

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KELSEY-HAYES COMPANY,

Plaintiff,

Case No. 13-137746-CK

Hon. Wendy Potts

v

HUTCHINSON SEAL DE MEXICO, et al,

Defendants.

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OPINION AND ORDER RE: DEFENDANT CATELSA CACERES S.A.'S MOTION FOR  
SUMMARY DISPOSITION OF PLAINTIFF'S BREACH OF CONTRACT AND BREACH OF  
WARRANTY CLAIMS

At a session of Court  
Held in Pontiac, Michigan

On  
FEB 19 2016

This matter is before the Court on Defendant Catelsa Caceres, S.A.'s Motion for Summary Disposition of Plaintiff Kelsey Hayes' Breach of Contract (Count A) and Breach of Warranty (Count B) Claims pursuant to MCR 2.116(C)(10). A motion under (C)(10) tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), "In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

Catelsa alleges that Count A of Kelsey Hayes' Complaint should be dismissed because Catelsa is not a party to the Purchase Orders that are at issue in the present case. In response to Defendant's motion, Plaintiff submitted evidence in the form of deposition testimony alleging that Kelsey Hayes initially dealt with Catelsa. Plaintiff also submitted evidence in the form of deposition testimony alleging that that Catelsa, Hutchinson Mexico, and Hutchinson Sealing purposefully represented themselves under one umbrella as Hutchinson. If these allegations are true, then there exists a question of fact and the Court cannot determine, without factual development, with whom Kelsey Hayes contracted.

In the Complaint, Plaintiff alleged that "Hutchinson Mexico, Catelsa, and Hutchinson Sealing are all part of what they refer to as 'Hutchinson Worldwide.' The Hutchinson Defendants share offices, employees, finances, books records, computer systems, information, and expertise. Hutchinson Mexico, Catelsa, and Hutchinson Sealing do not have any independent existence. Instead, they are, and present themselves as, a single Hutchinson entity and business enterprise. They are an amalgamation of corporate interests, entities, and activities so as to blur any legal distinction. . . ." (Complaint, para. 5).

Both parties' submissions contain evidentiary support for their assertions – as well as challenges to the other's credibility. It is well settled, however, that credibility is an issue that must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132 (2007). The *White* Court reasoned that, "courts may not resolve factual disputes or determine credibility in ruling on a summary disposition motion" *White*, 275 Mich App at 625. Whether Catelsa is an entity distinct from Hutchinson Mexico and Hutchinson Sealing is a question of fact that must be determined before it can be determined whether Kelsey Hayes and Catelsa are parties to a binding contract.

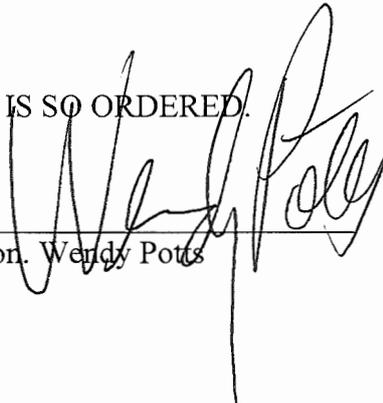
Catelsa next alleges that Count B of Plaintiff's Complaint should be dismissed because Catelsa did not make express or implied warranties regarding the booster diaphragms at issue. Catelsa further alleges that it did not make any warranties to Kelsey Hayes for the injection cavity tools at issue. Plaintiff submitted evidence in the form of documents and deposition testimony to refute Catelsa's allegations. With regard to implied warranties, Catelsa alleges that it did not design, sell, or manufacture the diaphragms at issue in the present case, and thus the breach of implied warranty claims should be dismissed. While Plaintiff is correct in its assertion that Michigan has abandoned the privity requirement for implied warranty claims, a question of fact exists as to whether Catelsa is a separate entity from Hutchinson Mexico and Hutchinson Sealing. Plaintiff further produced evidence alleging that Catelsa tested and measured the parts to ensure they met Kelsey Hayes' dimensional requirements. Plaintiff also produced deposition testimony alleging that Catelsa explicitly warranted the tool with product samples.

Resolution of Plaintiff's breach of contract and breach of warranty claims is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition wholly inappropriate. Thus, Defendant Catelsa Caceres, S.A.'s Motion for Summary Disposition of Plaintiff's Breach of Contract and Breach of Warranty Claims is denied.

Dated:

**FEB 19 2016**

IT IS SO ORDERED.

  
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Hon. Wendy Potts