STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

LARSEN TRUCKING, INC., a Michigan corporation,

Plaintiff/Counter-Defendant,

vs.

L & V TRAILER SALES, INC., a Michigan corporation,

Defendant/Counter-Plaintiff,

and

WABASH NATIONAL CORPORATION, a Delaware corporation,

Defendant.
_____/

Case No. 13-05748-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER ADDRESSING VARIOUS MOTIONS FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AND (10)

In the trucking industry, 13'6" is a magic number. Trailers of that height can readily be used all across the country, whereas trailers taller than that require special approval to travel the highways in many states. In the summer of 2012, Plaintiff Larsen Trucking, Inc. ("Larsen Trucking") ordered 40 "drop deck" trailers from Defendant L & V Trailer Sales, Inc. ("L&V"). Those 40 trailers were manufactured by Defendant Wabash National Corporation ("Wabash") and then delivered to Larsen Trucking, which complained that the trailers were 13'6.356" tall, and therefore too tall to be freely used in a significant number of states. Not surprisingly, this litigation ensued over the height of the 40 trailers. At this early stage of the case, all of the parties have moved for summary disposition in some fashion, but the Court cannot yet finally resolve the parties' dispute.

I. Factual Background

Although the parties have referred to MCR 2.116(C)(8) and (10) in their competing motions for summary disposition, they have all relied upon materials outside the pleadings, so the Court shall address the parties' motions under the standards prescribed by MCR 2.116(C)(10), see Silberstein v Pro-Golf of America, Inc, 278 Mich App 446, 457 (2008), which enables parties to test "the factual sufficiency" of the pleadings. See Maiden v Rozwood, 461 Mich 109, 120 (1999). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion." Id. (citation omitted). Thus, the Court shall present the factual background of this dispute by referring to materials supplied by the parties to support their motions.

In 2012, Plaintiff Larsen Trucking engaged in discussions with Defendant L&V, a wholesale distributor and authorized dealer of semi-truck trailers for Defendant Wabash, about the delivery of 40 custom-built trailers. During the negotiations, L&V prepared a proposed specification sheet and presented that document to Pete Larsen, the owner of Larsen Trucking. That specification sheet on Wabash letterhead, which Pete Larsen signed as "Spec Approved" on August 13, 2012, referred to an "Overall Height" of 13'6" and an "Overall Height at Rear (Empty)" of 162.356, which equates to 13'6.356." See, e.g., Defendant L&V Trailer Sales' Brief in Support of its Motion for Summary Disposition on all of Plaintiff's Claims, Exhibit A (page 2 under "General Data"). Then, in October 2012, L&V placed an order with Wabash for 40 trailers on behalf of Larsen Trucking. See Plaintiff's Brief in Response to Defendant L&V Trailer Sales, Inc.'s Motion for Summary Disposition on All Counts of Plaintiff's Complaint, Exhibit 1.

The specifications in the order transmitted by Defendant L&V to Defendant Wabash were identical to the terms of the specification sheet signed by Pete Larsen insofar as the order required an "Overall Height" of 13'6" and an "Overall Height at Rear (Empty)" of 162.356, which exceeds 13'6" by less than an inch. See Plaintiff's Brief in Response to Defendant L&V Trailer Sales, Inc.'s Motion for Summary Disposition on All Counts of the Plaintiff's Complaint, Exhibit 1 (page 4 of sales order confirmation under "General Data"). Although the parties have provided the Court with a wealth of information aimed at explaining how a request for an overall height of 13'6" yielded a fleet of trailers slightly in excess of that height, all sides seem to agree that the trailers supplied by Wabash to Plaintiff Larsen Trucking have been deemed by governmental authorities to exceed 13'6" and, thus, rendered out of compliance in states that limit trailer height to 13'6".[1] On June 20, 2013, Plaintiff Larsen Trucking commenced this action by filing a complaint against Defendants L&V and Wabash, setting forth claims for repudiation, rescission of contract, breach of contract, and defects in manufacturing. On July 29, 2013, L&V filed two counterclaims for breach of contract and unjust enrichment, and eventually all of the parties made requests for summary disposition.

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[1] An e-mail sent by Josh Wolf, the operations manager for Defendant L&C, to Eric Johnson at Defendant Wabash on April 15, 2013, and again on April 26, 2013, forthrightly and succinctly sets forth the problem:

> The drop decks will not ride at 13'6" with the 235/75-17.5 tires that were specified on the order. As you know, the trailers were built incorrectly with a 215/75-17.5. Wabash changed the tires to the 235, which put the trailer over 13'6". I've had conversations with SAF Holland, and the suspension cannot operate properly at this lower ride height. When we lowered the level valve to get the overall height to 13'6", there was not enough tire clearance, or suspension travel. The customer cannot operate over height, and we need to go back to the 215. This causes other issues with our customer, but it seems to be the only option.

