STATE OF MICHIGAN

COURT OF APPEALS

MARK LIEBERMAN,

Plaintiff-Appellant,

v

FLEETWOOD MOTOR HOMES OF INDIANA and SPARTAN MOTOR CHASSIS, INC.,

Defendants-Appellees.

UNPUBLISHED
February 24, 2009

No. 280692
Eaton Circuit Court
LC No. 06-000539-CP

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

In this action involving a motor home manufactured by defendants, plaintiff appeals as of right a circuit court order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10). We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Factual History

Plaintiff's company, Nostalgic Motoring, purchased the subject motor vehicle for $166,000 on June 27, 2005, and took delivery on that date. Fleetwood Motor Homes of Indiana manufactured the motor home portion of the vehicle, and Spartan Motor Chassis, Inc. manufactured the vehicle's chassis. On July 12, 2005, August 24, 2005 and September 12, 2005, plaintiff took the motor home to a dealer for various repairs to the coach. On November 15, 2005, plaintiff took the vehicle to Fleetwood's factory for additional repairs. In January 2006, Fleetwood notified plaintiff's attorney that it had completed the additional repairs. However, plaintiff declined to pick up the vehicle, and filed this action, which the circuit court summarily dismissed.

II. Standard of Review

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews de novo a circuit court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court reviews for an abuse of discretion circuit court rulings concerning discovery. *VanVorous v Burmeister*, 262 Mich App 467, 476; 687 NW2d 132 (2004).

III. Analysis

Plaintiff contends that the circuit court erred in concluding that the vehicle's "repair history" qualified as reasonable. Plaintiff's suggestion that the time spent making repairs was unreasonable focuses on the time he asserts that the vehicle spent inadequately repaired, i.e., from delivery in July 2005 through at least January or February 2006, or alternatively, the aggregate time that the vehicle remained at a repair facility.

This Court addressed the unreasonableness of the time taken for repairs as a basis for recovery in *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 314; 696 NW2d 49 (2005). In *Computer Network*, this Court recognized that "where a limited express warranty[1] fails of its essential purpose or deprives either party of the value of the bargain, the parties may pursue other remedies under the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.*" *Id*. However, the Court explained,

> In this case, there was no evidence indicating that the manufacturer's limited express warranty failed of its essential purpose. To the contrary, every time plaintiff presented the vehicle, repairs were made. In this respect, the present case is distinguishable from most defective vehicle cases. Additionally, there was no evidence that the time allotted for the presented repairs was unreasonable under the particular circumstances. There were numerous different repairs to the vehicle over a lengthy period, most of which were not repeat repairs. Plaintiff relies on the aggregate number of repair days to argue that there is a question of fact whether the time for repairs was unreasonable. However, it offers no evidence that the time to perform the numerous, individual repairs was unreasonable for this specific vehicle. [*Id*. at 315 (citation omitted).]

In this case, plaintiff identified a host of complaints each time that he presented the vehicle for servicing. With few exceptions, the complaints differed on each occasion he presented the vehicle for repair. As in *Computer Network*, plaintiff contends that the aggregate number of days for repair should be considered, but he fails to show that the time for the individual repairs was in any way unreasonable. Moreover, plaintiff refers to the periods that the vehicle remained with the dealer, but he does not indicate whether he retrieved the vehicle promptly after the repairs were effectuated. For example, with respect to the August 24, 2005 repair, plaintiff indicates that the dealer "had the vehicle for several weeks," but the order states that the service was completed on the same day. In summary, plaintiff has failed to present evidence establishing a genuine issue of material fact concerning whether the manufacturers' warranties failed of their essential purpose.

Plaintiff briefly addresses his claims under the Magnuson-Moss Warranty Act, 15 USC 2301 *et seq.*, and the Michigan Consumer Protection Act, MCL 445.901 *et seq*. However, he

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[1] Fleetwood disputes whether its warranty is properly characterized as a limited express warranty. We assume without deciding that plaintiff has correctly characterized the applicable warranty as limited and express.

recognizes that his claims under these statutes are derivative of his warranty claims. Because we have affirmed the circuit court's dismissal of plaintiff's warranty claims, no basis exists for granting relief with respect to these derivative claims.

Plaintiff also contends that the circuit court erred in failing to order Spartan to comply with discovery. He asserts that Spartan failed to adequately answer an interrogatory about service, maintenance, or repairs performed by Spartan, and did not produce any documentation of repairs. Plaintiff complains that he raised the issue at a motion to compel and in response to defendants' motions for summary disposition, but the court "simply refused to rule," which was an abdication and abuse of its discretion.

The record does not support plaintiff's argument. The record reflects that the parties resolved the discovery issue off the record. Furthermore, the court did not abuse its discretion by failing to issue an order to compel Spartan to produce documents that counsel represented did not exist, and which in any event related to a claimed defect that had been resolved. *VanVorous*, *supra* at 476.

Affirmed.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher