any requirements provided to [busSTRUT] by Target." Id. Ex. 36, at 3. Pricing as set forth in the bid was "fixed" and therefore would be "constant and [would] not change over the life of the contract." Id. busSTRUT

[2] Target was also looking for a separate vendor to provide light duty track lighting. 2d Robinson Decl., ECF No. 157, Ex. 35, at 3. There is no dispute that busSTRUT was only asked to provide a bid for heavy duty track lighting. As such, the court will not address terms relating to light duty track lighting.

understood these terms to mean that, if awarded the contract, it would be the exclusive supplier for all of Target's heavy duty track lighting needs throughout the duration of the contract. See G. Gellert Dep. at 123:13-24:25, 157:16-60:14, 170:9-18, 171:6-16, 172:1-73:7.

On November 2, 2016, after busSTRUT submitted its bid, Target invited busSTRUT, among other potential vendors, to its headquarters to discuss "[their] relationship, agreements, and related pricing." Id. Ex. 37, at 1. Larry, Greg, and Michael Gellert attended the meeting, which took place on November 10, on behalf of busSTRUT. M. Gellert Dep. at 61:19-21. A representative of Target told the Gellerts that "the stakes were high" and that it was a "really important day" for busSTRUT. Id. at 63:7-12.

Target gave a PowerPoint presentation during the meeting, which indicated that busSTRUT was "being given the opportunity ... to secure a contract and stop the competitive sourcing event" for Target's heavy duty track lighting program. 2d Robinson Decl. Ex. 38, at 2.[3] The PowerPoint also stated that if busSTRUT agreed to Target's terms, Target would "Award Track and LED Track Head Program for 3 years." Id. at 6; see Trankel Dep. at 231:1-11 (confirming Target's offer of a three-year contract). According

[3] Target produced a draft of the PowerPoint in discovery and has confirmed that the draft reflects what was discussed at the November 10 meeting. Graham Dep. at 82:12-23.

to busSTRUT, Target also verbally indicated that if it chose busSTRUT as its vendor, the relationship would be exclusive, meaning that Target would not purchase heavy duty track lighting from any other vendor during the contract period. L. Gellert Dep. at 39:24-41:6; M. Gellert Dep. at 63:18-64:25; G. Gellert Dep. at 170:9-171:21.

Target acknowledged that it intended to reach a deal with busSTRUT the day of the meeting and that it was looking for a discounted rate on lighting. Trankel Dep. at 222:8-12, 230:6-17, 232:13-25. Target further acknowledged that to induce busSTRUT to agree to it terms, it would give busSTRUT a contract and "stop competitive sourcing." Id. at 223:7-15. Target did so as a "negotiation ploy to try to get a lower cost." Id. at 232:13-25.

Although busSTRUT's bid was for a two-year contract, the parties negotiated a lower price for the lighting in exchange for a three-year deal. L. Gellert Dep. at 38:5-39:23; Trankel Dep. at 230:10-17; Graham Dep. at 92:15-93:4. The parties reached an oral agreement the day of the meeting. Trankel Dep. at 233:20-234:5; L. Gellert Dep. at 57:20-25. According to Target, the parties had "a contract in place to purchase if we had a demand." Graham Dep. 63:1-12. Although awarded the contract, busSTRUT was concerned about the discounted price ultimately negotiated, but believed that the additional year on the contract would make the price decrease tenable. See M. Gellert Dep. 69:8-24.

After the meeting, Target sent an email recapping the parties' agreement and congratulating busSTRUT "on the awarded business." Robinson Decl. Ex. 7, at 1. The email confirmed the agreed-to pricing and the three-year contract term but did not discuss exclusivity. Id. at 1-2.

IV. Program Agreement Amendment

The following day, after negotiating its terms, Target and busSTRUT executed Amendment Number 1 to Program Agreement for Goods and Services (Amendment). Id. Ex. 8; see also McBride Decl. Exs. 14-18; G. Gellert Dep. at 185:18-200:14. The Amendment includes scope of work details and specifications, which superseded the terms set forth in the Program Agreement. Robinson Decl. Ex. 8. The Amendment also specifically states that it is effective for three years – from November 11, 2016, to December 31, 2019 – unless terminated earlier as permitted under the Program Agreement. Id. at 1, 5.

