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

PUREFLEX, INC.,

Plaintiff,

vs.

MIDWAY MACHINERY MOVERS, LLC,

Defendant.
_____/

Case No. 13-03774-CKB

HON. CHRISTOPHER P. YATES

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

In July of 2012, Pureflex, Inc. ("Pureflex"), a corporation located in Kent County, purchased a commercial oven that was located in Battle Creek, Michigan. Pureflex then hired Midway Machinery Movers, LLC ("Midway") to transport the oven from Battle Creek to Kent County. Pureflex alleges that Midway damaged the oven during transit, and it brought a lawsuit against Midway on April 23, 2013, to recover damages for the cost to repair or replace the oven. The discovery period for this action has run, and Defendant Midway now requests summary disposition under MCR 2.116(C)(10).* "'A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.'" Corley v Detroit Bd of Ed, 470 Mich 274, 278 (2004). "In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." Id. The moving party is entitled to summary disposition only if "there is no genuine issue regarding any material fact[.]" West v General Motors Corp, 469 Mich 177, 183 (2003).

* Defendant Midway did not rely upon a specific subsection of MCR 2.116(C) as the basis for relief, but the Court's analysis requires consideration of documentation submitted by the parties. Thus, the Court shall assess this motion under the standards for summary disposition prescribed by MCR 2.116(C)(10).

Because the oven was damaged in part during transportation, Defendant Midway contends that the Michigan No-Fault Act, MCL 500.3101 *et seq*, precludes recovery. To be sure, "Michigan's no-fault act generally abolishes tort liability arising from the ownership, maintenance, or use of a motor vehicle[,]" Grange Ins Co v Lawrence, 494 Mich 475, 490 (2013), citing MCL 500.3105, but the "statutory language does *not* reflect an intent to abolish *contractual* liability for collision damages[.]" Universal Underwriters Ins Co v Kneeland, 464 Mich 491, 500 (2001). A plaintiff cannot circumvent the No-Fault Act, however, by simply pleading a breach of contract where no contract actually existed. Id. at 501. Here, Pureflex has pleaded this action as a claim for breach of contract, and Pureflex has presented documentary evidence supporting its assertion that a contract did, in fact, exist. See Pureflex, Inc.'s Brief in Opposition to Defendant's Motion for Summary Disposition, Exhibits B & D. Viewing this evidence in the light most favorable to the non-moving party, the Court concludes that Pureflex has, at the very least, raised a genuine issue of material fact as to whether a contract was formed that places liability upon Midway for the alleged damage to the oven. Accordingly, the Court concludes that the No-Fault Act does not preclude recovery in this case.

Midway also requests that the Court limit the amount of damages that Pureflex may recover on its claim for breach of contract. But the plaintiff is the master of the complaint and is entitled to request any form of damages that could flow from its claim. Therefore, Pureflex has the right to advocate for whatever form of damages it chooses, and Pureflex's request for damages will either stand or fall at trial. For these reasons, the Court must deny Midway's request for summary disposition in its entirety.

IT IS SO ORDERED.

Dated: January 30, 2014

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