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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5735-12T3

VIRGINIA WILLIAMS,

Plaintiff-Appellant,

v.

WAYNE WILSON, MELISSA WILSON
AND FAMILY AUTO CENTER, LLC,

Defendants-Respondents,

and

AEGIS SECURITY INSURANCE COMPANY,

Defendant.

Submitted May 29, 2014 – Decided June 6, 2014

Before Judges Fasciale and Haas.

On appeal from the Superior Court of New Jersey, Law Division, Special Civil Part, Mercer County, Docket No. DC-3611-11.

Roger S. Mitchell, attorney for appellant.

Respondents Wayne Wilson, Melissa Wilson and Family Auto Center, LLC have not filed briefs.

PER CURIAM

Plaintiff appeals from a February 23, 2012 judgment and an April 24, 2012 amended order of judgment, contending that the

judge erred by rejecting her claims under the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -195, and Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA), N.J.S.A. 56:12-14 to -18. We affirm.

In February 2011, plaintiff agreed to purchase an "as-is" 1999 Saab 9-5 and an added-on "50-50" powertrain warranty from defendant Family Auto Center, LLC, a used car dealership operated by defendants Wayne and Melissa Wilson. After receiving the vehicle, however, plaintiff discovered that it stalled and had an oil leakage. About one month after the sale, plaintiff and Wayne agreed to spend $500 each to have the car repaired by a mechanic who specialized in foreign cars, but the mechanic was unable to fix the problems. Eventually, frustrated and having made four installment payments, plaintiff returned the car to defendants and removed its tags.

In October 2011, plaintiff filed her second amended complaint, asserting several causes of action including claims under the CFA and TCCWNA. She contended that Wayne was not a "proper person" to sell used cars in New Jersey, that plaintiff's bi-weekly installment payment schedule violated CFA regulations, and that Wayne failed to make required disclosures about the history of the vehicle.

In February 2012, Judge F. Patrick McManimon conducted a trial and took testimony from plaintiff, plaintiff's daughter, and Wayne. At the close of trial, he ruled for plaintiff in the amount of $2990, stating that:

> I'm really not persuaded by the [TCCWNA] warranty issue because the as[-]is no warranty [which was the original agreement between plaintiff and defendant in this case before the parties signed the 50-50 powertrain warranty] means you buy it as[-]is with no warranty. And to then have somebody pay for a warranty on top of that is very common, as I indicated. It's not -- it doesn't void or make it a bad business practice to advertise as[-]is no warranty and then charge somebody for a warranty because it's very common even in a new car purchase to have somebody buy an extended warranty on top of that.
>
> . . . .
>
> [W]e . . . have a lot of sloppy practices on the part of the defendant . . .
>
> Frankly[,] they don't give rise to a [CFA] violation in my mind. But . . . I have to put more of the blame on [Wayne's] part. . . .
>
> He is a businessman in the used car business. . . . [T]here's been no evidence presented here that . . . he shouldn't be in that business other than the statements of [plaintiff's counsel]. If I had something from the Department of Banking and Insurance I'd think about that.
>
> But what we have is that the plaintiffs paid essentially [$]2450 for the car plus $500 for the . . . work plus another $40

[for another repair]. So they spent a little over $2990 . . . .

On the other hand [Wayne] through his company Family Auto Service LLC basically has a net loss . . . of $1655 which is the [$]2155 balance less than $500 that he salvaged in selling the car, wherever that was.

There's been some testimony about whether this was a salvaged car. There's been no evidence presented that this is a salvaged car. Just the purchase from [a salvage company], doesn't necessarily make it a salvaged car. I don't see the failure to disclose a history in this case as being an issue.

We have a lot of minor de minimis things that I say are raised by the plaintiff in this case that [plaintiff's attorney is] trying to raise to the level of [CFA] violations and I don't find that.

. . . .

It's illegal [under N.J.A.C. 13:45A-26A.8] to advertise installment sales on any basis other than a monthly basis meaning that if as a come on to a sales transaction you're going to advertise that the monthly payment is going to be X number of dollars based on a certain balance due, that's what the advertising must be.

But [the CFA regulation] doesn't say it's illegal to actually enter a transaction with less than monthly payments. It just says you can't advertise it because it can be false advertising if it's not proper and true.

. . . .

> I'm going to issue a judgment to the plaintiff for $2990 to get their money back on the basis that I think it was a sloppy transaction and of the two people who should be most responsible I think [Wayne]'s the one. . . .
>
> And I'm going to dismiss the counterclaim. . . . Essentially I want to put the plaintiff back the position they were when they went to buy the car.

The judge imposed liability on Family Auto Center but not on Wayne or Melissa personally.

On appeal, plaintiff argues the following points:

> POINT I
>
> THE LICENSE OF DEFENDANT FAMILY AUTO CENTER, LLC IS SUBJECT TO REVOCATION BECAUSE MELISSA WILSON FALSIFIED SUBMITTALS TO NEW JERSEY OFFICIALS.
>
> POINT II
>
> THE INDIVIDUAL DEFENDANTS ARE PERSONALLY LIABLE FOR VIOLATIONS OF THE CONSUMER FRAUD ACT.
>
> POINT III
>
> THE INSTALLMENT SALE CONTRACT SIGNED BY DEFENDANT WAYNE WILSON VIOLATED THE CONSUMER FRAUD ACT AND ITS REGULATIONS BECAUSE, AMOUNG OTHER THINGS, IT MISREPRESENTED THE COST OF THE TRANSACTION.
>
> POINT IV
>
> DEFENDANT WAYNE WILSON VIOLATED THE TRUTH IN CONSUMER CONTRACT, WARRANTY, AND NOTICE ACT (TCCWNA) BECAUSE HE FAILED TO DISCLOSE THE HISTORY OF THE VEHICLE.

POINT V

> AEGIS SECURITY INSURANCE COMPANY ISSUED A SURETY BOND TO DEFENDANTS AND THAT BOND IS TRIGGERED BY THE WRONGDOING OF DEFENDANTS WILSON AND FAMILY AUTO CENTER AND SHOULD BE USED TO COMPENSATE PLAINTIFF.[1]

After a thorough review of the record and consideration of the controlling legal principles, we conclude that plaintiff's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons stated by Judge McManimon in his comprehensive oral opinion. We add the following brief comments.

"A CFA claim requires proof of three elements: '1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss.'" Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 121 (2014) (citations omitted). The statute defines unlawful conduct as:

> [t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real

[1] We discern from the record that claims against Aegis have been settled and that plaintiff's argument under this point heading is moot.

> estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.
>
> [N.J.S.A. 56:8-2.]

"There is no precise formulation for an 'unconscionable' act that satisfies the statutory standard for an unlawful practice. The statute establishes 'a broad business ethic' applied 'to balance the interests of the consumer public and those of the sellers.'" D'Agostino v. Maldonado, 216 N.J. 168, 184 (2013) (quoting Kugler v. Romain, 58 N.J. 522, 543-44 (1971)). However, "[a]n unconscionable practice under the CFA 'necessarily entails a lack of good faith, fair dealing, and honesty.'" Id. at 189 (quoting Van Holt v. Liberty Mut. Fire Ins. Co., 163 F.3d 161, 168 (3d Cir. 1998)).

Individuals, including corporate officers and employees, may be personally liable for their own acts under the CFA if they commit "an affirmative act or a knowing omission that the CFA has made actionable." Allen v. V & A Bros., Inc., 208 N.J. 114, 131-32 (2011). Individual defendants may also be liable where the basis for a CFA claim is a regulatory violation. Id. at 133. "[I]ndividual liability for regulatory violations ultimately must rest on the language of the particular regulation in issue and the nature of the actions undertaken by

the individual defendant." Ibid. "The principals [of the entity] may be broadly liable, for they are the ones who set the policies that the employees may be merely carrying out." Id. at 134.

We agree with the judge that plaintiff failed to satisfy these standards. Plaintiff has not established any violation of the TCCWNA. She has not established that any of the defendants committed unlawful conduct under the CFA, or that she suffered an ascertainable loss caused by such conduct. Finally, she provides no other credible grounds on which to impose liability on the individual defendants.

Affirmed.