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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AQUAIR VENTURES, LLC, ANTONIA)	No. C-08-2903 SC
CITRINO, and JOSEPH GEIGER,)	
)	ORDER GRANTING
Plaintiffs,)	DEFENDANT'S MOTION
)	FOR PARTIAL SUMMARY
v.)	<u>JUDGMENT</u>
)	
GULF STREAM COACH, INC.,)	
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Aquair Ventures, LLC ("Plaintiff" or "Aquair") brought this suit against Gulf Stream Coach, Inc. ("Defendant" or "Gulf Stream") in the Sonoma County Superior Court. See Notice of Removal, Docket No. 1, Ex. A ("Compl."). Aquair seeks to recover damages for Gulf Stream's alleged willful violation of the Song-Beverly Consumer Warranty Act, California Civil Code section 1790, et seq., violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq., and negligence. See id. Gulf Stream invoked the Court's diversity jurisdiction and removed the action from the Superior Court on June 11, 2008. See Notice of Removal.

Before the Court is Gulf Stream's Motion for Partial Summary Judgment. Docket No. 25. Aquair filed an Opposition and Gulf Stream filed a Reply. Docket Nos. 29, 33. Having considered the parties' arguments and supporting declarations thoroughly, the Court hereby GRANTS Gulf Stream's Motion for the reasons set forth

United States District Court
For the Northern District of California

1 below.

2
3 **II. BACKGROUND**

4 In May 2006, Aquair purchased a new 2006 Gulf Stream Tour
5 Master motor home ("the RV") from California RV Supercenter
6 ("Dealer"), a Gulf Stream dealer, for \$206,543.00. Suddon Decl. ¶
7 8.¹ At the time of purchase, Aquair and the Dealer executed a
8 Retail Installment Sale Contract. Id. Ex. A ("Contract"). Aquair
9 is the only name that appears in the "Buyer" section at the top of
10 the Contract. Id. In seven different places on the Contract,
11 Aquair signed as the buyer and guarantor. Id. Each signature
12 appears to have been executed by Citrino, in the form "Aquair
13 Ventures, LLC by Antonia D. Citrino, Member." Id. Aquair
14 indicated that the primary use for which the RV was purchased was
15 "personal, family or household." Id. Citrino and her husband,
16 Joseph Geiger, are the sole owners of Aquair, a Montana limited
17 liability corporation. See Citrino Decl. ¶¶ 2-7.²

18 At the time of purchase, the RV was covered by a warranty.
19 The warranty protected the floor, walls, and roof for the lesser
20 of two years or 24,000 miles, and the construction of the RV and
21 its original components for the lesser of one year or 12,000

22
23 ¹Anthony Suddon, the Director of Consumer Affairs for Gulf
24 Stream, filed a declaration in support of Gulf Stream's Motion.
Docket No. 26.

25 ²Antonia Citrino, a member of Aquair, submitted a declaration
26 in opposition to Gulf Stream's Motion. Docket No. 30. Citrino and
27 her husband, Joseph Geiger, were originally plaintiffs in this
28 matter. See Compl. However, on Gulf Stream's prior motion, the
Court dismissed Citrino and Geiger's claims because they lacked
standing. See Docket No. 17.

1 miles. Compl. ¶ 7. The warranty included all repairs and
2 adjustments, including parts and labor. Id. Aquair alleges that
3 at the time of purchase, the RV was defective.

4 The RV is a Gulf Stream Tour Master motor home, with the
5 vehicle identification number 4UZAAB2CY46CW81682. Suddon Decl. ¶
6 8. The gross vehicle weight of the chassis of the RV exceeds
7 32,000 pounds, excluding cargo and passengers. See id. ¶ 9, Ex. B
8 (Tour Master brochure).

9 Aquair and the dealer executed the Contract in Santa Rosa,
10 California. Citrino Decl. ¶ 2. At the same time and place, they
11 also executed a Delayed Warranty Start Form. Id. ¶ 11, Ex. B. On
12 the warranty form, under the heading "Owner Acknowledgment," it
13 states, "My signature on the line below represents acknowledgment
14 of receipt of the vehicle herein described." Id. Ex. B. Citrino
15 signed the form for Aquair below that statement. Id. However,
16 Aquair received the keys to the RV on delivery in Boomtown,
17 Nevada. See id. ¶ 12; Suddon Decl. ¶ 10. In an email to Suddon
18 regarding the RV, Citrino stated, "On 5/18/06, we took possession,
19 all cash of a Tour master 2006, 40 ft, Stock # 1151, Model 9392,
20 Silver and Black, Out of State Delivery was taken in Nevada, just
21 over border at Boom town [sic]." Suddon Decl., Ex. C.

