2016 IL App (1st) 142177-U

FIFTH DIVISION
October 21, 2016

No. 1-14-2177

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

STEPHANIE WASHINGTON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant	)	Cook County.
and Cross-Appellee,	)	
	)	
v.	)	No. 13 M6 2489
	)	
COOL HEAT, INC.,	)	
	)	
Defendant-Appellee	)	The Honorable
and Cross-Appellant.	)	Leon Wool,
	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.

Justices Lampkin and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: This court affirmed the order of the circuit court granting the defendant's motion to strike and dismissing the plaintiff's Consumer Fraud Act and the Magnuson-Moss Act claims and denying the defendant's motion to strike the plaintiff's breach of contract claim.

¶ 2 The plaintiff, Stephanie Washington, filed an amended three-count complaint against the defendant, Cool Heating, Inc., alleging violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2012)) and the Magnuson-Moss Warranty Act (Magnuson-Moss Act) (15 U.S.C. § 2301 *et seq.* (1994)) and alleging breach of contract. The circuit court granted the defendant's motion to strike the Consumer Fraud Act and Magnuson-Moss Act claims and dismissed them. The court denied the motion to strike the breach of contract claim.

¶ 3 The plaintiff appeals contending that the circuit court erred in striking and dismissing her Consumer Fraud Act and Magnuson-Moss Act claims for failure to state a cause of action. The defendant cross-appeals from the denial of its motion to strike the breach of contract claim. We affirm the dismissal of the Consumer Fraud Act and Magnuson-Moss Act claims. We affirm the denial of the motion to strike the breach of contract claim.

¶ 4 BACKGROUND

¶ 5 Initially, the plaintiff filed a *pro se* complaint against the defendant. Subsequently, an attorney entered an appearance on her behalf and filed an amended complaint.

¶ 6 In her amended complaint, the plaintiff alleged the following facts. On January 24, 2011, the plaintiff brought her 2006 Ford Explorer sport utility vehicle (SUV) to the defendant for the installation of a replacement radiator. The defendant's invoice stated as follow: "NEW RADIATOR 2 YEARS GUARRANTEE, 1 YEAR FREE REPLACEMENT."

¶ 7 On August 8, 2011, the plaintiff took the SUV to River Oaks Ford after a warning light indicated a maintenance issue with the SUV. The service providers at River Oaks Ford

informed the plaintiff that the cooler line fitting had become undone, and the resulting fuel loss damaged the SUV's transmission. The service providers explained that the cooler line fitting was only done as part of the installation or repair of a radiator and that the "previous installation was defectively accomplished or repaired."

¶ 8 The plaintiff returned to the defendant and requested that the defendant repair the SUV. The defendant refused to repair the SUV or honor the warranty. The plaintiff had the SUV repaired for $2,500 at River Oaks Ford.

¶ 9 In count I of her amended complaint, the plaintiff alleged that the defendant violated the Consumer Fraud Act by violating certain sections of the City of Chicago Municipal Code (Municipal Code). The plaintiff sought damages of $3,500, punitive damages, reasonable attorney fees and costs of suit.

¶ 10 In count II of the amended complaint, the plaintiff alleged that the defendant breached the written contract entered into with the plaintiff by defectively installing the radiator and failing to honor the warranty resulting in damages to the plaintiff. The plaintiff sought damages of $3,500 plus costs of suit.

¶ 11 In count III of her amended complaint, the plaintiff alleged that the written warranty she received from the defendant was covered by the Magnuson-Moss Act. She further alleged that the defendant violated the Magnuson-Moss Act by breaching the written warranty and failing to provide her with the full content of the warranty. She further alleged that she sustained damage as a purchaser of auto parts and installation services supplied and warranted by the defendant. The plaintiff also alleged that the defendant breached the implied warranty of merchantability through the defective installation of the replacement radiator.

The plaintiff sought damages in the amount of $3,500, costs of suit and reasonable attorney fees.

¶ 12 Pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), the defendant filed a motion to strike the amended complaint for failure to state a cause of action. The defendant argued that in all three counts of the amended complaint the plaintiff pleaded conclusions without factual support. In addition, the defendant argued that count III violated section 2-613(a) the Code (735 ILCS 5/2-613(a) (West 2012)) by alleging several different causes of action in a single count.

