SUPERIOR COURT OF PENNSYLVANIA

Ford Motor Credit Co. v. Caiazzo, 387 Pa. Super. 561

564 A.2d 931 (Pa. Super. Ct. 1989) · Decided September 13, 1989

SUMMARY

The Pennsylvania Superior Court held that warranty, Lemon Law, and related damages claims generally were not cognizable as defenses or counterclaims in a replevin action. However, the buyers' alleged possessory purchase-money security interest under 13 Pa.C.S.A. § 2711(c), arising from their claimed revocation of acceptance of a defective vehicle, was properly cognizable and could not be dismissed at the preliminary-objection stage. The court affirmed in part, reversed in part, and remanded for further proceedings.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Kelly; Rowley; Hester
JURISDICTION	Pennsylvania
DECIDED	September 13, 1989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order sustaining preliminary objections in the nature of a demurrer and dismissing the defendants' answer, new matter, and counterclaim in a replevin action.
STANDARD OF REVIEW	On review of preliminary objections in the nature of a demurrer, the court accepts as true all material facts pleaded and all reasonably deducible inferences, determines whether the law establishes with certainty that recovery is impossible, and resolves doubt in favor of overruling the demurrer. The appellate court is not bound by the trial court's inferences or conclusions of law.
PRECEDENTIAL VALUE	Published Pennsylvania Superior Court opinion
PARTIES	Josephine J. Caiazzo a/k/a Josephine S. Caiazzo, Anthony J. Caiazzo a/k/a Anthony J. Caiazzo v. Ford Motor Credit Corporation

TOPICS

civil procedure · uniform commercial code · warranty · remedies · commercial litigation

PRACTICE AREAS

civil procedure · uniform commercial code · warranty · remedies · commercial litigation

QUESTIONS PRESENTED

1. Whether Lemon Law, warranty, repayment, and defamation claims and defenses may be asserted in a replevin action.
2. Whether a buyer's claimed possessory purchase-money security interest arising from a justifiable revocation of acceptance under 13 Pa.C.S.A. § 2711(c) may be asserted as a counterclaim in a replevin action.
3. Whether the effectiveness and timeliness of the alleged revocation of acceptance, and whether the vehicle's defects substantially impaired its value, could be resolved on preliminary objections in the nature of a demurrer.

HOLDINGS

1. A replevin action is limited to determining title and the right to immediate possession; warranty, Lemon Law, repayment, and defamation claims that do not establish a possessory right are not cognizable defenses or counterclaims in the replevin action and must be pursued independently.
2. A buyer may assert as a counterclaim in a replevin action a possessory purchase-money security interest in goods retained after a rightful rejection or justifiable revocation of acceptance under 13 Pa.C.S.A. § 2711(c).
3. An assignee of a security interest in a retail installment motor-vehicle financing contract takes subject to claims against the seller or manufacturer and is not a holder in due course who takes free from those claims.
4. The timeliness of notice of revocation, the existence of defects, and whether the defects substantially impaired the vehicle's value are factual questions generally not resolvable on preliminary objections in the nature of a demurrer.

KEY QUOTATIONS

> *“"Exclusive" right of possession means only a right which excludes the defendant.”* (566)

> *“Pursuant to Pa.R.C.P. 1082(a), a claim to possession based upon a lien on the property in question in a replevin action may properly be set forth as a counterclaim in the replevin action.”* (567)

> *“The assertion of such a possessory security interest is a properly cognizable counterclaim in a replevin action.”* (573)

FACTUAL BACKGROUND

The Caiazzos purchased a 1987 Mercury Grand Marquis from Biondi Motor Corporation under a retail installment financing contract that granted the seller an assignable possessory security interest upon default. The contract and security interest were assigned to Ford Motor Credit, which later brought a replevin action alleging that the Caiazzos had stopped making required payments. The Caiazzos alleged that numerous defects substantially impaired the vehicle's use, value, and safety, that they had promptly notified the dealer and manufacturer and provided an opportunity to cure, and that they had justifiably revoked acceptance while retaining possession under a purchase-money security interest. They supported the allegations with an automotive expert's report identifying 76 defects.

PROCEDURAL HISTORY

Ford Motor Credit commenced a replevin action seeking possession of the vehicle based on an alleged payment default and obtained a writ of seizure. The Caiazzos answered and asserted Lemon Law and warranty claims, denial of default, revocation of acceptance, and a possessory purchase-money security interest under 13 Pa.C.S.A. § 2711(c). The trial court sustained Ford's preliminary objections and dismissed the answer, new matter, and counterclaim in their entirety, relying on Ford Motor Credit Corp. v. Dunsmore. The Superior Court affirmed dismissal of the Lemon Law, warranty, repayment, and defamation claims, but reversed dismissal of the Section 2711(c) possessory-security-interest counterclaim and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including consideration of the Caiazzos' pleaded Section 2711(c) possessory purchase-money security-interest counterclaim. The dismissal of the Lemon Law, warranty, repayment, and defamation claims and defenses remains affirmed. Jurisdiction was relinquished.

CASES CITED

- Ford Motor Credit Corp. v. Dunsmore, 374 Pa. Super. 303, 542 A.2d 1033 (1988)
- Vattimo v. Lower Bucks Hosp., Inc., 502 Pa. 241, 465 A.2d 1231 (1983)
- Mahoney v. Furches, 503 Pa. 60, 468 A.2d 458 (1983)
- Woodward v. Dietrich, 378 Pa. Super. 111, 548 A.2d 301 (1988)
- Drug House, Inc. v. Keystone Bank, 272 Pa. Super. 130, 414 A.2d 704 (1979)
- Jones v. Travelers Insurance Co., 356 Pa. Super. 213, 514 A.2d 576 (1986)
- International Electronics Co. v. N.S.T. Metal Products Co., Inc., 370 Pa. 213, 88 A.2d 40 (1952)
- Wilson v. Highway Service Marineland, 274 Pa. Super. 391, 418 A.2d 462 (1980)
- Gensbigler v. Shawley, Inc., 162 Pa. Super. 642, 60 A.2d 360 (1948)
- Blossom Products Corporation v. National Underwear Company, 325 Pa. 383, 191 A. 40 (1937)
- Lee-Strauss Co. v. Kelly, 292 Pa. 403, 141 A. 236 (1928)
- Hall's Safe Company v. Walenk, 42 Pa. Super. 576 (1910)
- Hahn v. Andrews, 370 Pa. 65, 87 A.2d 284 (1952)
- Casey v. Philadelphia Auto Sales Co., 428 Pa. 155, 236 A.2d 800 (1968)

- First National Bank of Millville v. Horwatt, 192 Pa. Super. 581, 162 A.2d 60 (1960)
- Ford Motor Credit Corp. v. Moser, 34 D. & C.3d 115 (1984)
- Yates v. Clifford Motors, Inc., 283 Pa. Super. 293, 423 A.2d 1262 (1980)
- Cardwell v. International Housing, Inc., 282 Pa. Super. 498, 423 A.2d 355 (1980)
- Rozmus v. Thompson's Lincoln-Mercury Co., 209 Pa. Super. 120, 224 A.2d 782 (1966)
- Vista Chevrolet Inc. v. Lewis, 704 S.W.2d 363 (Tex. App. 1985)
- McCullough v. Bill Swad Chrysler-Plymouth, 5 Ohio St. 3d 181, 449 N.E.2d 1289 (1983)
- McGinnis v. Wentworth Chevrolet Co., 645 P.2d 543 (Or. App. 1982)
- Pavesi v. Ford Motor Co., 155 N.J. Super. 373, 382 A.2d 954 (1978)
- Irrigation Motor and Pump Co. v. Belcher, 29 Colo. App. 343, 483 P.2d 980 (1971)
- Mobile Homes Sales Management Inc. v. Brown, 115 Ariz. 11, 562 P.2d 1378 (1977)
- Grucella v. General Motors Corp., 10 D. & C.2d 65 (1956)