The Amendment does not address the issue of exclusivity, nor does it say that Target is obligated to purchase all of its heavy duty track lighting from busSTRUT during the contract's three-year term. See id. It appears, however, that for approximately the first sixteen months of the contract, Target did order all of its heavy duty track lighting from busSTRUT. Target therefore seems to have at least operated as though it had an exclusive arrangement with busSTRUT. See G. Gellert Decl. ¶ 2; Robinson Decl. Ex. 16;

id. Ex. 39 ("I don't know of any Grocery scope stores that are NOT introducing busSTRUT.").

V. Target Contracts with Another Vendor

In March 2018, with over a year and a half left on the Agreement, Target secretly negotiated a contract with another heavy duty track lighting vendor, Villa Lighting Supply. See Robinson Decl. Ex. 26; 2d Robinson Decl. Ex. 42, at 1. Target continued to also buy lighting from busSTRUT under the Agreement through 2020, and never terminated the Agreement. G. Gellert Dep. at 173:11-74:2. In other words, Target bought heavy duty track lighting from both busSTRUT and Villa while the Agreement was in place. Trankel Dep. at 497:5-17. Target installed the Villa lights in different parts of its stores than it did the busSTRUT lights. Id. at 497:18-98:10. Target denies that it would have used busSTRUT lighting in the areas in which it used the Villa lighting for aesthetic reasons. Id. at 498:21-99:14. Target also decided to purchase from Villa because it was overbudget on its store remodeling projects. Graham Dep. at 200:4-13. As discussed below, in March 2018, Target learned that busSTRUT was charging Target significantly above the contract rate on most, if not all, orders. Id. at 201:14-202:24.

According to busSTRUT, Target's decision to purchase lighting from Villa resulted in lost profits in excess of $10 million. See 2d Robinson Decl. Ex. 45. busSTRUT alleges that Target knew that

busSTRUT needed the Agreement to continue in full for three years in order for it to earn the profits negotiated by the parties. M. Gellert Dep. at 69:8-21. According to busSTRUT, when Target began purchasing lighting from Villa, it effectively deprived busSTRUT of the value of the Agreement. See id.; see also 2d Robinson Decl. Ex. 45. busSTRUT also alleges that it had to change it business model to meet the terms of the Agreement. Rather than rely on third-party manufacturers, as it had done traditionally, busSTRUT started manufacturing its own products, which required it to invest in manufacturing equipment, inventory and product tooling, and additional staff. G. Gellert Dep. at 252:11-54:17; M. Gellert Dep. at 24:5-24; see also Ex. 45, at 9-11 & Schedules 7, 10-11. busSTRUT also moved into a larger facility with a warehouse so it could accommodate its expanded inventory. G. Gellert Dep. at 253:2-17. When Target no longer purchased all of its heavy duty track lighting from busSTRUT, busSTRUT was left with equipment, tooling, materials, and warehouse space that it no longer needed. See id. at 193:14-16, 252:11-54:17; Ex. 45, at 9-11 & Schedules 7, 10-11.

VI. This Action

On April 8, 2019, busSTRUT commenced this action alleging that Target breached the exclusive agreement between the parties by purchasing heavy duty track lighting from Villa and breached the implied covenant of good faith and fair dealing by preventing

busSTRUT from realizing the fruits of the Agreement. In the alternative, busSTRUT alleges that Target breached an implied in fact requirements contract between the parties. busSTRUT also brings claims for promissory estoppel and unjust enrichment in the alternative.

VII. Target's Counterclaim

In response, Target filed a breach of contract counterclaim alleging that busSTRUT overcharged it for lighting throughout the life of the contract. Target specifically alleges that busSTRUT routinely billed it at a rate of [redacted] per light fixture, even though the Agreement set the price per unit at [redacted], resulting in overpayment exceeding $1.6 million ([redacted] per unit). See Robinson Decl. Ex. 8 § 1.3; Graham Dep. at 201:14-202:24. According to busSTRUT, it charged the additional $41.71 per unit as a fee for expediting orders when Target did not provide a twelve-week lead time, as required by the Agreement. Robinson Decl. Ex. 8 § 1.1; G. Gellert Dep. at 137:15-24. busSTRUT repeatedly reminded Target that it needed the contractual lead time to ensure that it could timely fulfill orders. See Robinson Decl. Exs. 9, 11; McBride Decl. Ex. 9.

busSTRUT also notified Target that it would need to charge the additional amount without the twelve-week lead time, but Target continually failed to meet that deadline. G. Gellert Dep. at 207:6-11; McBride Decl. Ex. 19, at 3-5. busSTRUT also included

the expedited fee as a line item in the electronic catalog it uploaded to Target's procurement platform. Robinson Decl. Exs. 12-14; see id. Ex. 8; McBride Decl. Exs. 2-3.

Target apparently noticed the line item for the first time in March 2018, when it conducted an audit. See Robinson Decl. Ex. 15, at 1; id. Ex. 17, at 1-5; McBride Decl. Ex. 19, at 2. When asked about it, busSTRUT explained the need for the expedited fee and the substantial inventory risks it faced when Target did not provide the required lead time. Robinson Decl. Ex. 17, at 2; id. Ex. 28. Target nevertheless continued to submit orders with contractually inadequate lead times. In fact, Target internally acknowledged that it was "never possible" to provide a twelve-week lead time because its electrical consultants do not have renderings completed that far in advance. Robinson Decl. Ex. 17, at 1. Target continued to pay invoices that included the expedited fee. See, e.g., Robinson Decl. Ex. 25.

Target now moves for summary judgment on busSTRUT's claims and busSTRUT moves for summary judgment on Target's counterclaim.

DISCUSSION

I. Standard of Review

The court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.

P. 56(a). A fact is material only when its resolution affects the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party. See id. at 252.

The court views all evidence and inferences in a light most favorable to the nonmoving party. See id. at 255. The nonmoving party must set forth specific facts sufficient to raise a genuine issue for trial; that is, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000); see Anderson, 477 U.S. at 249-50; Celotex v. Catrett, 477 U.S. 317, 324 (1986). Moreover, if a plaintiff cannot support each essential element of its claim, the court must grant summary judgment, because a complete failure of proof regarding an essential element necessarily renders all other facts immaterial. Celotex, 477 U.S. at 322-23.

I. Breach of Contract

busSTRUT claims that the Agreement obligated Target to purchase all of its heavy duty track lighting from busSTRUT during the contract period. In other words, busSTRUT's position is that the Agreement was an exclusive "requirements" contract under which Target was precluded from purchasing lighting from other vendors.

Target's position is that although the Agreement allowed it to purchase lighting from busSTRUT at a fixed price, it was not obligated to do so and, in fact, was free to purchase lighting from other vendors while the Agreement was in place. In other words, Target argues that it had a buyer's option contract with busSTRUT. The court finds that there is a genuine issue of material fact that precludes the entry of summary judgment on this claim.

"The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." Art Goebel, Inc. v. N. Suburban Agencies, Inc., 567 N.W.2d 511, 515 (Minn. 1997). Under Minnesota law,[4] a requirements contract is defined "as a contract in which the seller promises to supply all the specific goods or services which the buyer may need during a certain period at an agreed price in exchange for the promise of the buyer to obtain his required goods or services exclusively from the seller." Upsher-Smith Labs., Inc. v. Mylan Labs., Inc., 944 F. Supp. 1411, 1426 (D. Minn. 1996) (citation and internal quotation marks omitted). Under the Uniform Commercial Code, which applies here, "no special language is necessary to create a

[4] Minnesota law governs the Agreement. McBride Decl. Ex. 3 § 18.

requirement contract." Porous Media Corp. v. Midland Brake, Inc., 220 F.3d 954, 960 (8th Cir. 2000).

There is no dispute that the terms "requirements" or "exclusive" are not contained in the SQA, Program Agreement, or Amendment. Nor do those documents contain clauses otherwise indicating that the parties entered into a requirements contract. According to Target, this ends the inquiry. But the parties defined the Agreement more broadly than Target suggests. The SQA provides that the parties "Agreement" includes subsequent "Program Agreements, Orders and any other document or communication sent by Target to [busSTRUT] relating to the Goods and/or Services are referred to collectively as this 'Agreement.'" McBride Decl. Ex. 3 § 1.1. Given the breadth of the definition of "Agreement," which expansively includes post-SQA documents and communications, a reasonable jury could conclude that Target's statements made in negotiating the Amendment and thereafter are part of the Agreement.[5]

[5] The integration clause in the SQA does not preclude consideration of the parties' subsequent communications. See McBride Decl. Ex. 3 § 24 ("All prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with regard to the subject matter of this Agreement are expressly superseded by this Agreement."). And the Program Agreement and Amendment do not contain integration clauses. See McBride Decl. Ex. 2; Robinson Dec. Ex. 8. As a result, given the expansive definition of the "Agreement" and the lack of subsequent integration clauses precluding review of other communications, a jury may consider the parties' post-SQA communications in determining their intent.

During and after negotiations, Target made numerous comments that could be construed as a promise to purchase all heavy duty track lighting during the contract period from busSTRUT. For example, Target represented more than once that it would "stop competitive sourcing" if busSTRUT agreed to its terms. 2d Robinson Decl. Ex. 38, at 2; Trankel Dep. at 223:7-15. A jury could reasonably conclude that this meant that Target would not purchase heavy duty track lighting from other vendors during the contract period.

Because Target never directly used the terms "requirements contract" or "exclusive," however, the court finds that there is an ambiguity, and therefore a genuine issue of material fact, as to the nature of the contract and the parties' intent. See Christensen v. Metro. Life Ins. Co., 542 F. Supp. 2d 935, 941 (D. Minn. 2008) (quoting Lewis v. Equitable Life Assur. Soc. of the U.S., 389 N.W.2d 876, 884 (Minn. 1986) ("The construction and effect of a contract are questions of law for the court, but 'where ambiguity exists, and construction depends upon extrinsic evidence, the proper construction is a question of fact for the jury.'")).

Further, the course of performance by the parties could also support busSTRUT's position that it was a requirements contract.

It is undisputed that for the first sixteen months of the Agreement, Target purchased heavy duty track lighting exclusively from busSTRUT. Under the UCC, "course of performance ... is relevant to ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement." Minn. Stat. § 336.1-303(d). On the other hand, the parties' course of performance is also consistent with Target's stated belief that it could purchase busSTRUT product but that it was not required to do so. As such, the extent to which course of performance is relevant here is a question for the jury.

The post-SQA communications between the parties are also relevant to the issue of whether the Agreement was supported by adequate consideration. If Target is correct that it was not obligated to purchase exclusively from busSTRUT, there is an issue as to whether there is an absence of mutual consideration. If Target was free to purchase heavy duty track lighting from other vendors and could forgo purchasing from busSTRUT altogether, then Target arguably had no obligations under the Agreement. In contrast, busSTRUT was under numerous constraints and obligations subject to Target's whim. In that case, the Agreement may well fail for lack of mutual consideration. See Halvorson v. Harmer, No. C6-96-2348, 1997 WL 328064, at *1 (Minn. Ct. App. June 17, 1997) ("We will not enforce a contract absent mutual

consideration."); see also McMurray v. AT&T Mobility Servs., LLC, No. 21-cv-414, 2021 WL 3293540, at *5 (D. Minn. Aug. 2, 2021) ("[A]n exchange of mutual promise is adequate consideration to support a contract.").

A jury could reasonably infer from these facts that busSTRUT had a sufficient basis to believe that Target intended to purchase heavy duty track lighting exclusively from busSTRUT during the life of the contract. There are certainly facts in the record establishing that busSTRUT believed that to be the case when it agreed to the contract. As a result, whether the parties intended to enter into a requirements contract is subject to interpretation and, ultimately, is a question for the jury. The court therefore denies Target's motion on this claim.

II. Breach of the Implied Covenant of Good Faith and Fair Dealing

busSTRUT contends that Target breached the implied covenant of good faith and fair dealing by "arbitrarily, unreasonably, and without notice refusing to continue to use busSTRUT to source its requirements." Compl. ¶ 84. As with the contract claim, Target argues that this claim fails because the parties did not have a requirements contract.

Every contract under Minnesota law, "includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party's performance of the contract." In re Hennepin Cty. 1986 Recycling Bond Litig., 540

N.W.2d 494, 502 (Minn. 1995) (internal quotation marks and citation omitted). A party breaches the implied covenant when it acts in bad faith, that is, when it "refus[es] to fulfill some duty or contractual obligation based on an ulterior motive." Residential Funding Co. v. Terrace Mortg. Co., 725 F.3d 910, 918 (8th Cir. 2013) (internal quotation marks and citation omitted). A party does not act in bad faith when it exercises its legal and contractual rights. Id. The covenant does not extend to actions beyond the scope of the underlying contract. Christensen v. Metro. Life Ins. Co., 542 F. Supp. 2d 935, 943 n.5 (D. Minn. 2008).

The parties agree that this claim rises or falls with the breach of contract claim. Because the court has concluded that the contract claim must proceed to trial, so must the implied covenant of good faith and fair dealing claim. The court therefore also denies Target's motion with respect to this claim.

