

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

Anthony W. Gunzl,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 07C-10-169 PLA
v.	)	
	)	
CJ PONY PARTS and GLOBAL	)	
WEST SUSPENSION,	)	
	)	
Defendants.	)	

**ON DEFENDANT’S MOTION TO DISMISS  
GRANTED**

Submitted: February 25, 2008  
Decided: March 20, 2008

This 20<sup>th</sup> day of March, 2008, upon consideration of the Motion to Dismiss filed by Defendant Global West Suspension (“Global”), it appears to the Court that:

1. Plaintiff Anthony W. Gunzl (“Gunzl”) filed a *pro se* complaint on October 18, 2007 against CJ Pony Parts (“CJ”) and Global. In that complaint, Gunzl claims that he made various car part purchases from CJ for a 1966 Mustang Fastback. The complaint is not entirely comprehensible, but it appears to the Court that Gunzl is arguing that CJ breached its contract with him by selling defective gauges, dented doors, a defective back frame rail, and other “second hand parts or garbage parts that no one else would

buy.”<sup>1</sup> He also alleges that CJ defamed him by stating that Gunzl and his employees “did not know what they were doing” insofar as they misused the parts CJ sold him.<sup>2</sup> As a result of these breaches, Gunzl claims a loss of “prestige” since he cannot attend car shows. He is seeking \$50,000.00 in “communitive damages,” \$50,000.00 in punitive damages, damages for the allegedly improper parts, reimbursement for labor involved in repairing the parts for use with the Mustang, “at least” \$20,000.00 for future damages that may result “in case we have to bu[y] more parts from someone,” and other related costs.

2. On March 3, 2008, the Court sent a letter to Gunzl asking for clarification of his Complaint.<sup>3</sup> Specifically, the Court asked Gunzl whether he had alleged any causes of action against CJ that were distinct or different from the claims against Global. Since Global was represented by counsel and CJ was *pro se*, the Court’s inquiry was focused upon whether Gunzl’s cause of action was similarly subject to dismissal for the same reasons asserted by Global. Gunzl was given fifteen days from the date of the letter

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<sup>1</sup> Docket 1 (Complaint), ¶ 10.

<sup>2</sup> *Id.*, ¶ 14. The Court assumes that Gunzl is alleging a defamation claim because Gunzl only states that the statement made by CJ is “a deformation of character.”

<sup>3</sup> Docket 12.

to respond. Gunzl did not respond to the Court's letter within the time allotted.

3. Gunzl's only allegation of any wrongdoing against Global is contained in paragraph 13 of his complaint, in which he states:

The Plaintiff also purchased from the defendant strut rod housing that got welded to the frame. We had purchased and installed 2 strut rods from Global West. They are saying [that] there is nothing wrong with their parts [but] that C J Pony Parts are the ones that do not fit. The parts do not fit so therefore both parties are responsible.<sup>4</sup>

4. On February 5, 2008, Gunzl filed an amended complaint in which he alleged that: (1) he purchased the rods for \$344.35, with an additional \$23.29 in shipping costs; (2) he installed the rods into the 1966 Mustang but the rods did not fit; (3) he spoke with a representative from Global, who said that the parts are fine and that CJ is responsible for the problem. Although the Amended Complaint contains more specificity with respect to the amount of damages sustained by plaintiff, the Amended Complaint still does not allege any legal theory for recovery.

5. Global filed the instant motion to dismiss pursuant to Superior Court Civil Rule 12(b)(6). In it, Global contends that Gunzl's claim can only be recognized as a claim of strict liability, which is precluded under Delaware's Uniform Commercial Code ("DUCC"). Global notes that since

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<sup>4</sup> *Id.*, ¶ 13.

the DUCC precludes consequential and punitive damages, Gunzl has failed to state a cognizable claim. Alternatively, if Gunzl's claim is premised on negligence, Global submits that Gunzl has failed to plead with specificity any negligent act that Global may have committed, which is a requirement of Superior Court Civil Rule 9. Finally, Global argues that this Court should dismiss the claim against it for lack of personal jurisdiction and insufficiency of process as it is a California corporation with no offices in Delaware, and Gunzl has failed to file an Amendment to the Complaint as required by Superior Court Civil Rule 4(h) and 10 *Del. C.* § 3104.

6. In response, Gunzl contends that his allegations that Global shipped the wrong parts are sufficient to allege negligence. He also argues that, by advertising in Delaware, there are sufficient contacts to confer jurisdiction over Global, and that service of process was sufficient since defendants "received" the Complaint.

