

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN CORNING and K & K
GROUNDWORKS, LLC,

Plaintiffs,

v.

MTD PRODUCTS, INC., et al.,

Defendants.

CASE NO. C17-120 RAJ

ORDER

This matter comes before the Court on Defendants MTD Products, Inc.'s ("MTD") and Sears, Roebuck and Co.'s ("Sears") motion for summary judgment and to exclude testimony of Plaintiffs' expert. Dkt. # 26¹. Plaintiffs oppose the motion. Dkt. #

¹ The Court strongly disfavors footnoted legal citations, **and made this point clear in its Standing Order**. Dkt. # 4 at 4 (stating that "the Court does not allow citations in footnotes or endnotes"). Footnoted citations serve as an end-run around page limits and formatting requirements dictated by the Local Rules. *See* Local Rules W.D. Wash. LCR 7(e). Moreover, several courts have observed that "citations are highly relevant in a legal brief" and including them in footnotes "makes brief-reading difficult." *Wichansky v. Zowine*, No. CV-13-01208-PHX-DGC, 2014 WL 289924, at *1 (D. Ariz. Jan. 24, 2014). The Court strongly discourages the Parties from footnoting their legal citations in any future submissions. *See Kano v. Nat'l Consumer Co-op Bank*, 22 F.3d 899-900 (9th Cir. 1994).

1 31. For the reasons that follow, the Court GRANTS in part and DENIES in part the
2 motion.

3 **I. BACKGROUND**

4 Plaintiffs claim that the lawnmower in dispute had a defective design that caused
5 the machine to malfunction, slipping out of gear and failing to break on a steep downhill
6 slope. *See* Dkt. # 21 (First Amended Complaint). Defendants move the Court for
7 summary judgment, in large part, because they disagree with the credibility of Plaintiffs'
8 expert's analysis.

9 **II. LEGAL STANDARD**

10 Summary judgment is appropriate if there is no genuine dispute as to any material
11 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
12 56(a). The moving party bears the initial burden of demonstrating the absence of a
13 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
14 Where the moving party will have the burden of proof at trial, it must affirmatively
15 demonstrate that no reasonable trier of fact could find other than for the moving party.
16 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where
17 the nonmoving party will bear the burden of proof at trial, the moving party can prevail
18 merely by pointing out to the district court that there is an absence of evidence to support
19 the non-moving party's case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets
20 the initial burden, the opposing party must set forth specific facts showing that there is a
21 genuine issue of fact for trial in order to defeat the motion. *Anderson v. Liberty Lobby,*
22 *Inc.*, 477 U.S. 242, 250 (1986). The court must view the evidence in the light most
23 favorable to the nonmoving party and draw all reasonable inferences in that party's favor.
24 *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000). Credibility
25 determinations and the weighing of the evidence are jury functions, not those of a judge.
26 *Anderson*, 477 U.S. at 255.

1 However, the court need not, and will not, “scour the record in search of a genuine
2 issue of triable fact.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996); *see also*,
3 *White v. McDonnell-Douglas Corp.*, 904 F.2d 456, 458 (8th Cir. 1990) (the court need not
4 “speculate on which portion of the record the nonmoving party relies, nor is it obliged to
5 wade through and search the entire record for some specific facts that might support the
6 nonmoving party’s claim”). The opposing party must present significant and probative
7 evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*,
8 952 F.2d 1551, 1558 (9th Cir. 1991). Uncorroborated allegations and “self-serving
9 testimony” will not create a genuine issue of material fact. *Villiarimo v. Aloha Island*
10 *Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002); *T.W. Elec. Serv. V. Pac Elec. Contractors*
11 *Ass’n*, 809 F. 2d 626, 630 (9th Cir. 1987).

12 In resolving a motion for summary judgment, the court may only consider
13 admissible evidence. *Orr v. Bank of America*, 285 F.3d 764, 773 (9th Cir. 2002). At the
14 summary judgment stage, a court focuses on the admissibility of the evidence’s content,
15 not on the admissibility of the evidence’s form. *Fraser v. Goodale*, 342 F.3d 1032, 1036
16 (9th Cir. 2003).

17 **III. DISCUSSION**

18 A. Expert Testimony

19 Defendants wish to exclude the testimony of Plaintiffs’ expert, Patrick D.
20 Riedlinger. *See generally* Dkt. # 26. Defendants do not question Mr. Riedlinger’s
21 credentials but rather argue that his “opinions are untested, unreliable and depend on the
22 type of circular logic that *Daubert* and Rule 702 were intended to prevent.” *Id.* at 7. The
23 Court finds that the balance of Defendants’ arguments amount to credibility judgments.
24 Indeed, the Court agrees with Plaintiffs’ representation that Mr. Riedlinger “uses over 30
25 years of engineering experience, research, investigation, and production
26 inspection/testing” to do his work as an expert witness. Dkt. # 31 at 6. Because the issue
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1 of his credibility is an issue for the jury, the Court declines to exclude Mr. Riedlinger’s
2 testimony on summary judgment. *Anderson*, 477 U.S. at 255.

3 B. Washington Products Liability Act (WPLA)

4 Defendants also seek summary judgment on each of Plaintiffs’ product liability
5 claims. Dkt. # 26 at 6. “The WPLA, RCW 7.72 et seq., is the exclusive remedy for
6 product liability claims in Washington.” *Kirkland v. Emhart Glass S.A.*, 805 F. Supp. 2d
7 1072, 1076 (W.D. Wash. 2011). The statutory framework authorizes claims for
8 manufacturing and design defects, and the failure to warn. *Id.*; *see also* RCW 7.72.030.
9 Defendants’ arguments for summary judgment on Plaintiffs’ manufacturing and design
10 defect claims are largely premised on the unreliability² of Mr. Riedlinger’s testimony and
11 Mr. Corning’s. However, the Court finds this testimony admissible and therefore
12 genuine disputes of material facts exist as to these claims. These claims will continue to
13 trial.

14 Defendants argue that Plaintiffs “failed to demonstrate that any alleged lack of
15 adequate warnings or instructions proximately caused their injuries.” Dkt. # 26 at 25.
16 Indeed, Defendants present deposition testimony from Mr. Corning evidencing his
17 awareness of the risks involved in driving the lawnmower and the futility in any
18 additional warnings. Dkt. # 26 at 26 (citing Mr. Corning’s deposition); *see also* Dkt. #
19 27-1 at 36-39 (Mr. Corning testifying that he was familiar with the warning labels on the
20 lawnmower). Plaintiffs do not rebut this contention and fail to offer evidence to the
21 contrary. Accordingly, summary judgment is appropriate on Plaintiffs’ failure to warn
22 claim as there is no genuine dispute of material fact that Defendants did not fail to warn
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25 ² Defendants do not question Mr. Riedlinger’s qualifications or expertise, but rather
26 question the method and resources he used to reach his opinions. Accordingly, the Court finds
27 that Defendants’ use of “credibility” and “unreliability” in their briefing is interchangeable when
addressing Mr. Riedlinger’s opinions.

1 Plaintiffs of the dangers associated in utilizing the lawnmower. The Court therefore
2 grants summary judgment with regard to this claim.

3 C. Breach of Implied Warranties

4 Plaintiffs allege that Defendants “breached the implied warrant[y] of
5 merchantability.” Dkt. # 21 (First Amended Complaint) at ¶ 6.1. “[A] product seller
6 other than a manufacturer is liable to the claimant only if the claimant’s harm was
7 proximately caused by . . . [b]reach of an express warranty made by such product
8 seller[.]” RCW 7.72.040(1)(b). Accordingly, Sears—as the product seller—is not liable
9 under Plaintiffs’ claim for breach of an implied—as opposed to an express—warranty.
10 Notably, Plaintiffs offer no response to Defendants’ argument on this point.

11 With regard to MTD, Defendants claim that Plaintiffs failed to show that there
12 exists a genuine issue of material fact that the lawnmower “was not fit for the ordinary
13 purposes for which riding lawn mowers are sold.” Dkt. # 26 at 28. RCW 62A.2-314 and
14 RCW 62A.2-315 govern claims for breach of the implied warranty of merchantability
15 and implied warranty of fitness for a particular purpose. As to the former, similar to the
16 manufacturing and design defect analysis above, there is a genuine dispute of material
17 fact as to whether the lawnmower was “fit for the ordinary purposes for which such
18 goods are used.” *See* RCW 62A.2-314(2)(c). As to the latter, Plaintiffs fail to present
19 any evidence suggesting that they relied on MTD’s “skill or judgment to select or furnish
20 suitable goods[.]” *See* RCW 62A.2-315. Moreover, Plaintiffs do not counter this
21 contention in their opposition brief, nor does Mr. Corning counter this in his deposition
22 testimony. *See, e.g.*, Dkt. # 27-1 at 36-37 (Mr. Corning agreeing that he read the owner’s
23 manual for the lawnmower in the store “to see if it was consistent with [his] experience”).
24 As such, the Court grants summary judgment to the extent Plaintiffs plead a claim for
25 breach of the implied warranty of fitness. However, Plaintiffs may try their claim for
26 breach of the implied warranty of merchantability to the jury.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court GRANTS in part and DENIES in part
3 Defendants' motion for summary judgment. Dkt. # 26.

4 Dated this 20th day of February, 2018.

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8 The Honorable Richard A. Jones
9 United States District Judge

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