

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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**Re: Henry A. Stenta v. General Motors Corporation and
Delaware Cadillac, Inc.
C.A. No.: 05C-03-328 RRC**

Submitted: July 3, 2008
Decided: August 29, 2008

On Plaintiff's Motion for "Elder Victim Enhanced Penalty Act Liability and
Deceptive Trade Practices Act Liability and Prejudgment Interest and Costs."
DENIED.

Dear Counsel:

This case arises from a complaint filed by Henry A. Stenta (“Plaintiff”) in March, 2005 against General Motors Corporation and Delaware Cadillac, Inc. (“Defendants”). Mr. Stenta has alleged that the Cadillac that he had purchased from Delaware Cadillac, Inc. was defective. The case was set for trial on December 3, 2007. However, the parties advised the Court on the day of trial that there had been a partial settlement of the case (as explained below). Now before the Court is a “General Release and Settlement Agreement” (“the Settlement Agreement”), as well as a “Stipulation” submitted by both parties that purports to establish a framework for the Court’s resolution of the remaining unresolved factual and legal issues. The problem is that the parties have fundamental disagreements as to what was supposedly agreed to in the partial settlement of the case, particularly with respect to what issues remain for this Court to decide.

The issue is before the Court is whether the parties entered into an enforceable agreement pursuant to these documents, despite the contradictory provisions contained in each document. Neither party has argued that the Settlement Agreement is unenforceable; rather, each argues that it must be interpreted in favor of the particular party.

Because the Court finds that there was no “meeting of the minds” between the parties as to the meaning of the provisions contained in the documents, the Court holds that both the Settlement Agreement and Stipulation are unenforceable. Because Plaintiff’s motion was premised upon the enforceability of these documents, Plaintiff’s motion is **DENIED**.¹

I. FACTS AND PROCEDURAL HISTORY

Plaintiff has alleged that the Cadillac he purchased in July 2000 from Delaware Cadillac, Inc. had a continual “musty” smell that was never remedied, despite Plaintiff’s numerous complaints and trips to the dealership’s service department, and despite the service department’s efforts to fix the problem. Eventually Plaintiff requested that the Cadillac be replaced under Delaware’s “Lemon Law.”² Instead, Plaintiff was offered a

¹ Plaintiff is also seeking attorneys fees and costs, which by agreement of the Court and counsel has been deferred until the resolution of this case. As of January 9, 2008 (and before the extensive briefing in subsequent months) Plaintiff asserted a claim of \$69,505 and costs. Pl. Mot for Attorneys Fees, D.I. 31.

² Stip. of Facts, at 3.

non-Lemon Law trade-in, which he rejected. Plaintiff filed suit in March 2005, alleging violation of the “Lemon Law,” violation of the Consumer Fraud Act, violation of the Deceptive Trade Practices Act, violation of the Elderly Victim Act (Plaintiff was 78 at the time of the purchase of the Cadillac, and thus an “elder person” as defined by 6 *Del. C.* § 2580), and breaches of express and implied warranties.³

At the pre-trial conference held on November 5, 2007, the parties discussed the possibility of “limiting trial” by “reaching stipulations that would result in a ‘mini [bench] trial.’”⁴ The Court agreed to allow the parties to do so, and, after “many days”⁵ of negotiation, the parties signed the Settlement Agreement on December 3, 2007 (the day of the trial), by which Plaintiff received \$41,199.60, the original cost of the vehicle, and agreed to dismiss his Lemon Law claim. The parties then signed the Stipulation on December 21, 2007, which incorporated the terms and conditions of the Settlement Agreement.

The relevant portions of the Settlement Agreement are as follows:

2. As partial consideration for the payment described to be tendered in the form of one check in the amount of \$41,199.60 made payable to Releasor, Henry A. Stenta; ...

(c) That Releasor fully understands that this is a full and final settlement and disposition of all disputes as to legal liability and as to the nature and extent of any damages claimed from Releasees by Releasor. This includes but is not limited to all claims made by the Releasor under the Delaware Lemon Law, Consumer Fraud Act, Dealer’s express written labor warranty, breach of implied warranty of good workmanship, and breach of implied labor warrantee of fitness for intended purpose. This does not include the claims as outlined in paragraph (j); ...

(j) It is hereby expressly agreed and understood that Releasor is still entitled to present a claim for pre-judgment interest, present an application to the Court as to whether Plaintiff has standing and is entitled to remedies under the Elder Victims Enhanced Penalties Act, present an application to the Court as to whether the Plaintiff has standing and is entitled to remedies under the Deceptive Trade Practices Act, and that “the Court, in its discretion, may award Plaintiff’s costs and reasonable attorney fees....”;

(k) It is hereby expressly agreed and understood that the Releases have not admitted any liability under Delaware lemon law, consumer fraud act, dealer’s express written labor warrantee and/or breach

³ Am. Complaint, at 4-12.

⁴ Tr. of Status Conf., at 3 (April 14, 2008).

⁵ Def. Letter of April 21, 2008.

of implied warranty claims or any claim or cause of action brought by the Realeasor...

The Stipulation states, in full:

The parties stipulate and agree that the “Delaware Lemon Law” claim and all other claims plead by Plaintiff have been resolved except for the following which will be briefed by the parties and submitted to the Court for decision:

- [1] The issue of whether Plaintiff has standing and is entitled to remedies under the Elder Victims Enhanced Penalties Act;
- [2] Whether Plaintiff has standing and is entitled to remedies under the Deceptive Trade Practices Act;
- [3] The issue whether Plaintiff is entitled pre-judgment interest; and
- [4] The issue of counsel fees and costs.

These issues will be briefed and argued without admission of liability by Defendants for a violation of the Lemon Law, Consumer Fraud Act, dealer’s express written labor warranty, and /or breach of implied warranty claims or any other claim or cause of action brought by Plaintiff. Further, all parties agree that this briefing process will take place without the submission of any proof of evidence of liability for a Lemon Law violation or proof of a violation of the Lemon Law or any other theory of liability plead by Plaintiff.

It is hereby stipulated and agreed by the parties that the terms and conditions of the General Release and Settlement Agreement dated December 3, 2007, are hereby incorporated in this Stipulation.

It is hereby stipulated and agreed that the parties are permitted to submit evidence under the Elder Enhanced Penalties Act. However, as agreed above, such evidence shall not include evidence of violation of any other claim, including but not limited to a violation of the Lemon Law, Consumer Fraud Act, dealer’s express written labor warranty, and/or breach of implied warranty claims or any other claim or cause of action brought by Plaintiff.

The parties submitted extensive briefing (the substantive portions of the motion, response, and reply constituted 65 pages) on the issues supposedly left to be presented to the Court (the Elder Victim Enhanced Penalty Act liability; Deceptive Trade Practices Act liability; and Prejudgment Interest and Costs), whereupon it became apparent that there

was a fundamental disagreement between the parties as to the meaning of the Settlement Agreement and Stipulation.⁶

The Court convened a conference on April 14, 2008 to discuss the obvious misunderstandings, and, at the Court's urging, the parties continued negotiations in May and June, but these negotiations were unsuccessful.

II. CONTENTIONS OF THE PARTIES

Defendants contend that settling the case “without the Defendants admitting liability and [with Plaintiff] giving up the right to prove or present evidence of [the Lemon Law claim] is a “fatal flaw’ to Plaintiff’s claim for enhanced or treble damages,” because without a Lemon Law violation, or presentation of the related evidence, Plaintiff cannot establish a violation of the Elder Victim Enhanced Penalties Act or the Deceptive Trade Practices Act.⁷ Defendant states that “Plaintiff recognized that giving up his right to presenting evidence of and proving these claims might be fatal to his claim for enhanced or treble damages, but chose to do so in exchange for a full buy back, with no mileage deduction, for a car he had possession of and drove for seven years.”⁸

In response, Plaintiff contends that “the Stipulation permits evidence of violation of the [Elder Victim Enhanced Penalties Act] and [Deceptive Trade Practices Act], but proof of violation of the Lemon Law is not required by those Acts, they have their own requirements, proof of which was preserved by this Stipulation.”⁹ Plaintiff identifies the language in the Stipulation stating that “the parties are permitted to submit evidence under the Elder Enhanced Penalties Act” as supporting this contention. Plaintiff asserts that the language to which Defendant refers only prevents “new evidence of violation of the Lemon Law or Consumer Fraud Act.”¹⁰ Plaintiff states that

⁶ Additional issues identified by the parties include whether: Plaintiff has standing to recover treble damages and attorneys fees for a violation of the Elder Victims Enhanced Penalties Act; whether Plaintiff has standing and entitlement to treble damages pursuant to the Deceptive Trade Practices Act; whether Plaintiff is entitled to prejudgment interest as a matter of law; and whether Plaintiff’s Lemon Law claim, Elder Victims Enhanced Penalties Act Claim, and Deceptive Trade Practices Act claim, are barred by the statute of limitation and doctrine of laches.

