STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1037

Steven Smith, et al.,
Appellants,

vs.

The Mobility Group, Inc., d/b/a Complete Mobility Systems,
Respondent,

Ford Motor Company, a Delaware corporation
licensed to transact business in the State of Minnesota,
Defendant,

The Braun Corporation, an Indiana corporation,
Respondent.

Filed May 21, 2008
Affirmed in part, reversed in part
Willis, Judge

Sherburne County District Court
File No. 71-C4-06-001012

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Considered and decided by Shumaker, Presiding Judge; Willis, Judge; and Poritsky, Judge.*

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Appellants challenge the grant of partial summary judgment to respondents, arguing that the district court erred by concluding that (1) there is no independent cause of action under the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2312 (2000), for a claim of breach of a limited warranty and (2) privity of contract is required of a claim for the remedy of revocation of acceptance. We affirm in part and reverse in part.

FACTS

On January 11, 2003, appellants Steven and Susan Smith purchased a 2002 Ford Econoline van. They hired respondent The Mobility Group, d/b/a Complete Mobility Systems (Complete Mobility) to install adaptive equipment to make the van handicapped-accessible, including the installation of a wheelchair lift manufactured by respondent The Braun Corporation (Braun). Complete Mobility issued a limited warranty for its workmanship, and Braun issued its own limited warranty for the wheelchair lift.

After taking delivery of the van in early March 2003, the Smiths immediately began experiencing problems: the van would not start properly, the check-engine light came on intermittently, the doors would not completely open and close, and an electronic pad on the wheelchair lift malfunctioned. Additionally, the wheelchair lift would not rise

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

off the ground and retract into the van, the controls on the arm of the lift did not work, and the rear heating controls in the van had been removed, making it impossible to direct hot air to the rear of the van.

Two days after taking delivery, the Smiths brought the van back to Complete Mobility to have the problems fixed. Complete Mobility readjusted the doors but told the Smiths that they did not have enough time that day to work on the malfunctioning lift. The Smiths brought the van back to Complete Mobility on March 16, 2003; they told Complete Mobility that the rear heating controls had been removed; and Complete Mobility agreed that the wheelchair lift was not functioning properly because there was no horizontal lever or tilt function on the controls. Thereafter, the Smiths continued to bring the van back to Complete Mobility for repairs both to the van itself and to the wheelchair lift,[1] and, in early January 2005, they again contacted Complete Mobility, complaining that there was a leak in the van's steering system, a defective backlight on the wheelchair lift's touchpad, a defective switch on the lift, a defective remote control for the lift and door, and the rear heating controls had not been replaced. Complete Mobility apparently attempted repairs at no charge to the Smiths. The Smiths allege, however, that the problems with the van continue to exist.

[1] The Smiths claim that they took the van to Complete Mobility for repairs on at least six occasions. Complete Mobility and Braun concede that the Smiths took the van to Complete Mobility on "several occasions."

The Smiths filed a complaint in district court in July 2006 against Complete Mobility, Braun, and Ford Motor Company,[2] asserting breaches of express warranties in violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2312 (2000) (Magnuson-Moss); revocation of acceptance under Minn. Stat. § 336.2-608 (2006); and breaches of express warranties in violation of Minn. Stat. § 325G.19 (2006). The district court granted summary judgment in favor of Braun on all three claims and in favor of Complete Mobility on the Smiths' claims under Magnuson-Moss and section 325G.19. The district court denied summary judgment, however, on the Smiths' claim seeking revocation of acceptance against Complete Mobility, concluding that there remained a fact issue regarding that claim. The Smiths appeal.[3]

D E C I S I O N

When reviewing a grant of summary judgment, this court determines whether there are genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). When the district court grants summary judgment based on its application of a statute to undisputed facts, the result is a legal conclusion, which we review de novo. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998). And this court reviews the record in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). We may affirm a district court's grant of summary

[2] The Smiths settled their claims against Ford Motor Company but preserved their claims against Complete Mobility and Braun.

[3] The Smiths appeal only the district court's grant of summary judgment on their claims of violations of Magnuson-Moss and revocation of acceptance; they do not appeal the district court's grant of summary judgment on their claims under section 325G.19.

judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995).

I. The district court erred by granting summary judgment in favor of respondents on the Smiths' claims under Magnuson-Moss.

A. Magnuson-Moss provides an independent cause of action for a breach of a limited warranty.

The district court concluded that Magnuson-Moss "does not permit a consumer who is issued a limited warranty a direct right of action under state law." Because Complete Mobility and Braun issued limited warranties to the Smiths, the district court granted summary judgment in favor of Complete Mobility and Braun on the Smiths' Magnuson-Moss claims. The Smiths argue that Magnuson-Moss provides an independent cause of action for a breach of a limited warranty, and, therefore, the district court erred by granting summary judgment.

Under Magnuson-Moss, "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" in an appropriate state court or federal court. 15 U.S.C. § 2310(d)(1) (2000). Magnuson-Moss distinguishes between full warranties and limited warranties. *See id.* § 2303(a). Magnuson-Moss imposes minimum standards for full warranties and "provides remedies for their breach, including either a full refund of the purchase price or a replacement of the product if the warrantor cannot remedy defects or malfunctions after reasonable attempts to do so." *Schimmer v. Jaguar Cars, Inc.*, 384 F.3d 402, 405 (7th Cir. 2004) (citing 15 U.S.C.

§ 2304 (2000)). But limited warranties are not subject to section 2304, and, thus, the substantive remedies provided for in that section, which include a full refund of the purchase price, are not available for a breach of a limited warranty. *See* 15 U.S.C. § 2303(a); *Schimmer*, 384 F.3d at 405; *MacKenzie v. Chrysler Corp.*, 607 F.2d 1162, 1166 n.7 (5th Cir. 1979).

Complete Mobility and Braun contend that this court's decision in *Bretheim v. Monaco Coach Corp.*, No. A06-127, 2006 WL 3593044, at *2 (Minn. App. Dec. 12, 2006), *review dismissed* (Minn. Feb. 28, 2007),[4] is controlling and holds that a consumer cannot maintain a breach-of-warranty claim under Magnuson-Moss when the consumer has not expressly asserted a breach-of-warranty claim under state law. They conclude that because the Smiths do not appeal the district court's grant of summary judgment on their only claims citing a specific state law—that is, their claims under Minn. Stat. § 325G.19—the "procedural posture of the case in this court is fatal to the Smiths' purported [Magnuson-Moss] claim[s]."

In *Bretheim*, this court rejected an argument that a claim under Magnuson-Moss does not require consumers of products with limited warranties to bring suit under state law, explaining that "appellants cite no case in which a consumer of a product with a limited warranty recovered without bringing an action under state law." 2006 WL 3593044, at *2. The plaintiffs in *Bretheim* "unequivocally" declared that their claims were not claims "for breach of warranty," but rather claims for a warrantor's "failure . . .

[4] Unpublished opinions of this court are not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2006).

to comply with any obligation under [Magnuson-Moss]." *Id.* at *1 (alteration in original). *See also* 15 U.S.C. § 2310(d)(1) (providing for two types of claims: (1) claims for failing to comply with the minimum standards in section 2304 for full warranties and (2) claims for breach of warranty). Accordingly, this court viewed the plaintiffs' claims in *Bretheim* as being claims that a warrantor failed to meet the minimum standards prescribed in section 2304. *Id.* at *1-*2. And because the warranty at issue in *Bretheim* was a limited warranty, the minimum standards in section 2304 did not apply, and the plaintiffs failed to state a claim on which relief could be granted. *Id.* at *2. But here, unlike in *Bretheim*, the Smiths' claims are for breach of warranty and are not based on alleged violations of the minimum warranty standards prescribed in section 2304.

Properly understood, *Bretheim* holds that a claim of breach of a limited warranty under Magnuson-Moss will necessarily fail if a plaintiff is unable to show that there has in fact been a breach of the warranty, which is a question that is answered by looking to state breach-of-warranty law. Thus, if a plaintiff fails to establish, under state law, that a warranty has been breached, the corresponding Magnuson-Moss claim will likewise fail. Such a conclusion is consistent with the application of Magnuson-Moss in other jurisdictions. *See, e.g.*, *Milicevic v. Fletcher Jones Imps., Ltd.*, 402 F.3d 912, 918 (9th Cir. 2005) ("[I]t is clear from the statutory language that [Magnuson-Moss] creates a private cause of action for a warrantor's failure to comply with the terms of a written warranty. . . . [W]hether the written warranty is full or limited makes no difference."); *Gusse v. Damon Corp.*, 470 F. Supp. 2d 1110, 1116-17 (C.D. Cal. 2007) (explaining that under Magnuson-Moss, there is a cause of action for breach of an express limited

warranty but that the federal remedies in Magnuson-Moss apply only to full warranties, and thus, state substantive law determines the remedies for breach of a limited warranty); *Pierce v. Catalina Yachts, Inc.*, 2 P.3d 618, 626 (Alaska 2000) (agreeing with courts from other jurisdictions that Magnuson-Moss creates an independent cause of action for a breach of a limited warranty); *see also Temple v. Fleetwood Enters., Inc.*, 133 Fed. App'x 254, 268 (6th Cir. 2005) (explaining that the applicability of Magnuson-Moss is "directly dependent" on a sustainable claim for breach of warranty, and, thus, if there is no actionable warranty claim, there can be no violation of Magnuson-Moss); *Walsh v. Ford Motor Corp.*, 807 F.2d 1000, 1016 (D.C. Cir. 1986) ("[S]tate warranty law lies at the base of all warranty claims under Magnuson-Moss."); *Carey v. Chaparral Boats, Inc.*, 514 F. Supp. 2d 1152, 1154 (D. Minn. 2007) ("In determining whether the warrantor has breached a written or implied warranty, this Court must look to state law.").

We conclude that Magnuson-Moss provides an independent cause of action for a breach of a limited warranty, and the district court erred by concluding otherwise. That is, although the merits of a claim under Magnuson-Moss for breach of a limited warranty are determined by looking to state breach-of-warranty law, a plaintiff is not required to expressly assert a separate cause of action for breach of warranty under a state statute.

B. There are genuine issues of material fact that preclude summary judgment.

Complete Mobility and Braun argue alternatively that this court should affirm the district court's summary-judgment ruling on the ground that the record fails to show that there are genuine issues of material fact regarding whether they breached the terms of

their respective warranties. As we have already noted, even though the Smiths' breach-of-warranty claims arise under Magnuson-Moss, the question of whether or not a breach of the warranty has been established is a question that is governed by state law. *See Walsh*, 807 F.2d at 1016; *Carey*, 514 F. Supp. 2d at 1154. To establish a breach of warranty in Minnesota, a buyer must show the existence of a warranty, a breach of that warranty, and a causal connection between the breach and the damages suffered. *Peterson v. Bendix Home Sys., Inc.*, 318 N.W.2d 50, 52-53 (Minn. 1982). We will consider Complete Mobility's and Braun's warranties in turn.

1. Complete Mobility's warranty

In concluding that the Smiths failed to present any evidence that Complete Mobility breached its warranty, the district court explained that to prove a breach of the warranty, the Smiths must demonstrate that Complete Mobility "refused or otherwise failed to pay for the repair of a covered item." The Smiths argue that this is an incorrect standard. They claim that the warranty has been breached if Complete Mobility failed to conform its product to its warranty within a reasonable time. We agree with the Smiths.

