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FOURTH DIVISION
February 26, 2004

No. 1-03-0719

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEFFREY KORPALSKI, Plaintiff-Appellant, v. DAIMLERCHRYSLER CORPORATION, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 01 M1 117397 Honorable Robert Gordon, Judge Presiding.

ORDER

Plaintiff Jeffrey Korpalski appeals from the trial court's order dismissing his three-count amended complaint under the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (the Act) (15 U.S.C. § 2301 *et seq.* (2000)) against defendant DaimlerChrysler Corporation. On appeal, plaintiff contends that he sufficiently stated claims for breach of written and implied warranties under the Act even though he is a lessee, not a purchaser, of the defective automobile. For the following reasons, we reverse and remand.

In his amended complaint, plaintiff alleged the following facts. On February 20, 1998, plaintiff leased a 1998 Dodge Durango, which was manufactured and distributed by

DaimlerChrysler, from an authorized DaimlerChrysler dealership. Prior to or contemporaneous with plaintiff's lease of the Durango, the dealership, Torco Dodge, Inc. (Torco), sold the Durango and transferred its interest in the lease to Chase Manhattan Automotive Finance Corporation (Chase). Chase purchased the car from Torco in order to lease it to plaintiff and not for resale purposes.

In connection with that sale, DaimlerChrysler issued and supplied to Chase its written warranty that covered the Durango for three years or 36,000 miles. At the time Chase purchased the car, the Durango had been driven approximately 62 miles and was covered by this written warranty. Plaintiff alleged that Chase would not have purchased the car, nor would plaintiff have leased it, without this warranty. Chase transferred the Durango and assigned its rights in DaimlerChrysler's written warranty to plaintiff. The transfer of the warranty occurred during the duration of the warranty.

The lease between Chase and plaintiff indicated that it was primarily for personal, family or household purposes and stated that the vehicle was subject to a manufacturer's standard new car warranty. Under the lease, plaintiff paid $4,648.56 at signing and would make 47 additional monthly payments of $544.56. Plaintiff also paid all license, title, registration, documentation and acquisition fees as well as sales and use taxes. The parties agreed that the value of the vehicle was $34,884.00 and the gross capitalized lease cost of the car was $37,461.21. The lease contained an option to purchase the car at the end of the lease term for $19,203.30, the residual value of the vehicle, plus a $150.00 purchase option fee. If plaintiff chose to exercise this option, he would have already paid $26,138.88 in monthly payments and a $4000 down payment for the car.

Additionally, plaintiff was required under the lease to maintain insurance coverage on the vehicle.

Shortly after plaintiff took possession of the car, he experienced problems with the transmission, engine, brakes and electrical system, including a loss of power upon acceleration, intermittent illumination of the check-engine light, and a failure to start. Pursuant to the written warranty, plaintiff brought the car, on numerous occasions, to authorized DaimlerChrysler dealerships for repair and the dealerships serviced the car under the warranty. After several attempts, DaimlerChrysler failed to repair the defects in the car.

Because of DaimlerChrysler's failure to repair the car and its subsequent refusal to allow plaintiff to revoke acceptance of the car, plaintiff sought redress. In his three-count complaint brought under the Act, plaintiff alleged that DaimlerChrysler breached the written warranty and the implied warranty of merchantability and he sought revocation of acceptance. The trial court later granted DaimlerChrysler's motion to dismiss under section 2-619(9) of the Illinois Code of Civil Procedure (the Code), finding that the Act applied only when a vehicle was sold, not leased, and held that plaintiff had no privity with DaimlerChrysler to bring a breach of an implied warranty claim. Plaintiff then filed this timely appeal.

Section 2-619 of the Code (735 ILCS 5/2-619 (West 2000)) provides for the involuntary dismissal of a cause of action based on certain defects or defenses. Chandler v. Illinois Central Railroad Co., 207 Ill. 2d 331, 340, 798 N.E.2d 724, 728 (2003). When reviewing a section 2-619 dismissal, we take as true all well-pleaded facts alleged in the complaint and view them in the light most favorable to the plaintiff. Bartow v. Ford Motor Co., 342 Ill. App. 3d 480, 482, 794 N.E 2d 1027, 1029 (2003). Our review is *de novo*. Van Meter v. Darien Park District, 207 Ill. 2d 359,

368, 799 N.E.2d 273, 278 (2003).

The issue in this case is whether plaintiff, a lessee of an automobile, may bring a cause of action for breach of written and implied warranties under the Act against DaimlerChrysler, the manufacturer of the vehicle. Until recently, no Illinois case had considered this subject, leaving only conflicting federal and other state cases for guidance. However, in September 2003, this court first addressed this issue in Dekelaita v. Nissan Motor Corp. in USA, 343 Ill. App. 3d 801, 799 N.E.2d 367 (2003). After analyzing these contradictory cases, the legislative history behind the Act, and the statutory language, the Dekelaita court held that lessees could enforce written and implied warranties under the Act. We continue to agree with the well-reasoned analysis in Dekelaita and apply its holdings to the facts of this case.

The Act states that "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" and collect attorney fees. 15 U.S.C. § 2310(d)(1) (2000). In order to bring an action for breach of written and implied warranties under the Act, plaintiff must qualify as a "consumer," DaimlerChrysler's written warranty must constitute a "written warranty," and plaintiff must be entitled to sue for breach of an "implied warranty" as all three terms are defined in the Act and by state law.

A "consumer" is defined in the Act as:

"[1] a buyer (other than for purposes of resale) of any consumer product, [2] any person to whom such product is transferred during the duration of an implied or

written warranty (or service contract) applicable to the product, and [3] any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract)." 15 U.S.C. § 2301(3) (2000).

A person need only meet one of these three prongs in order to qualify as a consumer. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 370. Regardless of whether a lessee could meet the first two definitions of consumer, a lessee of a vehicle qualifies as a consumer under the third definition. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 372. As in Dekelaita, Chase assigned the rights of the DaimlerChrysler warranty to plaintiff and plaintiff was entitled to enforce those rights, perhaps even if only under state law. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 372, citing Collins Co., Ltd. v. Carboline Co., 125 Ill. 2d 498, 507-08, 532 N.E.2d 834, 837 (1988). In fact, DaimlerChrysler dealerships serviced the Durango on several occasions under the warranty.

DaimlerChrysler contends that the definition of "consumer" requires that the warranty be connected to a sale. Even if we accepted that argument, a lessee would satisfy the third definition, which does not mandate that the warranty be connected to a sale, but simply requires that the warranty is enforceable under state law. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 372. Additionally, as in Dekelaita, DaimlerChrysler does not argue that this warranty is unenforceable under state law by a lessee as well as by a buyer. Because plaintiff was entitled to enforce the warranty under the third prong, plaintiff qualifies as a "consumer" under the Act. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 372. See also Voelker v. Porsche Cars North

America, Inc., 353 F.3d 516, 524 (7th Cir. 2003); Cohen v. AM General Corp., 264 F.Supp.2d 616, 619 (N.D.Ill. 2003).

DaimlerChrysler next argues that to enforce a written or implied warranty, the consumer must have acquired the consumer product by way of a sale under the definitions of written and implied warranty. It argues that because plaintiff merely leased the Durango and did not purchase it, the warranty was not issued "in connection with the sale" and plaintiff's claims must fail.

A "written warranty" under the Act is defined as:

> "(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
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> (B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for promises other than resale of such product." 15 U.S.C. § 2301(6) (2000).

An "implied warranty" is defined as: "an implied warranty arising under State law * * * in connection with the sale by a supplier of a consumer product." 15 U.S.C. § 2301(7) (2000).

In Dekelaita, this court found that the warranty was issued in connection with a sale-- the sale between the dealer and the lessor-- which in this case, was the sale between Torco and Chase.[1] Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 373. The court reasoned:

> "Though the majority of courts fall on the side of the defendant, we are persuaded by the Act's plain language that the legislature's intent was to cover lessees. In so holding, we return to our examination of the Act's plain language. The legislature's definitions of 'written warranty' and 'implied warranty' state quite simply that the warranty be issued 'in connection with the sale' of a consumer product: Congress does not demand its readers to conclude that the sale must be between the consumer and the supplier." Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 373.

The Act does not limit a "sale" to transactions between the warrantor and the ultimate consumer. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 373, citing Cohen, 264 F.Supp.2d at 619. Taking the relevant sale to be between Torco and Chase confers warranty rights under the Act to plaintiff. The warranty gave rise to rights produced "in connection with the sale" as mandated by the Act and those rights are now enforceable by plaintiff as an assignee. "In the instant case, then, in connection with the sale, the warranty was assigned to the lessees, who are consumers entitled

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[1] DaimlerChrysler contends that "there is no evidence before this Court" that Chase purchased the vehicle and the title of the vehicle is not in the record, and thus, plaintiff cannot make this claim. However, plaintiff alleged in his complaint that Torco sold the vehicle and transferred its interest in the lease to Chase and then Chase transferred the car and warranty to plaintiff. As this case is before us on a section 2-619 motion to dismiss, we take all well-pled facts as true (Bartow, 342 Ill. App. 3d at 482, 794 N.E.2d at 1029) and find plaintiff's allegations sufficient at this stage.

to enforce the Act." Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 373. See also Voelker, 353 F.3d at 525.

In so holding, the Dekelaita court examined DiCintio v. DaimlerChrysler Corp., 97 N.Y.2d 463, 768 N.E.2d 1121 (2002), which DaimlerChrysler relies on heavily in the present case. In DiCintio, the court held that a lessee could not be a consumer because each prong of that definition required a sale. Additionally, the court concluded that because a sale was defined in the Uniform Commercial Code as the "passing of title," a lease could not constitute a sale and there was no other relevant sale in the case. Thus, there was no "written warranty" or "implied warranty" under the Act and the plaintiff-lessee could not be a consumer. DiCintio, 97 N.Y.2d at 471, 768 N.E.2d at 1124. After an extensive discussion, the Dekelaita court found DiCintio's analysis "flawed" and discovered legislative history which supported the opposite result. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 374-75. See also Cohen, 264 F.Supp.2d at 620-21. The Dekelaita court determined that the legislative intent was best served by protecting lessees with a broad reading of the definitions of "written warranty" and "implied warranty" and that public policy supported affording long-term automobile lessees the same rights afforded to purchasers. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 375.

Similarly, we decline to follow DiCintio. Additionally, because we have an Illinois case directly on point, we decline to follow the other cases cited by DaimlerChrysler which came to the same conclusion as DiCintio. See Weisberg v. Jaguar Cars, Inc., No. 02 C 1678, 2003 WL 1337983 (N.D.Ill. Mar. 18, 2003); Voelker v. Porsche Cars North America, Inc., No. 02 C 4798, 2003 WL 291909 (N.D.Ill. Feb. 10, 2003), affirmed in part and reversed in part, 353 F.3d 516

(7th Cir. 2003); Diamond v. Porsche Cars North America, Inc., No. 02 C 414, 2002 WL 31155064 (N.D.Ill. Sept. 26, 2002), vacated on other grounds, No. 02-3585, 70 Fed. Appx. 893 (7th Cir. July 16, 2003). Accordingly, plaintiff stated a cause of action for breach of written warranty under the Act and the trial court erred in dismissing this count.

Next, we address plaintiff's claim for breach of implied warranty. Generally, privity is required under the Illinois Commercial Code law (810 ILCS 5/1-101 *et seq.* (West 2000)) to establish a claim of implied warranty. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 376. However, the Illinois Supreme Court determined that this requirement was unnecessary where the claim was brought under the Act. Rothe v. Maloney Cadillac, Inc., 119 Ill. 2d 288, 295, 518 N.E.2d 1028, 1031 (1988); Szajna v. General Motors Corp., 115 Ill. 2d 294, 315-16, 503 N.E.2d 760, 769-70 (1986). In those cases, the supreme court determined that where there was a "written warranty" under the Act, the state law privity requirement is overridden by federal law and therefore, a consumer with a written warranty under the Act could maintain an action for breach of implied warranty without having contractual privity with the manufacturer. Rothe, 119 Ill. 2d at 295, 518 N.E.2d at 1031; Szajna, 115 Ill. 2d at 315-16, 503 N.E.2d at 769-70; Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 376.

DaimlerChrysler cites several federal cases which have criticized and rejected this holding and urges us to do the same. See Kutzle v. Thor Industries Inc., No. 03 C 2389, 2003 WL 21654260 (N.D.Ill. July 14, 2003); Kowalke v. Bernard Chevrolet, Inc., No. 99 C 7980, 2000 WL 656660 (N.D.Ill. Mar. 23, 2000); Larry J. Soldinger Associates, Ltd. v. Aston Martin Lagonda of North America, Inc., No 97 C 7792, 1999 WL 756174 (N.D.Ill. Sept. 13, 1999).

But see Cohen, 264 F.Supp.2d at 621. We reject DaimlerChrysler's request because we are bound by *stare decisis* and must follow the decisions of our supreme court. Dekelaita, 343 Ill. App. 3d at ___, 799 N.E.2d at 376. Because plaintiff established that he is a "consumer" under the Act entitled to enforce a "written warranty," he need not establish privity with the manufacturer and is entitled to sue for breach of implied warranty under the Act.

Accordingly, we find that the trial court erred in dismissing plaintiff's amended complaint because plaintiff, as a lessee, sufficiently alleged claims of breach of written and implied warranties under the Act. The judgment of the circuit court of Cook County is reversed and the cause remanded for further proceedings.

Reversed and remanded.

THEIS, J., with QUINN, P.J. and GREIMAN, J., concurring.