III. Quasi-Contractual Claims

busSTRUT alleges three quasi contractual theories alternative to its contract claims: breach of an implied in fact contract, promissory estoppel, and unjust enrichment. "Although a party may not ultimately recover on both breach of contract and unjust enrichment claims, it may pursue these alternative theories until it is conclusively decided 'that a valid and enforceable contract exists between the parties which governs the specific dispute

before the court.'" MidCountry Bank v. Rajchenbach, No. 15-cv-3683, 2016 WL 3064066, at *4 (D. Minn. May 31, 2016) (quoting Spectro Alloys Corp. v. Fire Brick Eng'rs Co., 52 F. Supp. 3d 918, 932 (D. Minn. 2014)). As discussed above, there is a triable issue as to the existence of a contract between the parties. As a result, busSTRUT may proceed to trial on its implied in fact contract claim and its promissory estoppel claim. busSTRUT's unjust enrichment claim is not viable, however.

To state a claim of unjust enrichment under Minnesota law, a plaintiff must allege that there was "(1) a benefit conferred; (2) the defendant's appreciation and knowing acceptance of the benefit; and (3) the defendant's acceptance and retention of the benefit under such circumstances that would be inequitable for him to retain it without paying for it." Dahl v. R.J. Reynolds Tobacco Co., 742 N.W.2d 186, 195 (Minn. Ct. App. 2007). It is not enough that "one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." First Nat'l Bank of St. Paul v. Ramier, 311 N.W.2d 502, 504 (Minn. 1981).

busSTRUT argues that Target was unjustly enriched because it did not properly compensate busSTRUT for its products and services. But the facts demonstrate otherwise. There is no dispute that Target paid for the products it purchased from busSTRUT. The issue

is whether Target was contractually or equitably obligated to continue to exclusively purchase products from busSTRUT for the entirety of the three-year term. As such, this case does not involve the kind of alleged inequity contemplated by the theory of unjust enrichment. See Vielbig v. USA Janitorial, Inc., No. C8-00-1255, 2001 WL 50890, at *3 (Minn. Ct. App. Jan. 23, 2001) (citation omitted) (holding that claims for unjust enrichment are "appropriate when a party receives money or property of another that in 'equity and good conscience' should be repaid"). This claim therefore must be dismissed.

IV. Target's Counterclaim

Target alleges that busSTRUT routinely overcharged it for lighting in violation of the Agreement. busSTRUT responds that it charged Target an additional fee for orders Target placed outside of the contractual twelve-week notice period, consistent with the parties' understanding. The court finds that there is a genuine issue of material fact precluding summary judgment on this claim.

Specifically, there is an ambiguity as to relevant contractual terms. Target argues that busSTRUT was not permitted to charge Target a rush fee given the plain terms of the Amendment which states that the price per unit is [redacted]. Robinson Decl. Ex. 8 § 1.3. As busSTRUT notes, however, the Agreement broadly includes Target's orders. McBride Decl. Ex. 3 § 1.1. Whether the orders include the expedited fee charged by busSTRUT is subject to

debate. The orders themselves did not include pricing, but busSTRUT fielded orders from Target through its electronic catalog that busSTRUT uploaded to Target's procurement platform. The electronic catalog included the expedited fee for orders placed outside a twelve-week lead time. Robinson Decl. Ex. 14, at 2. Given the breadth of the parties' definition of Agreement, there is a factual issue as to whether and under what circumstances busSTRUT was permitted to charge a rush fee.

Target also argues that it was not obligated to provide a twelve-week lead time for orders. This, too, is far from clear. The Amendment identifies "lead time" as "12 weeks based on commit email from Procurement to secure material based on a prototype quantity." But it also seems to hedge on the necessity of a lead time: "For purposes of clarity, if Target issues a commit email, receipt of that email starts the 12 week lead-time." Id. Ex. 8 § 1.1 (emphasis added). In light of these arguably competing statements, there is also an ambiguity as to whether a twelve-week lead time was a contractual requirement.

The parties' correspondence and course of performance, which are certainly relevant to the issue, support busSTRUT's position that it was permitted to charge a rush fee for orders placed without a twelve-week lead time. The court nevertheless cannot conclude that such facts conclusively decide the issue. As a

result, busSTRUT is not entitled to summary judgment on Target's counterclaim.

CONCLUSION

Accordingly, **IT IS HEREBY ORDERERD** that:

1. busSTRUT's motion for summary judgment [ECF No. 81] is denied; and

2. Target's amended motion for summary judgment [ECF No. 85] is granted in part as set forth above.

Dated: November 9, 2021

s/David S. Doty
David S. Doty, Judge
United States District Court