

Guarino v Land Rover N. Am., Inc.

2011 NY Slip Op 33372(U)

December 12, 2011

Supreme Court, Nassau County

Docket Number: 13417/10

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

JOSEPH GUARINO,

Plaintiff,

- against -

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 13417/10
Motion Seq. No.: 01
Motion Date: 07/14/11

LAND ROVER NORTH AMERICA, INC.,
JAGUAR LAND ROVER NORTH AMERICA, LLC and
AUTOMOBILE PROTECTION CORPORATION,

Defendants.

The following papers have been read on this motion:

	Papers Numbered
<u>Notice of Motion, Affirmation and Memorandum of Law</u>	<u>1</u>
<u>Affirmation in Opposition and Exhibits</u>	<u>2</u>

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendant Jaguar Land Rover North America, LLC ("Jaguar") moves, pursuant to CPLR § 3212, for an order granting it summary judgment. Plaintiff opposes the motion. No papers were submitted by defendant Land Rover North America Inc., nor defendant Automobile Protection Corporation.

The instant action involves a breach of warranty claim. Plaintiff commenced the action by filing a Summons and Verified Complaint on or about July 14, 2010. Issue was joined by defendant Jaguar on or about August 17, 2010.

In its motion for summary judgment, defendant Jaguar asserts that plaintiff leased a 2005 Range Rover in or about July 2007. Said vehicle was originally sold on November 30, 2004, with a standard factory warranty of four years or 50,000 miles. Defendant Jaguar submits that the standard factory warranty would have expired no later than November 29, 2008. Defendant Jaguar states that plaintiff, in his Verified Complaint, claims that he developed engine concerns on December 23, 2009, and that he had purchased an extended warranty through defendant Automobile Protection Corporation. Defendant Jaguar now moves for summary judgment on the basis that there are no facts to support a breach of warranty claim against it since no complaints were made within the warranty period and the engine concerns plaintiff alleges occurred thirteen (13) months after the factory warranty expired. Defendant Jaguar argues that an express warranty does not cover repairs made after the applicable warranty period has elapsed.

In opposition to defendant Jaguar's motion, plaintiff submits that, in July 2007, upon leasing the 2005 Range Rover, he "purchased a Limited Warranty through the defendants, providing him with coverage for seventy two (72) additional months or seventy five thousand (75,000) miles." See Plaintiff's Affirmation in Opposition Exhibit A. Plaintiff contends that, on or about December 2009, the subject vehicle developed engine trouble. After inspection of the vehicle, defendant Jaguar refused to cover the cost of the repairs to the vehicle pursuant to the Limited Warranty. Plaintiff argues that defendant Jaguar's motion for summary judgment should be denied in its entirety on the grounds that there are issues of fact which preclude summarily deciding this matter and that defendant Jaguar has failed to make a *prima facie* showing of its entitlement to judgment as a matter of law.

Plaintiff submits that, "[i]n its affirmation, the attorney for defendant alleges that the

defendant did not issue the limited warranty. Conversely, the limited warranty may very well have been issued by defendant Jaguar Land Rover North America, LLC since the warranty is on the Land Rover letterhead and was delivered to plaintiff at the dealership when he leased the vehicle. Although the engine problems at issue may not have occurred during the basic factory warranty period, it (*sic*) has absolutely occurred during the limited warranty period. Further, defendant Jaguar Land Rover North America, LLC is the selling dealer who leased this vehicle to the plaintiff at the time that the limited warranty was issued. Defendant Jaguar Land Rover North America, LLC has been in possession of the vehicle since December 2009, when the plaintiff returned the vehicle to them to make repairs because it was no longer drivable. Defendant Jaguar Land Rover North America, LLC is now seeking damages from the plaintiff to cover the repairs. In view of the fact that defendant Jaguar Land Rover North America, LLC is seeking that the plaintiff monetarily contribute to the repairs which should have been covered, the defendant must remain in the action until the legal positions of all parties are established.”

Plaintiff further notes that defendant Jaguar fails to provide a copy of the basic factory warranty, which is referenced on numerous occasions in its motion, and fails to include an affidavit on behalf of defendant Jaguar, but instead make baseless assertions.

Plaintiff argues that, “[i]n this case, it is obvious that the defendant is not entitled to summary judgment relief. A review of the evidence in this matter indicates that a warranty existed at the time of the engine trouble that should have covered any and all of the repairs to the vehicle. The vehicle was purchased from the defendant and the defendant is now seeking payment from the plaintiff for the repairs which should have been covered under the limited warranty. Further, even if the defendant is not the party that issued the limited warranty, it has

not provided any evidence to support its contention that it is not responsible under the basic factory warranty. They have failed to include a copy of that warranty or an affidavit substantiating the attorney's claims."

Plaintiff adds that the instant motion is premature as the parties have not yet exchanged any discovery, nor have the parties conducted depositions. In fact, plaintiff has not yet received an Answer from defendants Land Rover North America, Inc. or Automobile Protection Corporation.

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. *See Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. *See Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. *See CPLR § 3212 (b); Olan v. Farrell Lines Inc.*, 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 427

N.Y.S.2d 595 (1980), *supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. *See Sillman v. Twentieth Century- Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957), *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. *See Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. *See Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989).

Based upon the legal argument and the lack of evidence provided by defendant Jaguar in its motion, the Court finds that defendant Jaguar has failed to make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. As noted by plaintiff, defendant Jaguar provided no documentary evidence whatsoever. Additionally, the Court notes that defendant Jaguar failed to submit a copy of the pleadings as an exhibit to the motion as required pursuant to CPLR § 3212 which states that “[a] motion for summary judgment shall be supported by...a copy of the pleadings...” Based upon the papers before it, the Court finds that there are indeed issues of fact which would preclude summary judgment.

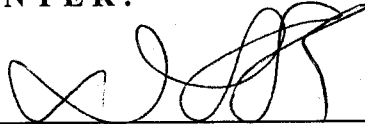
Accordingly, defendant Jaguar’s motion, pursuant to CPLR § 3212, for an order granting it summary judgment is hereby **DENIED**.

It is further ordered that the parties shall appear for a Preliminary Conference on January 26, 2012, at 9:30 a.m., at the Preliminary Conference Desk in the lower level of 100 Supreme

Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this Order shall be served on all parties and on the DCM Case Coordinator. There will be no adjournments, except by formal application pursuant to 22 NYCRR § 125.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
December 12, 2011

ENTERED
DEC 14 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE