

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

GREAT LAKES SALES & MARKETING, LLC,

Plaintiff,

v

JOHN LOUSSIA, et al,

Defendants.

Case No. 13-137997-CB
Hon. Wendy Potts

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR SUMMARY
DISPOSITION PURSUANT TO MCR 2.116(C)(4) AND (C)(10) AND/OR IN THE
ALTERNATIVE AWARD SECURITY FOR COSTS

At a session of Court
Held in Pontiac, Michigan

On

JUN 19 2014

Plaintiff Great Lakes Sales & Marketing, LLC alleges that in August 2013 it purchased 358 cases of Similac infant formula in a wholesale transaction from Defendant Value, Inc. Great Lakes paid Value \$14,400 for the formula and planned to sell it to a third party for \$16,800. However, before Great Lakes could sell it, federal agents seized the formula from the warehouse claiming that it was stolen goods. Great Lakes notified Value on September 3, 2013 that it was rejecting the goods as non-conforming and sought a refund, but Value did not make an effort to cure. Great Lakes then filed this action against Value and Defendants John, Brian, and Matthew Loussia in December 2013 alleging breach of contract, promissory estoppel, unjust enrichment, fraudulent misrepresentation, and negligent misrepresentation.

Defendants now move for summary disposition under MCR 2.116(C)(4) on the ground that Plaintiff's claims against them do not exceed \$25,000 and fall within the exclusive

jurisdiction of the district courts. Whether this Court has subject matter jurisdiction over Plaintiff's claims is a question of law. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 399; 651 NW2d 756 (2002). This Court has jurisdiction to hear all civil claims "except where exclusive jurisdiction is given in the constitution or by statute to some other court . . ." MCL 600.605. Under MCL 600.8301(1), district courts have exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000.00. Subject matter jurisdiction is determined solely by the allegations in the pleadings. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 587-588; 644 NW2d 54 (2002).

Defendants ask the Court to dismiss the claims or, in the alternative, transfer the case to an appropriate district court because Great Lakes did not allege that it suffered damages exceeding \$16,800. However, Defendants' argument assumes that the damages alleged are the loss of the goods and Great Lakes anticipated profits from the resale. To the contrary, Great Lakes alleged incidental damages arising from the sale including "inspection, receipt, transportation, and care and custody of the goods." Great Lakes also alleged consequential damages including "loss of / damage to Plaintiff's reputation, actual attorney fees, and costs incurred as a result of Defendant's wrongdoing." Because these losses, combined with the loss of the goods and profits, could exceed \$25,000, the Court has subject matter jurisdiction over this action.

Defendants next assert that Great Lakes's fraud claims are duplicative of their breach of contract claims and should be dismissed. However, Great Lakes alleges the essential elements of their fraudulent or negligent misrepresentation claims, and it is premature for the Court to reach any conclusions whether Great Lakes will be able to demonstrate a question of fact on their fraud

theories. Defendants may reassert their arguments against the fraud claims after discovery on this issue is complete.

Defendants also ask the Court to order Great Lakes to post a bond as security for costs under MCR 2.109(A). The decision to require security is within the Court's discretion. *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 270; 463 NW2d 254 (1990). A motion for security for costs under MCR 2.109 must be premised on a substantial reason, such as a "tenuous legal theory of liability" or groundless factual allegations. *Hall, supra* at 270. Because Defendants do not explain why they are entitled to costs, the Court denies their request.

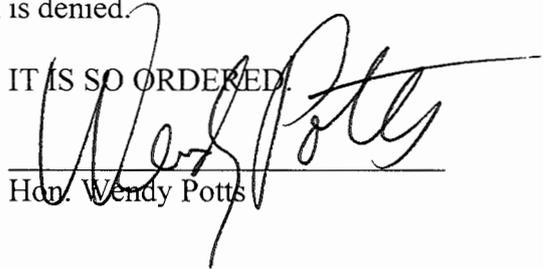
Both parties ask the Court to sanction the opposing parties and their counsel for violating MCR 2.114(D). Defendants assert that Great Lakes made allegations that are not well grounded in fact or law, and Great Lakes claims that this motion is frivolous. Determining whether a pleading or a motion is frivolous focuses on the reasonableness of the inquiry into the factual and legal basis for the claims at the time they are alleged. *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). At this early stage of the case, the Court cannot conclude that either Great Lakes or Defendants made allegations that are factually or legally meritless.

For all of these reasons, Defendants' motion is denied.

Dated:

JUN 19 2014

IT IS SO ORDERED.



Hon. Wendy Potts