

STATE OF MICHIGAN
COURT OF APPEALS

DEANNA STARNES, individually and as Next Friend
for Brett Ashley Starnes and Adam James Starnes,
Minors,

UNPUBLISHED
July 9, 1996

Plaintiff-Appellant,

v

No. 178286
LC No. 92-426944-NO

GAMALSKI BUILDING SPECIALTIES, INC.,

Defendant-Appellee.

Before: Smolenski, P.J., and Holbrook, Jr. and F.D. Brouillette,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for directed verdict. We affirm.

Plaintiffs brought an action for breach of express and implied warranty, alleging that Deanna Starnes was injured when a defective door closer supplied by defendant caused a door to slam on her arm. At the close of plaintiffs' proofs, defendant made a motion for a directed verdict, which the court denied. However, after the close of defendant's proofs and the discussion regarding jury instructions, the court sua sponte granted defendant's motion for a directed verdict with regard to the claim of breach of express warranty. The court noted that plaintiffs did not establish a prima facie case of breach of express warranty because they did not introduce evidence of the specifications to which the door closers should have conformed. Plaintiffs argue that the trial court erred in granting defendant's motion for a directed verdict as to the issue of breach of express warranty. In reviewing a trial court's decision regarding a motion for a directed verdict, this Court views the evidence and all reasonable inferences in a light most favorable to the nonmoving party. *Oakland Hills Development Corp v Lueders Drainage Dist*, 212 Mich App 284, 289; 537 NW2d 258 (1995). Unless reasonable minds could not differ with regard to whether the burden of proof has been met, a directed verdict should be denied. *Id.*

* Circuit judge, sitting on the Court of Appeals by assignment.

An express warranty is created by a seller by setting forth a promise or affirmation, description, or sample with the intent that the goods will conform. *Guaranteed Construction Co v Gold Bond Products*, 153 Mich App 385, 390; 395 NW 2d 332 (1986). During trial, plaintiffs introduced into evidence that defendant “guarantee[d] all work . . . to be in accordance with the requirements set forth in the specifications . . . as prepared by the Architect.” Plaintiffs also introduced into evidence a copy of the door lock and hardware schedule. This schedule indicated which doors needed “LCN 4040 Closers.” Plaintiffs argue that this schedule provided the required specifications to established a prima facie case of breach of express warranty.

This case is analogous to *Guaranteed Construction, supra*. In that case, the plaintiff-contractor brought a claim for breach of express warranty against the manufacturers users and suppliers of a steel corner bead that was used in the plaintiff’s construction project. After installation, the corner bead corroded, and the plaintiff was required to replace it and fix the affected area. This Court held that the trial court properly granted the defendant’s motion for summary disposition because the plaintiff did not properly present a claim based on express warranty. This Court stated:

Plaintiff contends that the packages which Dale sold to it carried the description “corner bead” on them, and that this created express warranties in favor of it. . . . It is clear that Dale did supply “corner bead”. If Dale’s packaging had said “non-corrosive corner bead”, then plaintiff’s assertion might have merit. However, in this case, plaintiff has not pointed to any representation by the seller that the corner bead would not rust. . . . Consequently, if plaintiff is to recover on a warranty theory, it will have to rely on an implied warranty. [*Id.* at 390 (citations omitted).]

In the present case, plaintiffs presented evidence only that defendant would supply “LCN 4040 Closers.” Neither the door lock and hardware schedule, nor any other evidence, provided a description or specifications for the door closers other than that they would be “LCN 4040 closers”. Plaintiffs’ implication that the door closer on door twenty-nine was not fit for its intended purpose because it allegedly leaked oil is relevant only to the claim of breach of implied warranty. *Id.* at 390-391. Because the specifications required only that the door closers would be “LCN 4040 Closers” and defendant provided “LCN 4040 Closers”, it did not breach any express warranty. *Scott v Motor Wheel Corp*, ___ Mich App ___; ___ NW2d ___ (Docket Number 170249, issued 5/31/96), slip op pp 4-5.

Accordingly, the trial court properly granted defendant’s motion for a directed verdict because reasonable minds could not differ as to the failure of plaintiffs to present evidence sufficient to establish a prima facie case of breach of express warranty by defendant.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Francis D. Brouillette