

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN STATE UNIVERSITY FEDERAL
CREDIT UNION,

UNPUBLISHED
August 25, 2005

Plaintiff-Appellant/Cross-Appellee,

v

No. 252393
Washtenaw Circuit Court
LC No. 02-000957

LEXUS OF ANN ARBOR,

Defendant-Appellee/Cross-
Appellant.

Before: Cooper, P.J., and Fort Hood and R. S. Gibbs*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's decision finding that defendant was liable for no damages because of its failure to record a lien in plaintiff's favor on a car sold by defendant to plaintiff's debtor. Defendant cross appeals from the trial court's earlier decision denying defendant summary disposition and granting summary disposition for plaintiff with respect to liability only. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's complaint alleged that plaintiff's customer, an individual named Punit Sushil, presented to defendant, an automobile dealer, a check issued by plaintiff for the purchase of an automobile and that, by endorsing the check, defendant agreed to record a first lien on the vehicle in favor of plaintiff. Defendant admitted that it had agreed to record a lien in favor of plaintiff by endorsing the check, and that it failed to do so. No payments on the vehicle were ever made by the buyer to plaintiff, and plaintiff has been unable to locate the buyer or the vehicle. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), asserting that

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

it was expressly relieved of liability because plaintiff did not allege compliance with MCL 257.217(8).¹

The trial court concluded that plaintiff had complied with the statute and granted partial summary disposition for plaintiff with respect to liability only. The parties then agreed by stipulated order that the matter be submitted to the court for decision on the briefs.² The parties agreed to allow the court to decide whether plaintiff was entitled to damages, and if so, the amount of damages to which plaintiff was entitled.

In its brief to the trial court, plaintiff asserted that defendant's failure to record plaintiff's lien on the vehicle was the proximate cause of plaintiff's damages because the vehicle was most likely shipped out of the United States and a recorded lien on the vehicle would have prevented it from being so shipped. Plaintiff attached to its brief in the lower court a document apparently reflecting Michigan Secretary of State records and indicating that the registration of the vehicle had expired on March 9, 2002, and was not renewed in Michigan. The trial court, however, found that plaintiff was entitled to no damages. The court found plaintiff's theory unsupported by evidence, and the court noted that it would have to engage in a series of speculations to conclude that plaintiff was entitled to damages from defendant and that the inferences required for that process were not necessary, or even more probable than not. Asserting the same

¹ The statute provides:

If the seller does not prepare the credit information, contract note, and mortgage, and the holder, finance company, credit union, or banking institution requires the installment seller to record the lien on the title, the holder, finance company, credit union, or banking institution shall pay the seller a service fee of not more than \$10.00. The service fee shall be paid from the finance charges and shall not be charged to the buyer in addition to the finance charges. The holder, finance company, credit union, or banking institution shall issue its check or bank draft for the principal amount financed, payable jointly to the buyer and seller, and there shall be imprinted on the back side of the check or bank draft the following:

"Under Michigan law, the seller must record a first lien in favor of (name of lender) _____ on the vehicle with vehicle identification number _____ and title the vehicle only in the name(s) shown on the reverse side. " On the front of the sales check or draft, the holder, finance company, credit union, or banking institution shall note the name(s) of the prospective owner(s). Failure of the holder, finance company, credit union, or banking institution to comply with these requirements frees the seller from any obligation to record the lien or from any liability that may arise as a result of the failure to record the lien. A

² The parties' stipulated order states, "As the facts of the matter are not in dispute (other than the valuation of the subject vehicle), testimony is not necessary."

arguments made below, plaintiff claims on appeal that the trial court erred by finding it entitled to no damages. Because the matter was submitted to the court on undisputed facts, we conclude that it is appropriately reviewed as a judgment on stipulated facts. MCR 2.116(A). Therefore, our review is only for errors of law. *Federal Land Bank of St Paul v Bay Park Place, Inc*, 162 Mich App 1, 6; 412 NW2d 222 (1987).

We conclude that the trial court did not commit legal error. Damages recoverable in a contract action are those that arise naturally from the breach or that were in the contemplation of the parties at the time the contract was made. *Kewin v Massachusetts Mut Life Ins Co*, 409 Mich 401, 414; 295 NW2d 50 (1980); *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 678; 591 NW2d 438 (1999). A party injured by another's contractual breach may recover only for such injuries as are the direct, natural and proximate result of the breach. *Stewart v Rudner*, 349 Mich 459, 468-469; 84 NW2d 816 (1957); *Farm Credit Services, supra* at 679. Although our review is for legal error, we are compelled to note that, as a factual matter, the record in this case simply does not establish that Mr. Sushil must have, or even probably, shipped the vehicle out of the United States. The fact that the vehicle has not been reregistered in Michigan or in another state does not compel that conclusion, and as defendant noted in the trial court any number of factual scenarios are plausible, including that the buyer drove the vehicle to Canada or Mexico, or that it is still in the United States. The record further fails to establish that the vehicle could not have been removed from the United States if the lien had been recorded. The trial court's conclusion that the factual scenario posited by plaintiff simply was not established by the facts before the court appears correct. More significantly, however, the trial court's determination is not subject to review in this appeal from a judgment on stipulated facts, which is reviewed only for errors of law. *Federal Land Bank of St Paul, supra* at 6.³ Because there appears no error of law, we affirm the decision of the trial court.⁴

³ Even if the decision were reviewed as a judgment after trial of facts before the court, MCR 2.517, we would find no clear error. MCR 2.613(C).

⁴ We are not persuaded by defendant's contention that the injuries incurred by plaintiff could not be the proximate result of defendant's failure to record the lien because the perfection of a security interest is only relevant to purchasers of the vehicle or to a priority battle between creditors. See MCL 440.9201(1); MCL 440.9324(1). Even if the only relevance of a perfected security interest within the commercial code is to purchasers and creditors, this does not as a matter of law preclude the possibility that the perfection of the lien might have other effects that were contemplated by the parties, and therefore foreseeable and natural results of defendant's failure to perfect the lien. *Kewin, supra* at 414; *Farm Credit Services, supra* at 679. Specifically, in light of the federal regulation plaintiff cites, 19 CFR 192.2, which requires the written consent of a lien holder before an automobile may be shipped out of the country, we are unable to conclude that as a matter of law defendant's breach of contract could not be the proximate cause of the plaintiff's loss. However, as we have already noted, the record simply does not establish either that the vehicle was shipped out of the United States, or that it could not have been shipped out of the country if plaintiff's lien had been recorded.

Our resolution of plaintiff's appeal renders the issue presented on cross-appeal moot. Therefore, we decline to address that issue at this time.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Roman S. Gribbs