

Flint v Thor Motor Coach
2016 NY Slip Op 30001(U)
January 4, 2016
Supreme Court, Steuben County
Docket Number: 2014-1488 CV
Judge: Marianne Furfure
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State of New York
County of Steuben

Supreme Court

VERNON FLINT,

Plaintiff,

DECISION

vs.

Index No. 2014-1488 CV

THOR MOTOR COACH,
MEYER'S RV CENTERS, LLC,
d/b/a CAMPING WORLD RV SALES, and
M & T BANK,

Defendants.

Appearances: David P. Miller, Naples for Plaintiff

LeClair Korona Giordano Cole, LLP, Rochester (Jeremy M.
Sher of counsel) for Defendants

This matter comes before the Court on defendants' motion to dismiss plaintiff's amended complaint in its entirety pursuant to CPLR Sections 3211(a)(1) and (7). Plaintiff and defendant Meyer's RV Centers d/b/a Camping World RV Sales (Camping World) entered into a Vehicle Cash Purchase Agreement (contract) whereby plaintiff agreed to purchase a 2014 Thor Motor Coach Hurricane (motor home) for \$90,721.94. Plaintiff made a \$25,000 down payment and financed the balance through defendant M&T Bank (M&T). Plaintiff claims that, shortly after purchase, he discovered numerous defects with the motor home. He called Camping World several times in an effort to have the defects repaired, and took the motor home in for repairs four (4) times. After these attempts to repair or replacement failed for the most part, plaintiff notified

Camping World that he was revoking acceptance of the motor home and returned the vehicle to defendant. Plaintiff commenced the action for rescission of the contract after Camping World refused to return plaintiff's down payment. Before defendants answered, plaintiff withdrew the complaint and served an amended complaint for revocation based on Uniform Commercial Code (UCC) Section 2-608, which allows a buyer to revoke acceptance of a commercial unit, if the unit does not conform to what he purchased, he could not have discovered the non-conformity without difficulty, and the non-conformity substantially impairs its value to him. As and for damages, plaintiff asks that the Court grant him a judgment for \$25,000 as reimbursement for his down payment, plus costs and disbursements.

In lieu of answering the amended complaint, defendants filed this motion to dismiss, claiming the contract which plaintiff signed contained a disclaimer of all warranties related to the motor home and, as a result, plaintiff purchased the motor home with no warranty protection. Defendants argue that the complaint must be dismissed, as given the disclaimers, plaintiff is not entitled to revoke the contract. Defendants attached a copy of the contract to their motion papers.

Plaintiff opposed defendants' motion and argued that dismissal is unwarranted because the disclaimers are unconscionable as a matter of law and defendants should not be permitted to rely upon the disclaimers as a defense to the action. Plaintiff claims that enforcement of the disclaimers of warranty would have the drastic effect of barring plaintiff from all remedies based on the defective

motor home and asks that, if the Court grants defendants' application to dismiss the complaint, he be granted leave to amend his complaint to include a cause of action based on the unconscionability of the disclaimers of warranty.

On a pre-answer motion to dismiss a complaint on the ground that the action is barred by documentary evidence, pursuant to CPLR Section 3211(a)(1), the motion may be granted only in those cases in which the documentary evidence conclusively refutes plaintiff's factual allegations and conclusively establishes a defense to plaintiff's claims as a matter of law (*Beal Sav. Bank v. Sommer*, 8 NY3d 318, 324 [2007]; *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Allen v. Echeverria*, 128 AD3d 738, 740 [2nd Dept. 2015]; *J.A. Lee Electric, Inc. v. City of New York*, 119 AD3d 652, 653 [2nd Dept. 2014]).

In this case, defendants submitted a copy of the contract for sale of the motor home which included disclaimers of "... all warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose ...". Although this language supports defendants' claim that plaintiff purchased the motor home without any warranty protection, at this stage of the proceedings the disclaimer language does not bar plaintiff's claim of unconscionability because the contract does not refute plaintiff's claim of unconscionability as a matter of law and defendants have not submitted any other evidence addressing the formation of the contract (*Goshen v. Mutual Life Ins. Co. of N.Y., Id.*). Therefore, defendants' motion to dismiss the complaint based on CPLR Section 3211(a)(1) is denied.

Defendants also moved to dismiss the complaint pursuant to CPLR Section 3211(a)(7), alleging that the complaint fails to state a cause of action. On a motion to dismiss the complaint, the Court must accept the facts alleged in the complaint as true, afford plaintiff every possible inference and determine whether the facts alleged fit within any cognizable legal theory (*Lawrence v. Miller*, 11 NY3d 588, 595 [2008]). However, when the movant offers evidence beyond the four corners of the complaint and the motion is not converted into one for summary judgment, the standard for the Court's review is not whether the plaintiff has stated a cause of action, but whether plaintiff has a cause of action (*Matter of Niagara County v. Power Auth. of State of N. Y.*, 82 AD3d 1597, 1599 [4th Dept. 2011]; *Olszewski v. Waters of Orchard Park*, 303 AD2d 995 [4th Dept. 2003]). Unless there is proof that a material fact claimed by plaintiff is not a fact at all, and, unless there is no significant dispute involving the material facts, dismissal must be denied (*Guggenheimer v. Ginzburg*, 43 NY2d 268, 275 [1977]; *Liberty Affordable Housing, Inc. v. Maple Court Apartments*, 125 AD3d 85 [4th Dept. 2015]; *Allen v. Echeverria*, Id.).

Plaintiff claims that it would be unconscionable to enforce the warranty disclaimers because he would then be required to pay more than \$151,000.00 for a motor home that was not what he bargained for, and he would have no other venue in which to recover his damages. Unconscionability is an equitable doctrine which is "intended to be sensitive to the realities and nuances of the bargaining process" and is directed at the "prevention of oppression and unfair surprise"

(*Gillman v. Chase Manhattan Bank*, 73 NY2d 1,10 [1988]; *Matter of State of New York v. Avco Fin. Serv. of N.Y.*, 50 NY2d 383, 389-390 [1980]).

While generally the determination of the unconscionability of a contract is based on the contract formation process and the lack of meaningful choice of one of the parties (procedural unconscionability), coupled with the terms and content of the contract unreasonably favorable to one party (substantive unconscionability), neither one of these two factors is given a set amount of weight and “each case must be decided on its own facts” (*State of New York v. Wolowitz*, 96 AD2d 47, 68 [2nd Dept. 1983]). While plaintiff’s complaint alludes to the claim of unconscionability in its claim that defendant did not properly exclude the warranties, defendant submitted no factual affidavits to assert that the contract formation complied with the UCC. In response to defendants’ motion plaintiff has specifically asserted the doctrine of unconscionability. Plaintiff has not been given the opportunity to amplify his pleadings or provide discovery responses prior to defendants’ motion to dismiss. Neither party has sufficiently developed the facts and circumstances surround the formation of the contract for the Court to determine whether plaintiff’s claim of unconscionability is meritorious. Therefore, taking into account the Court’s standard of review on a pre-answer motion to dismiss, and given that this matter has not been converted into one for summary judgment, defendants’ motion to dismiss the complaint must be denied to allow further proceedings so that each party may further develop their claims on this issue (*Lawrence v. Miller*, 11 NY3d 588, 593-594 [2008]; *Gillman v. Chase*

Manhattan Bank, Id.; UCC §2-302(2)). To that end, plaintiff should be afforded the opportunity to amend his complaint, to more fully set out his claim of unconscionability. At that point, defendant will have a further opportunity to bring another motion to dismiss.

Plaintiff's counsel to submit order.

Dated: *January 4, 2016*

ENTER:



Hon. Marianne Furfure
Acting Supreme Court Justice