

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JUANITA L. KAVANAGH :
and GERALD KAVANAGH, JR., :
 :
Plaintiffs, :
 :
v. : Civil Action No. 98-
 : 556-JJF
KEIPER RECARO SEATING, INC., :
a corporation of the State of :
Michigan, KEIPER ENTERPRISES, INC., a :
corporation of the State of Michigan, :
RECARO NORTH AMERICA, INC., a :
corporation of the State of Michigan, :
and RECARO ENTERPRISES, INC., :
 :
Defendants. :

Robert Jacobs, Esquire, of JACOBS & CRUMPLAR, P.A., Wilmington, Delaware.
Attorney for Plaintiffs JUANITA L. KAVANAGH and GERALD KAVANAGH, JR.

Armand J. Della Porta, Jr., Esquire, of KELLEY, JASONS, MCGUIRE & SPINELLI, Wilmington, DE.
Attorney for Defendant KEIPER RECARO SEATING, INC., KEIPER ENTERPRISES, INC. and RECARO NORTH AMERICA, INC.

MEMORANDUM OPINION

September 30, 2002
Wilmington, Delaware

FARNAN, District Judge

Presently pending before the Court is a Motion For Partial Summary Judgment filed by Defendants Keiper Recaro Seating, Inc., Keiper Enterprises, Inc., and Recaro North America, Inc. (collectively "Recaro"). (D.I. 149). For the reasons set forth below, Recaro's Motion (D.I. 149) will be granted.

I. BACKGROUND

This is a personal injury action brought by Plaintiff Juanita L. Kavanagh¹ (hereinafter "Plaintiff") as a result of injuries she allegedly sustained in the course of her employment as a bus driver for the Delaware Area Regional Transit (DART). (D.I. 1). On September 19, 1996, Plaintiff alleges that she was injured while operating a DART bus manufactured by Defendants Gillig Corporation (hereinafter "Gillig") and Herrick-Pacific Corporation (hereinafter "Herrick"). (D.I. 1). Specifically, Plaintiff alleges that her injury was caused by a defect in the driver's seat, which was manufactured by Recaro. (D.I. 149 at 6).

On August 21, 1998, Plaintiff initiated this lawsuit in the Superior Court of the State of Delaware in and for New Castle County, alleging, *inter alia*, breach of express and implied warranties of merchantability and fitness for its ordinary

¹Also named as Plaintiff is Juanita's husband, Gerald Kavanagh, Jr.

purpose in connection with Recaro's product. (D.I. 149 at 6). Shortly thereafter, the lawsuit was removed to this Court and, on April 3, 2001, judgment as a matter of law was entered in favor of Gillig and Herrick. (D.I. 149 at 6; D.I. 171).

On October 6, 2000, Recaro filed the instant Motion For Partial Summary Judgment seeking dismissal of Plaintiff's warranty claims based on the applicable statute of limitations. (D.I. 149 at 4). The Court subsequently denied Recaro's Motion (D.I. 149) with leave to renew pending disposition of a virtually identical action also involving Recaro, namely Strange v. Keiper Recaro Seating, Inc., C. A. No. 99-177-JJF, which was on appeal from an Order of the Court granting summary judgment to the Recaro Defendants. (D.I. 205). On February 5, 2002, the United States Court of Appeals for the Third Circuit affirmed the Court's decision, holding that Strange was time-barred from bringing suit against Recaro because the original contract properly reduced the applicable limitations period to one year. See Strange v. Keiper Recaro Seating, Inc., C. A. No. 00-3615 (3d Cir. 2001). Shortly thereafter, Recaro renewed their Motion For Partial Summary Judgment, contending that the Strange decision is controlling and therefore their Motion should be granted. (D.I. 212).

II. STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides

that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 120 S. Ct. 2097, 2110 (2000). Thus, to properly consider all of the evidence, the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses.'" Id.

