



Gina Giroux v. David Sharron

DECISION ON APPEAL

Defendants–Appellants Richard and Gina Giroux, who operate a used car sales business, have appealed from a small claims judgment in favor Plaintiff–Appellee David J. Sharron, who bought a car from the Giroux that was soon thereafter determined to be “unrepairable.” The remedy ordered by the small claims court was to “undo” the transaction: Mr. Sharron was to return the unrepairable car to the Giroux, and the Giroux were then to refund the full purchase price. The Giroux have appealed, relying on the “as-is” disclaimer as they did at the small claims hearing.

An appeal from a small claims judgment is heard and decided “based on the record made in the small claims court.” 12 V.S.A. § 5538. The “appeal is limited to questions of law.” V.R.S.C.P. 10(d). If the small claims court has applied the correct law, this court will affirm its “conclusions if they are reasonably supported by the findings.” *Maciejko v. Lunenburg Fire Dist. No. 2*, 171 Vt. 542, 543 (2000) (mem.). In turn, the findings of fact must be supported by the evidence, *Brandon v. Richmond*, 144 Vt. 496, 498 (1984), and such findings “must be construed, where possible, to support the judgment,” *Kopelman v. Schwag*, 145 Vt. 212, 214 (1984). The court’s review of the small claims court’s legal conclusions, however, is “non-deferential and plenary.” *Maciejko*, 171 Vt. at 543 (quoting *N.A.S. Holdings, Inc. v. Pafundi*, 169 Vt. 437, 439 (1999)).

The court has listened to the recording of the small claims hearing and reviewed the entire record of this case. The small claims court issued its findings and conclusions orally at the end of the hearing. Its findings are to the following effect. Mr. Sharron became interested in a car on the Giroux’s lot. Unlike the cars ordinarily sold by the Giroux, this one was uninspected, and it needed substantial work. Mr. Sharron understood that. All parties understood that Mr. Sharron was seeking to purchase a “repairable” car that, with the right work, would be able to pass inspection. The testimony at the hearing was that Mr. Sharron was inclined to buy the car if they could get the engine running. With some effort, they got the engine running. Mr. Sharron bought the car, had it transported to a mechanic, and the mechanic quickly determined that it was unrepairable, and could not pass any inspection, because the frame was too rotted away. Mr. Sharron attempted to return the

car and get his money back, but the Giroux's refused, relying on the as-is disclaimer for the sale.

The “buyer’s guide” for the car clearly reflects the Giroux’s intention to sell it without any warranties. The top section of the form says, “IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing.” The same section describes the “WARRANTIES FOR THIS VEHICLE” as “NONE.” Nearby, “no inspection” is handwritten in. The form then has sections corresponding to “AS IS—NO WARRANTY” and “WARRANTY.” The “as is—no warranty” section is clearly marked. It expressly reads, “YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.” The section for “warranty” (full or limited) is unmarked, as is the line corresponding to a service contract.

Turning to its conclusions, the small claims court explained that it did not see an express warranty, 9A V.S.A. § 2—313. It appears to have held that because there was no express representation as to repairability by the Giroux's that there could not have been an express warranty.

It did not further consider Mr. Sharron’s claim under Vermont law. It instead turned to the federal Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301–2312. The court appears to have held that under the Act, a disclaimer of warranties does not apply to an implied warranty of general fitness. There was, the court found, a general understanding that Mr. Sharron was seeking a repairable car, so the court found in his favor based on that implied warranty regardless of the written disclaimer.

The court then ruled that the remedy in the case was to “undo” the transaction. It ordered that Mr. Sharron was entitled to get his money back when he returned the vehicle to the Giroux's. The court’s oral description of the contemplated judgment caused the parties substantial confusion, and the proceeding turned into a question and answer session as to what the parties were supposed to do next. In particular, Mr. Sharron was interested to know when he was supposed to return the vehicle. The Giroux's indicated that they were likely to appeal. Ultimately, the court advised Mr. Sharron to wait and see if the Giroux's actually filed an appeal, and if they did, he should wait to return the vehicle until after the appeal (assuming the judgment was unaffected by the appeal).

On the written judgment form, the court entered the amount of the judgment and added this: “Defendants’ obligation to pay this judgment is conditioned on Plaintiff’s return of the 1999 White Subaru Legacy automobile to Defendants’ premises and transfer of title to the vehicle back to Defendants. No payment shall be due until the return is effectuated.” The judgment form does not say when Mr. Sharron is supposed to do this or what happens if the Giroux's refuse to accept the return of the vehicle.

Shortly thereafter, Mr. Sharron represented that he attempted to deliver the vehicle to the Giroux, and the Giroux refused to accept it. Based on that, he filed a motion for contempt. The court denied it, noting that the small claims case was stayed pending this appeal.

Jurisdiction of the small claims court

The small claims judgment must be vacated and this case remanded because the judgment entered by the small claims court was beyond its jurisdiction. The small claims court has jurisdiction to enter judgments for money damages within jurisdiction limits only. See 12 V.S.A. § 5531(b). The small claims court in this case essentially ordered Mr. Sharron to retitle and return the car to the Giroux. The court had no power to enter such a judgment, which is void for lack of subject matter jurisdiction.

The apparently conditional nature of the judgment also renders it nonfinal and uncertain. As one treatise describes:

Some courts have authorized judgments that do not become effective unless certain conditions are complied with, or that may be defeated or amended by the performance of a given act or the occurrence of a certain event. Judgments of this type are considered judgments under Rule 54(a) *only when the contingency has been removed*; prior to that time the court's decision is not appealable. On the other hand, the court may enter a final and appealable judgment and still retain jurisdiction over the action so as to make sure that its order is applied correctly. This type of judgment is not conditional since it becomes effective immediately.

10 Wright & Miller, Federal Practice & Procedure: Civil 4th § 2651 (footnotes omitted). The small claims court's lack of jurisdiction to enter a judgment for anything but money damages forecloses it from entering a conditional judgment. Even if it could, the small claims court instructed Mr. Sharron not to satisfy the contingency until after appeal, though the judgment could not become final until the contingency was satisfied.

To the extent that the conditional nature of the judgment was intended to avoid the small claims court's limitation to awarding money damages only (presumably by making satisfaction of the condition voluntary at the risk of forfeiting the contingent award of damages), that is error. Such a conditional judgment does not comply with the spirit of 12 V.S.A. § 5531(b) and is not in keeping with the simple and informal nature of small claims proceedings. See *Brandon v. Richmond*, 144 Vt. 496, 496–98 (1984) (“This Court has recognized that in small claims proceedings the parties are encouraged to appear pro se, and that the procedure ‘is intended to provide a simple, informal and inexpensive method for the determination of disputes.’” (citation omitted)).

The substance of the small claims decision

Substantively, the small claims court presumably believed that the car should be returned to the Giroux because it retains some value even if it cannot pass inspection. On remand, the court thus may well need to consider whether the judgment amount needs to be modified to reflect that retained value, an issue on which this court takes no position.

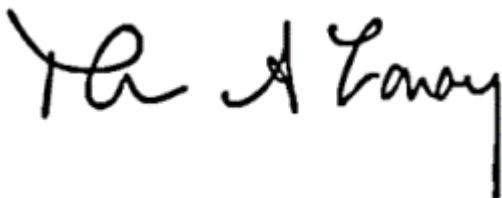
The court also notes, for the benefit of the parties and the court on remand, that the small claims court's oral decision as to the as-is disclaimer is unclear. In its oral decision, the court appears to have held that the Magnuson-Moss Warranty Act wholly forecloses reliance on a written disclaimer of warranties when an implied warranty of general fitness has arisen. In the judgment order, it wrote that its decision is consistent with § 2308 of the Act. Subsection 2308(a), the apparently applicable part, provides: "No supplier may disclaim or modify . . . any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product." 15 U.S.C. § 2308(a) (emphasis added). Yet, there was no finding of any written warranty or service contract. Otherwise, 9A V.S.A. § 2—316 generally permits the disclaimer of implied warranties.

Ultimately, the court is unclear as to how the small claims court arrived at its ultimate determination that the disclaimer in this case is ineffective. The small claims court should clarify or reconsider its determination as to the disclaimer on remand.

ORDER

For the foregoing reasons, the judgment of the small claims court is vacated. This case is remanded for clarification or reconsideration of the basis for judgment, and entry of judgment consistent with this decision.

Electronically signed: 4/5/2023 4:53 AM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "Thomas A. Zonay". The signature is written in a cursive, flowing style.

Thomas A. Zonay
Chief Superior Judge