

STATE OF MICHIGAN  
IN THE 20<sup>th</sup> CIRCUIT COURT FOR THE COUNTY OF OTTAWA  
SPECIALIZED BUSINESS DOCKET

414 Washington Street  
Grand Haven, Michigan 49417  
(616) 846-8320

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**MIDWEST GEAR & MACHINING, INC.,**  
a Foreign Corporation,

Plaintiff,

v

**CAMPBELL GRINDER DELAWARE CO.,**  
**d/b/a CAMPBELL GRINDER CO.,**

Defendant.

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**OPINION AND ORDER**  
**GRANTING SUMMARY**  
**DISPOSITION**

File No. 14-3792-CK

Hon. Jon A. Van Allsburg

Defendant Campbell Grinder Delaware Company, d/b/a Campbell Grinder Company (Campbell) brings a motion for summary disposition pursuant to MCR 2.116(C)(7) based on the statute of limitations. Campbell contends that the period of limitations that applies in the case at bar is the four-year statute for transactions in goods.<sup>1</sup> Plaintiff Midwest Gear and Machining, Inc. (Midwest) contends that the applicable period of limitations is the six-year statute governing general contract actions.<sup>2</sup> For the reasons stated below, the court finds that the contract between the parties is a contract for the sale of goods, subject to the four-year statute of limitations in the Uniform Commercial Code (UCC), and grants Defendant's motion for summary disposition.

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<sup>1</sup> MCL 440.2725.

<sup>2</sup> MCL 600.5807(8).



The facts that follow are presented in the light most favorable to Midwest. Campbell manufactures grinding machines. Midwest manufactures and sells component parts for the machines that Campbell manufactures. Campbell issued four purchase orders to Midwest numbered CG26974, CG27364, CG26914, and CG28966. The purchase orders set forth Campbell's manufacturing specifications for the parts.

The parties agree that the parts manufactured pursuant to purchase orders CG26974 and CG27364 conformed to Campbell's specifications, and Campbell paid for them in full. However, Campbell alleges that a portion of the parts manufactured pursuant to purchase order CG26914, and all of the parts manufactured pursuant to purchase order CG28966, did not meet Campbell's specifications. For this reason, Campbell rejected these parts and returned them to Midwest, but did pay for the conforming parts shipped pursuant to purchase order CG26914. Midwest neither admits nor denies Campbell's allegations regarding the allegedly non-conforming parts.

Midwest accepted Campbell's rejection of the parts manufactured pursuant to purchase order GC26914. However, Midwest refused to accept Campbell's return of the parts manufactured pursuant to purchase order GC 28966, and Campbell refused to pay for any of the parts manufactured pursuant to that purchase order. It is the parts manufactured pursuant to this last purchase order that are the focus of the instant litigation. Midwest filed the instant action demanding that Campbell pay for those parts.

Midwest characterizes the action as an action on an open account. Midwest contends that the action is based on series of continuous transactions that transformed the parties' relationship

into that of an open account. Campbell disagrees. Campbell characterizes Midwest's action as an action in breach of contract for the manufacture of goods.

If Midwest's action is an action on an open account, the action is subject to the six-year statute of limitations applicable to such actions and is not time-barred. However, if Midwest's action is an action in breach of a contract for the sale of goods, the action is barred by the four-year statute of limitations that is applicable to such actions under the Uniform Commercial Code.

In *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013), the Court of Appeals set forth in detail the law that applies when a party brings a motion for summary disposition pursuant to MCR 2.116(C)(7) based on the statute of limitations. "Summary disposition under MCR 2.116(C)(7) is appropriate when the undisputed facts establish that the plaintiff's claim is barred under the applicable statute of limitations." "Generally, the burden is on the defendant who relies on a statute of limitations defense to prove facts that bring the case within the statute." *Id.*

In ruling on a (C)(7) motion based on the statute of limitations, the trial court must accept the allegations set forth in the plaintiff's complaint as true – unless these allegations are contradicted by documentary evidence submitted by the defendant. *Kincaid, supra*, at 522, citing *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The court "... must view the pleadings and supporting evidence in the light most favorable to the nonmoving party ...." *Id.* Though the moving party is not required to submit documentary evidence, the moving party may do so. MCR 2.116(G)(3); *Id.* If the moving party *does* submit documentary evidence, the court must consider such evidence. *Id.*

The *Kincaid* panel stated: “If there is no factual dispute, whether a plaintiff’s claim is barred under the applicable statute of limitations is a matter of law for the court to determine.” *Kincaid, supra*, at 523 (citation omitted). However, if the parties present evidence that establishes a question of fact, summary disposition is not appropriate. *Id.* In those cases in which the evidence establishes that there is a question of fact, the factual dispute must be submitted to the fact finder. *Id.*

A “mutual and open account current” is an account between two parties “... that is both mutual and open, resulting from a course of dealing where each party furnishes credit to the other on the reliance that upon settlement the accounts will be allowed, so that one will reduce the balance on the other.” *Fisher Sand and Gravel Co v Neal A Sweebe, Inc*, 494 Mich 543, 555-556; 837 NW2d 244 (2013). An open account “... consists of a series of transactions and is continuous or current, not closed or stated.” *Id.* at 554. An action on an open account is not based on the parties’ relationship as buyer and seller. Instead, it is based on their relationship as creditor and debtor: the action is “... an independent claim that arises out of the course of dealing between a creditor and a debtor ....” *Id.* at 569. Therefore, the action is separate and distinct from the underlying transaction or transactions between the parties that give rise to the antecedent debt. *Id.* at 573.

