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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001542-MR

C.A.R.S. PROTECTION PLUS, INC.

APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 03-CI-00452

STEVE CAPPS

APPELLEE

AND

NO. 2007-CA-001821-MR

LARRY STIGERS EQUIPMENT,
TRAILERS & TRUCKS, LLC

APPELLANT

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 03-CI-00452

STEVE CAPPS, AND
C.A.R.S. PROTECTION PLUS, INC.

APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: LAMBERT AND NICKELL, JUDGES; HENRY,¹ SENIOR JUDGE.
NICKELL, JUDGE: C.A.R.S. Protection Plus, Inc. (C.A.R.S.) and Larry Stigers Equipment, Trailers & Trucks, LLC (Stigers) appeal from a judgment of the Bullitt Circuit Court in favor of Steve Capps (Capps). In a dispute over the purchase of a used vehicle and its accompanying warranty, the circuit court held Stigers and C.A.R.S. violated both the Kentucky Consumer Protection Act (KCPA)² and the terms of the used vehicle warranty and entered judgment for Capps. We vacate the judgment and remand for further proceedings.

Facts

Capps purchased a vehicle from Stigers and a warranty from C.A.R.S. We rely on the following facts as found by the trial court. On February 24, 2003, Capps visited Stigers' dealership looking to buy a pick-up truck for his son. Capps showed interest in a 1998 Dodge 3500 diesel truck but, due to a dead battery, could not take a test drive. Capps also noticed the truck was leaking oil. When he called this to the attention of one of Stigers' employees, he was told the oil leak was a known issue and was the result of a faulty gasket in the motor which was to be

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

² Codified at KRS Chapter 367.

replaced. Capps also discovered the truck was low on brake fluid. The employee informed Capps that, if he would return the next day, they would have the truck fixed.

Capps returned the next day and test-drove the truck. Although now drivable, Capps was wary of potential trouble with the truck and hesitant to make the purchase. Stigers then told Capps about a used vehicle warranty offered by C.A.R.S. that Capps could purchase to ease his concerns about buying the truck. Stigers further represented to Capps that if *anything* was wrong with the truck the warranty would cover the cost of repairing the problems. Capps was shown a brochure describing the warranty term as 48-months with unlimited miles for a price of \$995.00.

Still hesitant about the quality of the vehicle and the validity of the warranty, Capps asked that Stigers contact C.A.R.S. and confirm the warranty did, in fact, cover diesel trucks. C.A.R.S. affirmed the warranty covered diesel trucks and Stigers further assured Capps the warranty would cover *any* problems listed in the warranty once the truck was taken off the lot. In the end, Capps purchased the truck and the warranty and drove the vehicle home.

The agreement to purchase the truck was contained in a purchase order prepared by Stigers' wife. According to the purchase order, the price of the truck was \$16,900.00. Capps was credited \$6,900.00 for trading in his truck and was to pay the remaining balance of \$10,000.00. Although the purchase order contained a warranty disclaimer, in the warranty field of the purchase order was

written “4 yr unlimited” and “\$995.” Capps signed both the purchase order and the warranty disclaimer but admitted he did so without reading either document.

When Capps reached his home, he checked the oil level of the truck and discovered it was a gallon low even though it had been at the proper level when he left the dealership. He called Stigers who told him not to worry and to drive the truck as he had purchased a warranty. The next day, after having driven the truck approximately 140 miles, the truck lost oil pressure and the engine began to knock. Capps took the truck to Shelbyville Chrysler which inspected the motor, found it to be “trashed,” and told Capps the motor needed to be replaced. Capps contacted Stigers who told him to call C.A.R.S. because the truck was under warranty.

C.A.R.S. inspected the truck and denied coverage to Capps. The company relied on a clause in the warranty stating “component failures which occur prior to the acceptance of this limited warranty are not covered.” C.A.R.S. deemed the problems with the truck to pre-exist³ the purchase of the warranty. Once C.A.R.S. denied coverage, Capps never picked up the truck from Shelbyville Chrysler. To date, \$13,000.00 in storage fees (at \$10.00 a day) has accrued, which, along with the hourly labor incurred by Shelbyville Chrysler in tearing down the engine, remains unpaid.

