

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.

OPINION AND ORDER RE: DEFENDANT HUTCHINSON SEALING SYSTEMS INC.'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 Hutchinson Sealing Systems, Inc.'s Motion for Summary Disposition of Plaintiff's Claims for Breach of Contract (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).

Hutchinson Sealing alleges that Count A of Kelsey Hayes' Complaint should be dismissed because Hutchinson Sealing is not a party to the purchase order contracts at issue in

the present case. In response to Defendant's Motion, Plaintiff submitted evidence in the form of deposition testimony alleging that defendant purposefully represented themselves under one umbrella as Hutchinson.

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 Hutchinson Sealing is an entity distinct from Hutchinson Mexico and Catelsa is a question of fact that must be determined before it can be determined whether Kelsey Hayes and Hutchinson Sealing are parties to a binding contract.

Hutchinson Sealing next alleges that Count B of Kelsey Hayes' Complaint should be dismissed because Hutchinson Sealing made no express or implied warranties to Kelsey Hayes regarding the booster diaphragms and/or the injection cavity tools at issue in this case. Plaintiff submitted evidence in the form of documents and deposition testimony to refute Hutchinson Sealing's allegations. With regard to implied warranties, Hutchinson Sealing alleges that it is a corporate entity distinct from Hutchinson Mexico and Catelsa. Defendant further alleges that Hutchinson Sealing did not sell, design, or manufacture the parts at issue in this case.

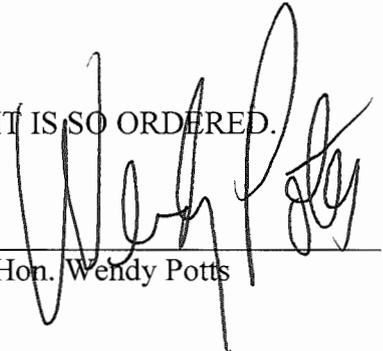
Both parties' arguments are also based on artful editing and out-of-context quotations that cannot possibly tell the entire story. As a result, factual development is necessary for disposition of Plaintiffs' claims and to determine whether Hutchinson Sealing is a separate entity from Hutchinson Mexico and Catelsa. Thus, Defendant Hutchinson Sealing, Inc.'s Motion for

Summary Disposition of Kelsey Hayes' Breach of Contract and Breach of Warranty Claims is denied.

Dated:

FEB 19 2016

IT IS SO ORDERED.



Hon. Wendy Potts