

**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 Summary Judgment on the Claims of Jeffrey Harrison (“Harrison”) and J&C Housing Construction, LLC (“J&C”). ([Doc. #1013.](#)) 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 Jeffrey Harrison and J&C Housing Construction, LLC

Harrison is an Arkansas resident who purchased the 303 THF Products in Arkansas. Harrison owns and operates J&C. Harrison testified that he and his wife jointly own J&C “as far as [he] knows” and that his wife “set [it] up.” ([Doc. #1013-1, p. 4.](#))

In his Class Membership Form, Harrison represented that he purchased 84 buckets of the 303 THF Products from March 2014 to April 2019, which damaged a backhoe, dozer, and trackhoe (“the Equipment”). Harrison testified that he personally purchased 95% of the 303 THF Products using his and his wife’s joint personal credit card, and J&C never reimbursed him for those purchases. J&C purchased some of the 303 THF Products with checks from a J&C checking account. Harrison further testified that the Equipment was owned by J&C and used in its business operations, but Harrison also used the Equipment for his personal benefit. He testified that he paid for some of the repairs to the damaged Equipment himself, which allegedly resulted from using the 303 THF Products.

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*

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.).

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. ([Doc. #46.](#))

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint (“FACC”). See ([Doc. #260.](#)) 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.](#)) On April 21, 2023, Plaintiff filed the Fifth Amended Consolidated Complaint (“5ACC”), which added J&C as a Plaintiff. The Court notes that the 5ACC does not differentiate between Harrison and J&C in its allegations, instead treating “[a]ll references . . . to ‘Jeffrey Harrison’ and/or ‘Harrison’ [as] references to Mr. Harrison personally and to his entity, J & C Housing Construction, LLC.” ([Doc. #834, p. 22.](#))

Harrison and J&C seek to represent a class of Arkansas 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; VI, Fraudulent Misrepresentation;² and Count VIII, Arkansas Deceptive Trade Practices Act, § 4-88-101.

On August 2, 2023, Defendants filed the instant motion for summary judgment on Harrison and J&C’s claims, pursuant to [Federal Rule of Civil Procedure 56](#). Plaintiffs oppose the motion.

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

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 and citation 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 and citations omitted).

III. DISCUSSION

Defendants argue that they are entitled to summary judgment because (1) Harrison did not purchase or use the 303 THF Products; and (2) J&C did not purchase or use the 303 THF Products. Each argument is addressed separately below.

A. Whether Harrison is a Real Party in Interest and has Standing

Defendants argue they are entitled to summary judgment on Harrison’s claims because there is no evidence that Harrison “was the party who purchased the THF and used it in the at-issue equipment,” which means that Harrison is not a real party in interest and does not have standing to pursue his claims. ([Doc. #1013, p. 11.](#)) Harrison disagrees, arguing that “[b]ased on his personal payment for purchases of Defendants’ 303 THF Products and his payment for at least some of the repairs, [he] has adequately provided evidence which . . . supports his claim.” ([Doc. #1057, pp. 33–34.](#))

Federal Rule of Civil Procedure 17(a) provides that “[a]n action must be prosecuted in the name of the real party in interest.” “The real party in interest is a party who, under governing substantive law, possesses the rights to be enforced.” *Consul Gen. of Rep. of Indon. v. Bill’s Rentals, Inc.*, 330 F.3d 1041, 1045 (8th Cir. 2003) (citation omitted). “Such a requirement is in place ‘to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata.’” *United HealthCare Corp. v. Am. Trade Ins. Co.*, 88 F.3d 563, 569 (8th Cir. 1996) (quoting Fed. R. Civ. P. 17(a), Advisory Committee Note). Under Arkansas law, “[a] real party in interest is considered to be the person who can discharge the claim on which the allegation is based, not necessarily the person ultimately entitled to the benefit of any recovery.” *C&R Constr. Co. v. Woods Masonry & Repair, LLC*, 596 S.W.3d 35, 40 (Ark. Ct. App. 2020) (citing *Forrest Constr., Inc. v. Milam*, 43 S.W.3d 140 (Ark. 2001)).

Additionally, “[s]tanding is a threshold issue in every case, [and] if a plaintiff lacks standing, he or she cannot invoke the court’s jurisdiction.” *Staples v. Batesville Casket Co.*, No. 5:07CV214JMM, 2008 WL 509430, at *2 (E.D. Ark. Feb. 20, 2008) (citing *Boyle v. Anderson*, 68 F.3d 1093, 1100 (8th Cir. 1995), *cert. denied*, 516 U.S. 1173 (1996)).

First, a plaintiff must have suffered an ‘injury in fact,’ and such an injury must be concrete, particularized, and either actual or imminent. Second, a would-be litigant must make out a causal connection between the alleged injury and the conduct challenged. Third, he or she must show that the injury is likely to be redressed by a favorable decision.

Id. (citations omitted). For example, when a plaintiff asserts claims for violations of the Arkansas Deceptive Trade Practices Act, unjust enrichment, fraud, breach of contract, breach of express warranty, and breach of implied warranty, but did not purchase the product, have an interest in the funds used to purchase the product, and was not a third party beneficiary, in that

they weren't reasonably expected to "use, consume or be affected by the goods[.]" the court has held the plaintiff lacks standing. *Id.* at *3 (quotation omitted).

Here, the Court finds that Harrison is a real party in interest and has standing to pursue his claims. When viewing the facts in a light most favorable to the nonmoving party, Harrison presents evidence that he personally bought most of the 303 THF Products, and used it in the Equipment, which was sometimes operated for personal uses. Further, he personally paid for some of the repairs to the Equipment. Unlike in *Staples*, Harrison put forth sufficient evidence that he purchased and consumed some of the 303 THF Products when using the Equipment for his personal benefit. *See id.* at *3. Thus, Harrison is a real party in interest and has standing to pursue his claims.

B. Whether J&C is a Real Party in Interest and has Standing

Defendants argue that they are entitled to summary judgment on J&C's claims because "J&C Housing has not come forward with evidence that the LLC was the party who purchased the THF, or the at-issue equipment, to satisfy the elements of its claims—let alone that it has standing or is the real party in interest." ([Doc. #1013, p. 16.](#)) J&C argues that:

Defendants' arguments do not credit the testimonial evidence that some of the 5% of the purchases of Defendants' 303 THF Products were paid for by J&C . . . and that J&C owned and used the [E]quipment damaged by Defendants' 303 THF Products[, which] . . . supports J&C also having standing to pursue claims against Defendants[.]

([Doc. #1057, p. 34.](#))

Similarly, the Court finds that J&C is a real party in interest and has standing to pursue its claims. J&C presented evidence that it purchased some of the 303 THF Products and it was used in the Equipment, which was owned and operated for its business operations. *See Staples*, [2008 WL 509430](#), at *3. Thus, J&C is a real party in interest and has standing to pursue its claims.

IV. CONCLUSION

Accordingly, Defendants' Motion for Summary Judgment on the Claims of Jeffrey Harrison and J&C Housing Construction, LLC ([Doc. #1013](#)) is DENIED.

IT IS SO ORDERED.

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

Dated: September 21, 2023