³ The C.A.R.S. adjuster and the Shelbyville Chrysler mechanic agreed the extensive damage to the truck did not happen “overnight” and was present when Capps purchased the vehicle.

The circuit court found generally that the dealership's misrepresentations and omissions in selling the truck to Capps violated the KCPA.⁴ The court relied on KRS 186A.500 and KRS 186A.540 for the proposition that dealerships or individuals must disclose prior severe damage to buyers of automobiles if the damage exceeds more than \$1,000.00. The Court found the truck's damage was clearly more than \$1,000.00 and the dealership breached its duty to inform Capps of the damage because it had superior knowledge of the truck's condition and the statutory requirements of disclosure.⁵ The court found Stigers merely disclosed to Capps that the truck had problems and by omitting the severity of the damage and known problems with the truck, misled and deceived Capps about the truck's real condition. The court also found Capps was not interested in buying the truck after discovering its problems and Stigers deceitfully used the C.A.R.S. warranty as a sales tool to manipulate Capps into buying a truck that was a "lemon."⁶

The court noted C.A.R.S. claimed the exclusionary language contained in the warranty insulated C.A.R.S. from liability because that language meant pre-existing conditions at the time the warranty was purchased would not be

⁴ The court did not address specific omissions and/or misrepresentations.

⁵ The Court did not specify the damages that totaled over \$1,000.00. The Court further did not disclose why it found that Stigers had "special knowledge" concerning the condition of the truck and/or what role that played in the outcome of this case.

⁶ The Court did not indicate what role Capps's initial hesitation in buying the truck played in this litigation, nor did it rely on specific events to show Stigers' use of the C.A.R.S. warranty was a sales tool.

covered. The court found a plain language reading of the clause meant components of the truck that have not actually and fully failed before the warranty has been accepted and the vehicle has been driven off the lot are to be covered by the warranty. Relying on this interpretation, the court found the components covered by the warranty did not actually and fully fail until after the warranty was accepted and the vehicle was driven off the lot.⁷

Relying on the KCPA, the circuit court awarded Capps a total of \$40,201.00⁸ including storage costs and engine replacement costs in the amount of \$33,169.00 and attorney fees of \$7,032.00.⁹ The Court found Stigers and C.A.R.S. were jointly and severally liable for this amount.¹⁰ This appeal followed.

On appeal, Stigers and C.A.R.S. have filed separate briefs but their alleged errors are consistent with each other. Stigers maintains that it did not violate the KCPA, the trial court wrongly awarded damages to Capps, and the court erred in denying his motion to dismiss, motion for summary judgment and motion to alter, amend or vacate the judgment.¹¹ C.A.R.S. maintains it did not

⁷ The Court did not specifically find which truck components failed and when.

⁸ The court pointed specifically to KRS 367.200, which permits a trial court to make orders or judgments as necessary to restore to plaintiffs any moneys or property that may have been paid as a result of conduct by the dealership declared unlawful by KRS 367.130 to KRS 367.300. Specifically, KRS 367.220 authorizes a court to award actual damages, punitive damages, attorney's fees, court costs and other damages the court may deem equitable.

⁹ The court did not disclose how it arrived at these figures.

¹⁰ The court did not apportion fault in imposing joint and several liability, but stated the judgment was proper under the KCPA.

¹¹ The court judgment mentioned neither a motion to dismiss nor a motion for summary judgment.

violate the KCPA, the trial court miscalculated the damages and the court misinterpreted the operative language of the warranty. C.A.R.S. believes the warranty should be construed to exclude coverage for pre-existing conditions; the engine trouble of which Capps complains was, in fact, pre-existing; and, therefore, it properly denied him coverage. For the reasons discussed below, this matter is remanded for specific findings of fact regarding both Stigers and C.A.R.S.

Standard of Review

When reviewing questions of fact, appellate courts set aside a trial court's factual findings only if clearly erroneous. *Medley v. Board of Educ., Shelby County*, 168 S.W.3d 398, 402 (Ky. App. 2004). A factual finding is not clearly erroneous if it is supported by "substantial evidence" which is evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people. *Id.*

In contrast, we review questions of law *de novo*. *New v. Commonwealth*, 156 S.W.3d 769, 774 (Ky. App. 2005). As such, they are reviewed without deference to the trial court's interpretation. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998).

