

DeJesus v FCA US LLC
2020 NY Slip Op 30512(U)
February 24, 2020
Supreme Court, New York County
Docket Number: 157275/2018
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 157275/2018

RAYMOND DEJESUS,

MOTION SEQ. NO. 001

Plaintiff,

- v -

FCA US LLC, MANHATTAN JEEP CHRYSLER DODGE
INC., ZF NORTH AMERICA, INC., and JOHN DOES,

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for LEAVE TO FILE.

In this personal injury action, plaintiff Raymond DeJesus (“DeJesus”) moves, pursuant to CPLR 3025 (b), for leave to serve an amended complaint (Doc. 19). Defendant FCA US LLC (“FCA”) opposes the motion (Doc. 27). After a review of the motion papers, as well as the relevant statutes and case law, the motion is decided as follows.

PROCEDURAL HISTORY:

On July 31, 2016, DeJesus allegedly parked his 2014 Jeep Grand Cherokee and, when he attempted to exit the vehicle, which he put in “park,” it began traveling backwards (Doc. 1). The vehicle struck DeJesus and dragged him approximately 250 feet before it came to rest after hitting a metal pole (Doc. 1). In August 2018, DeJesus commenced this action against, *inter alia*, FCA, the manufacturer of the vehicle; Manhattan Jeep Chrysler Dodge Inc. (“Manhattan Jeep”), the dealer; and ZF North America, Inc. (“ZF North America”), the alleged manufacturer and

distributor of the defective gear selector, by filing a summons and complaint (Doc. 1).¹ In the complaint, DeJesus alleged three causes of action: strict liability, product liability and negligence (Doc. 1). FCA served an answer to the complaint in September 2018 and asserted several affirmative defenses (Doc. 10). On March 9, 2019, Manhattan Jeep filed a petition for reorganization in the United States Bankruptcy Court for the Southern District of New York (“the Bankruptcy Court”) (Doc. 35). Further, on May 15, 2019, the Bankruptcy Court confirmed its plan for Manhattan Jeep’s reorganization (Doc. 35).

On July 25, 2019, DeJesus served defendants with an amended complaint adding claims for failure to warn and breach of express and implied warranties (Doc. 16). However, it was rejected by FCA on July 29, 2019 on the basis, *inter alia*, that the action was stayed by the bankruptcy proceeding initiated by Manhattan Jeep (Doc. 18). DeJesus filed the instant motion on August 19, 2019 (Doc. 19). In opposition to the motion, FCA argues, *inter alia*, that the second cause of action for a breach of express and implied warranties is barred by the four-year statute of limitations because, as reflected by the “Carfax Vehicle History Report,” the subject vehicle was placed in the stream of commerce by FCA in September 2013 (Doc. 28).

Further, contends FCA, the fourth cause of action, based on failure to warn, is devoid of merit because, prior to DeJesus’ purchase of his vehicle from Manhattan Jeep on July 25, 2016, a recall had been issued in early 2016 for all 2014 Jeep Grand Cherokees due to a defective gear selector (Doc. 27). By correspondence dated April 22, 2016, entitled “New Safety Recall Advanced Communication,” FCA notified car dealers of the defect in certain models of the Jeep Grand Cherokee and informed them that these models would be recalled (Doc. 30). The recall

¹ DeJesus discontinued his claims as against ZF North America in August 2019, after this motion was filed (Doc. 26). Although all other defendants were served with process, only FCA filed an answer in this action.

began in June 2016 and, although DeJesus was not the owner of the subject vehicle at that time, FCA affirms that additional notices were sent to the owners of the recalled vehicles (Doc. 32-33).

LEGAL CONCLUSIONS:

“Leave to amend a pleading should be freely given as a matter of discretion in the absence of prejudice or surprise” (*Cafe Lughnasa Inc. v A & R Kalimian LLC*, 176 AD3d 523, 523 [1st Dept 2019] [internal quotation marks and citations omitted]). “However, leave will be denied where the proposed amendment lacks merit or would serve no purpose other than to “needlessly complicate and/or delay discovery and trial” (*id.*, quoting *Verizon N.Y. Inc. v Consolidated Edison, Inc.*, 38 AD3d 391, 391 [1st Dept 2007]).

As an initial matter, although FCA argues that there is presently a bankruptcy stay that warrants denial of the instant motion, a docket report issued by the Bankruptcy Court reflects that that court confirmed a plan of reorganization for Manhattan Jeep on March 9, 2018, which terminated the automatic stay (*see* 11 USC §§ 1141 [d] [1]; 362 [c] [1]; *Calderon v Holdings Ltd.*, 2004 US Dist. LEXIS 3122, *6-7 [SDNY 2004]).

That branch of DeJesus’s motion seeking leave to add a claim for failure to warn is granted. Although this Court acknowledges that FCA recalled the particular model of DeJesus’ vehicle prior to his purchase of the car in July 2016, and had issued notices to car dealers and owners of the recalled models, “[i]t is axiomatic that in all but the most unusual circumstances, the adequacy of a warning is a question of fact” that must be considered by the jury (*Macek v CBS Corp.*, 29 Misc 3d 1204(A), 2013 NY Misc. LEXIS 1721, *6 [Sup Ct, NY County 2013]), quoting *Polimeni v Minolta Corp.*, 227 AD2d 54, 67 [3rd Dept 1997]; *see Rogers v Sears & Co.*, 268 AD2d 245, 245 [1st Dept 2000]). Thus, this Court rejects FAC’s argument that the claim is devoid of merit.

However, this Court finds that the second cause of action, sounding in breach of warranty, cannot be maintained as against FCA. Specifically, FCA alleges that, “[i]n connection with the designing, manufacturing, assembling, marketing, selling and servicing of the product in question, the defendants rendered certain warranties to plaintiff, both expressed and implied” but “breached their warranties, without cause or [j]ustification” (Doc. 23). Although DeJesus argues in the instant motion that there is a viable breach of warranty claim as against Manhattan Jeep pursuant to VTL § 417, he concedes that, “as to [FCA], the statute of limitations for breach of warranty claims has expired” (Doc. 34). Since the breach of warranty claim against FCA is time-barred (*see generally Katopodis v Marvin Windows & Doors*, 105 AD3d 633, 633 [1st Dept 2013]; *Richard A. Rosenblatt Co. v Davidge Data Sys. Corp.*, 295 AD2d 168, 168-169 [1st Dept 2002]), that branch of DeJesus’ motion seeking to amend the complaint to add such claim is granted, but only to the extent that the amended complaint permits DeJesus to allege said cause of action solely against Manhattan Jeep.

The remaining arguments are either without merit or need not be addressed given the findings above.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiff is granted leave to amend the summons and complaint to assert a claim for failure to warn as against all defendants; and it is further

ORDERED that plaintiff is granted leave to amend the summons and complaint to assert a breach of warranty claim solely against defendant Manhattan Jeep Chrysler Dodge Inc.; and it is further

ORDERED that, within 30 days of service of this order with notice of entry, plaintiff shall serve and file a newly drafted amended complaint, as limited by the preceding paragraphs and in accordance with this order; and it is further

ORDERED that this action is discontinued as against defendant ZF North America, Inc., without prejudice, in accordance with the stipulation of discontinuance filed August 23, 2019 (Doc. 26), and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that, within 20 days of the entry of this order, plaintiffs' counsel shall serve a copy of this order, with notice of entry, upon all parties and upon the County Clerk (Room 141 B) and the Clerk of the Trial Support Office (Room 158) and the Clerks are directed to mark their records accordingly; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/suptctmanh); and it is further

ORDERED that the parties are directed to appear for a preliminary conference on May 26, 2020 at 80 Centre Street, Room 280, at 2:15 P.M.; and it is further

ORDERED that this constitutes the decision and order of this Court.

2/24/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

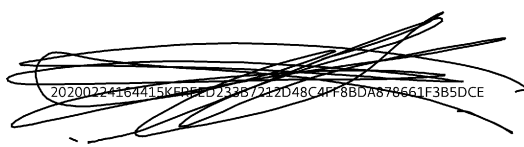
GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE



KATHRYN E. FREED, J.S.C.