08/18/80 DANIEL KERRIGAN v. ALDERMAN AUTOMOTIVE

1980 | Cited 0 times | Court of Chancery of Delaware | August 18, 1980

MAURICE A. HARTNETT, III, VICE-CHANCELLOR

UNREPORTED OPINION

Plaintiff-Daniel Kerrigan, a dissatisfied customer of defendant-Alderman Automotive Services, Inc. (Alderman), filed a complaint for rescission of a purchase agreement entered into by himself and his wife, Michele, seeking to invoke the aid of equity in resolving that which is essentially a contract dispute governed by the sales provisions of the Uniform Commercial Code, 6 Del.C. §§ 2-101 et seq. I have determined that this Court does not have subject matter jurisdiction and accordingly grant defendant's motion to dismiss.

The facts, viewed in a light most favorable to plaintiff, are: Although only Daniel Kerrigan is the plaintiff, he and his wife, Michele, decided to trade in their 1971 Volkswagen for a "smart looking" brand new 1979 blue Datsun 200SX coupe automobile with sport striping. On April 4, 1979, they placed their order with Alderman and made a $25 cash down payment as a deposit on the order which was also credited as a cash down payment toward the purchase price. The base price for the car was $6,534 and they ordered as extras a $150 polyglycoat finish and a $149 factory applied sport stripe of a specific style and color. These amounts, together with a 2% documentary fee and $35 charge for registration, comprised the total contract price of $6,990. According to the order, a balance of $6,165 was due on delivery of the automobile -- $800 having been credited as the trade-in value for the Volkswagen.

On or about April 26, 1979, the Kerrigans took delivery of the automobile after noticing that the sport stripe did not conform to the specifications -- it being wrong in color as well as style. Upon bringing this matter to the Alderman's attention, the Kerrigans were informed that it was not possible to obtain the factory applied stripe which was wanted. Thereafter the Kerrigans encountered additional problems with the striping in that portions peeled off. Alderman agreed to restripe the car but plaintiff called to Alderman's attention that he had learned that it was indeed possible to obtain a factory stripe as originally ordered. Alderman then agreed to have a factory type stripe placed on the automobile.

By the middle of August of 1979 plaintiff had the Datsun restriped by Alderman but noticed that the work was not performed in what plaintiff believed to be a workmanlike manner. Evidently, when Alderman removed the original stripe some of the automobile's paint was removed with it. Rather than correct the marred surface, Alderman put a new factory type stripe on top of the uneven paint

leaving bare metal exposed because the base surface underneath the stripe was pitted. Moreover, plaintiff noticed that the automobile's finish was damaged since several stains appeared on the hood which could not be washed off.

Being quite peeved at this point, plaintiff returned the vehicle to Alderman the same day and the stains were removed with tar remover. Unfortunately, the paint beneath the stains was removed as well. Alderman then offered to have all the paint problems of the car corrected by Autocrafters Paint Shop, an independent contractor, and thus in mid September of 1979 those areas where the original paint had been either peeled off or dissolved away were repainted, but alas, those areas no longer matched the remainder of the automobile. Thoroughly incensed, plaintiff met with Ronald Lockhart, General Manager of Alderman, and was given two options: first, Mr. Lockhart suggested that the car could be repainted in its entirety with the original color, in which case he could not guarantee the paint would not chip; or secondly, those sections which were not painted by Autocrafters could be repainted with the different shade thereby causing the entire car to be the same color, albeit not the hue plaintiff chose originally.

On November 6, 1979, plaintiff sought to revoke his April 26, 1979, acceptance of the Datsun and demanded that he be given a new 1979 Datsun 200SX or a full refund of the purchase price. Alderman was unwilling to comply and this action for rescission of the contract ensued on December 17, 1979, with plaintiff alleging that Alderman, by failing to correct the defect to the automobile breached its contractual obligation to deliver an automobile which conformed to the contract.

I

It is axiomatic that this Court does not have subject matter jurisdiction where there exists an adequate remedy at law. 10 Del.C. § 342 provides:

The Court of Chancery shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State. (emphasis added)

Ordinarily a party aggrieved by a claimed breach of contract has an adequate remedy at law in the form of an action for damages, Hughes Tool Co. v. Fawcett Publications, Inc., Del. Ch., 297 A.2d 428, 431-2 (1972), rev'd. on other grounds, Del. Supr., 315 A.2d 577 (1974), Heston v. Miller et ux, Del. Ch., C.A. No. 5820-N.C. (October 11, 1979) and simply alleging that equitable principles are involved and demanding some form of equitable relief such as rescission does not confer subject matter jurisdiction on this Court. Bramble v. Danneman, Del. Ch., C.A. No. 5769-N.C. (January 10, 1980); Gaskewicz v. Spear, Del. Ch., 125 A.2d 269, 270 (1965); Fisher v. Valone, Inc., Del. Ch., C.A. No. 5874-N.C. (January 22, 1980). From the allegations and prayer for relief in the complaint, it is quite clear that money damages for breach of contract would make plaintiffs whole. The prayer for relief asks this Court to:

judgment in his favor allowing him to rescind the contract with Defendant and compelling Defendant to return the full purchase price paid under the contract for the defective automobile, plus interest, and incidental damages . . . .

This alone would preclude plaintiff from proceeding in this Court.

II

Also, however, plaintiff is relying on his right to cancel or revoke the contract pursuant to 6 Del.C. §§ 2-608 and 2-711 (UCC). The April 4, 1979, order is a contract (6 Del.C. § 2-204[1]) for the sale of an automobile which is "goods" within the ambit of 6 Del.C. § 2-105(1). The various provisions of the Uniform Commercial Code - Sales, 6 Del.C. § 2-101, are therefore applicable. Pavesi v. Ford Motor Company, N.J. Super., 382 A.2d 954 (1978); Fablok Mills, Inc. v. Cocker Machine & Foundry Company, N.J. App., 310 A.2d 144 (1976); Stroh v. American Recreational & Mobile Home Corporation of Colorado, Colo. App., 530 P.2d 989 (1975); Moore v. Howard Pontiac-American, Inc., Tenn. App., 492 S.W.2d 227 (1972), cert. den. 1973. Thus it appears that plaintiff has a sufficient remedy at law by common law for damages or by an action in the Superior Court to revoke his acceptance pursuant to the provisions of 6 Del.C. §§ 2-608 and 2-711 (UCC). This Court therefore is precluded from exercising jurisdiction. Sabo v. Williams, Del. Ch., 303 A.2d 696 (1973). As stated in 1 POMEROY, Pomeroy's Equity Jurisprudence § 176:

The principle may be stated in its broadest generality that in cases where the primary right, interest, or estate to be maintained, protected, or redressed is a legal one, and a court of law can do as complete Justice to the matter in controversy, both with respect to the relief granted and to the modes of procedure by which such relief is conferred, as could be done by a court of equity, equity will not interfere even with those peculiar remedies which are administered by it alone, such as injunction, cancellation and the like, much less with those remedies which are administered both by it and by the law, and which therefore belong to its concurrent jurisdiction. . . . (emphasis added)

It should be noted that Waltz v. Chevrolet Motor Division, Del. Super., 307 A.2d 815 (1972) does not hold than an aggrieved buyer can never revoke an acceptance under the UCC, nor that the Superior Court does not have jurisdiction to rule on whether there may be a revocation of the acceptance. It only holds that under the facts in that case the buyer was not entitled to revoke his acceptance. The statement in that opinion that "Accordingly, while a buyer may conditionally accept goods on the assumption that defects will be cured, (§ 2-607[2]), he cannot revoke an acceptance after attempts to cure have failed while continuing to hold and enjoy the goods." is mere obiter dicta. See Fablok Mills, Inc. v. Cocker Machine and Foundry Co., N.J. Super., 294 A.2d 62 (1972), rev. N.J. App., 310 A.2d 491 (1973). Therefore, Alderman's motion to dismiss is granted subject to the right of the plaintiff to transfer this case to the Superior Court pursuant to 10 Del.C. § 1902. So ordered.