SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0453-15T3

CHEE LI and FENG LI,

Plaintiffs-Appellants,

v.

BMW OF NORTH AMERICA, LLC,

Defendant-Respondent.

Submitted January 31, 2017 - Decided June 19, 2017

Before Judges Ostrer and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-3014-13.

Chee Li and Feng Li, appellants pro se.

Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys for respondent (Steven A. Andreacchi, of counsel and on the brief).

PER CURIAM

Plaintiffs, appearing pro se, appeal an August 17, 2015 order dismissing plaintiff Feng Li's claims due to a lack of standing, and a May 28, 2015 order granting defendant's request to limit

plaintiffs' written discovery demands. Based on our review of the record under the applicable law, we affirm.

I.

The material facts are not in dispute. On November 11, 2013, plaintiffs Chee Li (Chee) and her husband Feng Li (Feng),[1] filed a pro se complaint against defendant BMW of North America, LLC, alleging that in February 2011, plaintiffs purchased a defective vehicle from a local BMW dealership (dealership). The vehicle was covered by defendant's warranty agreement "against defects in materials or workmanship to the first retail purchaser, and each subsequent purchaser," for a period of "forty-eight months or 50,000 miles, whichever occurs first." Plaintiffs claimed that following the purchase, defendant refused to honor the warranty agreement when the vehicle experienced ongoing mechanical issues related to oil usage.

Plaintiffs filed a complaint alleging defendant sold the vehicle knowing it was defective, and breached the warranty agreement by refusing to repair the alleged defect. Plaintiffs asserted the following five claims: violations of the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (MMWA), 15 U.S.C.A. §§ 2301 to 2312, (count one); breach of express warranty

[1] Because plaintiffs share a surname, for ease of reference we respectfully refer to them by their first names.

(count two); breach of the implied covenant of good faith and fair dealing (count three); violations of the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20, (count four); and breach of the implied warranty of merchantability (count five).

Several disputes between the parties arose during discovery. Plaintiffs opposed defendant's request that its expert inspect the vehicle outside of plaintiffs' presence. Defendant claimed plaintiffs' service of 318 interrogatories and fifty-three document demands was excessive. Defendant moved to compel plaintiffs to produce the vehicle for inspection, plaintiffs cross-moved to permit their presence at the vehicle inspection, and defendant moved for a protective order limiting plaintiffs' discovery requests.

On May 28, 2014, the court entered an order granting defendant's motions and denying plaintiffs' cross-motion. In a written decision the judge found plaintiffs failed to demonstrate good cause for allowing their presence at the vehicle inspection, relying upon the standard set forth in Briglia v. Exxon Co., USA, 310 N.J. Super. 498, 502-03 (Law Div. 1997).[2] The court also determined plaintiffs' discovery demands were excessive and

[2] The court recognized that Briglia governs the permissibility of a party's attendance at independent medical examinations, but found its reasoning instructive in the present matter.

limited plaintiffs' discovery requests to twenty-five interrogatories and fifteen document demands.

The discovery exchanged between the parties revealed that the retail installment contract, purchase documentation, and vehicle title listed Chee as the vehicle's purchaser. Defendant moved to dismiss Feng's claims, arguing he lacked standing to prosecute the causes of action in the complaint, and that Feng, a disbarred New Jersey attorney,[3] was engaged in the unauthorized practice of law by acting as counsel for the vehicle's purchaser, Chee.

Following oral argument on defendant's motion, the court held an evidentiary hearing on "the issue of whether Feng [] has [an] ownership interest in the [vehicle] that is the subject of this action and/or standing to maintain this action." On August 6, 2015, the court summarized the facts developed at the evidentiary hearing and issued an oral decision.

As explained by the court, Feng testified he and Chee purchased the vehicle for his use, and Chee owned a separate vehicle. Feng testified he negotiated the purchase of the vehicle with a dealership sales representative, but did not qualify for the necessary financing. Feng explained that arrangements were then made for Chee to purchase the vehicle, as she qualified for

[3] See In re Feng Li, 213 N.J. 523 (2013).

the financing. The paperwork for the purchase and financing were made in Chee's name, and the motor vehicle title and registration were issued to Chee. Feng testified that he later "attempted to have his name put on the certificate of title, but [defendant] refused."

Feng testified that "the purpose of the acquisition of the car was so . . . he could drive it." Feng incurs all of the maintenance costs on the vehicle, and Chee makes the monthly financing payments with money Feng provides to her. Chee testified "that she does not drive" the car and that Feng "pays for the car in the sense that he transfers money to her, which she then forwards along . . . electronically, to [defendant]."

Plaintiffs introduced evidence showing Feng is the named insured on the insurance policy for the vehicle. Plaintiffs also introduced several invoices for the vehicle's maintenance that Feng signed, and documents showing he was loaned a temporary vehicle while the vehicle was under maintenance.

Plaintiffs also filed a pleading dated October 10, 2014, which they signed and entitled "Affidavit of Sale Agreement Between Plaintiffs Chee Li and Feng Li" (Affidavit of Sale). The document

appears to be both a purported affidavit,[4] asserting Chee and Feng were the joint purchasers of the vehicle, and a form of contract by which Chee purports to transfer to Feng all of her claims and causes of action against defendant, and her rights under the vehicle's warranty.

The contract documents related to the financing and purchase of the vehicle showed Chee was the purchaser, she solely applied for the financing, and the certificate of title was in her name. The retail installment contract listed Chee as the "buyer," included an acknowledgement that Chee was "purchasing the vehicle," and was signed by Chee. The agreement included provisions stating that Chee understood she had "no right to assign any of [her] rights under" the contract, that the contract "described all of the agreements with respect to the retail installment sale of the [v]ehicle between [the] [s]eller and [Chee]," and that "all prior agreements, whether oral or in writing, are superseded."

The court considered the evidence submitted and determined that Feng lacked standing to assert the causes of action in the

[4] The affidavit includes factual allegations plaintiffs suggest are relevant here, but the affidavit is not competent evidence of the alleged facts because it was not made upon oath or verification. R. 1:4-4; Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 236-37 (1998) (explaining an affidavit must be confirmed by oath or affirmation of the party making the statements).

complaint. The court found Feng "is not a real party in interest," or "a consumer as defined by the Lemon Law[5] or [MMWA]." The court rejected Feng's claim he was a co-owner of the vehicle and determined Chee was the vehicle's sole owner because:

> [H]ere we have a certificate of title in the name of [Chee]; a purchase invoice in the name of [Chee]; a copy of a purchase order in the name of [Chee]; the temporary registration and license tag in [Chee's] name; the odometer disclosure statement, which is signed by [Chee] as transferee; the . . . BMW [f]inancial [s]ervices consumer credit application, which is in [Chee's] name; and there is no co-applicant; and a BMW [f]inancial [s]ervices motor vehicle retail installment contract, which memorializes the loan in the name of [Chee].

The court rejected Feng's claim that by negotiating the vehicle's purchase and making monthly payments to his wife, he had standing. The court rejected Feng's reliance on the purported Affidavit of Sale agreement, noting it was contrary to the language of Chee's retail installment contract with defendant, which precluded the assignment of any of her rights, including "the

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[5] Plaintiffs' complaint did not allege a violation of New Jersey's Lemon Law, N.J.S.A. 56:12-29 to -49. The court, however, liberally read the complaint to allege a violation of the Lemon Law and dismissed the claim. Feng does not challenge the court's ruling on appeal and, in fact, affirmatively states that plaintiffs did not allege a Lemon Law claim. We therefore do not address the court's dismissal of the putative Lemon Law claim. An issue not briefed on appeal is deemed waived. Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525 n.4 (App. Div. 2008); Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001).

right to pursue the remedy under the [] warranty." The court concluded Feng was not the purchaser of the vehicle or a transferee of the vehicle's title, and therefore he lacked standing to prosecute the claims asserted in the complaint. The court entered an August 17, 2015 order dismissing Feng's claims.

Prior to the court's ruling, Chee's complaint was dismissed pursuant to Rule 4:21A-4(f) for failure to appear for a court-ordered mandatory non-binding arbitration. The court entered a July 9, 2015 order dismissing Chee's claims. Ignoring the court's order, Chee filed a notice of demand for a trial de novo on August 4, 2015, but the notice was returned by the court on August 12, 2015.

Plaintiffs filed the present appeal challenging the May 28, 2014 discovery order, and the August 17, 2015 order dismissing the complaint as to Feng. Plaintiffs did not appeal the court's July 9, 2015 order dismissing Chee's claims pursuant to Rule 4:21A-4(f).[6]

[6] Plaintiffs' notice of appeal makes no reference to the July 9, 2015 order. R. 2:5-1(f)(3)(A). "[O]nly the orders designated in the notice of appeal . . . are subject to the appeal process and review." W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008). We therefore do not consider the court's order dismissing Chee's claims. See, e.g., 30 River Court East Urban Renewal Co. v. Capograsso, 383 N.J. Super. 470, 473-74 (App. Div. 2006) (refusing to review orders not designated in the notice of appeal).

II.

We first address plaintiffs' argument the court erred by dismissing Feng's claims due to a lack of standing. We conduct a de novo review of the orders dismissing claims for lack of standing. Courier-Post v. Cty. of Camden, 413 N.J. Super. 372, 381 (App. Div. 2010) ("The issue of standing presents a legal question subject to [an appellate court's] de novo review."). However, when the court conducts an evidentiary hearing, we are bound by its factual findings that are supported by substantial credible evidence in the record. See Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974).

The issue of standing involves a threshold determination of the trial court's power to hear the case. N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 410 (App. Div.), certif. granted, 152 N.J. 13 (1997), appeal dismissed, 152 N.J. 361-62 (1998). We have adopted a "broad and liberal approach" on the issue of standing by a party to maintain an action before the court. Garden State Equal. v. Dow, 434 N.J. Super. 163, 197 (App. Div.), certif. granted, 216 N.J. 1, stay denied, 216 N.J. 314 (2013). Generally, "a plaintiff must have a 'sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and there must be a substantial likelihood that the plaintiff will suffer harm in the event of an unfavorable

decision.'" Ibid. (quoting N.J. Citizen Action, supra, 296 N.J. Super. at 409-10).

Although our courts apply a broad approach to standing, it is not automatic. EnviroFinance Grp., LLC v. Environmental Barrier Co. LLC, 440 N.J. Super. 325, 340 (App. Div. 2015). "[A] litigant usually has no standing to assert the rights of a third party." Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 436 (App. Div. 2011), certif. denied, 210 N.J. 478 (2012); Jersey Shore Med. Center-Fitkin Hosp. v. Estate of Baum, 84 N.J. 137, 144 (1980). Moreover, a plaintiff has no standing to assert a statutory claim where standing is not conferred or implied by the statute. See Crusco v. Oakland Care Center Inc., 305 N.J. Super. 605, 614-15 (App. Div. 1997); Lascurain v. City of Newark, 349 N.J. Super. 251, 274-75 (App Div. 2002) (finding plaintiff lacked standing to bring suit under the New Jersey Cemetery Act, N.J.S.A. 8A:1-1 to -12-6, because the statute did not authorize actions by private parties); Middlesex Cty. Bar Ass'n v. Parkin, 226 N.J. Super. 387, 392-93 (App. Div.) (finding plaintiff lacked standing to institute proceeding to remove worker's compensation judges because the constitutional and statutory authority for removal was vested in the Governor and Commissioner of the Department of Labor), certif. denied, 113 N.J. 380 (1988).

Here, we first consider Feng's claim the court erred by finding he lacked standing to prosecute the alleged violation of the MMWA under count one of the complaint. "[T]he [MMWA] permits 'a consumer who is damaged by the failure of [a] . . . warrantor . . . to comply with any obligation under . . . a written warranty [or] implied warranty . . .' to sue warrantors for damages and other relief including attorneys' fees." Ryan v. Am. Honda Motor Corp., 186 N.J. 431, 434 (2006) (quoting 15 U.S.C.A. § 2310(d)(1), (2)).

"[T]o invoke the provisions of the Act, a plaintiff must fall within one of [the following] three definitions of 'consumer'":

> (1) "a buyer (other than for purposes of resale) of any consumer product";
>
> (2) "any person to whom such product is transferred during the duration of an implied or written warranty . . . applicable to the product"; or
>
> (3) "any other person who is entitled by the terms of such warranty . . . or under applicable State law to enforce against the warrantor . . . the obligations of the warranty."
>
> [Ibid. (quoting 15 U.S.C.A. § 2301(3).]

Feng contends he has standing to prosecute his MMWA claim because he qualifies as a consumer within each of the three statutory categories of the MMWA. He claims the court erred by holding otherwise. We disagree.

The evidence supports the court's determination Feng was not a buyer of the vehicle and thus did not qualify as a category one consumer. Feng acknowledges he could not buy the vehicle because he was not financially able to do so. As a result, he arranged for Chee to purchase the vehicle. She obtained the financing, the retail installment agreement identifies her as the buyer, and the title of the vehicle was issued to her alone.

There is also no evidence supporting Feng's claim he qualifies as a category two consumer as a transferee of the vehicle during the warranty period. 15 U.S.C.A. § 2301(3). In order to qualify as a category two consumer, Feng is required to establish he was a "person to whom [the vehicle was] transferred during the duration of an implied or written warranty." Ibid.

Here, the title to the vehicle remained at all times in Chee's name, there was no evidence Chee transferred any legal right to the possession or use of the vehicle to Feng, and Chee was prohibited by the retail installment contract from transferring the vehicle without defendant's authorization, which Feng sought, but which defendant denied.

We reject Feng's argument that the Affidavit of Sale demonstrates a transfer of the vehicle from Chee to Feng. Apparently aware that a transfer of the vehicle is prohibited by Chee's retail installment contract and would constitute a default

under the agreement, the affidavit memorializes a putative sale only of Chee's "[c]ontract[] warranty, [c]laims and [c]auses of [a]ction" against defendant and others. The affidavit, to the extent it also constitutes a contract, simply does not transfer to Feng any legal right to the vehicle.

We also reject Feng's argument he was a transferee within the meaning of the MMWA based on his exclusive use of the vehicle following its purchase. His argument is unencumbered by citation to any legal authority supporting the notion that a transfer pursuant to section 2301(3) of the MMWA occurs when a vehicle owner permits another to use it. In support of his position, Feng relies only upon the court's analysis of category three consumers in Voelker v. Porsche Cars N. Am., Inc., 353 F.3d 516, 524-27 (7th Cir. 2003), which has no application to Feng's contention he qualifies as a category two consumer.

In Voelker, the court rejected the plaintiff's claim he was a category two consumer, but not based on the lack of a transfer of the vehicle. Id. at 524. The court considered whether plaintiff's entry into the lease for the vehicle with the lessor was a transfer of the vehicle under section 2301(3) of the MMWA. Ibid. The court determined the plaintiff was not a category two consumer, because the transfer by way of the lease did not occur "during the duration of" the warranty as required by the statute.

Ibid. Feng does not claim to be a lessee and, thus, Voelker does not support his contention he is a category two consumer.

In Ryan v. Am. Honda Motor Corp., 376 N.J. Super. 185, 187-89 (App. Div. 2005), aff'd as modified, 186 N.J. 431 (2006), we considered whether a lessee of a motor vehicle qualified as a category two consumer under the MMWA. We explained there was a conflict among the courts addressing the issue, with some courts determining a lessee could not qualify as a second category consumer because the statute required a transfer involving a sale and passing of title to the transferee. Id. at 193-94; see also DiCintio v. DaimlerChrysler Corp., 768 N.E.2d 1121, 1126-27 (2002). We also explained other courts have held that if warranties are issued initially as part of a sale, a subsequent lessee of the vehicle qualifies as a category two consumer if the lessee leases and takes possession of the vehicle during the duration of the warranties. Id. at 197-98; see, e.g., Voelker, supra, 353 F.3d at 524; Parrot v. Daimler-Chrysler, 108 P.3d 922 (App. 2005); Mangold v. Nissan N. Am., Inc., 809 N.E.2d 251 (2004).

We reasoned that the latter cases represented the more accurate interpretation of 15 U.S.C.A. § 2301(3), and concluded lessees could qualify as category two consumers. Id. at 197-99. In a per curiam decision on the defendants' appeal, the Supreme Court stated it would not address our conclusion concerning the

qualifications for category two consumers, and affirmed solely on the basis of our separate determination that the plaintiff qualified as a category three consumer. Ryan, supra, 186 N.J. at 434-35. Thus, the issue of whether a lessee can qualify as a second category consumer has not been resolved by our Court.[7]

We need not address or again resolve the precise issue we addressed in Ryan, supra, 376 N.J. Super. at 196-99, and the court addressed in Voelker, supra, 353 F.3d at 524, because in those cases and the others that have addressed the issue, entry into a lease has been uniformly construed as a transfer of the vehicle under section 2301(3) of the MMWA. 15 U.S.C.A. § 2301(3). Thus, those cases required only a determination as to whether the transfer of the vehicle otherwise qualified the lessee as a category two consumer.

In contrast, Feng is not a category two consumer because he failed to establish Chee transferred any legally enforceable right to the use or possession of the vehicle. Nor could she have transferred those rights because the retail installment agreement

[7] As noted in Justice Rivera-Soto's dissent, it is unclear whether the Court's decision to affirm based solely on our determination that the plaintiff qualified as a category three consumer was intended as a rejection of our determination a lessee can be a category two consumer. Justice Rivera-Soto stated that he concurred with the majority to the extent it "disagree[d] with the Appellate Division and conclude[d]" the plaintiff was not a category two consumer. Ryan, supra, 186 N.J. at 437.

prohibits the assignment of any of her rights to a third-party, including her right to the vehicle's use, possession or ownership.

Lacking any evidence Chee granted Feng any legally enforceable right or interest in the vehicle, we are satisfied the court correctly determined he was not a category two consumer. We reject Feng's contention that Chee's decision to permit him to use the vehicle that she had purchased, without more, constitutes a transfer under section 2301(3) of the MMWA. No legal precedent supports the contention, and acceptance of it would lead to the absurd conclusion that anytime the owner of a vehicle loans it to another, the user becomes a consumer under the MMWA. We find no support in law or logic for such a result.

We next consider whether the court correctly determined plaintiff was not a category three consumer under the MMWA. To qualify as a category three consumer, Feng was required to establish he "is entitled by the terms of such warranty . . . or under applicable State law to enforce against the warrantor . . . the obligations of the warranty." 15 U.S.C.A. § 2301(3). Thus, the inquiry is dependent in part upon Feng's state law claims for breach of express (count two) and implied (count five) warranties, which, as explained further below, are not viable claims under the facts presented here.

An automobile lessee that is assigned rights to a manufacturer warranty can qualify as a third category consumer under the MMWA. Ryan, supra, 186 N.J. 435-36. A lessee, "as the assignee of the dealer's warranty, is entitled to enforce the warranty under New Jersey law." Id. at 436 (citing Miller Auto Leasing Co. v. Weinstein, 189 N.J. Super. 543, 546 (Law Div. 1983), aff'd o.b., 193 N.J. Super. 328 (App. Div.), certif. denied, 97 N.J. 676 (1984)).

Thus, an assignee of a buyer's rights to a warranty agreement, though not the actual "buyer" within the statutory definition, may nevertheless enforce the warranty agreement in limited circumstances. Ibid. Plaintiffs' Affidavit of Sale, however, did not result in an enforceable assignment to Feng of Chee's rights under the warranties because the retail installment contract barred Chee's assignment of her contractual rights, Somerset Orthopedic Assoc., P.A. v. Horizon Blue Cross and Blue Shield of N.J., 345 N.J. Super. 410, 415 (App. Div. 2001) (finding specific and express anti-assignment clauses are generally upheld), and Feng provided no other evidence of a valid assignment of Chee's warranty rights.

Nevertheless, Feng argues he is entitled to assert the warranty claims as a third-party beneficiary of the retail installment contract. We disagree. A non-party cannot enforce a

contract unless it "clearly appear[s] that the contract was made by the parties with the intention to benefit the third party" and that "the parties to the contract intended to confer upon him the right to enforce it." First Nat'l State Bank v Carlyle House, Inc., 102 N.J. Super. 300, 322 (Ch. Div. 1968), aff'd o.b., 107 N.J. Super. 389 (App. Div. 1969), certif. denied, 55 N.J. 316 (1970). "The contractual intent to recognize a right to performance in the third person is the key." Broadway Maint. Corp. v. Rutgers, 90 N.J. 253, 259 (1982).

"When a court determines the existence of 'third-party beneficiary' status, the inquiry 'focuses on whether the parties to the contract intended others to benefit from the existence of the contract, or whether the benefit so derived arises merely as an unintended incident of the agreement.'" Ross v. Lowitz, 222 N.J. 494, 513 (2015) (quoting Broadway Maint., supra, 90 N.J. at 259). The rights of a third party beneficiary are determined by

> the intention of the parties who actually made the contract. They are the persons who agree upon the promises, the covenants, the guarantees; they are the persons who create the rights and obligations which flow from the contract. . . . Thus, the real test is whether the contracting parties intended that a third party should receive a benefit which might be enforced in the courts; and the fact that such a benefit exists, or that the third party is named, is merely evidence of this intention.

> [Ibid. (quoting Borough of Brooklawn v. Brooklawn Hous. Corp., 124 N.J.L. 73, 76-77 (E. & A. 1940)).]

Where there is "no intent to recognize the third party's right to contract performance," the third party is an incidental beneficiary, having no contractual standing. Ibid.

We are satisfied the record does not support Feng's claim he is a third-party beneficiary under the retail installment contract. The dealership may have been aware Feng would use the vehicle, but the record is devoid of any evidence showing the dealership or defendant intended "to recognize" a right in Feng to enforce performance of the contract's terms. Ibid. Therefore, Feng was not a third-party beneficiary under the retail installment contract.

Feng does not articulate any viable state law claim that would otherwise qualify him as a category three consumer under the MMWA. Although we have recognized that the MMWA effectively removes "the requirement of privity of contract between the consumer and the warrantor," Ventura v. Ford Motor Corp., 180 N.J. Super. 45, 59 (App. Div. 1981), the absence of privity in this case would at most allow Feng to pursue personal injury claims, not economic loss damages, as a result of the alleged breach of express or implied warranties. See Spring Motors Distribs. v. Ford Motor Co., 98 N.J. 555 (1985).

A buyer seeking economic loss damages resulting from the purchase of defective goods can maintain an action for breach of express or implied warranties pursuant to the Uniform Commercial Code (UCC), N.J.S.A. 12A:1:101 to 12-26. See Alloway v. Gen. Marine Indus., L.P., 149 N.J. 620, 627-30 (1997). The UCC "generally applies to parties in privity," but our courts have construed the statute to find that under certain circumstances, the absence of privity is not a bar to maintain such actions. Spring Motors, supra, 98 N.J. at 582. For example, the lack of vertical privity amongst parties in a distributive chain, i.e., a supplier, manufacturer, retailer, and ultimate buyer, does not preclude the extension of the supplier's warranties made to the purchaser. Id. at 583-84.

However, Feng's issue is one of "horizontal non-privity," or "the relationship between the retailer and someone, other than the buyer, who has used or consumed the goods." Id. at 584. A horizontal non-privity plaintiff refers to someone such as the buyer's spouse or child. Ibid. The UCC extends warranties horizontally to "any natural person who is in the family or household of [the] buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty." N.J.S.A. 12A:2-318 (emphasis added). Thus, the lack

of privity in this case would only allow Feng to pursue personal injury claims, not purely economic loss damages.[8]

In sum, Feng failed to demonstrate he is a category three consumer under section 2301(3) of the MMWA, and therefore lacked standing to prosecute violations of the MMWA under count one of the complaint or the claims for breach of express and implied warranty under counts two and five.

Moreover, because Feng was neither party to an enforceable contract providing for the warranties or entitled to assert a claim as a third party beneficiary, the court correctly dismissed his claim under count three for breach of the covenant of good faith and fair dealing.[9] See Cumberland Farms, Inc. v. New Jersey Dep't of Envtl. Prot., 447 N.J. Super. 423, 443 (App. Div. 2016)

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[8] We also reject Feng's attempt to ignore his lack of third-party beneficiary status by claiming he is the "true owner" of the vehicle. Feng's reliance on Verriest v. Ina Underwriters Ins. Co., 142 N.J. 401, 408 (1995), and Am. Hardware Mut. Ins. Co. v. Muller, 98 N.J. Super. 119, 129 (Ch. Div. 1967), aff'd o.b., 103 N.J. Super. 9 (App. Div.), certif. denied, 53 N.J. 85 (1968), is misplaced. Those cases addressed the issue of vehicle ownership for insurance purposes under the terms of insurance contracts different than the terms of the retail installment contract at issue here.

[9] Plaintiff's only remaining claim, asserted in count four, alleged defendant's refusal to honor the warranty agreement violated the the Consumer Fraud Act, (CFA), N.J.S.A. 56:8-1 to -20. The court's dismissal of the CFA claim is not challenged in plaintiff's brief on appeal, and therefore Feng's right to challenge the dismissal is waived. Jefferson Loan Co., supra, 397 N.J. Super. at 525 n.4; Zavodnick, supra, 340 N.J. Super. at 103.

(finding there can be no breach of the covenant of good faith and fair dealing in the absence of a contract), certif. denied, __ N.J. __ (2017).

We also reject Feng's argument that defendant "is equitabl[y] estoppe[d]" from claiming Feng lacked standing by inducing Chee to sign all of the documents related to the vehicles purchase. To establish equitable estoppel, Feng was required to prove that defendant "engaged in conduct, either intentionally or under circumstances that induced reliance." Knorr v. Smeal, 178 N.J. 169, 178 (2003); accord Berg v. Christie, 225 N.J. 245, 279 (2016). Feng must also establish defendant made "a knowing and intentional misrepresentation." O'Malley v. Dep't of Energy, 109 N.J. 309, 317 (1987); accord Berg, supra, 225 N.J. at 279.

Feng presented no evidence and made no allegation that defendant made misrepresentations related to the purchase of the vehicle. The evidence showed Feng was advised he did not qualify for the financing necessary to purchase the vehicle and, in response, his wife Chee purchased the vehicle instead. Contrary to Feng's assertion, there was no evidence supporting his equitable estoppel claim.

III.

Because we affirm the court's dismissal of Feng's complaint, it is unnecessary to address Feng's challenge to the May 28, 2015

order granting defendant's motion for a protective order limiting plaintiffs' written discovery demands. See, e.g., Lonegan v. State, 341 N.J. Super. 465, 481 (App. Div. 2001) (appeal of refusal to grant preliminary restraints mooted by substantive determination of merits on appeal), aff'd, 176 N.J. 2 (2003). In any event, we make the following comments.

The court found plaintiffs' 318 interrogatories and fifty-three document demands were excessive, and granted defendant's motion for a protective order, reasoning that ruling otherwise "would cause defendant to suffer an undue burden." We do not find, and plaintiffs have not established, the court abused its discretion in its well-reasoned decision to limit plaintiffs' demands. See Spinks v. Twp. of Clinton, 402 N.J. Super. 454, 459 (App. Div. 2008) (explaining an appellate court "defer[s] to the 'trial court's disposition of discovery matters including the formulation of protective orders'" (quoting Payton v. N.J. Tpk. Auth., 148 N.J. 524, 559 (1997))).

Last, we decline to address plaintiffs' arguments concerning the administrative dismissal of Chee from the case based on her failure to appear for the court ordered arbitration. The court's July 9, 2015 order dismissing Chee's complaint pursuant to Rule 4:21A-4(f) was not listed in plaintiffs' notice of appeal. See, e.g., 30 River Court, supra, 383 N.J. Super. at 473-74 (refusing

to review orders not included in the notice of appeal pursuant to R. 2:5-1(f)(3)(i)). Moreover, plaintiffs do not argue the court's dismissal order was entered in error. Plaintiffs challenge only the validity of a letter sent by the court staff to Chee rejecting her request for a trial de novo. The letter is not an order or judgment properly subject of the appellate review. R. 2:2-3.

Affirmed.