

**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’s (“CAM2”) (collectively, “Defendants”) Motion for Partial Summary Judgment on the Claims of Arno Graves (“Graves”) Under the Economic Loss Doctrine. ([Doc. #1051](#).) For the reasons discussed below, the motion is DENIED.

I. BACKGROUND

This MDL arises from Defendants’ 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 Arno Graves

Graves purchased 19 buckets of Cam2 Promax 303, Cam2 303, and Smitty’s Super Trac 303 in Oklahoma. He also purchased 23 buckets of Cam2 Promax 303 and Cam2 303 in

Missouri. He used those 303 THF Products in a 1975 John Deere 2030 Tractor, 1984 Case 480e Backhoe, and a 1973 International 1066 Tractor (collectively, the “Equipment”). Graves seeks damages for the full amount of the purchase price, \$23,052.16 in repairs to the Equipment, and flush costs for alleged continuing property damage.

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 Judicial Panel on Multidistrict Litigation 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 supersede all prior pleadings in the individual cases and the Court allowed direct joinder of new claims through the Consolidated Amended Complaint.

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint (“FACC”). 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.

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 (E. D. Cal.); *Blackmore v. Smitty’s Supply, Inc.*, No. 19-cv-04052 (N.D. Iowa); *Zornes v. Smitty’s Supply, Inc.*, No. 19-cv-02257 (D. Kan.); *Wurth v. Smitty’s Supply, Inc.*, No. 19-cv-00092 (W.D. Ky.); *Mabie v. Smitty’s Supply, Inc.*, No. 19-cv-03308 (S.D. Tx.); *Klingenberg v. Smitty’s Supply, Inc.*, No. 19-cv-02684 (D. Minn.); and *Graves v. Cam2 Int’l, LLC*, No. 19-cv-05089 (W.D. Mo.).

Graves seeks to represent classes of Missouri and Oklahoma purchasers, asserting the following claims: Count I, Negligence; Count II, Breach of Express Warranty; Count III, Breach of Implied Warranty of Merchantability; Count IV, Breach of Implied Warranty of Fitness for a Particular Purpose; Count V, Unjust Enrichment; Count VI, Fraudulent Misrepresentation;² Count VII, Negligent Misrepresentation; Count XXII, Violation of Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010; and Count XXVIII, Violation of Oklahoma Consumer Protection Statute (“OCPS”), Okla. Stat. Ann. tit. 15, § 751 *et seq.*³

On August 28, 2023, Defendants filed the instant motion for partial summary judgment on Graves’ claims, pursuant to Federal Rule of Civil Procedure 56. Graves 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.*

² The 5ACC referred to Count VI as Fraud/Misrepresentation, but for the sake of clarity, the Court will refer to Count VI as Fraudulent Misrepresentation.

³ In the Court’s order on Defendants’ Motion to Dismiss Plaintiffs’ Fourth Amended Consolidated Complaint, the Court discussed and ultimately dismissed Count XXVII, a violation of the Ohio Consumer Sales Protection Act, Ohio Rev. Code Ann. § 1345.09. However, on the final page of the order, the Court mistakenly referred to Count XXVII as a violation of the “Oklahoma Consumer Protection Act.” (Doc. #451, p. 57.) The Court dismissed Count XXVII a violation of the Ohio Consumer Sales Protection Act, not Count XXVIII a violation of the Oklahoma Consumer Protection Statute.

III. DISCUSSION

Defendants argue they are entitled to summary judgment because the economic loss doctrine bars Graves' negligence, unjust enrichment, fraudulent misrepresentation, negligent misrepresentation, and OCPS claims. Each argument is addressed separately below.

A. Whether the Economic Loss Doctrine Bars Graves' Negligence, Unjust Enrichment, Fraudulent Misrepresentation, and Negligent Misrepresentation Claims in Missouri

Defendants argue that Graves' claims are "barred by Missouri's . . . economic loss doctrine, as the injury alleged in this case is purely monetary." ([Doc. #1051, p. 7.](#)) Graves disagrees, arguing that the 303 THF Products "*did injure* other property owned by Graves" and the economic loss doctrine does not apply to consumer transactions. ([Doc. #1082, p. 15.](#)) Defendants further contend that Missouri law does "not distinguish between consumer and commercial transactions when applying the economic loss doctrine." ([Doc. #1095, p. 23.](#))

"The economic loss doctrine prohibits a commercial buyer of goods 'from seeking to recover in tort for economic losses that are contractual in nature.'" *Dannix Painting, LLC v. Sherwin-Williams Co.*, [732 F.3d 902, 905–06](#) (8th Cir. 2013) (quoting *Autry Morlan Chevrolet Cadillac, Inc. v. RJJ Agencies, Inc.*, [332 S.W.3d 184, 192](#) (Mo. Ct. App. 2010)).⁴

"[D]istinguished from harm to person or damage to property, economic, or commercial, loss includes cost of repair and replacement of defective property which is the subject of the transaction, as well as commercial loss for inadequate value and consequent loss of profits or use." *Id.* at 905 (quoting *Groppel Co. v. U.S. Gypsum Co.*, [616 S.W.2d 49, 55 n.5](#) (Mo. Ct. App. 1981)). "Missouri courts have not delineated a commercial-consumer distinction in the economic loss doctrine, and have applied the economic loss doctrine without regard to whether the plaintiff-purchaser was a 'consumer' or a 'commercial' party." *Tuter v. Freud Am., Inc.*, No.

