

SUPREME COURT OF NORTH DAKOTA

Darby v. Swenson Inc.

2009 ND 103 (2009) · No. No. 20080215 · Decided June 17, 2009

SUMMARY

The Supreme Court of North Dakota affirmed summary judgment for Swenson Inc. in a dispute involving a motor home, North Dakota's Lemon Law, and warranty claims. The court held that allowing Darby to amend his complaint would have been futile because the written sales documents conspicuously disclaimed warranties and Darby presented no evidence supporting his proposed claims. The court also affirmed dismissal with prejudice.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Mary Muehlen Maring; Daniel J. Crothers; Dale V. Sandstrom; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	June 17, 2009
DOCKET	No. 20080215
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order granting summary judgment for Swenson, dismissing Darby's complaint with prejudice, and denying Darby leave to amend his complaint.
STANDARD OF REVIEW	A denial of leave to amend after a responsive pleading has been served is reviewed for abuse of discretion. Summary judgment is reviewed under the standard applicable to whether there are genuine issues of material fact or conflicting reasonable inferences and whether the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Craig Darby v. Swenson Inc., d/b/a Swenson RV & Equipment

TOPICS

- motion to amend
- summary judgment
- warranty
- unconscionability
- civil procedure

PRACTICE AREAS

civil procedure

contracts

uniform commercial code

consumer protection

remedies

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Darby leave to amend his complaint in response to Swenson's summary-judgment motion.
2. Whether Darby's proposed express- and implied-warranty claims would have survived summary judgment or were futile.
3. Whether the district court erred by dismissing Darby's complaint with prejudice.
4. Whether Darby's reference to unconscionability in his summary-judgment response preserved an unconscionability claim for appellate review.

HOLDINGS

1. A proposed amendment is futile when the added claim would not survive a motion for summary judgment. When amendment is sought after a summary-judgment motion has been filed, the proposed claim must be theoretically viable and solidly grounded in the record, with allegations supported by substantial evidence.
2. Summary judgment was proper on Darby's proposed express- and implied-warranty claims because the undisputed record showed that Swenson conspicuously and unambiguously disclaimed all warranties and limited Darby's remedies to manufacturers' warranties, while Darby presented no evidence creating a genuine issue regarding the disclaimer.
3. The Lemon Law's exclusive-remedy provision did not bar Darby from seeking relief against Swenson under an alternative cause of action because the Lemon Law did not provide Darby a remedy against Swenson in the first place.
4. Darby did not preserve an unconscionability issue because he failed to plead it, failed to adequately brief it in the district court, and presented no evidence of procedural or substantive unconscionability.
5. Dismissal with prejudice was proper because Darby failed to adequately brief the issue on appeal and, in any event, all of his claims had been resolved on the existing record.

KEY QUOTATIONS

“If leave to amend is sought before discovery is complete and neither party has moved for summary judgment, the accuracy of the “futility” label is gauged by reference to the liberal criteria of Federal Rule of Civil Procedure 12(b)(6).” (¶ 12)

“Summary judgment is appropriate if, after viewing the evidence in the light most favorable to the party opposing the motion, there are no genuine issues of material fact or conflicting inferences that can reasonably be drawn from undisputed facts or if the only issues to be resolved are questions of law.” (¶ 16)

“All warranties may properly be excluded, but that exclusion must be part of the bargain between the parties.” (¶ 17)

FACTUAL BACKGROUND

Craig Darby purchased a motor home from Swenson Inc. for \$243,845 and signed purchase documents at the time of delivery. The documents included a Warranty Rights document expressly excluding implied and express warranties from Swenson and limiting Darby's remedies to manufacturers' warranties; Darby also acknowledged receiving the manufacturers' warranty and product information. Darby sued under North Dakota's Lemon Law, but Swenson presented evidence that it did not manufacture the motor home and that the vehicle was manufactured by Monaco Coach Corporation. In opposing summary judgment and seeking leave to amend, Darby submitted no affidavits, deposition testimony, or other evidence supporting his proposed warranty or unconscionability claims.

PROCEDURAL HISTORY

Darby sued Swenson under North Dakota's Lemon Law, alleging that a motor home was defective and had not been repaired or replaced. Swenson moved for summary judgment, arguing that the motor home was excluded from the statutory definition of a covered passenger motor vehicle and that the statute did not provide a remedy against a dealer. Darby opposed summary judgment and moved to amend his complaint to assert express- and implied-warranty claims. The district court granted summary judgment, dismissed the action with prejudice, and denied leave to amend. The North Dakota Supreme Court affirmed, although it rejected the district court's interpretation that the Lemon Law's exclusive-remedy provision independently barred amendment.

DISPOSITION

affirmed

CASES CITED

- Isaac v. State Farm Mut. Auto. Ins. Co., 547 N.W.2d 548, 551 (N.D. 1996)
- Grandbois and Grandbois, Inc. v. City of Watford City, 2004 ND 162, ¶ 11, 685 N.W.2d 129
- Farmers Alliance Mut. Ins. Co. v. Hulstrand Const., Inc., 2001 ND 145, ¶ 10, 632 N.W.2d 473
- Hatch v. Dep't for Children, Youth and Their Families, 274 F.3d 12, 19 (1st Cir. 2001)
- Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007)
- Watson ex rel. Watson v. Beckel, 242 F.3d 1237, 1239-40 (10th Cir. 2001)
- Johnson v. Am. Airlines, Inc., 834 F.2d 721, 724 (9th Cir. 1987)
- Ferreira v. City of Pawtucket, 365 F. Supp. 2d 215, 217 (D.R.I. 2004)
- Bebo v. Delander, 632 N.W.2d 732, 740 (Minn. Ct. App. 2001)
- Thompson v. First Nat. Bank, 269 N.W.2d 763, 764 (N.D. 1978)
- Riemers v. Grand Forks Herald, 2004 ND 192, ¶ 4, 688 N.W.2d 167
- Fleck v. Jacques Seed Co., 445 N.W.2d 649, 654 (N.D. 1989)
- Scientific Application, Inc. v. Delkamp, 303 N.W.2d 71, 74-75 (N.D. 1981)
- DeCoria v. Red's Trailer Mart, Inc., 491 P.2d 241, 244 (Wash. Ct. App. 1972)
- Farmers Elevator & Mercantile Co. v. Farm Builders, Inc., 432 N.W.2d 864, 869 (N.D. 1988)

- Olsrud v. Bismarck-Mandan Orchestral Ass'n., 2007 ND 91, ¶ 25, 733 N.W.2d 256

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