UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FORD MOTOR CO. SPEED CONTROL DEACTIVATION SWITCH PRODUCTS LIABILITY LITIGATION	/	MDL DOCKET NO. 1718
	/	HON. BERNARD A. FRIEDMAN
	/	*Standard Fire Ins. Co., et al. v. Ford Motor Co.*
	/	Case No. 10-11164

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction

This matter is before the Court on Defendant Ford Motor Company's motion for summary judgment pursuant to Fed. R. Civ. P. 56. Defendant argues that there is no genuine issue of material fact that Plaintiffs Standard Fire Ins. Co. and Travelers Pers. Sec. Ins. Co.'s product liability claims are barred by Tennessee's ten year statute of repose for product claims. Plaintiffs filed a response and Defendant filed a reply. Pursuant to E.D.Mich. L.R. 7.1(f)(2), the Court will decide this motion without oral argument.

This product liability lawsuit was filed by two insurance companies on behalf of their insured (the "Insured"), a Tennessee resident, relating to a March 2007 fire that occurred in Tennessee. Plaintiffs allege that the fire was caused by a 1997 Lincoln Town Car that was registered and insured in Tennessee. Plaintiffs allege that the fire caused damage to their Insured's property, and that they are subrogated to the rights of the Insured. The Town Car was manufactured, in part, and its final assembly was completed at Ford's Wixom Plant in Wixom, Michigan. It was sold to the original purchaser, in Michigan, on December 19, 2006. The Insured acquired the vehicle in 2004 and was the registered owner of the Town Car on the date of the incident.

Defendant asserts that Plaintiffs filed suit in Michigan in order to avoid Tennessee's ten year statute of repose. The issue before the Court is whether Michigan or Tennessee law applies to Plaintiffs' claims.

II. Standard of Review

Defendant's motion is brought pursuant to Federal Rule of Civil Procedure 56. Summary judgment is proper where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. In considering a motion for summary judgment, the Court will construe all facts in a light most favorable to the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). There are no genuine issues of material fact when "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." Id. If the movant carries its burden of showing an absence of evidence to support a claim, then the nonmovant must demonstrate by affidavits, depositions, answers to interrogatories, and admissions that a genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 324-325 (1986).

III. Analysis

The Complaint contains five counts, all of which are related to the Town Car. The Tennessee statute of repose states that product liability claims "must be brought within ten (10) years from the date on which the product was first purchased for use or consumption." Tenn. Code § 29-28-103. The statute of repose applies to "all actions seeking to recover for personal injuries, death, or property damage caused by defective or unreasonably dangerous products" and "[a]ny action 'under any substantive legal theory in tort or contract.'" Damron v. Media Gen., Inc., 3 S.W.3d 510, 512 (Tenn. Ct. App. 1999). Should Tennessee law apply, the statute of

repose would apply to Plaintiffs' claims, which were brought more than ten years after the Town Car was first purchased.

In diversity actions, federal courts must apply the choice of law rules of the state in which the court sits. Klaxon v. Stentor Electric Manufacturing Co., 313 U.S. 487, 496 (1941). Accordingly, this Court must apply Michigan's choice of law rules.

In tort actions, the Michigan Supreme Court has adopted "no specific methodology" in which to resolve conflicts of law, and "each case must be evaluated on the circumstances presented." In re Disaster, 86 F.3d 498, 540 (1996) (citing Olmstead v. Anderson, 400 N.W.2d 292 (1987)). However, Michigan decisions have "clearly established that a court must have a rational reason to justify displacing the law of the forum [i.e., Michigan], lex fori, in favor of a foreign law [in this instance, Tennessee]." Id. (citing Olmstead, 428 Mich. 1 (1987); Farrell v. Ford Motor Co., 199 Mich.App. 81 (1993); Mahne v. Ford Motor Co., 900 F.2d 83, 86–87 (6th Cir. 1990)). A majority of the courts applying Michigan's choice of law rules have utilized a "balancing-of-interests" approach to resolve conflicts problems. Id.; *See, e.g.*, Isley v. Capuchin Province, et al., 878 F.Supp. 1021,1023–1024 (E.D.Mich. 1995).

The parties do not agree about whether *Farrell v. Ford Motor Co.*, 199 Mich.App. 81, (1993) or *Mahne v. Ford Motor Co.*, 900 F.2d 83, 86–87 (6th Cir. 1990), governs the disposition of this motion. This Court is required to apply the law of the state of Michigan in accordance with the decision of the state's highest court. Monette v. AM–7–7 Baking, Co., Ltd., 929 F.2d 276 (6th Cir.1991). If, as with the question at hand, the state's highest court has not ruled on the issue, the Court must "ascertain from all available data, including the decisional law of the states's lower courts, restatements of law, law review commentaries, and decisions from other

jurisdictions on the 'majority' rule, what the state's highest court would decide if faced with the issue." Id. However, the opinion of a state intermediate appellate court should not be disregarded unless "the federal court is convinced by other persuasive data that the highest state court would decide otherwise." Id.