See Plaintiff's Brief in Response to Defendant L&V Trailer Sales, Inc.'s Motion for Summary Disposition on All Counts of the Plaintiff's Complaint, Exhibit 18.

II. Legal Analysis

All three parties have requested summary disposition under MCR 2.116(C)(10). The Court may grant such relief "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v General Motors Corp, 469 Mich 177, 183 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue on which reasonable minds might differ." Id. Based upon these standards, the Court must determine whether any party is entitled to summary disposition at this stage of the litigation.

The central dispute turns upon contract interpretation. Specifically, the Court must consider the meaning of the agreement struck by the parties concerning the fleet of trailers built by Defendant Wabash at the behest of L&V and ultimately delivered to Plaintiff Larsen Trucking. Both L&V and Larsen Trucking regard the terms of the contract, and more particularly the specifications signed by Pete Larsen, as unambiguous, but they urge the Court to draw diametrically opposite conclusions as to the meaning of the specifications. Larsen Trucking relies upon the reference to "Overall Height" of 13'6" as conclusive proof that the slightly-too-tall trailers constitute a breach of contract, whereas L&V cites the reference to "Overall Height at Rear (Empty)" of 162.356 as definitive evidence that the trailers were built in compliance with the parties' contractual agreement. As our Supreme Court has held, "if two provisions of the same contract irreconcilably conflict with each other, the language of the contract is ambiguous." Klapp v United Ins Group Agency, Inc, 468 Mich 459, 467 (2003). The Court believes that the small yet significant disparity between the "Overall Height" requirement of 13'6" and the "Overall Height at Rear (Empty)" specification of 162.356 inches gives rise to an irreconcilable conflict in the terms of the contract that the Court must treat as an ambiguity. "[T]he

interpretation of a contract whose language is ambiguous" must be left to the jury to decide based upon "relevant extrinsic evidence[,]" Klapp, 468 Mich at 469, so the Court necessarily must deny the competing motions for summary disposition submitted by Larsen Trucking and L&V based on the ambiguous nature of their contractual agreement.

The motion for summary disposition filed by Defendant Wabash requires more sophisticated consideration. Plaintiff Larsen Trucking's only claim against Wabash alleges manufacturing defects resulting in excessive height. See Complaint, ¶¶ 60-65. Wabash contends that that claim is barred by the economic-loss doctrine, which "provides that [w]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses." See Neibarger v Universal Cooperatives, Inc, 439 Mich 512, 520 (1992). Under Michigan's version of the economic-loss doctrine, which "is broader than other jurisdictions," Quest Diagnostics, Inc v MCI WorldCom, Inc, 254 Mich App 372, 378 n4 (2002), the Uniform Commercial Code "provides remedies sufficient to compensate the buyer of a defective product for direct, incidental, and consequential losses," MASB-SEG Property/Casualty Pool, Inc v Metalux, 231 Mich App 393, 401 (1998), so Wabash's production and delivery of the trailers to Larsen Trucking "must be evaluated under article 2 of the Uniform Commercial Code[.]" See, e.g., Bev Smith, Inc v Atwell, 301 Mich App 670, 682 (2013). Because Larsen Trucking has not asserted its claim against Wabash under the Uniform Commercial Code, the Court must grant summary disposition to Wabash under MCR 2.116(C)(8) and (10).

Anticipating problems with the economic-loss doctrine, Plaintiff Larsen Trucking has asked for leave to file an amended complaint modifying its claim against Defendant Wabash. As a general rule, if the Court grants summary disposition under MCR 2.116(C)(8) or (10), "the court shall give

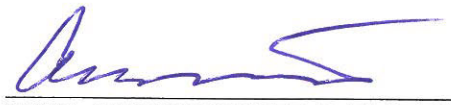
the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." See MCR 2.116(I)(5). Thus, leave to amend "should be freely granted" unless "it would be futile." Ormsby v Capital Welding, Inc, 471 Mich 45, 53 (2004). Here, although the Court has doubts about Larsen Trucking's ability to plead a viable claim against Wabash, the Court cannot say with confidence that such an effort by Larsen Trucking would be futile. Accordingly, the Court shall afford Larsen Trucking leave to file an amended complaint within three weeks of the issuance of this opinion.[2]

III. Conclusion

For the reasons set forth in this opinion, the Court cannot award summary disposition either to Plaintiff Larsen Trucking or to Defendant L&V on any of the claims or counterclaims. In contrast, the Court shall grant summary disposition to Defendant Wabash on Larsen Trucking's claim against Wabash set forth in the complaint, but the Court shall afford Larsen Trucking three weeks' leave to amend its claim against Wabash in conformity with the analysis in this opinion.

IT IS SO ORDERED.

Dated: August 27, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

[2] If Plaintiff Larsen Trucking does not file an amended complaint by that deadline, the Court shall regard the case as finally resolved with respect to Defendant Wabash by virtue of the summary-disposition award in this opinion.