

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

MERITOR, INC., et al.,

Plaintiffs,

v.

Case No. 2014-141543-CK

Hon. Wendy Potts

SCHAEFFLER GROUP USA, INC., et al.,

Defendants.

OPINION AND ORDER RE: DEFENDANTS' MOTION FOR PARTIAL SUMMARY
DISPOSITION

At a session of Court
Held in Pontiac, Michigan

On

~~MAY 12 2016~~

This matter is before the Court on Defendants' Motion for Partial Summary Disposition pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(10). A motion for partial summary disposition under MCR 2.116(C)(7) tests whether a claim is barred as a matter of law, and a motion under (C)(10) tests the factual support for a claim. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

For purposes of background information, Meritor and Schaeffler were parties to an agreement wherein Schaeffler supplied Meritor with unitized bearings that were integrated into Meritor hubs and axles, which were sold by Meritor for use in commercial dry vans and car-hauler trailers.

Defendants argue that Plaintiffs' claims are barred by the UCC statute of limitations, that there is no basis for equitable relief because the parties have an express contract, and that Plaintiffs' claims for lost business/profits are unsupported by evidence. Defendants allege that Plaintiffs' claims for breach of representation and warranty claims are barred by the four year statute of limitations contained in the UCC.

In support of their argument Defendants cite to MCL 440.2725(2), which provides that "[a] cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered." *Id.* Defendants argue that Meritor's claims under Complaint paragraphs 41.a, 42.a, and 43.a should be dismissed.

The Complaint alleges in paragraph 41.a that:

"Schaeffler would maintain (i) the quality management system certification known as TS16949 or its equivalent at the manufacturing locations that produced the Bearings, (ii) certain quality commitments for the Bearings including a maximum 50 PPM level during any calendar year on an annual basis during the term of the LTA, and (iii) reliability life targets for the Bearings of 'B10 at a confidence interval of 90%' during the design life of the Bearings."

At paragraph 42.a of the Complaint, Plaintiff alleges:

"Schaeffler would provide certain quality assurances including without limitation maintaining its status as an acceptable vendor under Meritor's 'supplier quality systems requirements.'"

And at paragraph 43.a, of the Complaint, Plaintiff alleges:

"Schaeffler would provide certain quality assurances including without limitation (i) maintaining its status as an acceptable vendor in compliance with Meritor's supplier quality systems requirements and Meritor's SQSR manual as adopted and amended from time to time, (ii) participating, as requested by Meritor, in Meritor's various initiatives and programs Meritor implements to improve quality, increase customer or end user satisfaction, or reduce costs, and (iii) complying with all product safety and compliance requirements contained in Meritor's

SQSR manual, and on Meritor's accessible website established by Meritor for supplier related requirements and related matters.”

In support of their arguments that these claims should be dismissed, Defendants allege that the UCC's four year statute of limitations started to run no later than the date of the delivery of goods. Defendants claim that all the bearings were delivered to Meritor more than four years prior to June 25, 2014, the date the Complaint was filed. Defendants additionally argue that express warranties that do not explicitly extend to future performance are time-barred.

Defendants also claim that Meritor's claims for breach of implied warranties are time-barred. In response, Plaintiffs argue that their claims for breach of warranty are not time-barred because Defendants warranted the bearings for an initial term of five years or 500,000 miles with an extended warranty of an additional two years or 750,000 miles. Plaintiffs argue that they did not discover Defendants' breaches of warranties until after June 24, 2010. Plaintiffs argue that Defendants consistently maintained that the bearings were failing because of an unspecified defect in the hubcap and gasket utilized by Meritor. In support of their arguments, Meritor attaches documentary evidence to its Response showing that Defendants advised Meritor that nothing was defective, non-conforming, or unfit with regard to the bearings.

Under MCL 440.2725(2) “[a] cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.” *Id.* The Court agrees with Plaintiff's arguments that the warranty in the instant matter extends to the future performance of the goods. The cause of action accrued when the breach was or should have been discovered. *Id.* At a minimum the bearings were warranted for 5 years or 500,000 miles. In interpreting a

warranty for future performance, the Court in *Executone Business Systems Corp v IPC Communications, Inc*, 177 Mich App 660, 666-667; 442 NW2d 755 (1989) held that “[w]here, however, an express warranty is made which extends for a specific period of time, i.e. one year, the policy reasons behind strict application of the limitations period do not apply. *If a seller expressly warrants a product for a specified number of years, it is clear that, by this action alone, he is explicitly warranting the future performance of the product or goods for that period of time.* As White & Summers, Uniform Commercial Code, p 342 points out, if an automobile is warranted to last for twenty-four thousand miles or four years, the warranty should extend to future performance. If the car fails within the warranty period, the limitations period should begin to run from the day the defect is or should have been discovered. . . . [U]nder § 2-725(2) the cause of action accrued when [Plaintiff] discovered or should have discovered that the machine was defective, so long as the defect arose within the warranty period.” *Id.* (emphasis in the original).

Defendants cite to *Moll v Abbott Laboratories*, 444 Mich 1; 506 NW2d 816 (1993) for the proposition that the statute of limitations begins to run once a claimant is aware of the possible cause of injury. In response to this argument, Plaintiffs present documentary evidence that prior to June 24, 2010 and through at least August 25, 2010, the parties were not aware of and were investigating the cause of the premature failure of the bearings. Resolution of the question of when Plaintiffs discovered or should have discovered their breach of warranty claims is so substantially intertwined with fact-finding determinations that summary disposition is wholly inappropriate.

Defendants next argue that Plaintiffs' claims that Defendants breached the contract by refusing to indemnify Plaintiffs and pay recall costs are time-barred. Defendants argue that Meritor's claims for indemnification are actually claims for a breach of contract of the sale of goods and subject to the UCC's four year statute of limitations. Plaintiffs allege that their claims for contractual indemnification are governed by the six year statute of limitations set forth in MCL 600.5807(8), but that their claims are timely even under the four year statute of limitations set forth in MCL 440.2725.

In the absence of binding authority, this Court may look to federal court decisions for guidance. *Abela v General Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004). "Michigan follows the general rule providing that a cause of action for indemnification accrues at the time judgment is paid or settlement." *Ameron, Inc v Chemische Werke Huls AG*, 760 FSupp 1234, 1236 (ED Mich 1991) (citations omitted). Additionally, in *Ameron* the Court found that MCL 440.2725 does not apply to claims for indemnification. *Id* at 1238. "The appropriate limitations period for plaintiff's indemnity claims is the six-year period provided for in Mich. Comp. Laws section 600.5807(8). Under this provision, plaintiff's cause of action accrued when the settlement was paid[.]" *Id*. (citations omitted). Accordingly, the appropriate limitations period for Plaintiff's contractual indemnification claims is the six year period found in MCL 600.5807(8).

The parties' agreement, which Defendants affirmatively reserved the right to contest, provides that "[s]eller shall indemnify and hold Buyer harmless against all loss, liability, damage cost or expense incurred by Buyer or its customers if Buyer recalls from Buyer's customers or others and Products furnished hereunder as an end product employing any such Products as a part or component thereof or repairs, replaces or refunds the purchase price of such Products or

end product.” Plaintiffs argue and the Court agrees that it is undisputed that they commenced a recall of the Bearings on December 6 and 7, 2010 and that they incurred losses of \$6,580,885.78 as a result of the recall. Plaintiffs’ breach of contract claim for Defendants’ failure to indemnify Plaintiffs did not occur until Plaintiffs began to sustain damages and Defendants failed to indemnify Plaintiffs for those damages. Plaintiffs argue that the earliest that the breach could have occurred was January 11, 2011, when Defendants advised Plaintiffs they would not participate in the recall effort.

A motion for summary disposition under (C)(7) tests whether a claim is barred, among other grounds, by expiration of a limitation period. *Turner v Mercy Hosp & Health Services*, 210 Mich App 345, 349 (1995). Although a motion under (C)(7) is generally based on the pleadings, Plaintiff’s well-pleaded allegations are accepted as true and construed in Plaintiff’s favor unless the allegations are contradicted by documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). 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). There are many questions of fact regarding when Plaintiff could have discovered or should have discovered their claims. 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. Accordingly, Defendants’ cannot show that Plaintiff’s breach of representation, warranty, warranties that extend to future performance, or

indemnification claims are time-barred and summary disposition is not appropriate on the instant claims.

Defendants next claim that Plaintiff's unjust enrichment and promissory estoppel claims fail and argue that such claims cannot be sustained in the face of an express contract. However, Defendants do not acknowledge the existence of an express contract and, in fact, affirmatively state that they reserve the right to contest the existence of an express contract. Accordingly, MCR 2.111(A)(2) provides that "[i]nconsistent claims or defenses are not objectionable. A party may . . . (b) state as many separate claims or defenses as the party has, regardless of consistency and whether they are based on legal or equitable grounds or on both." *Id.* Admittedly, Defendants reserved the right to contest the terms and conditions incorporated into the agreement. Thus, presently the Court finds no basis to dismiss Plaintiff's claims for unjust enrichment and promissory estoppel.

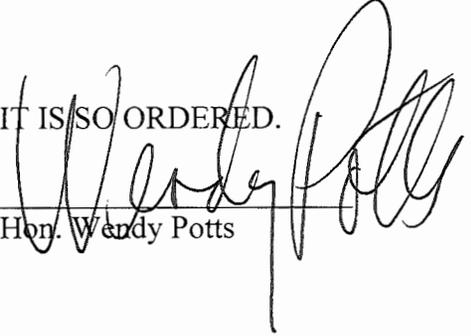
Defendants next argue that Plaintiffs cannot sustain a claim for lost business and lost profits and they submit the deposition testimony of Charles Allen and Robert Brazeau in support of their arguments. In response, Plaintiffs argue that their claims for loss profits are sufficiently supported, and they also attach the deposition testimony of Charles Allen and Robert Brazeau, which they claim supports their arguments. Both parties' arguments contain artful editing and out of context quotations that cannot possibly tell the whole story. A genuine issue of material fact exists when reasonable minds could differ on a material issue. *Allison*, 481 Mich. at 425. Resolution of Plaintiff's lost business and lost profits claims would require the court to make factual determinations. As the *White* Court stated, "courts may not resolve factual disputes or determine credibility in ruling on a summary disposition motion" *White, supra* at 625.

The issues presented are factual in nature and require factual development before there can be a disposition of Plaintiff's claims. Therefore, for all of the reasons stated, Defendants' motion for partial summary disposition is denied.

Dated:

MAY 12 2016

IT IS SO ORDERED.


Hon. Wendy Potts