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These later considerations are sometimes said to be personal to the plaintiff. So, for example, when the special intervention of the court is sought in the enforcement of contractual rights it is necessary to consider such matters as misrepresentation and non-disclosure, [...] and fraud and the need for clean hands.¹

While a finding that the plaintiff does not come to court with clean hands carries some weight, it is not necessarily determinative of the final outcome. It may be possible for a plaintiff without clean hands to yet obtain equitable relief.²

[8] GM Canada requested equitable relief. The defendants submitted that GM Canada did not come to court with clean hands and, accordingly, the court should not exercise its discretion to grant the requested relief. GM Canada's conduct must be examined.

[9] Cheryl Ollila has been GM Canada's general director of labour relations since April 2007. She was one of GM Canada's lead negotiators during the May 2008 negotiations that led to the May 15, 2008 collective agreement. She testified that, during those negotiations, 1) she was in contact with GM Corp officials at the Detroit head office, 2) she and the other company negotiators spoke with the authority of GM Canada and GM Corp, and 3) there was considerable discussion about the allocation of vehicle production to Oshawa and she believed that was of paramount importance to the CAW.

[10] Examination of the May 15, 2008 agreement confirms Ms. Ollila's testimony that major issues during the negotiations were the allocation of both car and truck production to Oshawa and the challenges faced with respect to the market for GM trucks, including those produced in Oshawa. The agreement contains provisions that specifically address both car and truck production in Oshawa. The agreement is replete with references to difficulties faced by GM, how those challenges may be handled, and the possibility of changes to production commitments based on market demand. For purposes of this ruling, I find that the agreement contains the following two provisions which are of particular importance:

"As a result of market uncertainty in this segment, the Company advised the CAW that the market demand and dynamics associated with the full size truck market would be periodically reviewed with the National Union CAW."³

"In the event that market, financial and regulatory conditions necessitate business decisions that alter the plans noted above, the CAW National Union and the General Motors of Canada leadership will have advance discussion in conjunction with the anticipated business decision changes. In that regard, the parties will explore other

¹ I.C.F. Spry, *The Principles of Equitable Remedies*, 6th ed. (Canada: Carswell Co, 2001 at 409.

² See I.C.F. Spry, *The Principles of Equitable Remedies*, 6th ed. (Canada: Carswell Co, 2001 at 5, Jeffrey Berryman *The Law of Equitable Remedies* (Toronto: Irwin Law, 2000) at chapter 11.

³ May 15, 2008 agreement at 19.