22
23 **III. LEGAL STANDARD**

24 Entry of summary judgment is proper "if the pleadings, the
25 discovery and disclosure materials on file, and any affidavits
26 show that there is no genuine issue as to any material fact and
27 that the movant is entitled to judgment as a matter of law." Fed.

1 R. Civ. P. 56(c). "Summary judgment should be granted where the
2 evidence is such that it would require a directed verdict for the
3 moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250
4 (1986). Thus, "Rule 56(c) mandates the entry of summary judgment
5 . . . against a party who fails to make a showing sufficient to
6 establish the existence of an element essential to that party's
7 case, and on which that party will bear the burden of proof at
8 trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In
9 addition, entry of summary judgment in a party's favor is
10 appropriate when there are no material issues of fact as to the
11 essential elements of the party's claim. Anderson, 477 U.S. at
12 247-49.

13
14 **IV. DISCUSSION**

15 Gulf Stream moves for summary judgment on Aquair's first
16 cause of action, which alleges that Gulf Stream willfully violated
17 the Song-Beverly Consumer Warranty Act ("the Act"). Gulf Stream
18 contends that Aquair is not entitled to the Act's protections for
19 two reasons: first, because Aquair took delivery of the RV outside
20 of California, it is not entitled to the benefits the Act offers
21 consumers in California; second, the RV does not qualify as a "new
22 motor vehicle" as that term is defined in the Act. The Court
23 addresses each issue.

24 **A. Delivery in California**

25 The protections offered in the Act "apply only to vehicles
26 sold in California." Cummins, Inc. v. Super. Ct., 36 Cal. 4th 478
27 (2005). The parties do not dispute that Aquair signed the
28

1 Contract in Santa Rosa, California, nor that Aquair took physical
2 possession of the keys and the RV in Nevada. The dispute is
3 whether, for the purposes of the Act, this constitutes delivery in
4 California or in Nevada. Gulf Stream contends that the Act
5 focuses solely on the physical delivery. In response, Aquair
6 claims that unless the parties' agreement specifies out-of-state
7 delivery, the Act still applies if the agreement was executed in
8 California.

9 Under the Act, "sale" means "(1) the passing of title from
10 the seller to the buyer for a price, or (2) a consignment for
11 sale." Cal. Civ. Code. § 1791(n). "California law is clear that
12 when title passes outside of California, the [Act] does not
13 apply." Gusse v. Damon Corp., 470 F. Supp. 2d 1110, 1113 (C.D.
14 Cal. 2007) (citing Cummins, 36 Cal. 4th at 478). Thus, as in
15 Gusse, the dispositive question here is whether title passed in
16 California or Nevada. See id. The Gusse court resolved this
17 issue by referencing the California Commercial Code. Id. Section
18 2401 of the California Commercial Code provides:

19 Unless otherwise explicitly agreed title
20 passes to the buyer at the time and place at
21 which the seller completes his performance
22 with reference to the physical delivery of the
23 goods, despite any reservation of a security
24 interest and even though a document of title
is to be delivered at a different time or
place; and in particular and despite any
reservation of a security interest by the bill
of lading

(a) If the contract requires or authorizes
the seller to send the goods to the buyer
but does not require him to deliver them
at destination, title passes to the buyer
at the time and place of shipment; but

1 (b) If the contract requires delivery at
2 destination, title passes on tender
3 there.

4 Cal. Com. Code § 2401(2).

5 The facts in Gusse are analogous to those before the Court
6 now. The parties in that suit signed the contract and a "purchase
7 acceptance report" in California. 470 F. Supp. 2d at 1112;
8 Citrino Decl. ¶ 11, Exs. A, B. As Aquair did, the plaintiff in
9 Gusse loaded the vehicle in California, but did not receive the
10 keys until the dealer's agent drove the vehicle across state lines
11 to avoid tax liability. 470 F. Supp. 2d at 1113; see Citrino
12 Decl. ¶ 12. The court in Gusse held that because the contract did
13 not explicitly require delivery in Arizona, the contract was a
14 "shipment contract," falling under California Commercial Code §
15 2401(2)(a), such that title passed at the time the contract was
16 signed. 470 F. Supp. 2d. at 1113-14. The court noted that under
17 California law, there is a presumption that a contract is a
18 shipment contract, rather than a delivery contract. Id. at 1113;
19 see also Wilson v. Brawn of Cal., Inc., 132 Cal. App. 4th 549, 556
20 (Ct. App. 2005). The contract at issue here does not require
21 delivery in Nevada or any other specific destination. As such, it
22 is a shipment contract, and title passed from the Dealer to Aquair
23 at the time the Dealer shipped the RV from California. The RV
24 therefore falls under the Act as a good purchased in California.

25 Gulf Stream's attempts to distinguish Gusse fall short.
26 First, Gulf Stream argues that the Gusse court failed to consider
27 Cummins, supra, and Davis v. Newmar Corp., 136 Cal. App. 4th 275
28 (Ct. App. 2006). Reply at 4. Gulf Stream overlooks the relevant

1 citations to both cases in the Gusse decision, as well as the
2 discussion explicitly distinguishing the facts of Gusse from those
3 of Davis on the grounds that the contract in the latter case had a
4 provision requiring delivery in Nevada, while the former was
5 silent on the issue. See Gusse, 470 F. Supp. 2d at 1113-14 & n.5.
6 That distinction is critical, and is relevant here, as the subject
7 Contract did not require the Dealer to deliver the RV to Aquair in
8 Nevada.

9 Gulf Stream also contends that the present facts are
10 distinguishable from Gusse because in that case, "the owner
11 directed a third party to transport the vehicle outside of
12 California", while it was the Dealer who did that in the present
13 matter. Reply at 5. The Court reads the facts of Gusse
14 differently. The relevant portion of the discussion follows:

15 Importantly, the contract does not provide for
16 delivery to a specific location and it does
17 not require that the Motorhome be tendered for
18 Gusse's acceptance in Arizona. . . . La Mesa
19 RV [the dealer] then hired a third party
driver to take the Motorhome wherever Gusse
wanted it transported, and Gusse directed the
driver to transport the Motorhome to Arizona.

20 Gusse, 470 F. Supp. 2d at 11114. Contrary to Gulf Stream's
21 assertion, it was the dealer who arranged for transport out of
22 state. The same scenario played out here. Despite the fact that
23 the Contract does not mention delivery in Nevada, the Dealer
24 arranged for the RV to be driven there after Aquair signed the
25 Contract and warranty form acknowledging receipt of the RV in
26 Santa Rosa, California. See Citrino Decl. ¶¶ 11-12.

27 The Court finds that the facts here are more comparable to
28

1 those in Gusse than Davis, and that the reasoning of Gusse is
2 consistent with California law. The Court therefore concludes
3 that title to the RV passed to Aquair in California and that Gulf
4 Stream is not entitled to judgment on this issue.

5 **B. Whether Aquair May Bring Suit Under the Act**

6 The parties frame this issue as a question of whether or not
7 the RV is a "new motor vehicle" as that term is defined in the
8 Act. Gulf Stream contends that the RV is not a new motor vehicle
9 and therefore falls outside the protection of the Act. Aquair
10 disputes this. A more appropriate question is whether a business
11 entity such as Aquair may bring suit under the Act. It may not.

12 Aquair's first cause of action alleges that Gulf Stream
13 willfully violated the Act. According to Aquair, the RV is a
14 "consumer good" covered by an "express warranty," as those terms
15 are defined in the Act, and Gulf Stream is the "manufacturer" of
16 the RV. See Compl. ¶¶ 13-15; Cal. Civ. Code §§ 1791(a), (j),
17 1791.2(a)(1). What Aquair fails to demonstrate is that it is a
18 "buyer." The Act establishes a cause of action for a buyer for
19 breach of an implied or express warranty:

20 Any buyer of consumer goods who is damaged by
21 a failure to comply with any obligation under
22 this chapter or under an implied or express
23 warranty or service contract may bring an
24 action for the recovery of damages and other
25 legal and equitable relief.

26 Cal. Civ. Code § 1794(a) (emphasis added). The Act explicitly
27 defines "buyer" to refer to individuals rather than to all
28 persons:

"Buyer" or "retail buyer" means any individual

1 who buys consumer goods from a person engaged
2 in the business of manufacturing,
3 distributing, or selling consumer goods at
4 retail. As used in this subdivision, "person"
5 means any individual, partnership,
6 corporation, limited liability company,
7 association, or other legal entity that
8 engages in any of these businesses.

