

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 08-46279 (21)

HILARIO RAMOS,

Plaintiff,

vs.

BULL MOTORS, LLC d/b/a
MAROONE FORD OF MIAMI and
AUTONATION, INC.,

Defendant.

ARBITRATOR'S OPINION

THIS MATTER came on to be heard before the arbitrator on Thursday, June 17, 2010, pursuant to the Order setting this cause for arbitration. Attending the arbitration were the following individuals and/or corporate entities represented by counsel:

- A. HILARIO RAMOS, represented by Attorney Don James.
- B. BULL MOTORS, LLC, D/B/A MAROONE FORD OF MIAMI, corporate representatives, represented by the Law Firm of Bromagen & Rathet, P.A. (Brooks Rathet).

The arbitration consisted of proffered testimony provided by the Plaintiff, HILARIO RAMOS; Ms. Perez, Sales Director, MAROONE FORD; and Mr. Berry, technician for the vehicle in question at MAROONE FORD.

Based upon the pleadings presented to the arbitrator, the documents received into evidence, the testimony provided and proffered to the arbitrator, and the applicable case and statutory authority construing the applicable provisions of the Uniform Commercial Code, the arbitrator makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On or about October 3, 2007, HILARIO RAMOS purchased a new 2008 Ford F350 (black in color) from MAROONE FORD OF MIAMI (hereinafter "MAROONE"). Mr. Ramos resides in North Carolina and owns a roofing company that does business in both North Carolina and South Florida. Mr. Ramos travels back and forth between North Carolina and Miami on a frequent basis.

2. The Ford F350 was purchased by Mr. Ramos for a selling price of \$47,478.00, and included Mr. Ramos' trading in a used Ford F350. Mr. Ramos financed the purchase of the new 2008 Ford F350, as reflected in the Retail Purchase Agreement which was introduced into evidence.

3. The Retail Purchase Agreement provided for the selling price and other operative terms and conditions with respect to the purchase of such vehicle.

4. Included within the documentation executed by Mr. Ramos was a document entitled Arbitration Agreement (also introduced into evidence), which required the parties to submit to a single arbitrator required to follow controlling law and to issue a decision in writing with a supporting opinion based upon applicable law.

5. In addition, Mr. Ramos executed with MAROONE a Simple Interest Vehicle Retail Installment Contract which specified the terms and conditions of the financing of such vehicle, which reflected a seventy-two month payment, an annual 4.99 percentage rate, with a monthly payment of \$892.33.

6. The Retail Purchase Agreement includes conspicuous language in bold print which provides as follows:

Purchaser acknowledges he or she has read all the foregoing and has received a true copy of this Agreement. No representations have been made that are not set out herein.

The Agreement also provided for certain acknowledgments on the part of Mr. Ramos regarding the completeness and accuracy reflecting the negotiations, as well as the highlighted disclaimer in capital bold print letters, as follows:

WE ARE SELLING THIS VEHICLE TO YOU AS-IS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSED, UNLESS OTHERWISE INDICATED BELOW. ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN OUR DEALERSHIP ARE THEIRS NOT OURS AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. WE NEITHER ASSUME NOR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR US ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED GOODS AND SERVICES. IF WE SELL A SERVICE CONTRAT ON OUR OWN BEHALF, ANY IMPLIED WARRANTIES WILL APPLY ONLY WITH RESPECT TO THE ITEMS COVERED IN THE SERVICE CONTRACT.

7. In addition, Paragraph 13 of the Agreement provides in bold print the following:

YOU SHALL NOT BE ENTITLED TO RECOVER FROM US ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, MENTAL ANGUISH, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR INCOME, OR ANY OTHER INDIRECT TO INCIDENTAL DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT.

8. Mr. Ramos testified that he has difficulty in reading the documents, but nevertheless signed them and acknowledged that he had the opportunity to contact his attorney to review the contents of the Agreement and either failed and/or refused to do so.

