MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Glenn Thomas, as Personal Representative of the Estate of Bernadette O'Malley,

Appellant-Plaintiff

v.

Valpo Motors, Inc.,

Appellee-Defendant

May 2, 2024

Court of Appeals Case No.
23A-PL-2391

Appeal from the Porter Superior Court

The Honorable Michael A. Fish, Judge

Trial Court Cause No.
64D01-2104-PL-3631

Memorandum Decision by Judge Bradford

Chief Judge Altice concurs and
Judge Felix dissents with separate opinion.

Bradford, Judge.

Case Summary

[1] In November of 2019, Bernadette O'Malley purchased a used 2007 Dodge Caliber ("the Vehicle") "as is" from Valpo Motors, Inc., in Valparaiso. The same day, O'Malley purchased a service contract ("the Service Contract") from Wynn's Extended Care, Inc. In December of 2019, the Vehicle broke down, and, after Valpo Motors refused to arbitrate the matter, O'Malley sued for breach of the implied warranty of merchantability. Valpo Motors moved for summary judgment on the ground that it had successfully disclaimed all implied warranties, which motion the trial court granted. Glenn Thomas, as personal representative of the estate of the now-deceased O'Malley, appeals, contending Valpo Motors's disclaimer of the implied warranty of merchantability was ineffective. We affirm.

Facts and Procedural History

[2] On November 1, 2019, O'Malley purchased the Vehicle from Valpo Motors by executing a Retail Installment Contract ("the Sales Contract") with financing from Indiana Credit Acceptance Corporation. At the time of the purchase, Valpo Motors provided O'Malley with a Buyers Guide, which stated that Valpo Motors was selling the vehicle "AS IS – NO DEALER WARRANTY [and that] THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY

REPAIRS AFTER SALE[.]" Appellant's App. Vol. II p. 105. Moreover, the Sales Contract contained the following provision: "USED CAR BUYERS GUIDE. THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE." Appellant's App. Vol. II p. 73. The same day, O'Malley purchased the Service Contract. At some point, the following handwritten notation was added to the Buyers Guide: "Customer has purchased a 24/24,000 mile Wynn's warranty." Appellant's App. Vol. II p. 105.

[3] In December of 2019, the Vehicle broke down. O'Malley enlisted the help of her son-in-law Glenn Thomas, who took the Vehicle to a auto-repair shop named Motor Works. Motor Works informed Thomas that there were issues with almost every system in the Vehicle and advised him that, in their opinion, the Vehicle was not worth repairing. According to Motor Works, while some of the needed repairs would be covered by the Service Contract with Wynn's, approximately $2500-3000 in repairs would not be. After Valpo Motors refused to perform any repairs or arbitrate the matter, O'Malley brought suit on April 20, 2021, alleging breach of the implied warranty of merchantability. On May 12, 2023, Valpo Motors moved for summary judgment, which motion the trial court granted on September 6, 2023. On October 4, 2023, Thomas was substituted as plaintiff in this matter as personal representative of the estate of O'Malley, who had passed away on July 9, 2023.

Discussion and Decision

[4] When reviewing the grant or denial of a summary judgment motion, we apply the same standard as the trial court. *Merchs. Nat'l Bank v. Simrell's Sports Bar & Grill, Inc.*, 741 N.E.2d 383, 386 (Ind. Ct. App. 2000). Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. *Id.*; Ind. Trial Rule 56(C). To prevail on a motion for summary judgment, a party must demonstrate that the undisputed material facts negate at least one element of the other party's claim. *Merchs. Nat'l Bank*, 741 N.E.2d at 386. Once the moving party has met this burden with a prima facie showing, the burden shifts to the nonmoving party to establish that a genuine issue does in fact exist. *Id*. The party appealing the summary judgment bears the burden of persuading us that the trial court erred. *Id*. "In determining whether there is a genuine issue of material fact precluding summary judgment, all doubts must be resolved against the moving party and the facts set forth by the party opposing the motion must be accepted as true." *Lawlis v. Kightlinger & Gray*, 562 N.E.2d 435, 438–39 (Ind. Ct. App. 1990), *trans. denied*.

[5] The only question before us is whether the trial court correctly concluded that the designated evidence establishes, as a matter of law, that Valpo Motors had effectively disclaimed the implied warranty of merchantability when it sold the

Vehicle to O'Malley.[1] Pursuant to the Indiana Uniform Commercial Code, "[u]nless excluded or modified (IC 26-1-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind." Ind. Code § 26-1-2-314(1). It is well-settled, however, that a used-car dealer "may disclaim implied warranties through the use of conspicuous language containing expressions like 'as is' or 'with all faults' or other language which in common understanding call the buyer's attention to the exclusion of warranties and makes plain there is no implied warranty." *Town & Country Ford, Inc. v. Busch*, 709 N.E.2d 1030, 1033 (Ind. Ct. App. 1999); *see also* Ind. Code § 26-1-2-316(3)(2) ("[A]ll implied warranties are excluded by expressions like 'as is[.]'"). As mentioned, the Buyers Guide, which was explicitly incorporated into the Sales Contract, provided that the Vehicle was being sold "AS IS – NO DEALER WARRANTY [and] THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE[.]" Appellant's App. Vol. II p. 105. Thomas does not dispute that the Buyers Guide language was sufficient to disclaim any and all implied warranties; the only question is whether Thomas has established an exception to Valpo Motors's disclaimer.

[6] Thomas argues that Valpo Motors negated any implied-warranty disclaimers contained in the Sales Contract by offering the Service Contract to O'Malley

[1] It is undisputed that Valpo Motors did not provide O'Malley with any express warranties.

the same day it sold her the Vehicle, pointing to the following language from the Sales Contract for support:

> YOU UNDERSTAND THAT THE SELLER IS NOT OFFERING ANY WARRANTIES AND THAT THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED BY THE SELLER, COVERING THE VEHICLE *UNLESS THE SELLER EXTENDS A WRITTEN WARRANTY OR SERVICE CONTRACT WITHIN 90 DAYS FROM THE DATE OF THIS CONTRACT*.

Appellant's App. Vol. II p. 76 (italics added). We need not address the particulars of this argument. As mentioned, in the event of conflict with other provisions of the Sales Contract, the provisions of the Buyers Guide control. The Buyers Guide disclaims all implied warranties *without exception*, overriding any other language in the Sales Contract suggesting that any exceptions exist. Even if we assume, *arguendo*, that O'Malley's purchase of the Service Contract satisfied the exception laid out in the language above, it does not help Thomas.

[7] Thomas acknowledges that the Buyers Guide controls in the event of a conflict between it and other provisions of the Sales Contract but argues that there is, in fact, no conflict. To support this contention, Thomas points out that the Buyers Guide bears the following handwritten notation: "Customer has purchased a 24/24,000 mile Wynn's warranty." Appellant's App. Vol. II p. 105. This notation, Thomas argues, serves as an acknowledgment that O'Malley's purchase of the Service Contract negated Valpo Motors's warranty disclaimer. Thomas is asking us to assign rather more significance to the notation than it actually has. The notation is nothing more than a simple acknowledgment that

O'Malley had purchased the Service Contract from third-party Wynn's; the notation does not mention the warranty-disclaimer exception in the Sales Contract, much less incorporate it. Thomas has failed to establish that the language of the Buyers Guide can be harmonized with the relevant language in the Sales Contract.

[8] Thomas also draws our attention to our decision in *Universal Auto, LLC v. Murray*, 149 N.E.3d 639 (Ind. Ct. App. 2020), in which we concluded that Universal's warranty disclaimer was negated when Universal, as is alleged here, sold a used vehicle and also facilitated the sale of a third-party service contact to the purchaser. *Id*. at 644. Similarly to this case, the sales documents in *Universal* provided that Universal had disclaimed all implied warranties "'[*u*]*nless Seller … enters into a service contract* within 90 days of this contract[.]'" *Id*. at 643 (emphasis in *Universal*). We concluded that Universal was effectively a party to the third-party service contract due to its level of control over the transaction and the fact that its agent had signed the service contract, thereby triggering an exception to Universal's warranty disclaimer. *See id.* at 644. *Universal*, however, does not control under the facts of this case. Unlike here, there was no indication in *Universal* that any of the sales documents included (1) an unequivocal warranty disclaimer that did not allow for any exceptions or (2) language indicating that the unequivocal warranty disclaimer controlled in the case of conflicts with other provisions. Because both of these things are present in this case, Thomas's reliance on *Universal* is unavailing.

[9] We affirm the judgment of the trial court.

Altice, C.J., concurs.
Felix, J., dissents with separate opinion.

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Felix, Judge, dissenting.

[10] I respectfully dissent. I believe the Sales Contract disclaimer controls instead of the Buyers Guide disclaimer based on our rules of contract interpretation. Even assuming that the Buyers Guide disclaimer controls based on contract interpretation principles, I believe the Buyers Guide disclaimer is ineffective under Section 2308 of the Magnuson-Moss Warranty Act. I also believe that a genuine dispute of material facts exists regarding whether O'Malley gave Valpo Motors a reasonable opportunity to cure its breach of the implied warranty of merchantability, and such opportunity is a prerequisite for bringing an action under the Magnuson-Moss Warranty Act. Accordingly, I would reverse and remand.

[11] I initially observe that Thomas's claim that Valpo Motors breached the implied warranty of merchantability here is based solely on the Magnuson-Moss Warranty Act[2] (the "MMWA"). Appellant's App. Vol. II at 70; *see also id.* at 49. In moving for summary judgment on that claim, Valpo Motors argued that the conditions of Section 2308 of the MMWA were not satisfied and that even if they were, the MMWA did not apply because O'Malley failed to comply with Section 2310(e). Appellant's App. Vol. II at 49–66. The majority decides this case on principles of contract interpretation, so I address the question of

[2] 15 U.S.C. §§ 2301–12.

contract interpretation first and then proceed to address the applicability of the MMWA.

1. Rules of Contract Interpretation Compel the Conclusion that the Sales Contract Disclaimer Controls

[12] The parties ask us to interpret the Sales Contract together with the Buyers Guide. Contract interpretation is a question of law that we review de novo. *Land v. IU Credit Union*, 218 N.E.3d 1282, 1286 (Ind. 2023) (citing *Lake Imaging, LLC v. Franciscan All., Inc.*, 182 N.E.3d 203, 206 (Ind. 2022)), *aff'd on reh'g*, 226 N.E.3d 194 (Ind. 2024). "As such, cases involving contract interpretation are particularly appropriate for summary judgment." *Tricor Auto. Grp. v. Dealer VSC Ltd.*, 219 N.E.3d 206 (Ind. Ct. App. 2023) (quoting *B & R Oil Co., Inc. v. Stoler*, 77 N.E.3d 823, 827 (Ind. Ct. App. 2017)), *trans. denied sub nom. TriCor Auto. Grp. v. Elzayn*, 228 N.E.3d 1024 (Ind. 2024).

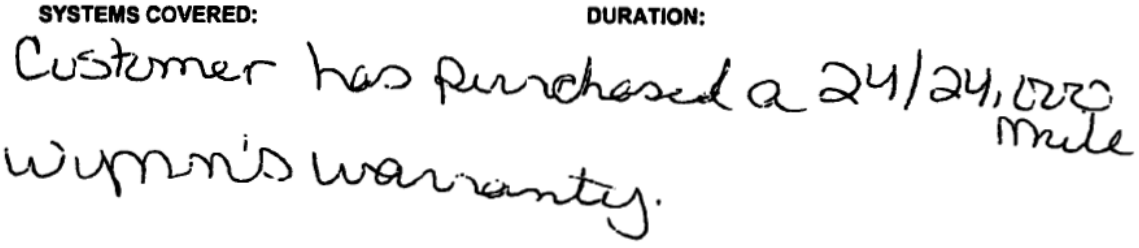
[13] I first observe that the Sales Contract incorporates by reference the Buyers Guide, so I construe those two documents together as the agreement of the parties. *See Performance Servs., Inc. v. Hanover Ins. Co.*, 85 N.E.3d 655, 659–60 (Ind. Ct. App. 2017) (citing *I.C.C. Protective Coatings, Inc. v. A.E. Staley Mfg. Co.*, 695 N.E.2d 1030, 1036 (Ind. Ct. App. 1998)). When this court interprets a contract,

> we ascertain the intent of the parties at the time the contract was made, as disclosed by the language used to express the parties' rights and duties. We look at the contract as a whole ... and we accept an interpretation of the contract that harmonizes all its provisions. A contract's clear and unambiguous language is given

> its ordinary meaning. A contract should be construed so as to not render any words, phrases, or terms ineffective or meaningless.

Ryan v. TCI Architects/Eng'rs/Cont'rs, Inc., 72 N.E.3d 908, 914 (Ind. 2017) (internal citations omitted). Additionally, "specific terms control over general terms." *Castleton Corner Owners Ass'n, Inc. v. Conroad Associates, L.P.*, 159 N.E.3d 604, 611 (Ind. Ct. App. 2020) (citing *G.G.B.W. v. S.W.*, 80 N.E.3d 264, 270 (Ind. Ct. App. 2017)). To the extent there are any ambiguities, we construe the agreement against its drafter. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006) (citing *MPACT Constr. Grp., LLC v. Superior Concrete Constructors, Inc.,* 802 N.E.2d 901, 910 (Ind. 2004)).

[14] Here, the Sales Contract disclaims all warranties except under certain conditions, whereas the Buyers Guide purports to disclaim all warranties without exception. However, the Buyers Guide states, "If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights." Appellant's App. Vol. II at 105 (emphasis in original). Although the service contract box on the Buyers Guide is not checked, the parties clearly knew that O'Malley had purchased the Service Agreement, as evidenced by the handwritten notation to that effect:



Id. I believe this handwritten notation demonstrates the parties also knew that implied warranties apply despite the disclaimer.

[15] The Buyers Guide disclaimer is a general term: "THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE." Appellant's App. Vol. II at 105. By contrast, the Sales Contract disclaimer is a specific term that delineates specific implied warranties that Valpo Motors is disclaiming and sets forth an exception to that disclaimer:

> YOU UNDERSTAND THAT THE SELLER IS NOT OFFERING ANY WARRANTIES AND THAT THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED BY THE SELLER, COVERING THE VEHICLE *UNLESS THE SELLER EXTENDS A WRITTEN WARRANTY OR SERVICE CONTRACT* WITHIN 90 DAYS FROM THE DATE OF THIS CONTRACT.

Id. at 76 (emphasis added). Respectfully, I believe the Sales Contract disclaimer is specific and the Buyers Guide disclaimer is general; therefore, the Sales Contract disclaimer should control. *See Castleton Corner Owners Ass'n*, 159 N.E.3d at 611.

[16] I recognize that the Buyers Guide includes a provision stating the terms of the Buyers Guide controls in the event they conflict with those of the Sales Contract. However, that conflict provision is of no moment because Valpo Motors clearly intended to waive the general Buyers Guide disclaimer by allowing an exception to that waiver as detailed in the more specific Sales Contract disclaimer. To interpret these documents otherwise would render the

exception clause of the Sales Contract disclaimer meaningless. Valpo Motors chose to allow an exception to its warranty disclaimer; it should have to deal with the consequences of that choice. Therefore, because Valpo Motors clearly offered a service contract to and entered into that service contract with O'Malley, *see Universal Auto LLC v. Murray*, 149 N.E.3d 639, 643–44 (Ind. Ct. App. 2020), I conclude that the exception clause of the Sales Contract disclaimer applies.

2. The Buyers Guide Disclaimer is Ineffective Under the MMWA, But a Genuine Issue of Material Fact Exists Regarding Whether O'Malley Afforded Valpo Motors a Reasonable Opportunity to Cure Its Breach of the Implied Warranty of Merchantability as Required by the MMWA

[17] Even if I agreed with the majority that the Buyers Guide disclaimer controls, Section 2308 of the MMWA overrides that provision. The MMWA provides a private right of action

> for consumers to enforce written or implied warranties where they claim to be damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under that statute or under a written warranty, implied warranty, or service contract. The Act also limits the extent to which manufacturers who give express warranties may disclaim or modify implied warranties, but looks to state law as the source of any express or implied warranty. *Schimmer v. Jaguar Cars, Inc.*, 384 F.3d 402, 405 (7th Cir. 2004).

