DIVISION ONE
FILED: 10/16/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

PETE GEORGIOPOULOS,	)	1 CA-CV 12-0071
	)	
Plaintiff/Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication-
GENERAL MOTORS COMPANY,	)	Rule 28, Arizona Rules
	)	of Civil Appellate
Defendant/Appellant.	)	Procedure)
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-002338

The Honorable Dean M. Fink, Judge

AFFIRMED

Pryor Ramirez & Amar, LLC — Tempe
By Shalev Amar
And Luis F. Ramirez
Attorneys for Appellee

Monroe McDonough Goldschmidt & Molla PLLC — Phoenix
By Negatu Molla
And Karl E. MacOmber
Attorneys for Appellant

G O U L D, Judge

¶1 Pete Giorgopoulos ("Plaintiff") sued General Motors Company ("Defendant") for an alleged breach of an automobile

warranty. Plaintiff's claim was settled, and the only issue Defendant now appeals is the trial court's determination that Plaintiff was entitled to an award of attorney's fees as the prevailing party under Arizona Revised Statute ("A.R.S.") § 44-1265(B).

Facts and Procedural Background

¶2 Plaintiff sought relief for a claimed breach of warranty pursuant to the Arizona Motor Vehicles Warranties Act, A.R.S §§ 44-1261 to 44-1267 (West 2012), otherwise known as the "Lemon Law."[1] The parties agreed to settle Plaintiff's claim for $13,100. However, the parties could not agree on attorney's fees, and agreed to have the trial court decide the amount of fees. The court set a briefing schedule and ultimately awarded Plaintiff $33,600 in attorney's fees. Defendant timely appeals. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and -2101(B).

Discussion

¶3 The sole issue in this appeal is whether Plaintiff was a prevailing party entitled to reasonable attorney's fees under Arizona's Lemon Law, A.R.S. § 44-1265(B). We review this

[1] We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

question of statutory interpretation de novo.[2] *Zeagler v. Buckley*, 223 Ariz. 37, 38, ¶ 5, 219 P.3d 247, 248 (App. 2009).

¶4 Arizona's Lemon Law provides that "[i]f a consumer prevails in an action under this article, the court shall award the consumer reasonable costs and attorney fees." A.R.S. § 44-1265(B). In 2003, we interpreted this statute to mean that "a party who settles a Lemon Law claim after a lawsuit has been initiated is a 'prevailing party' entitled to an award of attorney's fees as provided by A.R.S. § 44-1265(B)." *Moedt v. General Motors Corp.*, 204 Ariz. 100, 103, ¶ 9, 60 P.3d 240, 243 (App. 2002).

¶5 Defendant argues that the *Moedt* holding was wrong and that it should be changed, relying principally on three subsequent cases: *Hull*, *Parrot*, and *Mago*. However, none of these cases discuss the availability of fees upon settlement of a Lemon Law action. As such, they are inapplicable to this appeal.

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[2] Because Defendant does not appeal the *amount* of fees, but merely whether they could be awarded at all, the abuse of discretion standard does not apply. *Zeagler v. Buckley*, 223 Ariz. 37, 38, ¶ 5, 219 P.3d 247, 248 (App. 2009) (explaining that "[t]he trial court's decision on the amount of fees to award is reviewed under the abuse of discretion standard") (internal citation omitted).

¶6 In *Hull*, we held that because plaintiffs had sold the vehicle in question prior to trial, they could not recover under the Lemon Law because the vehicle could no longer be returned to the manufacturer. *Hull v. DaimlerChrysler Corp.*, 209 Ariz. 256, 258-59, ¶¶ 11, 16, 99 P.3d 1026, 1028-29 (App. 2004) (explaining that it was inconsistent to allow a plaintiff to recover under the Lemon Law while passing the vehicle off to another consumer). In *Parrot,* our supreme court held that a lessee could not sue a manufacturer under Arizona's Lemon Law because the statute's limited remedies assumed that the consumer had the right to transfer title back to the manufacturer. *Parrot v. DaimlerChrysler Corp.*, 212 Ariz. 255, 261-62, ¶¶ 41, 45, 130 P.3d 530, 536-37 (2006). In *Mago*, we held that a plaintiff's lessee status prevented him from seeking remedies under the Lemon Law for the reasons stated in *Parrot. Mago v. Mercedes-Benz, U.S.A. Inc.*, 213 Ariz. 404, 406, ¶ 1, 142 P.3d 712, 714 (App. 2006).

¶7 While these cases do demonstrate that a plaintiff must own a vehicle in order to pursue a Lemon Law claim, they say nothing about whether the settlement of a claim entitles a plaintiff to attorney's fees.

¶8 Defendant contends that because the settlement allowed Plaintiff to keep the vehicle *and* obtain a cash settlement - a

remedy that is not provided for under the Lemon Law statutes - Plaintiff did not "prevail" under the statutes. However, A.R.S. § 44-1265(B) does not require that a remedy under the act be awarded in order for a party to qualify as a prevailing party, but merely that the plaintiff "prevail" in the "action." A.R.S. § 44-1265(B).

¶9 Unlike the statutes in the cases cited by Defendant,[3] the Lemon Law statute does not require that the plaintiff prevail by an adjudication on the merits, but merely that the plaintiff "prevail[] in an action under this article." A.R.S. § 44-1265(B). As *Moedt* explains, given that an "action" has been defined to mean simply "'a lawful demand for a legal right,'" filing a complaint in superior court qualifies as an action, and successfully settling this litigation constitutes "'prevailing' in an 'action' as meant in A.R.S. § 44-1265(B)." *Moedt*, 204 Ariz. at 103, ¶ 8, 60 P.3d at 243 (quoting *Chalpin v. Mobile Gardens, Inc.*, 18 Ariz.App. 231, 236, 501 P.2d 407, 412 (1972)).

¶10 The Lemon Law's fee-shifting provisions promote the settlement of disagreements without extensive litigation and strengthen a purchaser's ability to enforce the consumer-

[3] For example, A.R.S. §§ 12-2030 and -348, discussed in *Arnold v. Arizona Bd. Of Pardons and Paroles*, 167 Ariz. 155, 805 P.2d 388 (App. 1990).

protection laws. *Moedt*, 204 Ariz. at 103, ¶ 9, 60 P.3d at 243. Prohibiting a fee award to a plaintiff who was willing to settle, but whose settlement did not include a remedy specified by the statute, would undermine both of these purposes. Defendant has offered no persuasive reason why this rule should be changed, and we decline to reverse it.

¶11 Given that Plaintiff was the prevailing party under the *Moedt* rule, we affirm the award of fees below.

Fees

¶12 Plaintiff requests the fees he incurred in this appeal pursuant to A.R.S. § 44-1265(B), arguing that Defendant "cannot litigate tenaciously and then be heard to complain about the time necessarily spent by Plaintiff in response." *Copeland v. Marshall*, 641 F.2d 880, 904 (D.C. Cir. 1980) (internal citation omitted). Given that Plaintiff is the prevailing party, we award Plaintiff his reasonable fees incurred in this appeal subject to his compliance with Arizona Rule of Civil Appellate Procedure ("ARCAP") 21.

Conclusion

¶13 For the foregoing reasons, we affirm.

/S/_____
ANDREW W. GOULD, Judge

CONCURRING:

/S/_____
MICHAEL J. BROWN, Presiding Judge

/S/_____
DONN KESSLER, Judge