Farrell and *Mahne* are factually similar. As this Court has previously summarized,

> Both cases dealt with (1) contested products liability issues which involved out-of-state plaintiffs and a Michigan-based corporate defendant, and (2) pertained to accidents that had occurred in the state where the plaintiff resided. Despite the factual similarity, the Sixth Circuit Court of Appeals (Sixth Circuit) and the Michigan Court of Appeals reached different conclusions. The Sixth Circuit concluded that the foreign state (Florida) had no interest in having its law applied to a Michigan manufacturer, even though the Plaintiff was a Florida resident. In *Farrell*, the Michigan Court of Appeals criticized the decision in *Mahne* and determined that the foreign state (North Carolina) had a substantial interest in having its law applied. Despite having reached different results on similar facts, the courts in *Farrell* and *Mahne* adhered to the ruling by the Michigan Supreme Court in *Olmstead* (namely, that a rational reason must exist before a foreign law can be deemed to supersede Michigan law). *Mahne*, 900 F.2d 83 at 85–86; *Farrell*, 501 N.W.2d 567 at 569–571; *See Isley v. Capuchin Province, et al.*, 878 F.Supp. at 1023.

Hilburn v. General Motors Corp., 958 F.Supp. 318, 320-321 (E.D.Mich. 1997).

In this matter, the Court finds *Farrell* to be controlling. It serves as direction from the highest Court in Michigan to consider the matters of (1) contested products liability issues which involved out-of-state plaintiffs and a Michigan-based corporate defendant, and (2) accidents that had occurred in the state where the plaintiff resided. Further, it refers to *Mahne* as an "errant decision of the Sixth Circuit," leading this Court to conclude that it in determining this choice of law question, it should follow the ruling of the Michigan Court of Appeals rather than the Sixth Circuit. Farrell, 501 N.W.2d at 571.

The Court finds that Michigan's interest is minimal, and Tennessee has a significant

interest in having its law applied. As noted above, the Insured was a Tennessee resident, the incident occurred in Tennessee and the Town Car was registered and insured in Tennessee. As to Tennessee's interest in this litigation, Defendant points out, without dispute, that

> Ford has been authorized to do business in Tennessee since March 13, 1920. See Hoffman Decl. at ¶ 5. From 2007-2010, 122,737 Ford, Lincoln, and Mercury vehicles were sold in Tennessee. Id. at ¶ 6. In 2010, 73 authorized Ford, Lincoln, and Mercury dealers conducted business in Tennessee. Id. at ¶ 7. In 2010, Ford paid $32,025,149.00 in warranty claims relating to Tennessee vehicles, id. at ¶ 8, and an additional $10,723,020.00 for national advertising in Tennessee. Id. at ¶ 9. Ford itself directly employed about 126 people in Tennessee in 2010. Id. at ¶ 10. Ford Motor Credit Corporation, a wholly owned Ford subsidiary, employed 679 people in Tennessee in 2010. Id. at ¶ 11.

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Accordingly, after thorough review, the Court is satisfied that Tennessee has an obvious and substantial interest in shielding Defendant from open-ended products liability claims. In addition to the facts regarding the incident, the Court finds it compelling that Defendant generates substantial commerce within Tennessee, and directly employs numerous Tennessee residents.

While Tennessee has a substantial interest in applying its law, Michigan has little or no interest in this Tennessee incident involving a Tennessee resident. Further, "Michigan has no interest in affording greater rights of tort recovery to a [Tennessee] resident than those afforded by [Tennessee]. Michigan is merely the forum state and situs of defendants's headquarters. Such minimal interests are insufficient to justify the result-oriented forum shopping that has been attempted." Farrrell, 501 N.W.2d at 572-573 (internal citations omitted).

The Court will therefore apply Tennessee law to Plaintiffs' claims. Tennessee's statute of repose, which states that product liability claims "must be brought within ten (10) years from

the date on which the product was first purchased for use or consumption" bars Plaintiffs' claims, and summary judgment is therefore appropriate. Tenn. Code § 29-28-103.

IV. Order

Accordingly,

IT IS ORDERED that Defendant's motion for summary judgment is GRANTED.

Dated: April 9, 2012
Detroit, Michigan

S/Bernard A. Friedman_____
BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE