STATE OF MICHIGAN

COURT OF APPEALS

DANNY A. SHEA II, Plaintiff-Appellant,	UNPUBLISHED October 17, 2017
v	No. 333588 Oakland Circuit Court
FCA US LLC, Defendant-Appellee.	LC No. 2016-152098-CZ

Before: SHAPIRO, P.J., and HOEKSTRA and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff, Danny Shea, appeals as of right the trial court's order to enforce an arbitration award. For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

This case arises out of Shea's lease of a 2014 Dodge Ram 1500 pickup truck that was manufactured by defendant, FCA US LLC. The total amount due at signing was $4,192.61, which was reduced by a $3,500 rebate to $692.61. Shea began experiencing mechanical trouble with the pickup, and FCA's authorized dealer was unable to repair it after several attempts. Eventually, Shea demanded that the pickup be repurchased under the warranties on new motor vehicles act (lemon law), MCL 257.1401 *et seq.* In accordance with the terms of the lease, the matter was submitted to binding arbitration, and the arbitrator returned an award favorable to Shea requiring FCA to repurchase the vehicle for "the lease price" minus a mileage usage fee. The arbitrator also awarded Shea $1,000 in attorney fees and $290 in arbitration costs.

Thereafter, Shea received correspondence from FCA's agent, Impartial Services Group (ISG), regarding the repurchase terms for the pickup. Shea's lawyer responded to ISG, stating that he disagreed with ISG's calculations because they excluded the $3,500 rebate from their calculation of the lease price and did not include the attorney fee award. ISG's agent explained that the attorney fee award was paid out by a separate check and that rebates are not included in the lease price. Because of this dispute, ISG eventually closed its file on the matter, and Shea filed suit against FCA in circuit court, alleging that FCA was refusing to comply with the arbitration award.

The trial court entered an order that Shea be paid total of $333.40, a figure calculated by adding the $692.61 he paid at lease signing (which includes the first month's payment, sales tax, and registration fees) plus the $7,813.37 in lease payments he had made to date, plus $290 in arbitration costs, and minus $8,462.58 for the mileage offset. The order expressly stated that Shea would not be "reimbursed for the required $3,500 down payment on the gross capitalized cost of the vehicle because the down payment was reduced by a $3,500 non-cash rebate/capitalized cost reduction." The order did not modify the $1,000 in attorney fees awarded by the arbitrator.

This appeal follows.

II. LEASE PRICE

A. STANDARD OF REVIEW

Shea argues that the trial court erred by improperly calculating the "lease price" as defined by MCL 257.1401(k). He contends that under the plain language of the statute, the $3,5000 rebate that was applied to the amount due at signing should have been included in the lease price, i.e., the price FCA was required to pay when repurchasing the vehicle. We review de novo questions of statutory interpretation. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013).

> The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language. The first step in that determination is to review the language of the statute itself. Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. [*Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 515; 821 NW2d 117 (2012) (citation and quotation marks omitted).]

B. ANALYSIS

Under Michigan's lemon law, an automobile manufacturer is required to repair a new motor vehicle if it "has any defect or condition that impairs the use or value of the new motor vehicle to the consumer . . . ." MCL 257.1402. If a vehicle has been subjected to a reasonable number of repairs and the defect cannot be repaired, the manufacturer must provide "a refund of the lease price paid by the consumer . . . less a reasonable allowance[1] for the consumer's use of the vehicle." MCL 257.1403(1) and (2).

[1] "A reasonable allowance for use is the purchase or lease price of the new motor vehicle multiplied by a fraction having as the denominator 100,000 miles and having as the numerator the miles directly attributable to use by the consumer and any previous consumer prior to his or her first report of a defect or condition that impairs the use or value of the new motor vehicle plus all mileage directly attributable to use by a consumer beyond 25,000 miles." MCL 257.1403(2).

Under MCL 257.1401(k):

> "Lease price" means the actual vehicle sales price paid by the lessor including any cash payment by the consumer and the sum equal to any allowance for any trade-in but excludes debt from any other transaction as well as any manufacturer to consumer discount, rebate, or incentive appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost. Additionally, any sales tax, license and registration fees, and similar government charges not included elsewhere paid by the lessor on behalf of the lessee are included as a part of lease price.

Under the language of the statute, the lease price only *includes* "the actual vehicle sales price *paid* by the lessor," but it *excludes* any rebate "the consumer received or that was applied to reduce the purchase or lease cost." Here, the vehicle sales price actually paid by Shea did not include the $3,500 rebate. Instead, that amount was deducted from the amount he was required to pay at signing—$4,192.61—so he only actually paid $692.61 at signing. Because the $3,500 was not an amount that Shea actually paid, it does not satisfy the first part of MCL 257.1401(k)'s definition of "lease price." Furthermore, because it is a rebate applied to reduce the purchase or lease cost, MCL 257.1401(k) expressly excludes it from being included in the definition of "lease price." Accordingly, the trial court did not err by determining that, under the statute, the lease price did not include the $3,500 rebate.[2]

III. ATTORNEY FEES AND COSTS

A. STANDARD OF REVIEW

Shea next argues that the trial court abused its discretion by refusing to award additional attorney fees. We review for an abuse of discretion a trial court's decision to award or not award attorney fees. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 438; 695 NW2d 84 (2005). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

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[2] Shea posits that because the rebate must be excluded from the lease price, it cannot be used in the calculation in any fashion. In other words, he asserts that the original price of the vehicle—without the rebate—must be used as the lease price because to do otherwise would be to include the rebate in the lease price in direct contravention of the statutory language. Shea's argument, however, ignores that the statutory definition requires the lease price to represent amounts that he actually paid. Under his definition, that part of the definition would be rendered nugatory or surplusage because, regardless of whether he "paid" the rebate, he would be entitled to receive that amount as part of the lease price in the event that the vehicle was repurchased. We will not interpret this statute in a fashion that renders parts of it nugatory or surplusage. See *Robinson v City of Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010).

B. ANALYSIS

MCL 257.1407(2) provides:

> A consumer who prevails in any action brought under this act may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses, including attorneys' fees based on actual time expended by the attorney, determined by the court to have been reasonably incurred by the consumer for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

This language plainly allows a trial court, in its discretion, to award attorney fees in a lemon-law action. In this case, Shea did not receive an award greater than he would have received from FCA's initial offer to comply with the arbitration award and repurchase the vehicle. Shea argues that he was forced to file suit to make FCA comply with the arbitration award. However, FCA was willing to repurchase the vehicle as required by the terms of the arbitration award, but Shea refused because he believed the lease price should include the $3,5000 rebate. Therefore, Shea was only "forced" to file suit because he was asserting the position that he should have been refunded the $3,500 rebate—a position not supported by the language of the statute. As such, the trial court did not abuse its discretion by not awarding additional attorney fees and costs.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ Michael J. Kelly