¶ 13 On June 10, 2014, the circuit court granted the defendant's motion, in part, striking and dismissing the Consumer Fraud Act and Magnuson-Moss Act claims. The court denied the motion to strike the breach of contract claim. Subsequently, the circuit court granted the plaintiff's motion to voluntarily dismiss the breach of contract claim without prejudice. This appeal and cross-appeal followed.

¶ 14 ANALYSIS

¶ 15 I. Plaintiff's Appeal

¶ 16 A. Standard of Review

¶ 17 The dismissal of a complaint pursuant to section 2-615 of the Code is reviewed *de novo*. *Compton v. County Mutual Insurance Co.*, 382 Ill. App. 3d 323, 325 (2008).

¶ 18 B. Discussion

¶ 19 "A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint based upon defects appearing on the face of the complaint." *Compton*, 382 Ill. App. 3d at 325-26. In ruling on a section 2-615 dismissal, the court must determine if the allegations of the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a

cause of action upon which relief can be granted. *Weis v. State Farm Mutual Insurance Co.*, 333 Ill. App. 3d 402, 405 (2002).

¶ 20 Since Illinois is a fact-pleading jurisdiction, the complaint must be both legally and factually sufficient. *Weis*, 333 Ill. App. 3d at 405. All well-pleaded facts and all reasonable inferences from those facts are taken as true, but legal and factual conclusions may be disregarded unless supported by allegations of fact. *Compton*, 382 Ill. App. 3d at 326. A liberal construction will not cure a complaint's factual deficiencies. *Barille v. Sears Roebuck & Co.*, 289 Ill. App. 3d 171, 174 (1997). A complaint should not be dismissed unless it is clearly apparent that the plaintiff could prove no set of facts entitling him or her to relief. *Compton*, 382 Ill. App. 3d at 326.

¶ 21 1. *Consumer Fraud Act*

¶ 22 In order to state a cause of action under the Consumer Fraud Act, the plaintiff must allege: (1) a deceptive act or practice by the defendant, (2) an intent on the defendant's part that the plaintiff rely on the deception, and (3) the deception occurred in the course of conduct involving trade or commerce. *JPMorgan Chase Bank, N.A. v. East-West Logistics, L.L.C.*, 2014 IL App (1st) 121111, ¶ 73. A complaint alleging a consumer fraud violation must be pleaded with the same particularity and sufficiency as required under common law fraud. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 501 (1996). "A successful common law fraud complaint must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the representations and to whom they were made." *Connick*, 174 Ill. 2d at 496-97.

¶ 23 The amended complaint alleged that the defendant violated the Consumer Fraud Act by violating sections of the Municipal Code. The plaintiff alleged that the defendant violated section 4-228-215 of the Municipal Code which provides in pertinent part that "[it] shall be unlawful for any motor vehicle repair shop to perform any of the following acts or omissions related to the conduct of the business *** (d) any conduct which constitutes fraud; (e) any conduct which constitutes gross negligence." Chicago Municipal Code § 4-228-215(e)(d) (amended May 9, 2012).

¶ 24 The amended complaint alleged the radiator was "defectively" installed. The plaintiff failed to plead, with specificity and particularity, facts necessary to demonstrate that the defective installation was performed to defraud the plaintiff. Moreover, the plaintiff failed to allege facts beyond the alleged defective installation of the radiator in order to demonstrate gross negligence on the part of the defendant rather than mere negligence.

¶ 25 The plaintiff further alleged that the defendant's failure to return the replaced radiator to her violated the Municipal Code. Section 4-228-250 of the Municipal Code provides upon the customer's request, the motor vehicle repair shop must return the replaced part to the customer upon completion of the work. Chicago Municipal Code § 4-228-250(j) (amended Nov. 8, 2012). The customer must be advised of his or her right to receive the replaced part on the face of the invoice. Chicago Municipal Code § 4-228-250(l)(2) (amended Nov. 8, 2012).The customer must be informed that, subject to certain exceptions not relevant here, they are "entitled by law to the return of all parts replaced." The section further provides that the motor vehicle repair shop must provide the customer with "a choice of receiving replaced parts by including on all estimate forms the following statement:

> I request the return of the parts replaced.

I do not want replaced parts returned to me." Chicago Municipal Code § 4-228-250(l)(3) (amended Nov. 8, 2012).

¶ 26 In order to establish a violation of section 4-228-250, the plaintiff must allege facts demonstrating that the defendant did not inform her that she was entitled to receive the replaced radiator, and did not offer her a choice of requesting or not requesting the return of the part, or that the defendant failed or refused to comply with her request to return the replaced radiator to her.

¶ 27 The defendant's invoice complied with the Municipal Code since it provided the plaintiff with the option to request or decline the return of the replaced radiator. At the bottom of the defendant's invoice, the plaintiff was requested to chose whether or not she wished to have the part replaced returned to her by checking the appropriate box. The plaintiff maintains that the fact she failed to check either option while signing other portions of the invoice suggests that she did not in fact decline her right to have the radiator returned to her. However, the plaintiff did not allege any facts establishing that she was prevented from exercising her right to have the radiator returned to her. Finally, the amended complaint alleged only that the defendant did not return the replaced radiator to her, not that the defendant refused or failed to comply with her request to return the replaced radiator to her.

¶ 28 The plaintiff further alleged that the defendant violated section 4-228-250 of the Municipal Code when it refused to repair the SUV or honor the warranty. Section 4-228-250 provides in pertinent part, "[i]t shall be a violation of this section if a licensee fails to honor any warranty or refuses to perform repairs which are covered by warranties provided pursuant to this chapter." Chicago Municipal Code § 4-228-250(o)(4) (amended Nov. 8,

2012). The amended complaint alleged that the plaintiff returned to the defendant and that the defendant refused to repair the SUV or honor the warranty.

¶ 29 The Consumer Fraud Act was not intended to apply to every contract dispute or supplement every breach of contract claim with a redundant remedy. *Zankle v. Queen Anne Landscaping*, 311 Ill. App. 3d 308, 312 (2000). As one court observed, " 'a deceptive act or practice' involves more than the mere fact that the defendant promised something and then failed to do it. That type of 'misrepresentation' occurs every time a defendant breaches a contract." *Zankle*, 311 Ill. App. 3d at 312.

¶ 30 The plaintiff's allegations of consumer fraud amount to no more than the defendant's failure to fulfill its contractual obligations regarding the installation of the new radiator. The allegation that the defendant failed to repair the SUV was insufficient to establish a violation of the Consumer Fraud Act. The plaintiff was required to set forth facts that, if proved would establish that the defendant engaged in a deceptive act or practice and intended the plaintiff to rely on the act or practice. The amended complaint lacks the necessary allegations of fact demonstrating that the defendant's refusal to repair the SUV was anything more than a breach of contract.

¶ 31 Moreover, the plaintiff failed to demonstrate that the defendant failed to honor the warranty. The warranty covered the radiator, not its installation. The plaintiff alleged only that the installation was defective, not the radiator. Therefore, the plaintiff failed to establish that the defendant failed to honor the warranty it gave to the plaintiff.

¶ 32 The plaintiff's reliance on *Garcia v. Overland Bond & Investment Co.*, 282 Ill. App. 3d 486 (1996) is misplaced. In *Garcia*, the reviewing court found that allegations alleging that the defendant advertised goods with the intent not to sell them as advertised, if proved

constituted a basis for a claim of deceptive practice under section 2 of the Consumer Fraud Act (815 ILCS 505/2 (West 1992)). *Garcia*, 282 Ill. App. 3d at 493. In contrast, in the present case, the plaintiff did not allege any facts that if proved established that the defendant offered the plaintiff a warranty or promise to repair that it had no intention of fulfilling.

¶ 33 We conclude that the plaintiff failed to state a cause of action for consumer fraud.

¶ 34 2. *Magnuson-Moss Act*

¶ 35 The plaintiff alleged that the defendant violated the Magnuson-Moss Act by breaching the written warranty it gave to the plaintiff and by failing to provide the full content of the warranty. The plaintiff also alleged that the defendant breached the implied warranty of merchantability base on the alleged defective installation of the new radiator in the SUV.

¶ 36 The Magnuson-Moss Act "provides a private right of action by a consumer purchaser of a consumer product against a manufacturer or retailer failing to comply with the [Magnuson-Moss] Act or the terms of a written warranty arising therefrom." *Hasek v. DaimlerChrysler Corp.*, 319 Ill. App. 3d 780, 793 (2001) (citing 15 U.S.C. § 2310 (d)(1) (1994). Under the Magnuson-Moss Act, a written warranty is:

> " '(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.' " *Hasek*, 319 Ill. App. 3d at 793-94 (quoting 15 U.S.C. § 2301 (6)(B) (1994).

A consumer product is " 'any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes.' " *Hasek*, 319 Ill.

App. 3d at 794 (quoting 15 U.S.C. § 2301 (1) (1994)). There is no dispute that the radiator was a consumer product.