⁷ Def. Letter of April 21, 2008.

⁸ Def. Letter of April 21, 2008.

⁹ Pl. Letter of April 28, 2008.

¹⁰ Pl. Letter of April 28, 2008.

Defendants now take the position that they tricked Plaintiff into a ‘fatal error’ of agreeing that the issue preserved for decision by the Court, cannot be decided because the Court is not permitted to consider the evidence that the Defendants themselves put into the record for the Court to consider concerning the violation of the Lemon Law as a triggering event for the Elder Victims Enhanced Penalties Act.

In essence, Defendant asserts that no evidence can be put forth in support of the claims of a violation of the Elder Victim Enhanced Penalties Act or the Deceptive Trade Practices Act, while Plaintiff maintains just the opposite. Thus, the parties’ positions are completely contrary as to what they agreed to in the Settlement Agreement and the Stipulation.

III. STANDARD OF REVIEW

“Before the Court can determine whether to enforce [a] settlement agreement, it must first determine whether a settlement agreement was made. This requires the Court to explore whether the parties reached a meeting of the minds” as to the terms of the settlement agreement.¹¹ “Where there is no meeting of the minds, there is no enforceable contract in Delaware.”¹² Furthermore, there is generally “no contract until agreement is reached on all material terms; the preliminary and partial agreements being expressly or impliedly incorporated into the final offer and acceptance.”¹³

IV. DISCUSSION

The Court holds that the terms of the Settlement Agreement and Stipulation are so contradictory that there was no meeting of the minds between the parties, and that both “agreements” are therefore unenforceable.

The contradictions becomes manifest when one examines the issue of what evidence can or cannot be presented by Plaintiff in the “mini bench trial.” The following paragraph in the Stipulation illustrates the discord:

It is hereby stipulated and agreed that the parties are permitted to submit evidence under the Elder Enhanced Penalties Act. However, as agreed

¹¹ *Mell v. New Castle County*, 2004 WL 1790140 (Del. Super.) (holding that a settlement agreement was enforceable because there was a “meeting of the minds”).

¹² *Rodgers v. Erickson Air-Crane Co. L.L.C.*, 2000 WL 1211157, at *6 (Del. Super.) (citing 1 WILLISTON ON CONTRACTS § 4:1 (4th ed. 1990) (“mutual assent is essential to the formation of ... contracts”).

¹³ *Id.* (citing CORBIN ON CONTRACTS § 2.8 (Rev. ed. 1993)).

above, such evidence shall not include evidence of violation of any other claim, including but not limited to a violation of the Lemon Law, Consumer Fraud Act, dealer's express written labor warranty, and/or breach of implied warranty claims or any other claim or cause of action brought by Plaintiff.

These terms purportedly bar evidence related to the Lemon Law violation, but at the same time purportedly allow evidence to be submitted under the Elder Victims Enhanced Penalties Act. These two bodies of evidence are not mutually exclusive, but are one and the same. Thus, it is impossible to come to a sensible understanding of the meaning of the Stipulation as to this material element of the purported agreements. The following paragraphs from the Settlement Agreement also become contradictory:

(j) It is hereby expressly agreed and understood that Releasor is still entitled to present a claim for pre-judgment interest, present an application to the Court as to whether Plaintiff has standing and is entitled to remedies under the Elder Victims Enhanced Penalties Act, present an application to the Court as to whether the Plaintiff has standing and is entitled to remedies under the Deceptive Trade Practices Act, and that "the Court, in its discretion, may award Plaintiff's costs and reasonable attorney fees....";

(k) It is hereby expressly agreed and understood that the Releases have not admitted any liability under Delaware lemon law, consumer fraud act, dealer's express written labor warrantee and/or breach of implied warranty claims or any claim or cause of action brought by the Releasor...

Essentially, each party seems to have inserted the language it wanted in these documents, with no ultimate reconciliation of the inconsistencies. Thus, the Court holds that there was no "meeting of the minds" between the parties, and the Settlement Agreement and Stipulation are unenforceable.

A conference will be held in the very near future at which time a new trial date will be set. The Court will, after hearing from the parties at that conference, enter an order that addresses the issue of the \$41,199.60 paid by Defendant to Plaintiff in December, 2007.

V. CONCLUSION

It is regrettable that this extensively litigated case must undergo more litigation. But for the foregoing reasons, Plaintiff's Motion for "Elder Victim Enhanced Penalty Act Liability and Deceptive Trade Practices Act Liability and Prejudgment Interest and Costs" is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

oc: Prothonotary