Hyundai Motor Am., Inc. v. Goodin, 822 N.E.2d 947, 951 (Ind. 2005). Pursuant to Indiana Code section 26-1-2-314, the implied warranty of merchantability is

included in all contracts for the sale of goods unless that warranty is excluded or modified.

[18] Section 8 of the MMWA provides in relevant part as follows:

> (a) Restrictions on disclaimers or modifications
> *No supplier may disclaim or modify . . . any implied warranty to a consumer with respect to such consumer product if* (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) *at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product*.
> * * *
> (c) Effectiveness of disclaimers, modifications, or limitations
> A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

15 U.S.C. § 2308(a), (c) (emphases added). A "consumer product" is "any tangible property which is distributed in commerce and which is normally used for personal, family, or household purposes." *Id.* § 2301(1). A "supplier" is "any person engaged in the business of making a consumer product directly or indirectly available to consumers." *Id.* § 2301(4). A "service contract" is "a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product." *Id.* § 2301(8).

[19] The Vehicle here is a "consumer product," Valpo Motors is a "supplier," and the Service Agreement is a "service contract" within the meaning of the MMWA. Additionally, the Service Agreement applies to the Vehicle, and

Valpo Motors entered into the Service Agreement with O'Malley, *see Universal Auto*, 149 N.E.3d at 643–44. Pursuant to the MMWA, Valpo Motors may not disclaim or modify any implied warranty with respect to the Vehicle because at the time of sale, Valpo Motors entered into the Service Agreement with O'Malley. *See* 15 U.S.C. § 2308(a). Consequently, the Buyers Guide disclaimer purporting to disclaim all implied warranties without exception violates the MMWA and is ineffective. *See id.* § 2308(c).

[20] Nonetheless, Valpo Motors argues that the MMWA does not apply here because O'Malley did not give it a reasonable opportunity to repair any defects in the Vehicle before she filed the complaint herein. Section 2310 of the MMWA provides in relevant part as follows:

> (d) . . . [A] consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief . . . .
> (e) . . . No action . . . may be brought under subsection (d) for failure to comply with any obligation under any written or implied warranty or service contract . . . unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to *cure* such failure to comply.

15 U.S.C. § 2310(d)(1), (e). The reasonability of an opportunity to cure is a question of fact. *Atchole v. Silver Spring Imports, Inc.*, 379 F. Supp. 2d 797, 800 (D. Md. 2005) (citing *Abele v. Bayliner Marine Corp.,* 11 F.Supp.2d 955, 961 (N.D. Ohio 1997)).

[21] The MMWA does not define "reasonable opportunity to cure," and neither this court nor the Indiana Supreme Court has addressed what that phrase means. Valpo Motors argues that O'Malley had to give it at least two opportunities to repair the Vehicle before it could file the complaint. The plain language of Section 2310(e) clearly contemplates a consumer only affording one reasonable opportunity to cure before instituting an action under Section 2310(d).[3] 15 U.S.C. § 2310(e).

[22] Valpo Motors also argues that "reasonable opportunity to cure" is limited to repairs only. Appellee's Br. at 25–26. I cannot agree. As our Supreme Court recently explained:

> When a statutory term is undefined, our Legislature has instructed "us to interpret the term using its 'plain, or ordinary and usual, sense.'" *Rainbow Realty Grp., Inc. v. Carter*, 131 N.E.3d 168, 174 (Ind. 2019) (quoting I.C. § 1-1-4-1(1)). In doing so, we "generally avoid legal or other specialized dictionaries," turning "instead to general-language dictionaries." *Id.*

[3] I recognize that the Seventh Circuit Court of Appeals, in applying Indiana law under the MMWA, has looked to Indiana's Lemon Law to conclude that "two chances is not a reasonable opportunity to cure the defects such that the warranty failed of its essential purpose," *Mathews v. REV Recreation Grp., Inc.*, 931 F.3d 619, 622 (7th Cir. 2019) (citing *Gen. Motors Corp. v. Sheets,* 818 N.E.2d 49, 53 (Ind. Ct. App. 2004) (discussing I.C. §§ 24-5-13-1, -6, -7, -15)), and that a "reasonable opportunity to cure, *at least in cases where the defects are somewhat minor, and not affecting full use of the vehicle*, means at least three chances," *Zylstra v. DRV, LLC*, 8 F.4th 597, 603 (7th Cir. 2021) (emphasis added) (citing *Mathews*, 931 F.3d at 623), *cert. denied*. However, the Seventh Circuit has not yet addressed a scenario in which defects are major or otherwise affect the full use of the vehicle, *see id.*, as is the case here. While I am inclined to agree with the Seventh Circuit's reasoning concerning minor defects, I believe in the MMWA context, the jury should decide what was reasonable under the circumstances, including if it was reasonable for the consumer to give the person obligated under the warranty or service contract only one chance to cure the breach. *See Atchole*, 379 F. Supp. 2d at 800 (citing *Abele,* 11 F.Supp.2d at 961).

Performance Servs., Inc. v. Randolph E. Sch. Corp., 211 N.E.3d 508, 512 (Ind. 2023). "To cure" generally means to restore, to remedy, to rectify; in other words, it means to fix a problem. *See Cure*, Am. Heritage Dictionary of the Eng. Language (5th ed. 2022), https://www.ahdictionary.com/word/search.html?q=cure; *Cure*, Merriam-Webster, https://www.merriam-webster.com/dictionary/cure#dictionary-entry-2 (last updated Apr. 9, 2024); *Cure*, Black's Law Dictionary (11th ed. 2019); *Cure of Default*, Black Law Dictionary (11th ed. 2019).

[23] If Valpo Motors had repaired the Vehicle, it undoubtedly would have cured the issue. However, that is not the only way in which it could have done so. Valpo Motors could have cured the problem by replacing the Vehicle or refunding O'Malley the money she had paid toward the Vehicle, among other options. I would decline to limit "to cure" as used in Section 2310(e) of the MMWA and instead would read that term broadly so as to allow the consumer and the person obligated under the relevant warranty or service contract to come up with reasonable but creative solutions to cure the latter's failure to comply with a warranty and service contract.

[24] The facts most favorable to Thomas demonstrate that O'Malley had the Vehicle for only two months before it broke down. Appellant's App. Vol. II at 74, 98; Appellant's App Vol. III at 126. Motor Works determined that the Vehicle had "substantial defects" and "preexisting damage." Appellant's App. Vol. III at 126. Motor Works also opined that even if it was able to get the Vehicle running, the Vehicle "would be unsafe to operate" without extensive repairs.

Id. at 127. Yet Valpo Motors's owner testified he inspected, ran diagnostic tests on, and test drove the Vehicle before it was sold to O'Malley and that the Vehicle was in good condition. Appellant's App. Vol. III at 36–43. Thomas contacted Valpo Motors on O'Malley's behalf the day after the Vehicle broke down "to inform them of the condition of the vehicle, what I had learned from the mechanic, and to give them an opportunity to rectify the situation however they seen [sic] fit." Appellant's App. Vol. II at 202. Valpo Motors did not "make any kind of offer to rectify the situation." *Id.*

[25] Based on the foregoing, I believe there is a genuine issue of material fact concerning whether O'Malley afforded Valpo Motors a reasonable opportunity to cure its failure to comply with the implied warranty of merchantability. To the extent a reasonable opportunity to cure may be found if there is evidence the person obligated under the warranty or service contract had knowledge of defects prior to the sale of the item, *see Alberti v. Gen. Motors Corp.*, 600 F. Supp. 1026, 1028 n.2 (D.D.C. 1985), there is a genuine issue here concerning what Valpo Motors knew about allegedly preexisting defects in the Vehicle at the time of sale. Thus, summary judgment is inappropriate.

Conclusion

[26] In sum, using rules of contract interpretation, I conclude that the Sales Contract disclaimer applies instead of the Buyers Guide disclaimer. I further conclude that the Buyers Guide disclaimer is ineffective pursuant to the MMWA but that there is a genuine issue of material fact concerning whether O'Malley provided Valpo Motors a reasonable opportunity to cure its failure to comply with its

obligations under the implied warranty of merchantability. Therefore, I would reverse and remand for a trial on the aforementioned question of material fact.