9. Shortly after Mr. Ramos' purchase of the Ford F350 truck, Mr. Ramos testified that he had "numerous" problems with the vehicle, which required his taking the vehicle to a local dealer in North Carolina (Lumberton Ford Lincoln Mercury), as well as ultimately taking the vehicle back to MAROONE FORD for inspection. The documents received into evidence from Lumberton Ford do not reflect Lumberton Ford having found any problem with the vehicle despite the complaints raised by Mr. Ramos.

10. With respect to MAROONE FORD, Mr. Ramos' repeated trips to MAROONE FORD regarding complaints pertaining to transmission jerking and slipping were never duplicated at the dealership by Mr. Berry, or any of the technicians at MAROONE. In fact, the codes that are contained within the computer system on the Ford F350 vehicle indicated that the vehicle was driven at speeds far in excess than normally driven (97 miles per hour plus).

11. Despite the alleged transmission problem and other problems complained of by Mr. Ramos, the dealer's testimony through its Sales Representative and technician, refuted Mr. Ramos' testimony so that the arbitrator was left to determine, based upon the documents submitted to the arbitrator, including repair orders from both MAROONE and Lumberton, as well as the respective contracts in question, whether Mr. Ramos is entitled to the relief sought in his Complaint.

12. Mr. Ramos has sued in a single count Complaint for Breach of Contract. He has not separated any theories in the Complaint regarding actions based upon express or

implied warranties of merchantability or particular purpose, or a separate count for FDUPTA (Florida Statute §501.201). Rather, in a single one count Amended Complaint, Mr. Ramos contends that the Defendants “breached the contract” by breaching the warranties of merchantability and fitness for purpose intended.

13. The Amended Complaint further alleges that the Defendants collectively had three opportunities to “make good” on the warranty of merchantability and implied warranty of fitness for purpose intended, and that Mr. Ramos suffered damages, including his obligation to Ford Motor Credit Company.

14. At arbitration, Mr. James, attorney for Mr. Ramos, indicated that the relief requested was the return of a \$2,000.00 deposit, the value of the vehicle that Mr. Ramos traded in (\$5,500.00), attorney's fees, pursuant to §501.201, (\$6,500.00), as well as to be released from his obligation under the installment contract as Mr. Ramos eventually returned the vehicle, which was repossessed.

CONCLUSIONS OF LAW

15. The contract that RAMOS and MAROONE entered into (which Mr. Ramos has not proven any duress in the execution of the contract or fraud in the inducement for entering into the contract), contains absolutely no representation regarding the performance of the vehicle. To the contrary, the contract includes a Disclaimer of Warranty, excluding all express or implied warranties. In fact, the contract contains a merger clause acknowledging that the contract is the final written expression of the parties' Agreement.

16. The claim for Breach of Contract (warranty) is governed by the Florida Uniform Commercial Code. In particular, Florida Statute §672.316 *et seq.* specifies the statutory

methodology to disclaim warranties, such as the one provided to Mr. Ramos in this matter. Such disclaimers have been found throughout the country, as well as in the State of Florida as valid as a matter of law, unless doing so would be unreasonable under the terms of the express warranty and the contractual disclaimer. This requires conspicuous language disclaiming such warranty. *Belle Plaza Condo, Association, Inc. v. B.C.E. Dev., Inc.*, 540 3 So.2d 239 (Fla. 3DCA 1989).

17. Thus, both express and implied warranties may be disclaimed by the Contract statutorily; however, the standards are different for the disclaimer of an implied warranty (See, §672.316 (2)).

18. The disclaimer provisions of the MAROONE/RAMOS contract are clear, conspicuous, and comport with Florida law and the arbitrator finds that they are not unconscionable. Accordingly, the arbitrator upholds the limitation of warranty provision specified in the contract between RAMOS and MAROONE and finds that there is no basis for any claim for Breach of Contract (express or implied warranty), based upon such provision. See, *McCormick Machinery, Inc. v. Julian Johnson & Sons, Inc.*, 523 So.2d 651 (Fla. 1DCA 1988); *Lennar Homes, Inc. v. Masonite Corporation*, 32 F.Supp. 2d 396 (E.D. La. 1998) (interpreting Florida law); *Monsanto Agr. Products Co. v. Edenfield*, 426 So.2d 574 (Fla. 1DCA 1982).

