

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

IN RE: SMITTY’S/CAM2 303 TRACTOR)	
HYDRAULIC FLUID MARKETING, SALES)	MDL No. 2936
PRACTICES, AND PRODUCTS LIABILITY)	
LITIGATION)	Master Case No. 4:20-MD-02936-SRB

ORDER

Before the Court is Defendants Smitty’s Supply, Inc. (“Smitty’s”) and CAM2 International, LLC (“CAM2”) (collectively, “Defendants”) Motion for Summary Judgment on the Claims of Plaintiff Alan Hargraves. ([Doc. #810.](#)) For the reasons discussed below, the motion is DENIED.

I. BACKGROUND

This MDL arises from Defendant’s manufacture, sale, and marketing of tractor hydraulic fluid (“THF”), a multifunctional lubricant designed to offer certain protective benefits when used in tractors and heavy equipment as a hydraulic fluid, transmission fluid, and gear oil. Plaintiffs represent a putative class of consumers who purchased at least one of four allegedly defective products at issue in this case: Smitty’s Super S Super Trac 303 Tractor Hydraulic Fluid (“Smitty’s Super Trac 303”), Smitty’s Super S 303 Tractor Hydraulic Fluid (“Smitty’s Super S 303”), Cam2’s Promax 303 Tractor Hydraulic Oil (“Cam 2 Promax 303”), and Cam2’s 303 Tractor Hydraulic Oil (“Cam2 303”) (collectively, the “303 THF Products”). Defendants Smitty’s and CAM2 manufactured the 303 THF Products, which were sold nationwide by multiple retailers under various label names.

A. Plaintiff Alan Hargraves

Plaintiff Alan Hargraves (“Hargraves”) is an Arkansas resident who purchased the 303 THF Products in Arkansas.

Hargraves operated a farm in a general partnership in equal share with his wife, Lindalu Hargraves, under the name Moon Lake Farms of Arkansas No. 2 (“Moon Lake Farms”). All purchases of the 303 THF Products were made on behalf of Moon Lake Farms. Hargraves claims damage to the following equipment: a 2006 John Deere 8320 Tractor, a 2004 John Deere 8120 Tractor, and a 580 Case Backhoe (“the Equipment”). Moon Lake Farms also used the 303 THF Products in a John Deere 8130 Tractor, an 8320 Case Combine, and other miscellaneous farming equipment, which Hargraves does not claim any damage to. All repairs done to the equipment was done on behalf of and at the expense of Moon Lake Farms.

Moon Lake Farms purchased at least 96 buckets of the 303 THF Products from 2014 to present. Hargraves testified that all purchases of the 303 THF Products, either made personally or by his employees, were made on behalf of Moon Lake Farms. Hargraves purchased about 60% of his 303 THF Products from Discount Ag. The other 40%, Hargraves purchased from Tractor Supply Co. in Greenwood, Arkansas; Southaven, Mississippi; and Wynne, Arkansas.

Hargraves first purchased the 303 THF Products in June or July 2014 from a Discount Ag in Marvell, Arkansas. Hargraves testified that he saw a display and talked to an employee, who told him it was a new product, was “cost-effective” and that they were “selling a lot of it.”

([Doc. #811-1, p. 25.](#)) Hargraves remembers only that the bucket had a label that said “303,” and testified that he “didn’t research” the product and “put his faith into the person there . . . that had probably more knowledge that [he] did that it – you know, it does everything that your other oils that you get from the dealership does, then there’s no sense of me looking into it any further.”

([Doc. #811-1, p. 26.](#)) Hargraves acknowledged that he believed the employee “wouldn’t have any knowledge” regarding the nature of the oil. ([Doc. #811-1, p. 25.](#))

Hargraves also testified that he didn’t read labels for tractor hydraulic fluids that he purchased “every time,” but that he “looked at the specs on [Defendants’] products and said that

it was okay for [him] to use in [his] tractors[.]” ([Doc. #924-1, p. 5.](#)) Hargraves stated that he would read a products label only “[w]hen [he] first purchased the product” and that he again read the 303 THF Product’s label “when they changed from 303 to the other newer brand.[.]”

([Doc. #924-1, p. 6.](#)) Hargraves identified the 303 THF Product as the same product he had been purchasing by seeing 303 on the label, a yellow bucket, and a listed price that aligned with what he expected.

In 2019, Hargraves joined *Buford v. Smitty’s Supply Inc.*, No. 19-cv-00082 (E. D. Ark.), which was later consolidated into this suit. Defendants served Hargraves their First Request for Production on May 21, 2021. On July 14, 2021, Defendants mailed Plaintiffs’ counsel a letter (“the Preservation Letter”) that stated:

In anticipation of future inspections and as part of ongoing discovery in this matter, I write to confirm and remind you, on behalf of all of Plaintiffs in this litigation, of Plaintiffs’ ongoing duty to preserve all relevant evidence in this matter. . . . This includes the duty to preserve all physical evidence of alleged damage caused by a 303 THF Product.

Please take all steps necessary to have Plaintiffs preserve anything in your or Plaintiffs’ possession that might be evidence with regard to the claims or defenses[.] . . . To ensure that all relevant evidence is preserved, please communicate directly with Plaintiffs and advise them to retain and not alter or destroy relevant evidence in their custody.

Specifically, you are hereby put on notice that the following are deemed relevant by the Manufacturing Defendants to these claims and should not be destroyed:

1. All equipment allegedly damaged by the use of a 303 THF Product.
 - a. If the owner of such equipment intends to sell or otherwise dispose of the equipment, we request 30-days advance written notice of such sale or disposition to enable all parties to conduct a reasonable inspection.

...

2. In the case that any equipment which Plaintiffs allege was damaged by the use of 303 THF Product has already been destroyed, sold, or otherwise disposed of, all records related to such disposition, including any documents or communications related to the equipment’s condition and value prior to its disposition.

...

Destruction, sale, or other disposition of relevant evidence—including those categories of evidence listed above—that makes it unavailable for inspection, review, copying, or use in the litigation will be considered by the Manufacturing Defendants as spoliation.

([Doc. #911-5, pp. 2–3.](#)) In August and December 2021, Moon Lake Farms sold its farming property and equipment. At that time, Moon Lake Farms disposed of all documentation related to the farming equipment, including maintenance records and logs, without making copies.

Hargraves does not recall seeing the Preservation Letter.

B. The Instant Action

Plaintiffs initiated suit against Defendants in multiple federal district courts where the 303 THF products were sold. On February 11, 2020, Defendants requested all pending actions be consolidated and transferred pursuant to [28 U.S.C. § 1407](#). On June 2, 2020, the J.P.M.L. consolidated and transferred the eight then-pending actions to the Western District of Missouri.¹ *See In re: Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2936, [2020 WL 2848377](#), at *1 (J.M.P.L. June 2, 2020). Following the creation of this MDL, Plaintiffs filed another lawsuit, *Feldkamp v. Smitty's Supply, Inc.*, No. 20-cv-02177, in the U.S. District Court for the Central District of Illinois, which was subsequently transferred to this Court. Pursuant to this Court's order dated August 3, 2020, Plaintiffs were permitted to file a Consolidated Amended Complaint that would serve to supersede all prior pleadings in the individual cases that were consolidated. Further, this Court's August 3, 2020 Order permitted direct joinder of new claims through the Consolidated Amended Complaint.

¹ The pending actions consolidated before the undersigned are as follows: *Buford v. Smitty's Supply Inc.*, No. 19-cv-00082 (E. D. Ark.); *Fosdick v. Smitty's Supply Inc.*, No. 19-cv-01850 (N. D. Iowa); *Blackmore v. Smitty's Supply Inc.*, No. 19-cv-04052 (N.D. Iowa); *Zornes v. Smitty's Supply, Inc.*, No. 19-cv-0257 (D. Kan.); *Wurth v. Smitty's Supply Inc.*, No. 19-cv-00092 (W.D. Ky.); *Mabie v. Smitty's Supply, Inc.*, No. 19-cv-3008 (S.D. Tx.); *Klingenberg v. Smitty's Supply, Inc.*, No. 19-cv-2684 (D. Minn.); and *Graves v. Smitty's Supply, Inc.*, No. 19-cv-5089 (W.D. Mo.).

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint (“FACC”). Hargraves seeks to represent a class of Arkansas purchasers and asserts the following claims: (1) Count I, Negligence; (2) Count II, Breach of Express Warranty; (3) Count III, Breach of Implied Warranty of Merchantability; (4) Count IV, Breach of Implied Warranty of Fitness for a Particular Purpose; (5) Count V, Unjust Enrichment, (6) Count VI, Fraudulent Misrepresentation; (7) Count VII, Negligent Misrepresentation; (8) Count VIII, Arkansas Deceptive Trade Practices Act, § 4-88-101.

On October 25, 2021, Defendants filed a motion to dismiss the FACC, which the Court granted in part and denied in part on March 9, 2022. *See* ([Doc. #451](#).) Relevant to this motion, the Court dismissed Hargraves’s Count VII. On March 17, 2023, Defendants filed the instant motion for summary judgment on Hargraves’s remaining claims, pursuant to [Federal Rule of Civil Procedure 56](#). Hargraves opposes the motion.

II. LEGAL STANDARD

Under Rule 56, summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(a\)](#). The moving party has the burden of identifying “the basis for its motion, and must identify those portions of the record which it believes demonstrate the absence of a genuine issue of material fact.” *Torgerson v. City of Rochester*, [643 F.3d 1031, 1042](#) (8th Cir. 2011) (en banc) (cleaned up). If the moving party makes this showing, “the nonmovant must respond by submitting evidentiary materials that set out specific facts showing that there is a genuine issue for trial.” *Id.* (quotation marks omitted). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Id.* (quotation marks omitted).

III. DISCUSSION

Defendants argue that they are entitled to summary judgment because (1) Hargraves is not the real party in interest; (2) Hargraves has destroyed or failed to preserve evidence; (3) in purchasing the 303 THF Products, Hargraves relied on representations made by a store employee and not Defendants. Each argument is addressed separately below.

A. Real Party in Interest

Defendants argue they are entitled to summary judgment because Hargraves is not the real party in interest. Hargraves argues that he may bring the claims on behalf of Moon Lake Farms.

Federal Rule of Civil Procedure 17(a) provides that “[e]very action shall be prosecuted in the name of the real party in interest.” “The real party in interest is a party who, under governing substantive law, possess the rights to be enforced.” *Consul Gen. of Rep. of Indon. v. Bill’s Rentals, Inc.*, 330 F.3d 1041, 1045 (8th Cir. 2003). “Property acquired by a partnership is property of the partnership and not of the partners individually.” Ark. Code. Ann. § 4-46-203. However, a “partnership cannot itself be sued as an entity. In Arkansas a partnership is sued by naming the general partners.” *Farmers & Merchants Bank v. Hamilton Hotel Partners of Jacksonville Ltd. Partnership*, 702 F.Supp. 1417, 1427 (W.D. Ark. 1988) (citing *Pate v. Martin*, 13 Ark. App. 182, 681 S.W.2d 410 (Ark. 1985)). “[I]n an action to recover damages to partnership property all partners are necessary parties plaintiff.” *Evans v. Thompson*, 121 F.Supp. 46, 51 (W.D. Ark. 1954) (citations omitted). However, Rule 17(a) provides that an action may continue “as if the action had been commenced in the name of the real party in interest” where there is “ratification of commencement of the action by . . . the real party in interest.” Fed. R. Civ. P. Rule 17(a).

Here, Hargraves is the managing partner of Moon Lake Farms. Moon Lake Farms has only one other partner, Hargraves's wife, Lindalu Hargraves. The parties do not dispute that the equipment was purchased by and for Moon Lake Farms. Thus, to be proper, both Hargraves and his wife should be named parties in the instant suit. However, Hargraves has produced evidence that Lindalu Hargraves consents and ratifies Moon Lake Farms' participation in the suit. The Court finds that Lindalu Hargraves's ratification satisfies Rule 17(a), such that the ratification has "the same effect as if the action had been commenced in" her name. Fed. R. Civ. P. 17(a); *see Sun Refining and Mktg. Co. v. Goldstein Oil Co.*, 801 F.2d 343, 345 (8th Cir. 2986) (holding a district court abused its discretion by refusing to accept a ratification from a real party in interest). As the Court finds that Defendants are not prejudiced, Defendants' argument is rejected.