9 Id. § 1791(b) (emphasis added). The Act "was originally intended
10 to protect individual consumers." Park City Servs., Inc. v. Ford
11 Motor Co., 144 Cal. App. 4th 295, 306 (Ct. App. 2006). The
12 California Legislature subsequently expanded the Act to cover
13 vehicles purchased for business purposes by including the
14 following definition of "new motor vehicle":

15 "New motor vehicle" means a new motor vehicle
16 that is bought or used primarily for personal,
17 family, or household purposes. "New motor
18 vehicle" also means a new motor vehicle with a
19 gross vehicle weight under 10,000 pounds that
20 is bought or used primarily for business
21 purposes by a person, including a partnership,
22 limited liability company, corporation,
23 association, or any other legal entity, to
24 which not more than five motor vehicles are
25 registered in this state. "New motor vehicle"
26 includes the chassis, chassis cab, and that
27 portion of a motor home devoted to its
28 propulsion, but does not include any portion
designed, used, or maintained primarily for
human habitation, a dealer-owned vehicle and a
"demonstrator" or other motor vehicle sold
with a manufacturer's new car warranty but
does not include a motorcycle or a motor
vehicle which is not registered under the
Vehicle Code because it is to be operated or
used exclusively off the highways.

29 Id. § 1793.22(e)(2). When this definition was adopted, however,
30 the definition of "buyer" was not changed. See Park City Servs.,
31 111 Cal. App. 4th at 306; Cal. Civ. Code § 1791(b). The court in
32 Park City Services concluded that the Act includes as "buyers"

1 only those corporate purchasers "to whom not more than five motor
2 vehicles are registered in the state." Id.

3 There is no dispute that Aquair is a corporate entity rather
4 than an individual, and that Aquair is the only purchaser of the
5 RV. See Citrino Decl. ¶¶ 5, 8; Contract. However, Aquair asserts
6 that it is a buyer under the Act despite not fitting the explicit
7 statutory definition. See Opp'n at 4-5. Aquair relies on Park
8 City Services for this contention, because the court there held
9 that the amendment to the Act included corporate purchasers with
10 fewer than five vehicles registered in California. Id.; see also
11 Park City Servs., 144 Cal. App. 4th at 306. In Park City
12 Services, however, the weight of the vehicle in suit was not at
13 issue, so the court there did not address this aspect of the
14 definition of "new motor vehicle." There is nothing in the
15 decision to suggest that the Park City Services court read that
16 limitation out of the statute, yet Aquair fails to address the
17 weight of the RV in its briefing. Under the current version of
18 the Act, two categories of vehicles qualify for protection: (1)
19 vehicles purchased by individual buyers and used "primarily for
20 personal, family, or household purposes" and (2) vehicles
21 purchased by any buyer, individual or corporate, used for business
22 purposes, provided that the vehicle weighs less than 10,000 pounds
23 and that the purchaser has fewer than five vehicles registered in
24 the state. See Cal. Civ. Code § 1793.22(e)(2).

25 Aquair may not bring suit under the Act. Because Aquair is
26 not an individual, it is not a buyer for the purposes of the Act,
27 and therefore may not bring suit over the RV, which it purchased

1 for "personal, family, or household purposes."³ Thus, Aquair may
2 only maintain this action if it has fewer than five vehicles
3 registered in California and if the vehicle that is the subject of
4 the suit weighs less than 10,000 pounds. It is not disputed that
5 the RV weighs over 32,000 pounds. Suddon Decl. ¶ 9, Ex. B.
6 Aquair is therefore not entitled to bring suit over the RV under
7 the Act.

8
9 **V. CONCLUSION**

10 For the reasons described above, the Court concludes that the
11 RV is not protected under the Song-Beverly Consumer Warranty Act,
12 and that Aquair is not entitled to bring suit under that statute.
13 The Court therefore GRANTS Gulf Stream's Motion for Partial
14 Summary Judgment. Aquair's first cause of action is DISMISSED.

15
16
17 IT IS SO ORDERED.

18
19 Dated: January 21, 2009

20 
21 _____
22 UNITED STATES DISTRICT JUDGE

23
24
25 _____
26 ³Because Aquair is not an individual, its assertion that it
27 purchased the vehicle for personal, family, or household purposes
28 is immaterial, and the Court need not resolve the parties' dispute
over this issue to rule on the Motion.