NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 15, 2024*
Decided April 16, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2508

CLARENCE SHED, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
v.	
	No. 21-cv-5523
JOSEPH BREDEMANN, et al., *Defendants-Appellees*.	Steven C. Seeger, *Judge*.

O R D E R

Clarence Shed sued a car dealership and several of its employees after a used car he purchased there quickly developed mechanical problems. When the dealership offered a refund but refused to repair the car, Shed filed this lawsuit alleging that the dealership's employees racially discriminated against him and breached the covenant of

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

good faith and fair dealing implied into the purchase order. The district court dismissed his complaint for failure to state a claim, and we affirm.

We recount the well-pleaded facts as alleged in Shed's complaint, accepting them as true. *See Bronson v. Ann & Robert H. Lurie Child.'s Hosp. of Chi.*, 69 F.4th 437, 448 (7th Cir. 2023). In July 2021, Shed, a Black man, responded to an advertisement by Bredemann Ford, a dealership in Glenview, Illinois, listing for sale a used 1999 Cadillac sedan. Shed inspected the vehicle, deemed it acceptable, and returned several days later to complete the purchase. The sales manager, Victor Martinez, told Shed that that the dealership had inspected the car, and it was in good working condition. Shed signed a purchase order, paid $7,450, and left with the car. The purchase order contained this clause, which Shed signed:

> USED VEHICLE "AS IS": Purchaser will bear the entire expense of repairing or correcting any defects that presently exist or that may at any time hereafter occur in the vehicle … THIS VEHICLE IS SOLD AS IS WITH NO WARRANTY AS TO MECHANICAL CONDITION.

Despite this language, the Illinois statutory used car warranty, 815 ILCS 505/2L, and common-law implied warranties afford some protections to used-car buyers.

Several days after the purchase, the vehicle began causing problems for Shed. A different dealership told him that the car was leaking large amounts of oil and coolant. Shed had the car towed back to Bredemann Ford after Martinez told him that the dealership would fix these issues.

After the car was inspected, Martinez told Shed that the repairs would cost $3,500. Shed refused to pay and requested that Bredemann Ford cover the repair costs under 815 ILCS 505/2L. The dealership's president, Joseph Bredemann, called Shed several days later to tell him that the dealership would not pay for repairing the Cadillac. Shed again insisted that Illinois law required it to do so. Bredemann responded by belittling him in a raised voice. And upon learning that Shed was from a predominantly Black neighborhood in Chicago, Bredemann further berated him, reiterated that he refused to fix the "damn car," and demanded that Shed instead return the title. Shed perceived that Bredemann was bullying him because of his race.

The dispute continued for several weeks. When Shed went to collect his personal belongings from the car, staff told him, falsely, that the car was at a different dealership. Then, the dealership's manager, John Sagat, refused to help him open the

vehicle and, speaking in expletives, demanded that Shed bring back the title. Shed eventually returned with the title and offered to sign it back to the dealership if he got a refund of the purchase price. The dealership agreed, but it also required Shed to provide a release, which he signed under "inordinate pressure." Throughout the whole ordeal, Bredemann Ford employees were disrespectful and dishonest toward Shed, who attributed the mistreatment to racial discrimination.

Shed sued the dealership's parent company, Martinez, Bredemann, and Sagat, asserting that they had discriminated against him in violation of 42 U.S.C. § 1981 and breached the covenant of good faith and fair dealing implied into all Illinois contracts. After multiple dismissals and amendments of the complaint, the district court recruited counsel, who filed another amended complaint on Shed's behalf. The defendants moved to dismiss the operative complaint for failure to state a claim, *see* FED. R. CIV. P. 12(b)(6), and the district court granted the motion. As to the § 1981 claim, the court concluded that Shed failed to allege facts which plausibly suggested that the defendants deprived him of the right to make or enforce a contract because of his race. The court also rejected Shed's claim for breach of the implied covenant of good faith and fair dealing because Shed failed to identify any contract term that the defendants had exploited. Shed filed a motion for reconsideration within 28 days of the ruling, *see* FED. R. CIV. P. 59(e), but the court found his arguments unpersuasive and denied it.

