

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001261-MR

SAEID SHAFIZADEH

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 00-CI-006339

AAMCO TRANSMISSION, INC.;
LOUISVILLE AAMCO TRANSMISSION
DEALERS ADVERTISING POOL, INC.;
D.B.O., INC.; DONALD G. OLSON;
GARRY N. STUCKER; AND JOHN N.
FERRITTO, D/B/A AAMCO TRANSMISSION

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; COMBS AND DYCHE, JUDGES.

DYCHE, JUDGE. In this matter appellant, Saeid Shafizadeh,¹
alleges numerous counts after problems arose when he had his van
serviced several times at an independently owned and operated
AAMCO Transmissions, Incorporated, franchise. Appellee Donald

¹ Appellees note in their brief that, since the time this litigation started, Shafizadeh, who represents himself, has graduated from law school and passed the Kentucky Bar Examination.

G. Olson was the owner/operator of the franchise for the AAMCO in question at the time the dispute arose. Olson incorporated appellee DBO to operate the franchise and was the sole officer and shareholder of DBO. DBO, however, was not a party to the franchise agreement. Appellee Garry N. Stucker was the customer service manager employed by AAMCO at the time Shafizadeh took his van in for repair work. Appellee John Ferritto purchased the assets of AAMCO from Olson in March of 2000, which was after Shafizadeh's problems arose with AAMCO. Also named in the complaint was Louisville AAMCO Dealers Advertising Pool, Incorporated, which advertises for AAMCO franchisees, including the AAMCO in question.

In September of 1998, Shafizadeh contacted AAMCO regarding problems with his van. He maintains that Stucker first quoted him a price of \$240 over the telephone to reseal the transmission. When Shafizadeh took the van into the AAMCO center, Stucker told him it would cost \$360, instead of \$240, to fix the problems. After the repairs were completed, Shafizadeh continued to have problems with his van, and he maintains that the van actually developed new problems. He took his van back to the AAMCO shop, and after an inspection Shafizadeh was told that the transmission needed a complete overhaul at a cost of \$900. He contends that, unless he agreed to this, AAMCO would not provide a warranty for the work previously done. He argues

that he agreed to have the work done, but that he was coerced into it.

When Shafizadeh picked up his van and received the written warranty, the warranty had been marked as six months instead of the one-year warranty previously agreed upon and the nationwide warranty had been eliminated. In its place only the local AAMCO, where the work was done, was included in the warranty.

Shafizadeh noticed more problems with the van after driving it for a few days. He took it to another transmission mechanic, who recommended that the transmission needed to be overhauled again. Thereafter, Shafizadeh took the van back to AAMCO, which did more repair work. However, once again there were more problems with the van. According to Shafizadeh, Olson promised to fix any problems with the van's transmission.

This cycle of repairs and problems continued several more times. After Shafizadeh contacted the AAMCO franchisor and complained, Shafizadeh maintains that Olson agreed to repair the transmission again at no additional cost. After the van was inspected, Shafizadeh says that Olson contacted him and informed him that it would cost another \$600 to fix the transmission because a separate, unrelated problem with the van's transmission needed repair. Shafizadeh refused to pay, and the van was only temporarily fixed.

Thereafter, Shafizadeh filed suit in Jefferson County Circuit Court against appellees alleging RICO violations, civil conspiracy, outrage, breach of contract, breach of duty of good faith in performance of contract, unfair and deceptive trade practices in violation of the consumer protection act, fraud, negligence in the repair of the vehicle and in the selection of the franchisee, breach of implied warranty of merchantability, and breach of express warranty. Appellees timely removed the matter to the United States District Court, Western District of Kentucky, based upon the allegations of federal RICO violations. The federal court granted appellees' motions for summary judgment on the RICO claim and remanded the remaining claims to state court. Shafizadeh did not appeal this ruling to the Sixth Circuit Court of Appeals.²

Although the appeal in the state matter was taken after the state circuit court granted summary judgment to appellees on all counts, the only real issue involves the circuit court's decision to deny additional discovery because the discovery deadline in the federal matter had ended. Upon review, we hereby affirm.

By way of background, in the federal matter, the parties jointly agreed to a period of approximately six months to complete discovery. Although Shafizadeh maintains that he

² To the extent that Shafizadeh complains about the way the case was handled at the federal level, our Court cannot grant any relief.

reluctantly signed the discovery plan in federal court on June 8, 2001, he never moved for an extension, nor did he file any motions to compel during or after the period for discovery. In fact, almost half the period for discovery passed before Shafizadeh sent appellees a letter on September 5, 2001, identifying witnesses he wanted to depose and seeking dates to do so. Shafizadeh maintains that during this time he was doing research and other investigation on the matter. Ultimately, he only filed notices for the depositions of Olson and Stucker and served written discovery requests on only four of the six defendants.

Honorable James D. Moyer, United States Magistrate for the Western District of Kentucky, held a status conference on November 13, 2001, and substantially adopted the deadlines set forth in the parties' joint report. Although discovery was set to end on November 1, 2001, the Magistrate granted Shafizadeh until December 31, 2001, to take Olson's deposition. Shafizadeh was also given until December 1, 2001, to file a motion to compel regarding appellees' interrogatory responses. The deadline for dispositive motions was moved from December 17, 2001, to January 31, 2002. All other remaining deadlines remained the same.

Shafizadeh took Olson's deposition on December 14, 2001, but filed no motions to compel any other discovery. He

did, however, file objections to the Magistrate's order on November 29, 2001, seeking additional time for discovery. While these objections were pending, appellees filed their motions for summary judgment in accordance with the scheduling order. Shafizadeh's objections were overruled on May 1, 2002, by the federal district court. Shafizadeh thereafter filed a motion to reconsider the denial of his objections. His motion was denied at the same time the federal district court entered an order dismissing the RICO count and remanding the case to state court for the remaining state claims.

In the state court matter, appellees AAMCO, DBO, Olson and Stucker filed a motion for summary judgment on the remaining claims on October 23, 2002. Although Shafizadeh had not previously sought any additional discovery in state court, on November 11, 2002, he filed notices to take the depositions of David B. Butke, Jeremy Fox, and Thomas Vittitow, whose depositions were not noticed while discovery was pending in the federal matter.³ The next day Shafizadeh filed a response to the motion for summary judgment on the basis that discovery had not been completed and asserted no other grounds for denial of the motion.

Appellees filed a motion for a protective order to prevent these depositions from taking place arguing that the

³ Fox and Vittitow were formerly employees of DBO and worked at the AAMCO center operated by DBO. Butke was the accountant for DBO.

deadline for discovery had passed. The circuit court heard oral arguments on the matter on December 12, 2002, and granted the motion for a protective order and refused to allow Shafizadeh any additional time for discovery. The circuit court made oral findings of fact and conclusions of law⁴ on the record holding that Shafizadeh had participated in the discovery plan and had agreed to it. The circuit court refused to reopen discovery after the federal court had ruled on a discovery plan and had given an opportunity for discovery. The case had been filed over two years earlier, and the discovery deadline had ended a year earlier. Thus, the circuit court concluded that Shafizadeh had an opportunity for discovery but failed to take advantage of it.

Our standard of review in matters involving a trial court's rulings on evidentiary issues and discovery disputes is abuse of discretion. Goodyear Tire and Rubber Co. v. Thompson, Ky., 11 S.W.3d 575, 577 (2001); Sexton v. Bates, Ky. App., 41 S.W.3d 452, 455 (2001). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." Goodyear supra, at 581 (citation omitted).

⁴ To the extent Shafizadeh argues that written findings of fact and conclusions of law were required, we disagree. Findings of fact and conclusions of law are required under CR 52.01 only if issues of fact are tried before the court; rulings on motions are exempt. Clay v. Clay, Ky., 424 S.W.2d 583, 584 (1968).

We agree with the trial court that Shafizadeh was given ample opportunity to complete discovery in this matter. During the six-month period for which discovery was allowed, he never attempted to take the depositions of Butke, Fox, or Vittitow. Further, the case was remanded to state court in May of 2002, yet Shafizadeh waited nearly six months while the matter was pending before seeking any additional discovery. And his notices to take depositions were filed two weeks after appellees filed a motion for summary judgment.

Moreover, Shafizadeh did not argue at the circuit court level nor before this Court that additional discovery is necessary because the claims differ in any way from those litigated in the federal court. In fact, in the federal matter, appellees moved for summary judgment on all claims, not just the federal RICO claims. While Shafizadeh claims that appellees have not been prejudiced, we disagree. They have practiced their cases based on the fact that the discovery period had closed.

Shafizadeh did not even attempt to meet the deadline in federal court and then asked the state circuit court to allow him to open discovery a year after the discovery deadline had passed. The federal court ruled on this matter, including objections to the discovery deadline, and the circuit court relied on this determination. Because the merits litigated in

the federal matter were the same as those litigated in the state matter, we can find no abuse of discretion. Contrary to Shafizadeh's contentions, we find no merit in his argument that he was not given an opportunity to pursue discovery. He was indeed given the opportunity; he simply failed to take advantage of it.

Shafizadeh also cursorily charges that there were indeed genuine issues of fact and that summary judgment was inappropriate. However, he has failed to cite to this Court what those issues of fact are. Furthermore, in his response to the motions for summary judgment, Shafizadeh only relied on his argument that he needed additional discovery and did not present evidence supporting factual issues. Accordingly, we find no basis to reverse the circuit court's order of summary judgment.

ALL CONCUR.

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