

Consumer Law Reporter

A Newsletter for Dealers and Manufacturers of Consumer Goods

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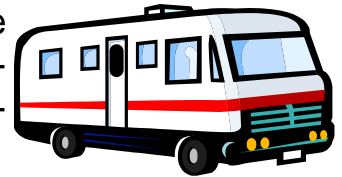
Summer 2006

INTRODUCTION

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In past newsletters we have advised our readers about several cases where the seller or manufacturer of consumer goods lost at the Trial Court level and were forced to file appeals to have the Appellate Court judges overrule what occurred in the Trial Court to correct inappropriate legal rulings. An automobile dealership recently prevailed in one of these situations, and we are dedicating this newsletter to a discussion of that case as it contains outstanding language regarding the errors made by the Trial Court and how dealerships who sell automobiles, RVs or other consumer goods can protect themselves from potential liability. If you have questions regarding how you may use this case to your advantage feel free to contact us.



Davis v Lafontaine

In past editions we have written case studies regarding cases that are not a matter of public record. As such, we do not always disclose the names of the parties. In this case, the Michigan Court of Appeals published its decision and the case is a matter of public record. It can be found at [Davis v Lafontaine](#), 271 Mich App 68 (2006).

In [Davis](#), the Trial Court denied a summary judgment motion and allowed the Plaintiff to pursue claims against an automobile dealership for breach of warranty and other causes of action where the automobile manufacturer (Daewoo) went out of business. The dealership (Lafontaine Motors) appealed. The issues in this case were of extreme importance to dealers and manufacturers of consumer goods in Michigan and throughout the United States. Thus the dealership sought the assistance of various automobile associations, the Recreational Vehicle Industry Association (RVIA) and the Michigan Recreational Vehicle and Campground Associations (MARVAC). Those entities teamed up to file Amicus Briefs on behalf of Lafontaine.

Davis v Lafontaine – A Case Study

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Ultimately, the Court of Appeals used the arguments of the dealership and those entities to reverse the Trial Court's decision in its entirety. As noted, the Court of Appeals decision contains excellent language, which can now be used by others to defeat the claims of consumers against dealerships and manufacturers in litigation in Michigan and throughout the United States.

One of the primary issues in Davis was whether the disclaimer language in the dealership's sales paperwork prevented the consumer from filing suit against the dealership. The Court of Appeals ruled that it did. As our readers are aware, defense attorneys have had excellent success in using disclaimer language to defeat claims by consumers. However, in the last 12-16 months we have seen a growing trend of cases where judges have not enforced the disclaimer language in a purchase agreement because of an argument that consumers' attorneys use regarding financing paperwork and which documentation controls the sale. We believe that they have misconstrued various statutes regarding financing to confuse judges about how the financing paperwork between the consumer and the bank, which is usually initially signed by a dealership and then transferred to the bank, controls the transaction and prevents dealerships from enforcing the disclaimer language in their purchase agreement.

To confuse judges on the topic consumers' attorneys have cited to cases where consumers sued regarding inappropriate sales tactics under different statutes than those, that are applicable to breach of warranty litigation. The Michigan Court of Appeals did not fall for this tactic and ruled that the disclaimer language in Lafontaine's Purchase Agreement is enforceable, irrespective of the consumers' attorneys' arguments that the disclaimer language should not be valid since it did not appear in the financing paperwork. The Michigan Court of Appeals followed one of the better Trial Court opinions from a Federal Court Judge and ruled that his analysis was correct, i.e., the disclaimer language in a purchase agreement is valid even if it is not contained in the financing paperwork and the statutes cited by the consumers' attorneys do not control a situa-

tion where a consumer sues for breach of warranty as opposed to a deceptive sales practice.

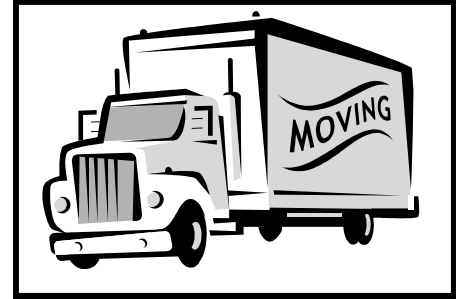
In addition to this, the Court of Appeals determined that a dealership who sells goods needs to give an express warranty to be sued by a consumer for breach of warranty. The consumers in Davis alleged that various things the dealership did created a warranty. The Court of Appeals disagreed and indicated that the Uniform Commercial Code requires certain parameters to be met for the conduct of a dealership to rise to the level of an express warranty. The Court provided excellent language regarding this topic. This is all the more significant because of Daewoo's bankruptcy and the consumers' attorneys' attempts to cause the dealership to be bound by the warranty, which Daewoo, not Lafontaine, provided with the sale of the car. The Court of Appeals did not make the warranty pass through from the manufacturer to the dealership, even though the manufacturer was no longer in business.

The consumers' attorneys even went so far as to try to convince the Court of Appeals that the dealership breached a warranty or violated the Consumer Protection Act because they allegedly "refused service." The Court of Appeals held that the dealership never refused service. In actuality the dealership was an authorized service center of the manufacturer at the time the vehicle was sold, but that relationship ended. The consumer was advised of this when the consumer attempted to obtain service, and the Court of Appeals ruled that the dealership acted appropriately. This did not amount to a refusal of service or a breach of warranty. Instead, it amounted to the dealership advising the consumer of what was happening and the consumer being left with options to act accordingly.

As noted, this case contains excellent language on topics that arise every day in breach of warranty and consumer protection act lawsuits. As such, this case can be used to show other judges how they should rule when interpreting the Uniform Commercial Code, breach of warranty allegations and, most importantly, how to interpret consumers' attorneys' arguments regarding paperwork, which disclaims warranties and competing paperwork that either does not disclaim warranties or does not mention anything about warranties. Notably, this is the first published Michigan Court of Appeals decision, which is directly on point on this issue and dealerships and manufacturers should make sure that they use it to defeat the previously prevailing arguments regarding paperwork that consumers' attorneys have been making for the last two years.

NEW ADDRESS AND CONTACT INFORMATION

As noted in our last newsletter the editors of Consumer Law Reporter have moved to a new office. As such, we now have all new contact information (except website and e-mail addresses, which remain the same). To that end, if you need assistance with litigation, litigation prevention, the drafting of warranties or sales paperwork, which excludes warranties, or limits warranties, you may feel free to contact us at:



Dolenga & Dolenga, PLLC

24001 Orchard Lake Road,
Suite 190,
Farmington, Michigan 48336

Phone (248) 478-9922

Fax (248) 478-9933

E-Mail Address: www.dolengalaw.com.

DOLENGA & DOLENGA, PLLC

24001 Orchard Lake Road, Suite 190
Farmington, MI 48336

Phone: 248-478-9922 Fax: 248-478-9933

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