

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, :
 :
Defendants. :

Robert Jacobs, Esquire of JACOBS & CRUMPLAR, P.A., Wilmington,
Delaware.
Attorney for Plaintiffs.

Armand J. Della Porta, Jr., Esquire of KELLEY JASONS McGUIRE &
SPINELLI, L.L.P., Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

July 24, 2003

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion For Reargument (D.I. 219) filed by Plaintiffs, Juanita L. Kavanagh and Gerald Kavanagh, requesting the Court to reconsider its previously entered Order (D.I. 218) granting partial summary judgment in favor of Defendants on Plaintiffs' claims for breach of warranty under Delaware law. For the reasons discussed, Plaintiffs' Motion For Reargument will be denied.

BACKGROUND

The pertinent factual background of this case has been set forth fully by the Court in its previously issued Memorandum Opinion. Kavanagh v. Keiper, Civ. Act. No. 98-556-JJF, mem. op. at 1-2 (D. Del. Sept. 30 , 2002) ("Kavanagh I") (D.I. 217). In Kavanagh I, the Court granted summary judgment in favor of Defendants on the grounds that Plaintiffs' warranty claims were barred by the applicable statute of limitations. In addition, the Court considered Plaintiffs' claim that the alleged defect was electrical in nature, and thus, covered by the three year express warranty in effect for electrical components. With regard to this claim, the Court concluded that Plaintiffs failed to establish a genuine issue of material fact as to whether the alleged defect was electrical in nature. Thereafter, Plaintiffs filed the instant Motion seeking reargument of that portion of the Court's decision pertaining to the warranty for electrical

components.

DISCUSSION

I. Legal Standard For Reargument

Although not explicitly provided for in the Federal Rules of Civil Procedure, Local Rule 7.1.5 provides for the filing of reargument motions.¹ See D. Del. L.R. 7.1.5. The decision to grant a motion for reargument lies within the discretion of the district court; however, such motions should only be granted sparingly. Dentsply Int'l, Inc. v. Kerr Mfg. Co., 42 F. Supp. 2d 385, 419 (D. Del. 1999).

A motion for reargument "should not be used to rehash arguments already briefed or to allow a 'never-ending polemic between the litigants and the Court.'" Id. (citing Ogelsby v. Penn Mutual Life Ins. Co., 877 F. Supp. 872, 892 (D. Del. 1995)). As such, a motion for reargument may only be granted in three narrow circumstances: (1) where the court has patently misunderstood a party, (2) where the court has made an error not of reasoning, but of apprehension, or (3) where the court has

¹ Local Rule 7.1.5 provides:

A motion for reargument shall be served and filed within 10 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 10 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted.

made a decision outside the scope of the issues presented to the court by the parties. Id. (citing Pirelli Cable Corp v. Ciena Corp., 988 F. Supp. 424, 445 (D. Del. 1998)). With this standard in mind, the Court will address Plaintiffs' Motion For Reargument.

II. Plaintiffs' Motion For Reargument

By their Motion, Plaintiffs contend that the Court erred in concluding that Plaintiffs did not produce evidence creating a genuine issue of material fact as to whether the three year electrical warranty applied to the alleged defect in this case. Specifically, Plaintiffs contend that the report of Plaintiffs' expert, Frank Johnson, establishes that "a defect was found in the switch for activating the air or pneumatic column, which supports the seat." (D.I. 219 at 2, citing D.I. 160 at 1-2). Because the switch is an electrical component, Plaintiffs maintain that the three year warranty with respect to electrical components is still in effect.

Plaintiffs presented this exact argument to the Court in its opposition to Defendants' motion for summary judgment. Plaintiffs also advanced the same expert report, and the Court considered that report in reaching its conclusion that Plaintiffs "failed to provide any documentary or testimonial evidence that the alleged defect was electrical in nature." Kavanagh I, Civ. Act. No. 98-556 at 6. As such, Plaintiffs' Motion attempts to

relitigate matters already decided by the Court, and therefore, Plaintiffs have not stated a cognizable ground justifying reargument in this case.²

However, even if the Court were to consider the substance of Plaintiffs' argument, the Court would not grant reargument and would reach the same conclusion it reached previously. The warranty for electrical components covers breakage and excessive wear under normal use. Mr. Johnson's expert report does not allege that any electrical component was broken or worn. At most, Mr. Johnson's report suggests that the location of the pneumatic suspension control switch may have been problematic, but the location of the switch is not an electrical issue covered by the applicable warranty. Accordingly, the Court finds no basis to alter its previous conclusion that Plaintiffs have "failed to provide any documentary or testimonial evidence that the alleged defect was electrical in nature." Kavanagh, Civ.

² Plaintiffs did not specify whether they were seeking reargument pursuant to Local Rule 7.1.5 or reargument pursuant to Federal Rule of Civil Procedure 59(e). However, a motion for reargument under Rule 7.1.5 that challenges the correctness of a previously entered order is considered the "functional equivalent" of a motion to alter or amend judgment pursuant to Rule 59(e). See e.g. New Castle County v. Hartford Accident and Indemnity Co., 933 F.2d 1162, 1176-1177 (3d Cir. 1991). Even if the Court were to consider the standards governing Rule 59(e) motions to alter or amend judgment, the Court would conclude that Plaintiffs are not entitled to relief. Plaintiffs have not presented the Court with a change in controlling law, newly discovered evidence, a clear error of law or fact, or the need to prevent manifest injustice. Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

Act. No. 98-556 at 6. Because Plaintiffs have failed to create a genuine issue of material fact as to whether the three year express warranty on electrical components applies, the Court concludes that summary judgment was properly granted in favor of Defendants, and therefore, Plaintiffs' Motion For Reargument will be denied.

CONCLUSION

For the reasons discussed, the Court will deny Plaintiffs' Motion For Reargument.

An appropriate Order will be entered.

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Michigan, :
 :
Defendants. :

ORDER

At Wilmington, this 24th day of July 2003, for the reasons
discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Plaintiffs' Motion For Reargument
(D.I. 219) is DENIED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE