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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5891-13T1

DIEUSEUL SYLINCE,

Plaintiff-Appellant,

v.

THRIFT AUTO SALES, INC. and
TINO RODRIGUES,

Defendants-Respondents.

Submitted May 20, 2015 – Decided October 14, 2015

Before Judges Fuentes, Kennedy and O'Connor.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Morris County, Docket No. DC-2187-14.

Pinilis Halpern, LLP, attorneys for appellant (William J. Pinilis, on the brief).

Respondents have not filed a brief.

The opinion of the court was delivered by

FUENTES, P.J.A.D.

Plaintiff Dieuseul Sylince filed a one count civil complaint against defendants Thrift Auto Sales, Inc. and Tino Rodrigues alleging violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20. Plaintiff's complaint sought treble damages and counsel fees as provided by the CFA under N.J.S.A.

56:8-19. After a bench trial, the judge found in plaintiff's favor and entered judgment against defendants in the amount of $2,355.60. Despite these undisputed facts, the trial judge denied plaintiff's counsel's motion to treble the damage award and denied his application for counsel fees, finding the CFA did not apply based on what the judge characterized as "an error" on defendants' part.

We now reverse and remand for the trial court to enter judgement against defendants trebling the award of monetary damages which constituted an "ascertainable loss" under the CFA. The court shall also award plaintiff's counsel reasonable fees in connection with his representation of plaintiff in this case, including the time counsel spent in connection with this appeal as provided by N.J.S.A. 56:8-19. The record shows plaintiff proved: (1) he was the victim of defendants' unconscionable commercial practices in the form of knowing misrepresentations concerning the sale of an extended service contract; (2) demonstrated an ascertainable loss; and (3) established a causal relationship between the unlawful conduct and the ascertainable loss. Under these circumstances, treble damages and counsel fees under N.J.S.A. 56:8-19 are mandatory. D'Agostino v. Maldonado, 216 N.J. 168, 185 (2013).

The following facts are undisputed. On January 11, 2014, defendants sold plaintiff a 2006 Chrysler 300 for $8,500. In

connection with the purchase of this car, defendants also sold plaintiff a third-party extended service contract for an additional $1000. Defendants represented to plaintiff that under this extended service contract Chrysler would pay certain repairs for a period of three months from the date of sale, regardless of the number of miles driven during this three-month period.[1]

Within the ninety-day extended service period plaintiff experienced certain mechanical problems with the car and noticed the "check engine" light had activated. Plaintiff immediately brought the car to defendants' mechanic for an evaluation. Defendants' mechanic told plaintiff they were unable to find anything wrong with the car. Defendants reset the "check engine" light to ensure this signal was no longer activated when plaintiff took possession of the car.

Shortly thereafter, plaintiff's "check engine" light again activated. This time, plaintiff brought the car to an independent mechanic employed by Beyer Chrysler Jeep Dodge, a local Chrysler dealership. The mechanic at Beyer Chrysler

[1] The "Car's Protection Plus" extended service contract defendants purportedly sold to plaintiff for $1000 was intended to cover repairs to the "engine/fuel system, automatic transmission/transfer case, manual transmission/transfer case, suspension, seals, gaskets, & fluids, steering components, brake components, air conditioning and Freon, engine cooling system, electrical components, labor, (at a rate of $60 per hour), rental benefits, and 24-hour roadside service."

informed plaintiff that the car's intake manifold needed repair at an estimated cost in excess of $2000. Beyer Chrysler repaired the car, ultimately charging plaintiff $2,289.60. Plaintiff proved, and the trial judge found as a matter of fact, that defendants did not transmit plaintiff's $1000 to the company that offered the extended service contract. In fact, defendant Tino Rodrigues admitted at trial he did not attempt to purchase the extended service contract on plaintiff's behalf until after Beyer Chrysler had already completed the repairs on plaintiff's car. As a result, plaintiff ended up having to pay Beyer Chrysler the $2,289.60 charge for repairing the car.

The record shows that before filing this suit, plaintiff requested defendants to pay for the cost of the repairs. Defendants refused. Furthermore, although defendants charged plaintiff $1000, the actual premium for this extended service was $250. Despite these uncontested facts, the trial judge concluded defendants' conduct had not violated the CFA. The judge gave the following explanation in support of this conclusion.

> But I don't find that there's sufficient evidence for the Court to conclude that somehow this was intentional action by Thrift Auto Sales from its inception. And I understand the Consumer Fraud Act does not require intentional conduct. I'm just responding to what I perceive counsel's arguments to be.

I don't think there's sufficient evidence that the Court can draw an inference that at the time of the purchase of the car it was the intent of Thrift Auto Sales not to send in the service contract.

If that were their intent and they made representations to the plaintiff that he would be covered and he paid for a service contract and all along the defendant had no intent of actually sending it in, which would cause their account to be debited $249, that would certainly be a violation of the Consumer Fraud Act.

But I think the facts here are a little bit different. I don't think I can draw an inference that that was the conduct of the defendant here. Certainly they didn't send the contract in to be activated for whatever reason. And as I said it's unclear to the Court what that reason was, whether they just failed to do it.

But I do note that the plaintiff testified, Mr. Sylince, that he had a conversation with the representative of Thrift Auto Sales and during that conversation he said the representative told Mr. Sylince that somebody screwed up, or words to that effect.

And from that I can draw the inference that someone at Thrift Auto Sales failed to fax the contract. It seems to me you're at a routine function of Thrift Auto Sales, but for whatever reason they didn't do it in this case. And the warranty wasn't covered.

And Mr. Sylince should certainly be compensated for the amount that he expended, $2,289.60. And I will find in his favor in that amount.

But the issue as addressed by counsel is whether the facts in this case warrant a

> violation of the Consumer Fraud Act. And I don't find that they do in this case.

We review the trial court's legal conclusion de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.") Our Supreme Court has recently reaffirmed how a court should construe the CFA.

> We construe the CFA in light of its objective to greatly expand protections for New Jersey consumers. As this Court has noted, the CFA's original purpose was to combat sharp practices and dealings that victimized consumers by luring them into purchases through fraudulent or deceptive means.
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> In a 1971 amendment to the CFA, the Legislature supplemented the statute's original remedies available to the Attorney General with a private cause of action. The CFA's private cause of action is an efficient mechanism to: (1) compensate the victim for his or her actual loss; (2) punish the wrongdoer through the award of treble damages; and (3) attract competent counsel to counteract the community scourge of fraud by providing an incentive for an attorney to take a case involving a minor loss to the individual.
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> [D'Agostino, supra, 216 N.J. 183-184 (quotations and citations omitted)].

To prevail in a cause of action asserting a violation of the CFA a plaintiff must prove: "'1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a

causal relationship between the unlawful conduct and the ascertainable loss.'" Id. at 184 (quoting Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 557 (2009)). The CFA defines the term "unlawful practice or conduct" as:

> The 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 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; provided, however, that nothing herein contained shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design or purpose of the advertiser.
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> [N.J.S.A. 56:8-2 (Emphasis added)].

Here, it is undisputed that at the time plaintiff first brought his car in for repairs, defendants misrepresented and knowingly concealed from plaintiff that they had not purchased the third-party extended service contract. It is equally clear defendants misrepresented and concealed the condition of plaintiff's car when they returned the vehicle to plaintiff. Specifically, defendants (1) failed to perform the necessary

repairs; (2) deactivated the "check engine" warning light; and (3) failed to disclose to plaintiff that he did not have the extended service protection he had paid $1000 to acquire. These material knowing misrepresentations and omissions constitute the type of unconscionable commercial practices the CFA was intended to deter by awarding the victims of such practices treble damages.

The record shows plaintiff established the unconscionability of defendants' conduct, demonstrated an ascertainable loss in the form of $2,289.60 in repair costs and $750 in excess premium, and proved a causal relationship between defendants' conduct and that ascertainable loss. Under these circumstances, plaintiff is entitled to treble damages and an award of counsel fees under N.J.S.A. 56:8-19 as a matter of law. The trial court has no discretion to deny this relief because the CFA makes both of these things mandatory. D'Agostino, supra, 216 N.J. at 185.

We thus reverse the trial court's ruling denying the applicability of the CFA, and remand for the trial court to amend the judgment entered against defendants by trebling the ascertainable loss sustained by plaintiff and awarding plaintiff "reasonable attorneys' fees, filing fees and reasonable costs of suit." N.J.S.A. 56:8-19. The court must determine the award of counsel fees by applying the methodology established by our

Supreme Court in Rendine v. Pantzer, 141 N.J. 292, 337 (1995), as reaffirmed in Walker v. Giuffre, 209 N.J. 124, 131-132 (2012).

Reversed and remanded. We do not retain jurisdiction.