The mere payment of money on an account is not sufficient to render an account mutual, *Id.* at 556, because an action on an open account is distinct and independent from the underlying transaction that gives rise to the antecedent debt. *Id.* at 548. Similarly, the mere performance or nonperformance of a contractual obligation will not support an action on an open account. *Id.* at 556.

An action on an open account may be premised on an express contract between the parties or on an implied contract<sup>3</sup> based on a course of dealing between the parties. *Id.* at 570. But whether the action is based on an express contract or an implied contract, the action is subject to the six-year statute of limitations governing general contract actions set forth at MCL 600.5807(8). *Id.* at 548, 570-571, & 573-574. When the underlying account arises from the sale of goods, the four-year statute of limitations set forth in section 2725 of the Uniform Commercial Code and adopted in Michigan at MCL 440.2725 has no application, since this period of limitations only applies to actions for the breach of a contract for the sale of goods. *Id.* at 568 & 569-570.

An action on an open account "... generally accrues on the date of each item proved in the account." *Id.* at 571. But as to each of the items, the claims "... are severally barred when as to them the statute has run." *Id.* citing 1 Am Jur 2d, Accounts and Accounting, section 22, p 644. Partial payment by the debtor may toll or even remove the statute of limitations. *Id.*

The Uniform Commercial Code, as adopted in Michigan, governs transactions in goods.<sup>4</sup> In the case at bar, there is no dispute that the component parts that are the subject of purchase order GC28966 are goods. An action for breach of a contract for the sale of goods must be commenced within four years after the cause of action accrues.<sup>5</sup>

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<sup>3</sup> "But when the credit relationship is not defined as an integral part of the transaction for goods or services, and instead arises from a course of dealing between the parties, an open account claim may arise by implied contract." *Fisher, supra*, p 568.

<sup>4</sup> See MCL 440.2102.

<sup>5</sup> See MCL 440.2725(1).

Midwest does not contend that there is an express contract between the parties that forms the basis for Midwest's action on an open account. Instead, Midwest contends that there was a course of dealing between the parties which resulted in the formation of a mutual and open account between them based upon the four purchase orders described above. Therefore, Midwest asserts its right to pursue a claim in an action on an open account based on Campbell's breach of the parties' implied contract arising from the parties' course of dealing.

Campbell contends that the relationship between the parties was that of seller and buyer rather than that of creditor and debtor. Campbell asserts that the four purchase orders form four separate and distinct contracts for the manufacture and sale of goods. In support of this contention, Campbell has submitted documentary evidence in the form of the four purchase orders. The court finds that these purchase orders contain terms of sale and purchase rather than terms of credit.

Campbell has further supported its motion with the affidavit of Mr. John Heffelfinger. Heffelfinger is Campbell's Chief Financial Officer. In his affidavit, Heffelfinger states that Campbell did not maintain an open account relationship with Midwest and that the parties' relationship was confined to the four purchase orders previously identified. Heffelfinger further states that Campbell did not apply to Midwest for credit and made no periodic payments to Midwest against an account balance.<sup>6</sup>

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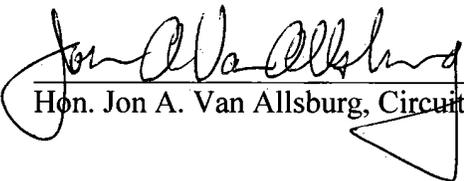
<sup>6</sup> The record also reflects that Campbell paid the first three purchase orders in full in a lump sum payment on April 11, 2008. At the time the last purchase order was issued on May 9, 2008, there were no prior purchase orders unpaid or outstanding, and therefore no "series of transactions" that was "continuous or current, not closed or stated." *Fisher, supra*, at 554.

Midwest, on the other hand, has failed to submit any affidavits or other documentary evidence<sup>7</sup> that indicate that the relationship between the parties was that of creditor and debtor as would indicate the existence of an open and mutual account. Therefore, the documentary evidence submitted by Campbell stands unchallenged, and there is no genuine factual dispute that the parties' relationship was that of seller and buyer rather than creditor and debtor. For this reason, pursuant to *Kincaid, supra*, there is no genuine factual dispute that Midwest's action is an action in breach of contract for the sale of goods rather than an action on an open account. As such, Midwest's action is barred by the four-year statute of limitations applicable to actions for breach of contract for the sale of goods.

Campbell's motion for summary disposition is GRANTED. Midwest's request for costs and attorney fees is DENIED.

*IT IS SO ORDERED.*

Dated: December 3, 2014

  
Hon. Jon A. Van Allsburg, Circuit Judge

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<sup>7</sup> Such as an account ledger against which credits and debits are posted, an application for credit from Campbell, or other similar documents that would factually substantiate the existence of a creditor-debtor relationship between the parties, and the terms and conditions of said relationship – such as the interest rate, the frequency and amount of the periodic payment, and the creditor's remedies in case of default.