

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

KELSEY-HAYES COMPANY,

Plaintiff,

v

Case No. 13-137746-CK

Hon. Wendy Potts

HUTCHINSON SEAL DE MEXICO, et al,

Defendants.

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR SUMMARY DISPOSITION OF
PLAINTIFF'S NEGLIGENCE AND MISREPRESENTATION CLAIMS

At a session of Court
Held in Pontiac, Michigan

On
FEB 24 2016

This case is before the Court on Defendants' Hutchinson Seal de Mexico, S.A. DE C.V., Catelsa Caceres, S.A., and Hutchinson Sealing Systems, Inc.'s Motion for Summary Disposition of Plaintiff Kelsey-Hayes' Negligence and Misrepresentation Claims pursuant to MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) is properly granted when the party opposing the motion "has failed to state a claim upon which relief can be granted." MCR 2.116(C)(8); *Radtke v Everett*, 442 Mich 368, 373; n505 NW2d 155 (1993).

Defendants allege that Plaintiff's negligence claim (Count C) is barred by the economic-loss doctrine because Plaintiff alleges only economic losses caused by a defective product. The economic loss doctrine bars a tort theory of recovery where the claim arises from a sale of goods and results in only economic loss. *Neibarger v Universal Cooperatives, Inc*, 439 Mich 512, 520; 486 NW2d 612 (1992).

In response to Defendants' argument that the economic loss doctrine bars its negligence claim, Kelsey Hayes alleges its negligence claim is not for losses arising from a defective product, but for negligence related to the design and engineering guidance that Hutchinson Sealing and Catelsa provided to Hutchinson Mexico.

Plaintiff pled, in part, "Hutchinson Sealing and Catelsa provided design and engineering guidance to Hutchinson Mexico, undertaking to do so for the benefit of Kelsey-Hayes. Hutchinson Sealing and Catelsa undertook to perform a duty owed to Kelsey-Hayes by Hutchinson Mexico. Both Hutchinson Mexico and Kelsey-Hayes relied upon Hutchinson Sealing's [and] Catelsa's design and engineering guidance." (Complaint, para. 35). Plaintiff is seeking to impose liability for economic losses only. "When a plaintiff seeks to impose liability for economic losses only, tort law concerns with product safety no longer apply, and commercial law concerns with economic expectations must govern." *Neibarger*, 439 Mich at 525-526 citing *Sylla v Massey-Ferguson, Inc.*, 660 F Supp 1044, 1046 (ED Mich 1984).

Here, Kelsey Hayes is seeking economic losses for damages it sustained related to allegedly defective brake booster seals and the mold used to make those diaphragms. A tort theory of negligence is barred by the economic loss doctrine because the economic expectations of commercial law govern. *Neibarger*, 439 Mich at 525-526.

Defendants next allege that Plaintiff's claim for misrepresentation claim (Count D) should be dismissed because Plaintiff failed to plead it with the particularity as required by law. In the instant action, Plaintiff pled that "Hutchinson Sealing made multiple misrepresentations to Kelsey-Hayes during their relationship, including representing Hutchinson Mexico would be backed by the full financial weight of Hutchinson worldwide and by Hutchinson Sealing. This representation was material to Kelsey-Hayes, and Kelsey Hayes relied upon this representation

in its decision to do business with the Hutchinson Defendants.” (Complaint, para. 40).

In pleading a claim for fraud or misrepresentation, the circumstances constituting the fraud or mistake must be stated with particularity. MCR 2.112(B)(1). Fraud claims must be pleaded with particularity, addressing each element of the tort. *Cooper v. Auto Club Ins. Ass'n.*, 481 Mich. 399, 414, 751 N.W.2d 443 (2008). Plaintiff failed to identify who made the alleged statements, when and where the statements were made, and to whom the statements were made. Plaintiff failed to plead its misrepresentation claim with the required particularity.

Even if Plaintiff had pled its misrepresentation claim with the required particularity, Defendants allege that Plaintiff’s misrepresentation claim would be barred by the economic loss doctrine. As previously stated, the economic loss doctrine bars a tort theory of recovery where the claim arises from a sale of goods and results in only economic loss. *Neibarger v Universal Cooperatives, Inc.*, 439 Mich 512, 520; 486 NW2d 612 (1992).

Plaintiff responds that the economic loss doctrine does not bar a fraudulent inducement claim. Kelsey Hayes is correct that the economic loss doctrine does not bar a fraud claim that is “extraneous” to the contract, such as a claim for fraudulent inducement. See *Huron Tool and Engineering Co v Precision Consulting Services, Inc.*, 209 Mich App 365, 373; 532 NW2d 541 (1995). Kelsey Hayes alleged that it entered into contracts with Hutchinson Mexico and made installment purchases of brake booster diaphragms from Hutchinson Mexico for seven years based on Hutchinson Mexico’s misrepresentations of financial backing by “Hutchinson Worldwide” and Hutchinson Sealing.

Plaintiff alleges that the economic loss doctrine does not apply because its fraudulent inducement claims address present and future facts. “Fraud requires a misrepresentation about the past or present.” *Lawrence M. Clarke, Inc. v Richco Const., Inc.*, 489 Mich 265, 284; 803

NW2d 151 (2011) citing *Hi-Way Motor Co. v Int'l Harvester*, 398 Mich 330; 247 NW2d 813 (1976). In its Complaint, Plaintiff stated, in part, "Hutchinson Sealing made multiple misrepresentations to Kelsey-Hayes during their relationship, including representing Hutchinson Mexico would be backed by the full financial weight of Hutchinson worldwide and by Hutchinson Sealing. . . ." (Complaint, para. 40). This allegation does not pertain to a past or present misrepresentation; the allegations relate to future conduct.

Plaintiff next alleges that a merger clause in the Kelsey Hayes/Hutchinson Mexico does not preclude its misrepresentation claims against Hutchinson Sealing. In its Complaint, Plaintiff alleged that "[t]he Purchase Orders state 'all material . . . supplied [by the Hutchinson Defendants] to fulfill the requirements of this purchase order will be 100% compliant with the applicable specifications and drawings' The TRW Automotive Terms and Conditions provide even more detailed product warranties: Product Warranties: (a) Seller warrants that the Goods (i) will be fit and sufficient for the purpose intended (if Seller knows or has reason to know the particular purpose for which Buyer intends to use the Goods); (ii) will be of merchantable quality and free from all defects, including defects in material and workmanship and, if not of Buyer's detailed written design, defects in design; and (iii) will conform with all representation, descriptions, samples, drawing, plans, specifications, designs and other data supplied by Seller or listed on the front side of this Order. Seller further warrants that, with respect to the Goods, Seller is and will at all times remain competitive in terms of price, quality, technology and service. The foregoing warranties are in addition to those available to Buyer by law." (Complaint, para. 20).

A merger clause has been held to invalidate the reasonable reliance element of a misrepresentation claim based on statements or promises made outside the agreement. *UAW-*

GM Human Resource Center v KSL Recreation Corp, 228 Mich App 486, 502 (1998). Thus, the merger clause precludes the misrepresentation claim made by Kelsey Hayes. “[F]raud will invalidate a contract when a party's assent to said contract is induced through *justified* reliance upon a fraudulent misrepresentation. A merger clause can render reliance unjustified as to agreements, promises or understandings related to performances that are not included in the written agreement.” *Barclae, supra* at 482, quoting *Star Ins Co v United Commercial Ins Agency, Inc*, 392 F Supp 2d 927, 928-929 (ED Mich, 2005) (emphasis in original).

Kelsey Hayes reliance on representations outside of the contract is unjustified since the Purchase Orders are subject to the TRW Automotive Terms and Conditions of Purchase. Both the 2006 and 2012 Terms and Conditions expressly stated that the order was the entire understanding or the entire agreement of the parties.

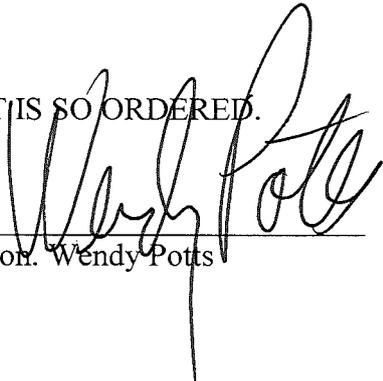
Plaintiff next alleges that the economic loss doctrine does not apply because it did not have privity of contract with regard to the engineering guidance services. However, privity of contract is unnecessary for the economic-loss doctrine to apply. *Sullivan Industries, Inc v Double Seal Glass Co*, 192 Mich App 333, 344; 480 NW2d 623 (1991). Lack of privity has been specifically rejected by the Court of Appeals. *Sullivan Industries, Inc v Double Seal Glass Co*, 192 Mich App 333, 344; 480 NW2d 623 (1991) (holding “the trial court clearly erred in finding that the absence of privity between Sullivan and Norton precluded an application of the economic-loss doctrine”); and *Freeman v DEC Int’l*, 212 Mich App 34, 36; 536 NW2d 815 (1995) (holding “the buyer’s remedies are not based on tort but on rights of recovery provided by the UCC, irrespective of the existence of privity of contract”). Privity is not required for the economic loss doctrine to apply, and Plaintiff’s arguments alleging the opposite are erroneous.

The economic loss doctrine applies to commercial transactions where the parties have the ability to bargain for the terms of the sale, including warranties, disclaimers, and limitation of remedies. *Quest Diagnostics, Inc. v MCI WorldCom, Inc.*, 254 Mich App 372, 380; 656 NW2d 858, 863 (2002). In the present instance, the parties had the ability to bargain before they entered into any contract or purchase agreement. Thus the economic loss doctrine applies.

For all of the above stated reasons, considering only the pleadings, and accepting all well-pled factual allegations as true, the Court concludes that Plaintiff's negligence claim and misrepresentation claim are barred by the economic loss doctrine and are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." Thus, Defendants' Motion for Summary Disposition under MCR 2.116(C)(8) is granted and Plaintiff's Count C and Count D are dismissed.

Dated: FEB 24 2016

IT IS SO ORDERED.



Hon. Wendy Potts