Shed's brief on appeal largely reproduces his motion for reconsideration in challenging the dismissal of his complaint. *See Norfleet v. Walker*, 684 F.3d 688, 691 (7th Cir. 2012). Both decisions are before us because Shed filed his notice of appeal within 30 days of the district court denying his timely motion for reconsideration, *see* FED. R. APP. P. 4(a)(1)(A), (a)(4)(A)(iv). We review de novo the decision to dismiss the complaint. *Bronson*, 69 F.4th at 447. A complaint will survive a motion to dismiss so long as it alleges "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In other words, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

We begin with Shed's assertion of racial discrimination under 42 U.S.C. § 1981, which the district court viewed as too "conclusory" to state a claim without allegations of explicitly race-based comments or superior treatment for white customers. We have explained, however, that the plaintiff in a discrimination suit need not allege specific facts beyond the type of discrimination that he thinks occurred, by whom, and when. *Swanson v. Citibank, N.A.*, 614 F.3d 400, 405 (7th Cir. 2010); *see also Swierkiewicz v. Sorema*

N.A., 534 U.S. 506 (2002). And here, Shed's complaint asserts that the defendants discriminated against him based on his race by refusing to repair his car.

Even assuming that Shed adequately described the alleged discrimination for purposes of notice pleading, dismissal of the complaint was appropriate because he did not identify a contract that the defendants impeded. *See DJM Logistics, Inc. v. FedEx Ground Package Sys., Inc.*, 39 F.4th 408, 413 (7th Cir. 2022). Section 1981 protects against race discrimination in the specific context of making and enforcing contracts. *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 474-75 (2006). But, as the district court explained of Shed's claim: "the reality is that the dealership sold him the car, and then returned his money, so there is no allegation of a deprivation of his rights under section 1981."

Shed disagrees, contending that under an Illinois law implied into his purchase agreement, he had a contractual right to have the car repaired as long as the cost of the repairs did not exceed the price of the car.[1] *See* 815 ILCS § 505/2L(f)–(g). He asserts that the defendants interfered with this right by forcing him to accept a refund instead of repairing the car as he asked. But the statute does not confer on the buyer a right to free repairs. Instead, it requires a buyer to give a dealer a "reasonable opportunity" to repair the used car before escalating to additional remedies. And its sets the dealer's maximum liability as "the purchase price paid for the used motor vehicle, to be refunded to the consumer … in exchange for return of the vehicle." *Id*. Shed's complaint establishes that the dealership jumped straight to offering him a full refund in exchange for the title—the maximum relief available to him. Therefore, Shed was not denied the "enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship," 42 U.S.C. § 1981(b), even if we accept as true the allegation that the defendants displayed racial animus toward Shed when he requested repairs.

Shed's complaint also failed to state a claim for breach of contract based on the implied covenant of good faith and fair dealing because he did not allege that the defendants exercised contractual discretion in an unexpected and unreasonable manner. *See Barwin v. Vill. of Oak Park*, 54 F.4th 443, 454 (7th Cir. 2022) (applying Illinois law). Under Illinois law, breach of the implied covenant is not a standalone cause of action to remedy the poor behavior of a contracting party. *See Wilson v. Career Educ. Corp.*, 844 F.3d 686, 688 (7th Cir. 2016) (applying Illinois law). Instead, it is a form of breach of contract. *See Barwin*, 54 F.4th at 452; *Voyles v. Sandia Mortg. Corp.*, 751 N.E.2d 1126, 1130 (Ill. 2001). The implied covenant requires a party vested with discretion by a

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[1] The parties apparently agree that Illinois law governs the contract.

contract to exercise that discretion reasonably and with proper motive. *Eckhardt v. Idea Factory, LLC*, 193 N.E.3d 182, 194 (Ill. App. Ct. 2021). Here, Shed points to the defendants' decision to refund the purchase price instead of repairing the vehicle. But granting a party the maximum recourse available to him under the contract is not arbitrary, capricious, or "inconsistent with the reasonable expectations of the parties." *Barwin*, 54 F.4th at 454.

AFFIRMED