7. Superior Court Civil Rule 12(b)(6) states, in pertinent part: "[T]he following defenses may at the option of the pleader be made by motion: . . . (2) lack of jurisdiction over the person, . . . (4) insufficiency of process, (5) insufficiency of service of process, [and] (6) failure to state a claim upon which relief can be granted. . . ." <sup>5</sup> When judging a motion to

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<sup>5</sup> Super. Ct. Civ. R. 12(b)(6).

dismiss a complaint for failure to state a claim, the Court must accept all well-pleaded allegations as true.<sup>6</sup> The Court must determine “whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”<sup>7</sup> Where a plaintiff may recover, the Court must deny the motion to dismiss.<sup>8</sup> “[V]agueness and lack of detail alone provide insufficient grounds for dismissal.”<sup>9</sup>

8. Gunzl is alleging that Global is liable for the sole reason that it sold him defective parts. Therefore, it appears that his claim is based on strict liability. Under Delaware law, a claim of strict liability based on sales is governed by the DUCC and not by tort law.<sup>10</sup> Thus, Gunzl can only recover damages for a breach of an implied or express warranty where there is privity between the parties, notice is established, and the applicable statute of limitations has not run.<sup>11</sup> Even if Gunzl could prove his claim, he would not be entitled to punitive damages because he has failed to allege bad faith

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<sup>6</sup> *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Smith v. First Corr. Med., LLC*, 2005 WL 1953118, at \*1 (Del. Super. Ct. Jul. 14, 2005).

<sup>10</sup> *Cline v. Prowler Indus. of Md., Inc.*, 418 A.2d 968, 971 (Del. 1980).

<sup>11</sup> *Id.* at 973-74.

giving rise to a tort claim.<sup>12</sup> Similarly, counsel fees are not recoverable in a contract action.<sup>13</sup>

9. Under any theory he maintains, Gunzl has not alleged a valid claim that justifies an award of damages. Gunzl has not asserted the existence of any express warranties, so that his claim must be that the implied warranties of merchantability and fitness for a particular purpose were breached. In this case, however, the vague allegations against Global, and complete lack of detail regarding any understanding or agreement between Gunzl and Global preclude consideration of any contract claim. By merely alleging that Global is liable because the parts he purchased did not fit his 1966 Mustang, Gunzl has failed to satisfy even the basic notice pleading standard required to place Global on notice of what type of claim Gunzl is asserting, whether Global's conduct caused any harm, or whether there were any warranties made or disclaimed. Simply stated, none of Gunzl's allegations against Global are "well-pleaded" and thus cannot survive a motion to dismiss.

10. Similarly, even if Gunzl's claim sounds in negligence, the complaint fails to state a claim upon which relief may be granted. Under

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<sup>12</sup> *E.I. DuPont de Nemours and Co. v. Pressman*, 679 A.2d 436, 445 (Del. 1996).

<sup>13</sup> *Nichols v. Mack Trucks, Inc.*, 1995 WL 1790686, at \*1 (Del. Ch. Mar. 24, 1995).

Superior Court Civil Rule 9, a party alleging negligence must plead allegations with particularity.<sup>14</sup> The purpose of the requirement for particularity is “to put the defendant on notice of the claims in order to give the defendant a fair opportunity to plan a defense.”<sup>15</sup> The rule is met where the pleading informs the defendant “(1) what duty, if any, was breached; (2) who breached it; (3) what act or failure to act breached the duty; and (4) the party upon whom the act was performed.”<sup>16</sup> To comply with Rule 9, the plaintiff cannot merely “state the result or conclusion of fact arising from circumstances not set forth in the declaration, nor . . . make a general statement of the facts which admits of almost any proof to sustain it.”<sup>17</sup>

11. Here, Gunzl’s claim that Global is liable for damages resulting from parts that do not fit the 1966 Mustang is vague and does not state a claim for which relief may be granted. Gunzl fails to allege that he instructed Global that the parts were specifically for a 1966 Mustang. He has not alleged what duty was owed, whether that duty was breached, or whether that breach was caused by Global. Conclusively stating that Global was negligent, without asserting any particular averments to place Global on

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<sup>14</sup> Super. Ct. Civ. R. 9(b).

<sup>15</sup> *Murphy v. Bayhealth Med. Ctr.*, 2006 WL 509544, at \*3 (Del. Super. Ct. Jan. 9, 2006).

<sup>16</sup> *Id.* (citing *Slade v. Carroll*, 2004 WL 440381, at \*2 (Del. Super. Ct. Feb. 25, 2006)).

<sup>17</sup> *Id.* (citation omitted).

notice of a negligence claim, is not sufficient to withstand a motion to dismiss.<sup>18</sup>

12. Even assuming that Gunzl has stated a sufficient claim against Global, the Court finds no basis to exercise jurisdiction over Global. Global is a California corporation. It has no offices in Delaware. While it is true that Global shipped items to Gunzl in Delaware under the parties' contract, that is not sufficient to give our courts jurisdiction: "[i]n a case grounded in breach of contract, without bodily injury claims, mere shipment of goods into Delaware, without additional contact with Delaware, is not adequate evidence of the requisite minimum contacts with Delaware. Thus, assertion of personal jurisdiction over Defendant would not be fair or reasonable."<sup>19</sup> Since Gunzl has failed to articulate any other acts by Global that might satisfy the minimum contacts required for due process, the complaint must be dismissed for lack of personal jurisdiction.

13. Finally, Gunzl's complaint against Global must be dismissed for failure to comply with service of process requirements. Where a plaintiff serves an out-of-state defendant pursuant 10 *Del. C.* § 3104, the plaintiff must file "the defendant's return receipt and the affidavit of the plaintiff . . .

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<sup>18</sup> *Id.*

<sup>19</sup> *Sheer Beauty, Inc. v. Mediderm Pharm. & Labs.*, 2005 WL 3073670, at \*3 (Del. Super. Ct. Oct. 27, 2005).

of the defendant's nonresidence and the sending of a copy of the complaint with the notice required by the statute . . . as an amendment to the complaint within 10 days of the receiving by the plaintiff . . . of the defendant's return receipt."<sup>20</sup> Gunzl never filed an affidavit of Global's nonresidence as an amendment to the Complaint. According to the documentation provided by Gunzl, he received notice that Global received his Amended Complaint, at the latest, on February 6, 2008. Gunzl, however, did not file the notice of receipt with this Court until February 25, 2008, nineteen days later. Gunzl's failure to comply with the statute renders service of process insufficient, warranting dismissal of the Complaint.

14. Based on the foregoing, the Court concludes that Gunzl has failed to state a claim upon which relief may be granted, has failed to demonstrate that this Court may exercise personal jurisdiction over Global, and has failed to demonstrate that Global was properly served. Accordingly, Defendant's Motion to Dismiss is hereby **GRANTED**.

15. The Court further exercises its discretion to dismiss Gunzl's Complaint against CJ. Superior Court Civil Rule 41(e) permits the Superior Court to dismiss an action *sua sponte* "upon notice of the Court, . . . for failure to comply with any rule . . . or for any other reason deemed by the

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<sup>20</sup> Super. Ct. Civ. R. 4(h).

Court to be appropriate.”<sup>21</sup> Where the Court decides to dismiss the action, the Prothonotary

shall forward to the party a notice directing that the party show cause why the action should not be dismissed for the reasons stated in the notice. The notice shall direct the party to respond within fifteen (15) days from the date of the notice. After consideration of such response, the Court shall enter an order dismissing the action or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the action should be dismissed, it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of costs.<sup>22</sup>

16. In this case, Gunzl’s failure to comply with court rules and to adequately plead any cause of action persuades the Court to dismiss his Complaint against CJ *sua sponte*. While stating that he purchased parts from CJ that did not fit his 1966 Mustang, Gunzl does not offer any reason or theory that would justify a finding that CJ is liable to Gunzl. Similarly, the Complaint is vague and lacks detail sufficient to place a trained practitioner, let alone a *pro se* defendant such as CJ, on notice of what claims Gunzl is asserting. Moreover, CJ is a resident of Harrisburg, Pennsylvania. At no time does Gunzl offer any explanation as to how CJ has sufficient minimum contacts with Delaware to justify the Court’s exercise of personal

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<sup>21</sup> Super. Ct. Civ. R. 41(e).

<sup>22</sup> *Id.*

jurisdiction. Finally, just as Gunzl failed to serve Global properly under Superior Court Civil Rule 4(h), Gunzl has also failed to serve CJ properly under the same rule. Although the Court permitted Gunzl fifteen days to clarify his Complaint and demonstrate any distinct or different allegations of wrongdoing against CJ, Gunzl has failed to respond. All of these errors are sufficient under the circumstances to warrant dismissal.

17. For the foregoing reasons, Gunzl's Complaint is hereby **DISMISSED.**

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

Original to Prothonotary