STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

FCA US, LLC, a Delaware Limited Liability Company,

Plaintiff,

v

Case No. 15-148204-CB
Hon. Wendy Potts

CONTINENTAL AG, a German Corporation, et al.

Defendants.
_____/

OPINION AND ORDER RE: CONTINENTAL AUTOMOTIVE SYSTEMS, INC.'S MOTION FOR PARTIAL SUMMARY DISPOSITION

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

This matter is before the Court on the Defendants Continental Automotive Systems, Inc. And Continental Automotive Systems US, Inc.'s motion for partial summary disposition under MCR 2.116(C)(7), which tests whether a claim is barred as a matter of law, and MCR 2.116(C)(10), which tests the factual support for a claim. *Maiden v Rozwood*, 461 Mich 109, 119-120 (1999). CAS requests dismissal of Plaintiff's Count IV (Breach of WIN Module Contract) and Count V (Breaches of Warranty—Express and Implied—WIN Modules).

For purposes of background information, FCA and CAS were parties to a contract where CAS was to manufacture and supply electronic rotary key ignition systems to FCA. The electronic rotary key ignition was comprised of the WIN and the FOBIK. FCA's claims relate to alleged defects in the components manufactured by CAS.

CAS argues that FCA's contract and warranty claims are barred by the statute of limitations. In support of its argument, CAS claims that the limitation period for contract claims, including claims for breach of warranty, is determined by the Uniform Commercial Code. Under the UCC, "[a]n action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it." MCL 440.2725(1).

CAS claims that since FCA warranted its products for a specified number of years, its contract and warranty claims accrued at the time FCA discovered or should have discovered the alleged breach. In support of their argument CAS cites 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.*

CAS alleges that FCA seeks damages arising out of three safety recalls that arise out of the same automotive components and the same allegedly defective condition that was first reported to NHTSA in February 2011. Thus, CAS alleges that the statute of limitations for Plaintiff's breach of contract and warranty claims expired no later than February 22, 2015.

In response to CAS's arguments, FCA first argues that its breach of contract and warranty claims are not barred by the UCC's statute of limitations. In support of its argument, FCA cites to MCL 440.2725(2) and claims that the WIN Module Contract contains a 10 year/150,000 mile warranty of future performance. In support of its Response, Plaintiff attaches the Production Purchasing Terms and Conditions and the Corporate Wireless Ignition Node

Performance Standard, which states that the operational life requirement of the WIN is 10 years/150,000 miles.

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).

CAS presents evidence in support of its argument that Plaintiff's claims are barred by the statute of limitations, however, FCA argues and presents evidence to support its argument that the original L25 recall was expanded on June 25, 2014 to include additional model years of vehicles and an additional defect allegedly related to the WIN/FOBIK that would cause the engine and passive restraint system, including the airbags, to shut off.

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.*

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).

There are many questions of fact regarding when Plaintiff could have discovered or should have discovered its 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. Because the instant motion is brought before the close of discovery, it is not possible to determine that there is no genuine factual dispute regarding when Plaintiffs discovered their claims. Therefore, summary disposition as to Plaintiff's Count IV for Breach of the WIN Module Contract and Count V for Breaches of

Express and Implied Warranty is denied without prejudice CAS may revisit the issue after the close of discovery.

IT IS SO ORDERED.

Dated: MAY 1 9 2016

Hon. Wendy Potts