

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PEIRRE M. STARKEY,)
Plaintiff,)
)
v.) C.A. No. 97C-10-084
)
INDEPENDENCE CHRYSLER)
PLYMOUTH, INC. t/a METRO)
CHRYSLER PLYMOUTH SUBARU, et al.)
Defendants.)

Date Submitted: February 20, 2002

Date Decided: March 26, 2002

ORDER

UPON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

DENIED

Laurence V. Cronin, Esq. of Smith, Katzenstein & Furlow, LLP, Wilmington, Delaware 19899. Attorney for Defendant OFL-A Receivables Corporation.

Steven F. Mones, Esq. of McCullough & McKenty, P.A., Wilmington, Delaware 19899. Attorney for Independence Chrysler Plymouth t/a Metro Chrysler Plymouth.

On this 26th day of March 2002, upon consideration of Defendant OFL-A Receivables Corporation's Motion for Summary Judgment and Defendant Independence Chrysler Plymouth t/a Metro Chrysler Plymouth's Motion for Summary Judgment, oral argument, and post-argument briefs, it appears to the Court that:

(1) In December 1996, Plaintiff Starkey bought a used 1996 Dodge Stratus from Metro. The contract was assigned by Metro to OFL-A.¹ In July 1997, the vehicle had a mechanical breakdown. Plaintiff stopped making payments to OFL-A and instituted suit among a variety of Defendants. Apparently the vehicle broke down from a failed oil pump. In its lawsuit, Plaintiff alleges that Metro misrepresented the quality of the vehicle to him. Plaintiff also alleged that OFL-A was subject to all Plaintiff's claims and defenses because of the consumer credit contract. OFL-A asserted a cross-claim against Metro for indemnification, costs and attorney fees under the Sales Contract. On February 2000, a settlement was reached between Plaintiff and all Defendants, except OFL-A. In the settlement release, Plaintiff agrees to indemnify all the Defendants, including Metro, for any liability that they may incur regarding this lawsuit.

(2) On April 5, 2000 Metro filed a Motion for Summary Judgment claiming that the release rendered Metro's indemnification obligations to OFL-A moot. OFL-A argues that it is

¹ OFL-A provides financing. Dealers enter into an installment sales contract with a buyer and obtain a security agreement, which they then assign to OFL-A.

not subject to the terms of the release because it was not a signatory to it. OFL-A argues that Metro is still responsible for indemnification to it.

(3) This Court granted OFL-A's motion to amend its cross-claim on May 25, 2000, although opposed by Metro. OFL-A amended the cross-claim to add a claim under the Dealer Agreement of 1997. OFL-A alleges that pursuant to the Dealer Agreement Metro unconditionally agrees to repurchase the sales contract from OFL-A or pay indemnification, plus costs, expenses and attorney fees if a dispute arises about statements, promises, actions or omissions of Metro. Metro argues that the Dealer Agreement does not matter, as OFL-A was not a party to that agreement, rather it was a contract between Metro and HAFC. HAFC is the parent company of OFL-A and therefore OFL-A is a party to that contract.

(4) Summary judgment is appropriate when the moving party has shown that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.² In considering such a motion, the Court must evaluate the facts in the light most favorable to the non-moving party.³ Summary judgment will not be granted under circumstances where the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.⁴

² *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

³ *Id.*

⁴ *Ebersole v. Lowengrub*, 180 A.2d 467 (Del. 1962).

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(5) The parties have failed to establish which contract should govern this dispute. Arguments have been raised that the Sales Contract, the 1997 Dealer Agreement and the 2000 Dealer Agreement cover the contract. At this point, a material question of fact exists as to which contract should apply to this situation. Therefore, summary judgment for both parties is DENIED pending further discovery.

For the aforementioned reasons, Defendants' Motions for Summary Judgment are Hereby DENIED.

IT IS SO ORDERED.

ALFORD, J.

Original: Prothonotary's Office - Civil Div.