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to show that there is more than:

some metaphysical doubt as to the material facts.... In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial"....Where the record taken as a whole could not

lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

III. DISCUSSION

Recaro contends they are entitled to summary judgment on the basis of the statute of limitations governing warranty claims. (D.I. 149 at 9). Although Recaro concedes that the general statute of limitations for warranty actions in Delaware is four years, Recaro contends that the parties in this case reduced the governing limitations period by way of written agreement. (D.I. 149 at 9). Specifically, Recaro contends that the agreement in the present action guarantees Recaro's bus seats "to be free from defects in material or workmanship for a period of one year after the date of original purchase." (D.I.160, Ex. C) (emphasis added). Recaro further contends that the agreement covers electrical components from breakage or excessive wear under normal conditions for three years. (D.I. 160, Ex. C.). Because the alleged defects stem from an alleged failure in the workmanship of the seat, and because the bus in question was delivered to DART more than one year before Plaintiff filed her

action, Recaro contends that Plaintiff is time-barred from bringing the present action. (D.I. 149 at 10).

In response, Plaintiff contends that the reduction in the governing warranty period is unconscionable, or otherwise contrary to the welfare of the general public (D.I. 159 at 10, 12). Plaintiff also contends that the choice of law as to the applicable warranty period is unclear, which raises an issue of fact for trial as to whether the Delaware statute of limitations is applicable. (D.I. 159 at 9). Plaintiff further contends that a genuine issue of material fact exists as to whether the alleged defect in Recaro's seat was covered by the three year express warranty on electrical components. (D.I. 159 at 13).

The relevant limitations period for a warranty claim in the State of Delaware is four years from the date the cause of action accrues. 6 Del.C. § 2-725(1) (1999). Upon agreement, however, the parties "may reduce the period of limitations to not less than one year, but may not extend it." Id.

After reviewing the parties' contentions in light of the Strange decision and the applicable law on this issue, the Court concludes that Plaintiff's Motion For Partial Summary Judgment (D.I. 149) should be granted. Under the same facts and with identical defendants, the United States Court of Appeals for the Third Circuit in Strange found that under Delaware law the parties' reduction in the governing limitations period was valid

and not unconscionable. No. 00-3615 at 6, 8. Because Plaintiff's contentions in opposition to the instant motion are nearly identical to those made by the plaintiff in Strange, the Court is obligated to adopt the Third Circuit's decision. Accordingly, for the reasons set forth by the Third Circuit in Strange, the Court concludes that the parties' reduction in the four year statutory warranty period in this action was proper.

The only remaining issue is Plaintiff's additional contention that an issue of fact exists as to whether the alleged defect was caused by a failure of the electrical components in Recaro's seat, triggering the three year express warranty on electrical components. After reviewing the parties' contentions and the evidence on this issue, the Court concludes that Plaintiff has failed to meet her burden of establishing that a genuine issue of material fact exists. While Plaintiff has brought to the Court's attention the existence of a three year warranty for defects in electrical components contained in Recaro's seats, Plaintiff has failed to provide any documentary or testimonial evidence that the alleged defect was electrical in nature. Because of this lack of substantiation, the Court finds that there is no genuine issue of fact as to whether the three year express warranty on electrical components applies, and concludes that the applicable warranty period is one year. Because Plaintiff filed this action more than one year after the

bus in question was delivered, and because Plaintiff's cause of action accrued when tender of delivery was made, the Court concludes that Plaintiff's claim is time-barred and will grant Recaro's Motion For Partial Summary Judgment. (D.I. 149); See 6 Del.C. § 2-725(2) (1999).

IV. CONCLUSION

For the reasons discussed, Recaro's Motion For Partial Summary Judgment (D.I. 149) will be granted.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

JUANITA L. KAVANAGH	:	
and GERALD KAVANAGH, JR.,	:	
	:	
Plaintiffs,	:	
	:	
V.	:	Civil Action No. 98-
	:	556-JJF
KEIPER RECARO SEATING, INC.,	:	
a corporation of the State of	:	
Michigan, KEIPER ENTERPRISES, INC., a	:	
corporation of the State of Michigan,	:	
RECARO NORTH AMERICA, INC., a	:	
corporation of the State of Michigan,	:	
and RECARO ENTERPRISES, INC.,	:	
	:	
Defendants.	:	

ORDER

At Wilmington this 30th of September, 2002, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendants, Keiper Recaro Seating, Inc., Recaro North America, Inc. and Keiper Enterprises, Inc. Motion for Partial Summary Judgment (D.I. 149) is GRANTED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE