

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

DART PROPERTIES, INC.,

Plaintiff,

vs.

Case No. 2013-2284-CK

NATIONAL COMFORT PRODUCTS, INC.,
FAMILY HEATING & COOLING, INC., and
FIRE & INC MECHANICAL, INC.,

Defendants.

and

NATIONAL COMFORT PRODUCTS, INC.,

Third Party Plaintiff,

vs.

THOMAS AND BETTS CORPORATION, and
REZNOR CORPORATION,

Third Party Defendants.

OPINION AND ORDER

Plaintiff Dart Properties, Inc. (“Plaintiff”) has filed a motion for leave to amend its complaint. Defendants Family Heating & Cooling, Inc. (“Defendant Family”) and Fire & Ice, Inc. (“Defendant Fire”) (collectively, “Defendants”) have each filed a response and request that the motion be denied.

In addition, Defendant Fire has filed a motion for summary disposition with respect to Plaintiff’s improper installation claims.

Facts and Procedural History

On June 10, 2013, Plaintiff filed its original complaint in this matter, alleging that Defendant National Comfort Products, Inc. (“NCP”) had breached its warranties for the heat exchangers it installed in its furnaces, which were sold to Plaintiff. In addition, Plaintiff’s complaint also contained claims against Defendant Fire and Defendant Family alleging that they improperly installed the furnaces at issue, which contributed to the fact that many of the furnaces purchased failed inspections.

On November 21, 2013, Defendant Fire filed its motion for summary disposition with respect to Plaintiff’s installation claims. On January 29, 2014, Plaintiff filed its motion for leave to amend its complaint to include breach of warranty claims against Defendants. However, in its proposed amended complaint Plaintiff has abandoned its installation claims against Defendants. Consequently, if the Court grants Plaintiff leave to amend, Defendant Fire’s motion for summary disposition of the installation claims becomes moot. As a result, the Court will first address Plaintiff’s motion to amend.

Standard of Review

MCR 2.118(A)(2) provides that leave to amend a pleading shall be freely given when justice so requires. A motion to amend ordinarily should be granted, unless one of the following particularized reasons exists: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility of amendment. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 239-240; 615 NW2d 241 (2000). Delay alone does not justify denying a motion to amend, but a court may deny a motion to amend if the delay was in bad faith or if the opposing party suffered actual prejudice as a result. *Franchino v Franchino*, 263 Mich App 172, 191; 687 NW2d 620 (2004).

Arguments and Analysis

In their response to Plaintiffs' motion, Defendants contend that the motion should be denied as the amendment would be futile and would be filed in bad faith. While a trial court should freely grant leave to amend when justice so requires, leave should be denied where amending the complaint would be futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

Plaintiff's proposed breach of warranty claim is based on its allegation that Defendants made express written warranties which have been breached as a result of their failure to honor them. In their responses, Defendants contend that the documents at issue do not provide an express warranty. However, such assertions require the Court to improperly look beyond the face of the pleadings in order to deny the proposed amendment. See *McNees, supra*. While Defendants may very well establish via a motion for summary disposition, or otherwise, that Plaintiff's breach of warranty claims are fruitless in light of the substantive facts present in this matter, the Court is satisfied that the amendment is not futile for the purpose of Plaintiff's instant motion given that Plaintiff's breach of warranty claims do not fail on their face. Moreover, Defendants assertion that the amendment is sought in bad faith is unavailing. While it may be true that Plaintiff could have brought breach of warranty claims against Defendants at the time it filed its original complaint, it was under no obligation to do so. Additionally, although a substantial amount of time has elapsed between the time of filing the original complaint and the time the instant motion to amend was filed, the Court is convinced that such a delay alone does

not warrant denying the motion on bad faith grounds. For these reasons, the Court is satisfied that Plaintiff's motion for leave to amend should be granted.

In addition, because Plaintiff's amended complaint abandons the claims at issue in Defendant Fire's motion for summary disposition of the installation claims, that motion is now moot and must be denied.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion for leave to file an amended complaint is GRANTED. Further, Defendant Fire & Ice, Inc.'s motion for summary disposition of Plaintiff's installation claims is DENIED AS MOOT. This Opinion and Order does not resolve the last claim and does not close the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: February 7, 2014

JCF/sr

Cc: *via e-mail only*
Norman C. Witte, Attorney at Law, ncwitte@wittelaw.com
Michael F. Condit, Attorney at Law, mfcondit@aol.com
Ronald L. Cornell, Jr., Attorney at Law, rcornell@seyburn.com
Thomas G. Cardelli, Attorney at Law, tcardelli@cardellilaw.com
John W. Whitman, Attorney at Law, jwhitman@garanlucow.com
Mark F. Miller, Attorney at Law, mmiller@dmm-law.com