¶ 37 The plaintiff argues that the defendant failed to provide the full content of the warranty. The written warranty stated, "new radiator 2 years guarantee, 1 year free replacement." (Emphasis omitted.) The warranty complied with section 2302 of the Magnuson-Moss Act by "fully and conspicuously disclos[ing] in simple and readily understandable language the terms and conditions of such warranty." 15 U.S.C. § 2302(a) (1994). Section 2302 further provides a list of other items that may be required to be included in the written warranty. See 15 U.S.C. § 2302(a) (1-13) (1994). However, the plaintiff does not allege what terms or other information about the warranty were not disclosed to her.

¶ 38 In any event, the plaintiff failed to allege that the defendant breached the written warranty. The allegations of her claim were not that the damage to the SUV's transmission resulted from a defect in the radiator but that the damage resulted from the defective installation of the radiator. The written warranty provided to her warranteed the radiator for two years and required the defendant to replace a defective radiator for free within one year. The warranty provided by the defendant did not cover the installation of the radiator and did not provide that the defendant would repair the SUV based on a defective installation.

¶ 39 The plaintiff claims that the defendant breached the implied warranty of merchantability through its detective installation of the new radiator. However, like the written warranty, the implied warranty applies to the sale of a consumer product. 15 U.S.C. § 2301(7) (1994). The plaintiff failed to allege that the consumer product in this case, the radiator, was defective. Therefore, the plaintiff failed to state a cause of action for breach of the implied warranty of merchantability.

¶ 40 We conclude that the plaintiff failed to state a cause of action under the Magnuson-Moss Act.

¶ 41 Finally, the plaintiff argues that her complaint should not have been dismissed at the pleading stage. In this case, the plaintiff does not have a cause of action under the Consumer Fraud Act or Magnuson-Moss Act. The failure to repair the SUV constitutes no more than a breach of contract, and the warranty covered the radiator, not the installation of the radiator, which she alleged caused the damage to her SUV.

¶ 42 II. Defendant's Cross Appeal

¶ 43 The defendant contends that the trial court erred when it denied his motion to dismiss the plaintiff's breach of contract claim. In order to state a cause of action for breach of contract, the plaintiff must allege facts demonstrating: (1) the existence of a valid enforceable contract, (2) performance by the plaintiff, (3) breach of the contract by the defendant, and (4) resulting injury to the plaintiff. *Gonzalez v. American Express Credit Corp.*, 315 Ill. App. 3d 199, 206 (2000). The defendant maintains that the plaintiff failed to allege facts demonstrating her performance of the contract and failed to set forth the terms of the parties' contract.

¶ 44 The plaintiff does not dispute the failure of her claim for breach of contract to meet the pleading requirements. Rather, she maintains that because she sought only $3,500 in damages, her pleadings should be judged by the more relaxed standard applicable in small claims cases. See Ill. S. Ct. R. 281 (eff. Jan. 1, 2006); Ill. S. Ct. R. 282 (eff. 1997). Other than the supreme court rules, the plaintiff does not cite any authority in support of her argument.

¶ 45 Rule 281 provides in pertinent part as follows: "For purposes of the application of Rules 281 through 288, a small claim is a civil action based on either tort or contract for money not in excess of $10,000, exclusive of interest and costs." The "civil action" in this case was the

plaintiff's amended three-count complaint. In each count she sought damages of $3,500, together totaling more than $10,000. In the absence of supporting case law or additional statutory authority, we conclude that the relaxed pleading requirements applicable to small claims complaints do not apply to the plaintiff's breach of contract claim which was a single count of a three-count complaint.

¶ 46 The plaintiff acknowledges that she failed to meet the pleading requirements to state a cause of action for breach of contract. Nonetheless, the allegations of the amended complaint militate against the dismissal of her claim for breach of contract. Mindful that a complaint should not be dismissed unless it is clearly apparent that the plaintiff could prove no set of facts entitling him or her to relief (*Compton*, 382 Ill. App. 3d at 326), we affirm the circuit court's denial of the defendant's motion to dismiss as to the breach of contact claim and remand for the plaintiff to amend, if she so chooses, her breach of contract claim. See *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 36 (although the plaintiff failed to state a cause of action, in the interest of a just result, the reviewing court reversed the dismissal with prejudice and remanded the case to allow the plaintiff to amend the complaint).

¶ 47 CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the circuit court is affirmed, and the cause is remanded.

¶ 49 Affirmed and remanded.