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 CLAIMS ALLEGING BREACH OF CONTRACT AND BREACH OF WARRANTY

At a session of Court
Held in Pontiac, Michigan
On
FEB 19 2016

This matter is before the Court on Defendants' Motion for Summary Disposition of Plaintiff's Breach of Contract Claim (Count A) and Breach of Warranty (Count B) 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).

In opposing Defendants' Motion for Summary Disposition as to Plaintiff's Breach of Contract and Breach of Warranty Claims, Plaintiff presents deposition and documentary

testimony that allegedly refutes Defendants' claims. Both Plaintiff's and Defendants' submissions contain evidentiary support for their assertions – as well as challenges to the other's credibility. Documents and drawings, together with deposition testimony, were submitted both in support of and in opposition to Defendants' motion. The issues presented are factual in nature and require factual development before there can be a disposition of Plaintiff's claims. Whether the diaphragms conformed with Kelsey Hayes' specification is a question of fact. A factual determination also must be made before a conclusion can be made as to whether Defendants breached either an express or an implied warranty. A genuine issue of material fact exists when reasonable minds could differ on a material issue. *Allison v. AEW Capital Mgt., LLP,* 481 Mich. 419, 425, 751 N.W.2d 8 (2008).

Summary disposition is not appropriate in the present case as factual development is required to resolve discrepancies in the conflicting testimony and exhibits that the parties presented. Thus, Defendants' Motion for Summary Disposition of Kelsey Hayes' Breach of Contract and Breach of Warranty Claims is denied.

IT IS SO ORDERED.

Dated: FEB 19 2016

Hon. Wendy Potts