

STATE OF MICHIGAN
COURT OF APPEALS

MACATAWA BAY BOAT WORKS, LLC,

Plaintiff-Appellant,

v

DOOGE VENEERS, INC.,

Defendant-Appellee.

UNPUBLISHED

March 22, 2005

No. 251729

Allegan Circuit Court

LC No. 02-031677-CK

Before: Murray, P.J., and Markey and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court’s order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff restores wooden boats and purchases materials for his work from defendant. In October 1995, plaintiff purchased marine grade plywood from defendant for use in restoring a particular boat. In 2000 the plywood failed, causing damage to the boat. In June 2002 plaintiff filed suit alleging that an express warranty arose in connection with the sale of the plywood, that the warranty extended to the future performance of the material, and that defendant breached the warranty by furnishing defective goods. Defendant sought summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff’s action was barred by the four-year limitations period in MCL 440.2725. The trial court granted the motion, concluding that a mere statement of acquiescence such as that made by defendant’s representative was insufficient to constitute an express warranty for the future performance of goods.

We review a trial court’s decision on a motion for summary disposition *de novo*. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999).

Under the Uniform Commercial Code, MCL 440.1101 *et seq.*, an action for breach of contract for sale must be commenced within four years after the cause of action accrues. MCL 440.2725(1). A cause of action accrues when the breach occurs, regardless of the aggrieved party’s lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made; however, if the warranty explicitly extends to the future performance of the goods, the cause of action accrues when the breach is or should have been discovered. MCL 440.2725(2); *Baker v DEC International*, 458 Mich 247, 251-252; 580 NW2d 894 (1998).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition and asserts that a warranty for the future performance of goods may be made either by expressly warranting a product for a certain number of years, as in *Executone Business Systems Corp v IPC Communications, Inc*, 177 Mich App 660, 666; 442 NW2d 755 (1989), or by stating that a product will outlast a comparable product, as in *Marvin Lumber & Cedar Co v PPG Industries, Inc*, 223 F3d 873 (CA 8, 2000). But plaintiff points to no binding authority that holds that a mere comparison of products can constitute a warranty of future performance.¹ In Michigan, a warranty extends to the future performance of goods only when the warranty explicitly provides that the goods will be free from defects for a specific period of time. See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002); *Snyder v Boston Whaler, Inc*, 892 F Supp 955, 958 (WD Mich, 1994). Here, the evidence showed that at some point in the 1970's, defendant acquiesced in a statement by plaintiff to the effect that if a product manufactured by defendant's competitor lasted fifty years, defendant's product should last 100 years. The trial court correctly concluded that because no evidence showed that defendant made an explicit statement that its products, including the product plaintiff purchased in October 1995, would be free from defects for a specific number of years, no factual development could show that defendant extended a warranty to the future performance of its goods. *Id.* Summary disposition was proper on the ground that plaintiff's action was time-barred. MCL 440.2725(1).

We affirm.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell

¹ This Court is not bound by a decision from a lower federal court. See *Abela v General Motors Corp*, 469 Mich 603, 606; 677 NW2d 325 (2004).