

STATE OF MICHIGAN
COURT OF APPEALS

ANTONIA BERRY, Personal Representative
of the Estate of DONALD DARKINS, Deceased,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 195374

Wayne Circuit Court

BRASS CRAFT MANUFACTURING and MASCO
CORPORATION,

LC No. 95-510819-NP

Defendants-Appellees,

and

MALISSA RUSAU,

Defendant.

Before: MacKenzie, P.J., and Neff and Markey, JJ.

MacKENZIE, P.J. (dissenting in part).

I respectfully dissent from that portion of the majority opinion holding that summary disposition was prematurely granted.

Generally, summary disposition is premature if granted before discovery on a disputed issue is complete. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996). However, there must be a disputed issue before the court. *Bellows v Delaware MacDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994). If a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence. *Michigan Nat'l Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993). An unsupported allegation which amounts solely to conjecture is insufficient. *Pauley v Hall*, 124 Mich App 255, 263; 335 NW2d 197 (1983).

In this case, plaintiff offered no evidence that she was awaiting receipt of discovery requests. Compare *Gara v Woodbridge Tavern*, ___ Mich App ___; ___ NW2d ___ (Docket No. 192878, issued 6/6/97). Moreover, plaintiff presented no meaningful evidence that additional discovery would have revealed the existence of a defect in the subject connector. Her expert indicated six months earlier that there was no evidence that the connector had stress corrosion cracking, and further testing would be needed to determine the presence of “what might be corrosion fatigue.” Plaintiff had done nothing since the receipt of that report. In short, plaintiff wholly failed to present any independent evidence to support her assertion that a factual dispute existed. *Michigan Nat’l Bank, supra*. Instead, her claim that discovery was premature was tantamount to an assertion that if she would conduct further investigation into her case, she might be able to find a defect in the connector. This, of course, is mere speculation on plaintiff’s part. *Pauley, supra*. Finally, it is significant that, in addition to failing to investigate her case, plaintiff failed to respond to defendants’ interrogatories despite repeated requests. In light of this continuous pattern of avoiding discovery, she should not be heard to complain that summary disposition was premature because the discovery period had not yet expired. I would therefore hold that summary disposition was properly granted and would affirm.

/s/ Barbara B. MacKenzie