

STATE OF MICHIGAN
COURT OF APPEALS

SHERRY GADULA,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION and JIM
CAUSLEY, INC.,

Defendants-Appellees.

UNPUBLISHED

January 5, 2001

No. 213853

Wayne Circuit Court

LC No. 96-635415-CK

Before: Smolenski, P.J., and Doctoroff and Wilder, JJ

PER CURIAM.

This case arises out of an automotive lease agreement which plaintiff contends defendants breached by failing to deliver a reliable car in good repair. Plaintiff appeals as of right from the trial court order granting defendants a directed verdict on all claims. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

Plaintiff leased a new Grand Am from defendant Jim Causley, Inc. (“the dealership”) in August, 1995. Plaintiff told the salesman that she wanted safe, reliable transportation that would not require repeated repair work. In response, the salesman described the car’s “bumper to bumper” warranty, provided by defendant General Motors. During the lease term, plaintiff experienced recurring problems with the car. The engine hesitated and sometimes stalled, during highway driving at speeds of 50 to 55 mph. Plaintiff brought the car to the dealership five times for repair of this hesitation problem. Each time, the dealership made repairs under the warranty, at no cost to plaintiff. However, plaintiff testified that the problem was not permanently corrected, and that it recurred throughout the lease term.

Plaintiff eventually filed a complaint alleging the following claims: breach of express and implied warranties, revocation of acceptance, and breach of the Michigan Consumer Protection Act (MCPA). The trial court granted defendants’ motion for directed verdict as to all three of the above claims, on the grounds that plaintiff had failed to produce evidence of damages.

This Court reviews a trial court’s decision on a motion for directed verdict de novo, to decide whether a question of fact exists upon which reasonable minds could differ. *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). In reviewing the trial court’s

ruling, this Court views the evidence presented up to the time of the motion in the light most favorable to the non-moving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor, to decide whether a question of fact existed. *Id.*

First, plaintiff contends that the court erred in directing a verdict on her breach of warranty claims. Plaintiff argues that she presented proofs sufficient to convince a reasonable jury that the warranty provided by defendants had failed of its essential purpose, thereby entitling her to damages. We disagree that plaintiff produced evidence of damages sufficient to allow this claim to reach the jury.

An essential element of a breach of warranty claim is proof of damages. SJI2d 140.42; SJI2d 140.45. The measure of damages for breach of warranty is provided in MCL 440.2969(4); MSA 19.2A519(4):

Except as otherwise agreed, the measure of damages for breach of warranty is *the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term*, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty. [Emphasis added.]

Plaintiff failed to offer any proofs regarding the damages available on a breach of warranty claim. Plaintiff could have presented evidence regarding the present value of a new or replacement lease, in order to approximate the value of the defective car she received. In addition, plaintiff could have presented evidence which quantified the value of inconvenience and lost work time incurred when she experienced problems with the car. Had the jury received such evidence, it could have crafted a damages award, under MCL 440.2969(4); MSA 19.2A519(4), that was not wholly speculative.

However, plaintiff simply attempted to testify that the car she received had zero value, given its defects. The trial court excluded plaintiff's opinion testimony on this issue, ruling that it lacked foundation. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993); *People v Watkins*, 176 Mich App 428, 430; 440 NW2d 36 (1989). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994). We find no abuse of discretion.

Even if plaintiff's testimony regarding damages had been admitted, it would not have assisted the jury in determining the present value of the difference between the value of the goods accepted and the value of the goods promised. A jury may not be left to devise a damage award that is based on nothing more than conjecture or speculation. *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 511; 421 NW2d 213 (1988); *Wolverine Upholstery Co v Ammerman*, 1 Mich App 235, 244; 135 NW2d 572 (1965). Plaintiff did not produce any evidence, opinion or otherwise, that would help the jury quantify the amount of damages rightfully due. This failure was not due to the difficulty or impossibility of quantifying an intangible value; rather, the failure

flowed from the fact that plaintiff did not bring to court attainable evidence. Therefore, we conclude that the trial court properly directed a verdict on the breach of warranty claims.

Plaintiff next contends that a directed verdict was improper because she was entitled to damages under her claim of revocation of acceptance, pursuant to the statutory remedy which allows recovery of rent and security paid when a lessor defaults on a lease contract. MCL 440.2958; MSA 19.2A508. We agree.

The Michigan Uniform Commercial Code (UCC) provides rules that apply to lease agreements. MCL 440.2801 *et seq.*; MSA 19.2A101 *et seq.* Under the UCC, damages are liberally construed and are intended to give the non-breaching party its benefit of the bargain. *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 346; 480 NW2d 623 (1991). When contracted remedies, such as the warranty to repair or replace, fail of their essential purpose, a plaintiff may resort to remedies provided by the UCC. MCL 440.2719(2); MSA 19.2719(2); *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 212; 457 NW2d 42 (1990).

Michigan has created a statutory remedy for lessees, upon default by a lessor:

(1) If a lessor fails to deliver the goods in conformity to the lease contract . . . or a lessee . . . justifiably revokes acceptance of the goods . . . the lessor is in default under the lease contract and the lessee may do any or all of the following:

(a) Cancel the lease contract.

(b) *Recover so much of the rent and security as has been paid and is just under the circumstances.*

(c) Cover and recover damages as to all goods affected

* * *

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages. [MCL 440.2958; MSA 19.2A508, emphasis added.]

Although plaintiff failed to prove that she incurred the type of damages recoverable under a breach of warranty theory, she did present evidence of damages recoverable upon revocation of a lease. The jury plainly had proof of rent and security paid, which is reimbursable under MCL 440.2958; MSA 19.2A508. Such an award would not be speculative. Therefore, we believe that the trial court erred in granting a directed verdict on plaintiff's revocation of acceptance claim.

Finally, plaintiff contends that a directed verdict on her claim under the MCPA was improper because there was sufficient evidence of a statutory violation by defendant, causing her a compensable loss, to warrant submission of the case to the jury. We agree.

The MCPA prohibits deceptive, unfair, and unconscionable trade practices that cause loss to consumers. MCL 445.903; MSA 19.418(3). It is a remedial statute and as such, it must be broadly construed. *Price, supra* at 471. A breach of an express or implied warranty is a

violation of the act. *Mikos v Chrysler Corp*, 158 Mich App 781, 783; 404 NW2d 783 (1987). Under the statute, a loss includes unfulfilled or frustrated expectations. *Mayhall v A H Pond Co, Inc*, 129 Mich App 178, 185-186; 341 NW2d 268 (1983).

Plaintiff testified that she expected a safe and reliable car that would not require repeated repairs, and that she shared those expectations with the salesman. He responded by explaining the car's "bumper to bumper" warranty. The evidence showed that the dealership repeatedly attempted to repair the car for its recurring hesitation problem, and plaintiff testified that her expectations for a reliable car were frustrated by defendants' repeated and unsuccessful repairs. This evidence plainly created a question for the jury on whether plaintiff suffered a loss of unfulfilled expectations, at the very least.

Unlike the requirements for a breach of warranty claim, the MCPA does not require the same type of proof on the element of damages. The MCPA allows recovery of either actual damages or \$250, whichever is greater, if a jury concludes that a plaintiff suffered a loss when the defendant violated the MCPA. MCL 445.911(2); MSA 19.418(11)(2). Although plaintiff failed to present sufficient evidence on the required element of damages under her breach of warranty claims, plaintiff did present evidence from which a jury could find a compensable violation of the MCPA. Because the statute imposes a set minimum damages award of \$250, plaintiff was not required to prove actual damages.

When considering the evidence in the light most favorable to plaintiff, a reasonable jury could have concluded that defendants violated the MCPA and that plaintiff suffered lost expectations. Therefore, the trial court should have allowed the jury to decide this issue and to assess an appropriate damages award, even if that award only amounted to the minimum statutory award of \$250 plus attorney fees. The directed verdict on this claim was error requiring reversal.

We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder