

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHAEL G. WILSON

Plaintiff-Appellant,

v

JENSEN LINCOLN-MERCURY, INC.,

Defendant-Appellee.

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UNPUBLISHED

February 11, 1997

No. 186674

Jackson Circuit Court

LC No. 95-071785-CZ

Before: Sawyer, P.J., and Marilyn Kelly and D.A. Burress,\* JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court granting summary disposition in favor of defendant. We reverse.

Plaintiff visited defendant's car lot and was interested in a white 1993 Lincoln Continental Signature. Plaintiff asked if the vehicle was available at a sale price of \$15,991. He was informed that it was one of three available at that price. After test driving the vehicle, he informed the salesman that he wished to purchase the vehicle. According to the salesman, however, the sales manager did not approve the sale at the \$15,991 price. Rather, the sales manager said the price for that particular vehicle was \$17,856, or \$1865 higher than the originally quoted price. Plaintiff objected to that price and did not purchase the vehicle.

Plaintiff thereafter instituted the instant action, seeking monetary, declaratory, and injunctive relief. The trial court held that, other than the injunctive relief, the claims did not come within the circuit court's jurisdiction because the amount in dispute was less than \$10,000. With respect to the claim for injunctive relief, the trial court ruled that plaintiff was not entitled to injunctive relief. First, the trial court reasoned, plaintiff did not request any injunctive relief with respect to this particular transaction, such as enjoining the sale of the vehicle until it was determined whether plaintiff was entitled to purchase it at the originally quoted price. Rather, plaintiff was merely seeking monetary damages from the alleged breach and, therefore, could be made whole by a monetary award if a breach had occurred. Second, the trial court concluded that plaintiff has not made a showing that this is a part of an ongoing practice by

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\* Circuit judge, sitting on the Court of Appeals by assignment.

defendant thus justifying the issuance of an injunction to prevent defendant from engaging in this conduct in the future.

The critical failure of the trial court's reasoning is that discovery had not yet closed. At a minimum, plaintiff was entitled to complete discovery before having his claim dismissed. See *Prysak v R L Polk Co*, 193 Mich App 1, 11; 483 NW2d 629 (1992) (generally summary disposition is premature before discovery is completed).

Furthermore, we agree with plaintiff that if the injunctive relief issue were properly dismissed, the remaining issues should have been removed to district court under MCR 4.003 rather than merely dismissed. Cf. *Boyd v Nelson Credit Centers, Inc.*, 132 Mich App 774, 781; 348 NW2d 25 (1984).

On remand, the trial court shall allow discovery to be completed. Thereafter, it may determine whether summary disposition is appropriate.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ David H. Sawyer  
/s/ Marilyn Kelly  
/s/ Daniel A. Burress