⁴ The parties agree that Missouri law governs the analysis of the economic loss doctrine for the Missouri claims.

4:22-CV-00282-RK, [2022 WL 4636225](#), at *12 (W.D. Mo. Sept. 30, 2022). “Personal injury and damage to property other than the product in question[, however,] are not considered economic damages and thus do not implicate the economic loss doctrine.” *Bishop v. DeLaval Inc.*, [466 F.Supp.3d 1016, 1024](#) (W.D. Mo. 2020).

The Court finds that the economic loss doctrine does not bar Graves’ negligence, unjust enrichment, fraudulent misrepresentation, and negligent misrepresentation claims in Missouri. Courts have applied the economic loss doctrine to individual consumers like Graves. *See Tuter*, [2022 WL 4636225](#), at *12. This Court, however, considers the Equipment other property, which does not implicate the economic loss doctrine. *See Bishop*, [466 F.Supp.3d at 1024](#). Defendants argue the Equipment is not considered other property, citing *OneBeacon Ins. Co. v. Deere & Co.*, [778 F.Supp.2d 1005, 1010](#) (E.D. Mo. 2011), where the Court held that the economic loss doctrine barred a plaintiff’s recovery when an allegedly defective combine also damaged a separately purchased corn header because the corn header was not considered other property. The Court finds this case unpersuasive because unlike the corn header, “which would have been useless without the John Deere combine[,]” the Equipment was not “useless” without the 303 THF Products. *Id.* at 1010–11. The Court considers the Equipment other property, so Graves is not claiming purely economic damages. Thus, the Court finds that the economic loss doctrine does not bar Graves’ claims under Missouri law because Graves has presented evidence of damage to other property.

B. Whether the Economic Loss Doctrine Bars Graves’ Negligence, Unjust Enrichment, Fraudulent Misrepresentation, Negligent Misrepresentation, and OCPS Claims in Oklahoma

Defendants argue that under Oklahoma law, the economic loss doctrine similarly bars Graves’ claims. Graves argues that under Oklahoma law, the economic loss doctrine is inapplicable because “there was damage to other property.” ([Doc. #1082, p. 25.](#))

“The ‘economic loss rule[.]’ . . . was adopted by the Oklahoma Supreme Court in *Waggoner v. Town & Country Mobile Homes, Inc.*, [808 P.2d 649](#) (Okla. 1990).” *Dinwiddie v. Suzuki Motor of Am., Inc.*, [111 F.Supp.3d 1202, 1214](#) (W.D. Okla. 2015).⁵

Subsequent federal decisions in Oklahoma have applied the reasoning of *Waggoner* ‘to the full range of unintentional torts,’ . . . [holding] that negligence claims, like manufacturers’ liability claims, are precluded when warranty claims provide a comprehensive remedy for the plaintiff’s economic injury and where no personal injury or property damage occurred other than to the allegedly defective property itself.

T.D. Williamson, Inc. v. Lincoln Elec. Automation, Inc., No. 21-CV-153-GKF-JFJ, [2022 WL 16842907](#), at *4 (N.D. Okla. Jan. 21, 2022) (citation omitted). “[U]nder *Dutsch v. Sea Ray Boats, Inc.*, [845 P.2d 187, 193–94](#) (Okla. 1992), . . . [however, the court] held that if a plaintiff alleges ‘other damages,’ either personal injury or injury to other property, the plaintiff may recover under tort theories.” *AMC W. Hous. LP v. NIBCO, Inc.*, No. CIV-18-959-D, [2020 WL 465034](#), at *5 (W.D. Okla. Jan. 28, 2020). For example, the court held that the economic loss doctrine did not bar plaintiff’s claims for damages when defective casing used to drill a well also damaged the well because “the casing [wa]s separate and distinct from the well.” *Red Rocks Res. L.L.C. v. Trident Steel Corp.*, No. CIV-14-0948-C, [2017 WL 1322214](#), at *1 (W.D. Okla. Apr. 10, 2017). Similarly, an “[e]ngine and its component part [f]uel [p]ump [were] the ‘product’ and the [a]ircraft [was] considered ‘other property[.]’” such that the economic loss doctrine did not bar recovery. *Agape Flights, Inc. v. Covington Aircraft Engines, Inc.*, No. CIV-09-492-FHS, [2012 WL 2792452](#), at *4 (E.D. Okla. July 9, 2012).

Here, the Court finds that the economic loss doctrine under Oklahoma law does not bar Graves’ negligence, unjust enrichment, fraudulent misrepresentation, negligent misrepresentation, and OCPS claims. Graves has presented evidence that the 303 THF Products

⁵ The parties likewise agree that Oklahoma law governs the analysis of the economic loss doctrine for the Oklahoma claims.

harm the Equipment, which this Court finds constitutes other property, as it is separate and distinct from the 303 THF Products. Since other property damage is alleged, Graves' damages for the purchase price are permitted. *See Dutsch*, [845 P.2d at 193–94](#).

IV. CONCLUSION

Accordingly, Defendants' Motion for Partial Summary Judgment on the Claims of Arno Graves Under the Economic Loss Doctrine ([Doc. #1051](#)) is DENIED.

IT IS SO ORDERED.

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

Dated: October 17, 2023