

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

WHITE ACRES, LLC; H & H TURKEY
FARMS; CROCKERY CREEK TURKEY
FARMS, LLC; HIGH LEAN PORK, INC.;
GREAT LAKES PORK, INC.; HURON
PORK, LLC; SIETSEMA FARMS FEEDS,
LLC; FARM BUREAU MUTUAL INSURANCE
COMPANY OF MICHIGAN; FRANKENMUTH
INSURANCE COMPANY; and NATIONWIDE
AGRIBUSINESS INSURANCE COMPANY,

Plaintiffs,

vs.

SHUR-GREEN FARMS, LLC; ZOETIS OF
DELAWARE, INC.; SUPERIOR FEED
INGREDIENTS, LLC; RESTAURANT
RECYCLING, LLC; and HERITAGE
INTERACTIVE SERVICES, LLC,

Defendants.

Case No. 15-07614-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING MOTION TO STRIKE
AFFIRMATIVE DEFENSES PURSUANT TO MCR 2.115(B)

In 1896, Colonel Lonsdale Hale described “the fog of war” as a “state of ignorance in which commanders frequently find themselves” when engaged in a pitched battle. Here, in the midst of a fierce contest over the validity and reach of a liquidated-damages provision, the Michigan Turkey Producers, LLC (“MTP”) and Starr Surplus Lines Insurance Company (“Starr Surplus”) responded to a volley of requests for summary disposition with a motion to strike various affirmative defenses under MCR 2.115(B). But because their reliance upon MCR 2.115(B) makes no sense whatsoever in this context, the Court must deny their motion to strike.

The request for relief accompanying the motion to strike asks the Court to take the following steps: “(A) Find that, as a matter of law, a liquidated damages provision is not a defense to a breach of implied warranty claim; (B) Find that, as a matter of law, a liquidated damages provision does not serve as a legal waiver of implied warranty claims without express disclaimer of those warranties; and (C) Strike Certain Defendants[’] Liquidated Damages Defense to Plaintiffs’ Breach of Implied Warranty Claims.” According to MTP and Starr Surplus, all of that relief is appropriate under MCR 2.115(B), which states:

On motion by a party or on the court’s own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules.

That provision does not authorize the Court to use a “motion to strike to test the legal sufficiency of the pleadings[.]” See Belle Isle Grill Corp v City of Detroit, 256 Mich App 463, 469 (2003); see also Reid v Lincoln Charter Township, No 287002, slip op at 8 (Mich App March 2, 2010) (unpublished opinion explaining that “[n]othing in the language of MCR 2.115(B) suggests that the court rule may be used as a means to test the legal sufficiency of the pleadings’ allegations”). Accordingly, because nothing in the language of MCR 2.115(B) permits the Court to afford any of the relief requested by MTP and Starr Surplus, the Court must deny their motion to strike *in toto*, albeit without prejudice to a future motion for summary disposition pursuant to MCR 2.116(C).

IT IS SO ORDERED.

Dated: November 20, 2018



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