Argument

We review first the common claims raised by C.A.R.S. and Stigers before addressing their separate claims.

I. Did Stigers and C.A.R.S. violate the KCPA?

The trial court found that both C.A.R.S. and Stigers violated the KCPA by inducing Capps to purchase the truck in question. The controlling language of the KCPA is contained in KRS 367.220(1), which provides in pertinent part:

[a]ny person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by KRS 367.170,¹² may bring an action . . . to recover actual damages.

Thus, to recover under the KCPA, Capps would have to prove: (1) he bought the truck primarily for personal, household, or family purposes; (2) Stigers and C.A.R.S. engaged in an unfair, false, misleading, or deceptive act; and (3) Capps suffered actual damages as a result of the violation of the KCPA.

A. Did Stigers violate the KCPA as a matter of law?

The trial court found Stigers violated the KCPA based upon his misrepresentations and omissions in selling the truck to Capps. Specifically, the court found that by disclosing to Capps only that the truck “had problems,” mislabeling the warranty, and, downplaying the severity of the truck’s problems, Stigers violated the KCPA. The court further found Stigers had a duty to inform Capps about the truck’s quality because of his superior knowledge of the truck and the statutory requirements of disclosure. The court cited KRS 186A.500 and KRS

¹² KRS 367.170(1) states: “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby unlawful.” KRS 367.170(2) provides: “[f]or purposes of this section, unfair shall be construed to mean unconscionable.” (footnote added).

186A.540 as the basis for finding a statutory requirement of disclosure. These sections provide:

KRS 186A.500. Legislative Finding . . . Purchasers when buying vehicles are entitled to know if the vehicle has sustained prior severe damage.

KRS 186A.540. Written disclosure of damages to motor vehicle: An individual or dealer . . . shall disclose all damages to a motor vehicle which result in repairs or repair estimates that exceed three hundred dollars (\$300) and that occur while the motor vehicle is in his possession and prior to delivery to a purchaser. Disclosure shall be in writing and shall require the purchaser's signature acknowledging the disclosure of damages.

While these two statutes create a statutory duty to disclose damages to a vehicle, they apply only when the damage occurs while the vehicle is in the possession of the individual or dealership. The trial court made no finding as to when the vehicle was damaged, and specifically made no finding as to whether the vehicle was damaged while in Stigers' possession. Further, the trial court made no finding as to the purpose for which Capps bought the truck, nor did the court find or identify any ascertainable loss suffered by Capps. To impose liability under the KCPA, these elements must be established. The trial court made no such findings.

Therefore, the judgment against Stigers must be vacated and the matter remanded for the trial court to make specific findings of fact as to all of the KCPA elements and to enter judgment based upon those further factual findings.

B. Did C.A.R.S. violate the KCPA as a matter of law?

The trial court also found that C.A.R.S. violated the KCPA.

However, the record is unclear as to the basis for imposing liability against C.A.R.S. The court found C.A.R.S. to be jointly and severally liable to Capps under the KCPA, but this is the sole mention of C.A.R.S. in relation to the KCPA. Again, the trial court made no findings as to the three required elements under the KCPA. Therefore, the judgment against C.A.R.S. under the KCPA must also be vacated and the matter remanded for further specific findings as to all of the elements of the KCPA and to enter judgment accordingly.

II. Was the award of damages imposed against Stigers and C.A.R.S. erroneous?

The trial court found Capps incurred damages in the amount of \$40,201.00 based upon a finding that Capps incurred storage costs and engine replacement costs in the amount of \$33,169.00 and attorney fees in the amount of \$7,032.00. The court stated in its judgment that this damage award was based upon the KCPA.¹³ However, as we are vacating the judgments premised on the KCPA, any further discussion regarding the calculation of damages based thereon is unwarranted.