19. As to Mr. Ramos' "rescission" claim, the Uniform Commercial Code provides a basis for revocation of acceptance which is prayed for in the relief (without statutory language) in the Amended Complaint.

20. §672.608 of the Florida Statutes pertains to claims for revocation of acceptance in whole or in part when goods are nonconforming.

21. In actions pertaining to other car dealerships disclaiming warranties for nonconformity, Appellate Courts in the State of Florida have found that a disclaimer would, in fact, preclude "revocation of acceptance". The disclaimer found in these other cases are similar to the ones contained in the RAMOS/MAROONE Contract. See, *Frank Griffin Volkswagen, Inc. v. Smith*, 610 So.2d 597 (Fla. 1DCA 1992).

22. Regardless of whether the disclaimer provisions were specified in the contract or even were absent from the contract, there is an inability to return the parties in this case to the *status quo ante*, which is a necessary precondition in a claim for revocation of acceptance or rescission. Mr. Ramos failed to present any evidence regarding the revocation of acceptance (Mr. Ramos indicated that he would furnish the arbitrator a letter furnished by his prior attorney, but failed to do so either at the arbitration or after the arbitration) and, accordingly, this claim fails as well.

23. As to the FDUTPA claim, the arbitrator finds that Mr. Ramos' theory for relief under the Florida Statute for Deceptive and Unfair Trade Practices Act fails as well. First, the Amended Complaint does not contain any allegations of deception or unfairness. Second, the FDUTPA claim is commingled with the Breach of Contract claim and, as a matter of law, a Breach of Contract claim without significant allegations of deceptive or unfair conduct is insufficient to state a cause of action under FDUTPA. *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So.2d 773 (Fla. 2003). Simply stated, a FDUTPA claim alleging nothing more than a Breach of Contract fails as a matter of law. See, *Zelyony v. Porsche Cars, N.A.*, 2008 U.S. Dist. LEXIS 31439 (S.D. Fla. 2008).

24. Finally, the arbitrator finds that Mr. Ramos has not proven beyond a preponderance of the evidence that the Ford F350 was not merchantable at the time of sale

or that the Ford F350 was defective. There was no evidence of the defective nature of such vehicle, either from MAROONE or an independent Lincoln Mercury dealer (Lumberton) in North Carolina. Failure to present adequate proof to the arbitrator leaves the arbitrator to conclude that Mr. Ramos has failed to meet his burden of proof in this matter and, accordingly, the arbitrator must find in favor of the Defendants.

FINAL JUDGMENT

Based upon the evidence presented, the pleadings, the testimony, and the documents introduced into evidence, as well as the applicable provisions of the Florida Uniform Commercial Code and the cases construing the Florida Uniform Commercial Code, the arbitrator finds that the Plaintiff's claims fail as a matter of law and as a matter of fact, as well. By failing to meet the evidentiary predicate necessary to prove his claim beyond a preponderance of the evidence, and based upon the pleadings as they are framed, the arbitrator is left with no other alternative but to enter Final Judgment in favor of the Defendants and to opine that the Amended Complaint be dismissed as to these Defendants.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been provided by U.S. Mail this 20th day of July 2010, to: **Don James, Esq.**, Don D.G. James, P.A., Counsel for Plaintiff, 2655 LeJeune Road, Penthouse 1D, Coral Gables, FL 33134; **Brooks Rathet, Esq.**, Bromagen & Rathet, P.A., Counsel for Maroone Ford, 135 2nd Ave North, Suite 1, Jacksonville Beach, Florida 32250.

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