

FILED
MAY 17 1994
ORANGE SUPERIOR COURT

STATE OF VERMONT
ORANGE COUNTY, SS

SUSAN LENCZYCKI)

v.)

CAPITAL CHRYSLER, INC., and)
MITSUBISHI MOTORS CREDIT OF)
AMERICA, INC.)

ORANGE SUPERIOR COURT

Docket No. S108-92 Oec

Decision

on

Cross Motions for Summary Judgment

Defendant Mitsubishi moved for Summary Judgment on February 1, 1994. Plaintiff filed an opposition on February 25, 1994, and moved for Summary Judgment in her favor against Defendant Mitsubishi. No further memoranda were filed.

No material facts are in dispute. The issue is a question of law: whether Mitsubishi, by having financed Plaintiff's purchase of an automobile from Defendant Capital Chrysler and without further involvement, is liable to Plaintiff under 9 V.S.A. §2461 for damages or consideration recoverable against a seller, solicitor, or "other violator" of the Consumer Fraud statutes, in a case in which Defendant Capital Chrysler is alleged to have committed consumer fraud violations as the seller of the automobile. Defendant Mitsubishi seeks summary judgment on the grounds that there are no facts alleged to establish any wrongdoing on its part under the Consumer Fraud statutes and its lender status alone does not make it liable to an individual consumer plaintiff seeking a private remedy. Plaintiff seeks summary judgment in her favor on the grounds that the Court's decision in State of Vermont v. Custom Pools, 150 Vt 533 (1988) establishes that a lender's "use" of a financing contract arising out of a transaction involving consumer fraud constitutes a prohibited practice of the lender under the consumer fraud law, and that Mitsubishi is thus liable as a matter of law as an "other violator" under the language of §2461(b).

After consideration of the arguments and authorities advanced by counsel, the court denies both motions for summary judgment.

As a matter of law, Mitsubishi could be an "other violator" under 9 V.S.A. §2461 and therefore liable to Plaintiff for monetary judgment in favor of Plaintiff, depending on the facts alleged. On the facts alleged here, it is Mitsubishi's status as a lender in the financing transaction that is the sole basis for imposing such liability. No specific facts showing Mitsubishi's involvement in a consumer fraud violation are alleged; rather it is Mitsubishi's status alone that Plaintiff alleges establishes the basis for liability to Plaintiff under the reasoning of Custom Pools.


In Custom Pools, the Court was construing 9 V.S.A. §2458, which provides the general public with a remedy of injunction against continuation of unfair consumer practices, as well as specified civil penalties where appropriate. In that context, the lender's status does give it a role in consumer fraud protection because it has the ability, as the Court noted, to police the business activities of the sellers with whom it does business. The primary remedy for affording protection under that provision is injunctive relief, and in the context of an injunction, business is halted until the involved parties, including lenders, stop the misconduct unfair to consumers. Lenders can exert pressure on sellers with unfair practices to give up such practices in order to get the flow of business going, and the public is thereby provided protection.

Such reasoning does not justify giving individual consumers an after-the-fact remedy in damages under 9 V.S.A. §2461(b) against a lender as a matter of strict liability based solely on the lender's status as lender in a financing transaction for a consumer. Under the terms of 9 V.S.A. §2461(b), the plaintiff bears the burden of alleging and proving a "violation." No material facts supporting a violation are alleged, except that Mitsubishi financed the transaction. It is not reasonable to conclude that its "use" of the financing contract amounts to a consumer fraud violation resulting in private damages including the possibility of treble damages. The remedies and purposes of §2458 and §2461(b) are somewhat overlapping but not entirely the same, and while a lender may have the leverage to stop the sellers it does business with from engaging in unfair practices generally, that does not mean it is fair to make a lender a guarantor of consumer fraud damages in each individual consumer transaction for which it provides financing. Such an interpretation places an onerous burden on consumer lenders, and the Legislature could have been clear about placing such a burden if it had intended to do so.

Rather, the statutory scheme indicates that the two provisions provide coordinating and complementary but different forms of protection: §2458 establishes a means for preventing the occurrence of unfair consumer practices on a broad basis, and by its terms focusses on prevention; §2461(b) provides a private remedy for those consumers injured in consumer fraud transactions, and by its terms focusses on compensation. It remains the burden of the plaintiff invoking relief under §2461(b) to have to show its entitlement to a private damages remedy from each named defendant on the basis of specific wrongdoing as an "other violator".

Summary judgment is therefore denied on both motions. Plaintiff has 15 days to supplement Count Seven with any facts showing it is an "other violator" under §2461(b) through participation in false or fraudulent representations or prohibited practices. If none are set forth, the claim against Mitsubishi will be dismissed.

Dated at Chelsea, Vermont this 17th day of May, 1994.



Mary Miles Teachout
Superior Judge