III. Should Stigers have been awarded summary judgment?

The standard of review for a motion granting summary judgment is “whether the trial court correctly found that there were no genuine issues as to any

¹³ KRS 367.220 provides that a court may award actual damages, punitive damages, attorney’s fees, courts costs, and other damages the court may deem equitable.

material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). On review, the record must be initially viewed in a light most favorable to the party opposing the motion for summary judgment and all doubt is to be resolved in its favor.

Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky. 1991).

Summary judgment is proper only when there are no disputed factual issues and the adverse party could not prevail under any circumstances. *Id.* (citing *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985)).

After careful review of the record, we hold the trial court’s decision to deny Stigers’ motion for summary judgment was proper. The facts of this case are not only disputed by all parties involved, but also bear substantially upon the outcome of the case.¹⁴ Because the case at bar is based almost entirely on factual disputes, the trial court correctly denied Stigers’ motion for summary judgment.

IV. Did the trial court correctly deny Stigers’ motion to dismiss?

It is well-established that a court should not dismiss an action for failure to state a claim unless the pleading party appears not to be entitled to relief under any set of facts. *Weller v. McCauley*, 383 S.W.2d 356, 357 (Ky. 1964). In ruling on a motion to dismiss, the pleadings should be liberally construed in the light most favorable to the plaintiff with all allegations being taken as true. *Mims v. Western-Southern Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. App. 2007).

¹⁴ There is substantial dispute about what, if any, representations and omissions were made to Capps by Stigers and C.A.R.S.

Therefore, “the question is purely a matter of law.” *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002). Accordingly, the trial court’s decision will be reviewed *de novo*. *Revenue Cabinet v. Hubbard*, 37 S.W.3d 717, 719 (Ky. 2000).

We believe the trial court properly denied Stigers’ motion to dismiss. The outcome of this case is wholly dependent upon the facts. Several different factual scenarios, if proven, could entitle Capps to relief. This is especially true when construing the facts in a light most favorable to Capps and taking all allegations as true. As there was at least one set of facts under which Capps could obtain relief, we hold that Stigers was not entitled to dismissal as the trial court correctly found.

V. Did the court correctly deny Stigers’ motion to amend, alter or vacate the judgment?

Stigers further contends the trial court erred in denying his motion to alter, amend or vacate the judgment against him. However, as we are vacating the judgment and remanding the matter to the trial court, this argument is rendered moot.

VI. Did the court correctly interpret the C.A.R.S. warranty?

At trial, C.A.R.S.’ main defense was that it was not required to honor the warranty entered into between it and Capps because the damages to the truck for which Capps sought to use the warranty for repairs were pre-existing and, therefore, excluded from coverage. C.A.R.S. argued the terms of the warranty specifically stated “[c]omponent failures which occur prior to the acceptance of

this limited warranty are not covered.” It contends this language indicates conditions existing at the time the warranty was signed were excluded from coverage. C.A.R.S. argued this militated against liability to Capps under the warranty contract. The trial court disagreed.

Interpreting the four corners of the document and invoking common maxims of contract interpretation, the trial court found a plain reading of the contract meant components of the truck that had not actually and fully failed until *after* the warranty had been accepted and the vehicle driven off the lot were covered by the warranty. The court found the truck components at issue had not actually and fully failed at the time Capps purchased the truck and executed the warranty, and, therefore, they should have been covered by the warranty.

Our reading of the contract supports the trial court’s interpretation. When a contract is free from ambiguity, it needs no construction and its express terms will be enforced. *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829, 836 (Ky. App. 2000) (citing *Johnson v. Edwards*, 230 Ky. 485, 20 S.W.2d 76, 77 (1929)). The warranty refers to “component failures” and makes no mention of the term “pre-existing.”

The trial court did not find C.A.R.S. had represented to Capps that component failures pre-dating the warranty purchase were not covered. The fact that one party (C.A.R.S.) may have intended different results is insufficient to construe a contract at variance with its plain and unambiguous terms. *Cantrell Supply, Inc, v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002). Thus,

we cannot say the trial court erred in interpreting the contract in accordance with its express terms.

Conclusion

Therefore, for the foregoing reasons, the judgment of the Bullitt Circuit Court is vacated and the matter is remanded for proceedings consistent with this opinion.

ALL CONCUR.

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