Complete Mobility's warranty provides:

> All warranties on adaptive equipment are those of the manufacturer. ([Complete Mobility] does not warrant the products of other manufacturers). [Complete Mobility] warrants its own workmanship and its installation of adaptive equipment for two years from date of purchase. In the event of a product or performance failure attributed to the workmanship of [Complete Mobility], [Complete Mobility] will rework, reinstall, replace or repair, at its option, the equipment at no cost to the owner during this warranty.

Warranties such as Complete Mobility's, which provide for repair or replacement as exclusive remedies, fail of their essential purpose, and are thus breached, when circumstances arise to deprive the warranty of its meaning or its benefit to the buyer. *See Durfee v. Rod Baxter Imports, Inc.*, 262 N.W.2d 349, 356 (Minn. 1977). If repairs are not "successfully undertaken within a reasonable time," the buyer is deprived of the benefit of the warranty. *Id.* And "[c]ommendable efforts alone do not relieve a seller of his obligation to repair." *Jacobs v. Rosemount Dodge-Winnebago South*, 310 N.W.2d 71, 75 (Minn. 1981).

The district court concluded that because there was no evidence that Complete Mobility refused to pay for any repair requested under its warranty, there were no genuine issues of material fact regarding whether the warranty had been breached. Although refusing to pay for such a repair would constitute a breach, so also would failing to make successful repairs within a reasonable time. *See Durfee*, 262 N.W.2d at 356. The record shows that the Smiths presented evidence that they brought the van to Complete Mobility for repairs on numerous occasions—six times according to them—and that the Smith's claim that the problems with the van and the wheelchair lift continue. Whether or not Complete Mobility's repair attempts were unsuccessful and, if so, whether Complete Mobility had a reasonable amount of time to complete successful repairs, are questions of fact that preclude summary judgment in favor of Complete Mobility on the Smiths' breach-of-warranty claim.

2. Braun's warranty

Braun argues that the evidence is uncontroverted that all the repairs to the Smiths' wheelchair lift were made under Complete Mobility's warranty and that there is, therefore, no evidence in the record that any repairs were ever undertaken or requested under Braun's warranty. Thus, Braun concludes, no genuine issue of material fact exists regarding whether Braun's warranty has been breached. We find Braun's argument unavailing.

Braun issued the following warranty regarding the wheelchair lift:

> The Braun Corporation . . . warrants its wheelchair lift against defects in material and workmanship for three years, provid[ed] the lift is operated and maintained properly and in conformity with this manual. The warranty is limited to the original purchaser and does not cover defects in the motor vehicle on which it is installed, or defects in the lift caused by a defect in any part of the motor vehicle.
>
> . . . .
>
> This warranty also covers the cost of labor for the repair or replacement of most parts for one year when performed by an authorized Braun Representative.

By its own terms, Braun's warranty directed the Smiths to bring the wheelchair lift to an authorized Braun representative for any repairs or replacements. And the evidence shows that Complete Mobility was such an authorized Braun representative when the Smiths took their van there for repairs. We do not agree that the fact that Complete Mobility did not request that Braun authorize Complete Mobility to make the repairs under Braun's warranty shows that there was no evidence that Braun breached its warranty. Braun cites no authority in support of its argument, and we are aware of none, suggesting that it was

not sufficient for the Smiths to bring the wheelchair lift, as instructed by Braun's own warranty, to an authorized Braun representative, Complete Mobility. Whether the alleged problems with the wheelchair lift are proved and, if so, are ultimately determined to be the result of a manufacturing defect (which would make Braun liable for breach of warranty), or an installation defect (which would make Complete Mobility liable), or a combination of the two, is an issue for the fact-finder that precludes summary judgment.

Because the district court erred by concluding that Magnuson-Moss does not provide an independent cause of action for breach of a limited warranty, and because there are fact issues regarding whether Complete Mobility and Braun breached their respective warranties, we reverse the district court's grant of summary judgment in favor of Complete Mobility and Braun on the Smiths's breach-of-warranty claims under Magnuson-Moss.

II. Privity of contract is required of a claim for the remedy of revocation of acceptance.

The Smiths argue that the district court erred by concluding that because they were not in privity of contract with Braun, Braun was entitled to summary judgment on the Smiths' claim for revocation of acceptance. The Smiths contend that "privity of contract is not required to pursue revocation of acceptance" under Minnesota law.

Revocation of acceptance is a remedy governed by the Uniform Commercial Code. As enacted in Minnesota, the relevant section of the code provides:

> (1) The buyer may revoke an acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the buyer if it was accepted

> (a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
> (b) without discovery of such nonconformity if the acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

Minn. Stat. § 336.2-608 (2006). The general rule, and the majority view among courts in other jurisdictions that have considered the issue, is that privity of contract is required to make a claim for revocation of acceptance. *See, e.g.*, *Chaurasia v. General Motors Corp.*, 126 P.3d 165, 172 (Ariz. Ct. App. 2006) (holding that a revocation-of-acceptance claim fails for lack of privity); *Mesa v. BMW of N. Am., LLC*, 904 So.2d 450, 458-59 (Fla. Dist Ct. App. 2005) (holding that absent privity of contract, a plaintiff cannot sue for revocation of acceptance); *Henderson v. Chrysler Corp.*, 477 N.W.2d 505, 507-08 (Mich. Ct. App. 1991) (stating that Michigan follows the majority position that revocation of acceptance is not available against a manufacturer because there is no privity of contract); *see also* Gary Monserud, *Rounding Out the Remedial Structure of Article 2: The Case for a Forced Exchange Between a Buyer and a Remote Seller*, 19 U. Dayton L. Rev. 353, 355 (1994) (explaining that the general rule is that revocation of acceptance is not available absent privity of contract).

In support of their argument that privity of contract is not required to seek revocation of acceptance, the Smiths cite *Durfee*, 262 N.W.2d at 358-59. Braun responds that the holding in *Durfee* represents an exception to the general rule and is limited to the unique circumstances of that case—that the seller was insolvent or had gone out of business. *See id.* at 357-58. Braun claims that neither of those circumstances is present here.

In *Durfee*, which involved a buyer who sought revocation of acceptance against a distributor, the Minnesota Supreme Court concluded that "[a]lthough the relevant sections of Article 2 of the Uniform Commercial Code" regarding revocation of acceptance "seem to require a buyer-seller relationship, [the distributor] does not escape liability on this ground in these circumstances." *Id.* at 357. We agree with Braun that the holding in *Durfee* was limited to the specific facts of that case. Legal commentators who have analyzed *Durfee* agree that the case represents an exception to the general requirement of privity to seek revocation of acceptance:

> Most cases that have considered the question have concluded that revocation of acceptance is a remedy available only against the buyer's immediate seller. However, one Minnesota case has concluded that privity will not act as a bar to revocation . . . where the immediate seller has gone out of business, because it makes no sense to force a buyer to keep a product "which is sufficiently defective so as to justify his returning it and then requiring him to sue the distributor for damages merely because the dealer is insolvent or no longer in business."

27 Michael K. Steenson et al., *Minnesota Practice* § 5.19(E) (2006) (footnotes omitted) (quoting *Durfee*, 262 N.W.2d at 357).

The Smiths argue that even if the holding in *Durfee* is limited to its facts, the facts here are sufficiently similar to entitle them to seek revocation of acceptance against Braun. In support of their argument, they point to a statement by counsel for Complete Mobility at the summary judgment hearing that Complete Mobility was "in difficult straits." But nothing in the record shows that Complete Mobility is in fact insolvent or has gone out of business. Applying the *Durfee* exception to the general rule is, therefore,

not warranted here, and we affirm the district court's grant of summary judgment in favor of Braun on the Smiths' claim for revocation of acceptance.

Affirmed in part, reversed in part.