B. Spoliation

Defendants argue that the Court should grant summary judgment on Hargraves's remaining claims as a sanction because "Hargraves has destroyed or failed to preserve evidence needed for him to bring a submissible case or for [D]efendants to offer a full defense." (Doc. #811, p. 12.) Hargraves disagrees, arguing that, at a maximum, an adverse jury instruction is appropriate.

"[A] spoliation ruling is evidentiary in nature." *Sherman v. Rinchem Co., Inv.*, 687 F.3d 996, 1006 (8th Cir. 2012).² "Possible sanctions for the failure to preserve evidence include a jury instruction on the 'spoliation inference,' an inference which permits the jury to assume that the destroyed evidence would have been unfavorable to the position of the offending party; the exclusion of certain evidence of the offending party; or the entry of judgment in favor of the prejudiced party." *Moyers By and Through Moyers v. Ford Motor Co.*, 941 F.Supp.883, 885

² "[F]ederal law applies to the imposition of sanctions for the spoliation of evidence." *Sherman*, 687 F.3d at 1006.

(E.D. Mo. 1996). A district court does not abuse its discretion in failing to sanction a party where the failure to destroy relevant evidence “was non-intentional” and “negligent in nature[.]” *Sherman*, [687 F.3d at 1007](#) (citation omitted). Sanctions are appropriate only where there is “a finding of *intentional destruction* indicating a desire to suppress the truth.” *Stevenson v. Union Pac. R. R. Co.*, [354 F.3d 739, 746](#) (8th Cir. 2004) (citation omitted) (emphasis in original).

Here, the Court finds that summary judgment is not warranted because Defendants have failed to show Hargraves disposed of the equipment with an intent to suppress the truth. The parties agree that the equipment was sold upon Hargraves’s retirement. The parties also agree that Hargraves received the Preservation Letter, and that the sale of the equipment was in violation of the Preservation Letter. However, Defendants have failed to produce any evidence that the sale of the equipment was due to Hargraves’s desire to destroy evidence of his claims, or the lack thereof. Therefore, Defendants’ argument is rejected.

C. Representations Made by Defendants

Defendants argue, alternatively, that they are entitled to summary judgment on Counts II, VI, and VII because “Hargraves did not rely upon any representations by Defendants[.]” ([Doc. #811, p. 15.](#)) Hargraves disagrees, arguing that Defendants take Hargraves’s deposition testimony out of context and that he purchased the 303 THF Products based on the labels.

In order to prevail on Counts II, VI, and VII, Hargraves must have relied on the 303 THF Products’ labels in making his purchasing decisions.³ Here, the Court finds that there are genuine issues of material fact that preclude summary judgment. Defendants’ motion rests almost solely on Hargraves’s testimony that he purchased the 303 THF Products due to the advice of a sales clerk and didn’t look into the products further. However, Hargraves presents

³ [Ark. Code Ann. § 4-2-313\(1\)](#); *Rosser v. Colombia Mut. Ins. Co.*, [928 S.W.2d 813, 815](#) (Ark. App. 1996); [Ark. Code Ann. § 4-88-113\(f\)\(1\)\(A\)](#).

conflicting deposition testimony, in which Hargraves testified that he relied on representations on the 303 THF Products' labels before purchasing. As the conflicting testimony regarding Hargraves's reliance on the 303 THF Products' labels creates a genuine dispute of material fact, a grant of summary judgment would be inappropriate.

IV. CONCLUSION

Accordingly, Defendants Partial Motion for Summary Judgment on the Claims of Plaintiff Alan Hargraves ([Doc. #810](#)) is DENIED.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: August 3, 2023