NEW YORK LAW SCHOOL

NYLS Law Review
Vols. 22-63 (1976-2019)

Volume 47
Issue 2 *VOLUME 47, NUMBERS 2-3, FALL 2003*

Article 9

January 2003

NEW YORK COURT OF APPEALS CASE COMPILATIONS: DICINTIO V. DAIMLERCHRYSLER CORP.

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Recommended Citation

Joshua T. Coleman, *NEW YORK COURT OF APPEALS CASE COMPILATIONS: DICINTIO V. DAIMLERCHRYSLER CORP.*, 47 N.Y.L. SCH. L. REV. 477 (2003).

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DICINTIO V. DAIMLERCHRYSLER CORP.[1]

(decided February 13, 2002; reargument denied, April 30, 2002)

I. SYNOPSIS

The New York Court of Appeals, in a unanimous ruling, reversed the order of the appellate division[2] and dismissed the first three causes of action of the complaint, and answered the certified question, "whether the Magnuson-Moss Warranty Act . . . applies to plaintiff['s] . . . automobile lease,"[3] in the negative.[4]

II. BACKGROUND

The plaintiff leased a sport utility vehicle, manufactured by DaimlerChrysler Corporation ("Daimler"), from Adzam Auto Sales, Inc. ("Adzam") in June of 1999.[5] Adzam assigned the lease to a "Holder," Chrysler Financial Company L.L.C. The plaintiff never obtained title to the vehicle.[6] The vehicle came with limited warranties in addition to warranties that "arise by operation of law."[7] The basic warranty provided for "the cost of all parts and labor necessary to repair any defective item . . . except [the] tires" and the additional warranties covered the "cost of repairing corrosion to the vehicle and bringing it into compliance with government emission standards."[8] The warranties did not distinguish between "warranties for buyers and warranties for lessees."[9] The cost of the vehicle and the payment schedule agreed upon was as follows:

> The agreed-upon value or "gross capital cost" of the vehicle was $32,349. DiCintio paid an initial "capitalized cost reduction" of $2,547—fees, taxes and first monthly payment brought his initial outlay to $4,179—and agreed to

1. 97 N.Y.2d 463 (2002).
2. DiCintio v. DaimlerChrysler Corp., 724 N.Y.S.2d 717 (App. Div. 2001).
3. *DiCintio*, 97 N.Y.2d at 466.
4. *Id.* at 475.
5. *Id.* at 466.
6. *Id.* at 467.
7. *Id.*
8. *Id.*
9. *DiCintio*, 97 N.Y.2d at 467.

> make monthly payments of $390 for 36 months. Of the $14,039 thus due in monthly payments, $9,736 reflected depreciation, while the lease classified the balance as rent. At the close of the 36-month lease period, having paid some $16,586 plus taxes and fees, DiCintio had the option to purchase the vehicle by paying an additional $20,561. If he returned the vehicle to Adzam before the end of the lease term, he would owe all remaining monthly payments, less the unearned rent charge for the remaining months, plus any excess mileage and excess wear and use charges.[10]

Shortly after the plaintiff received the vehicle, he experienced multiple problems: (1) the transmission did not work correctly; (2) the vehicle pulled to the left while driven; and (3) it experienced idling problems and stalled while at traffic lights. Despite taking the vehicle to six or seven authorized dealers for repairs, the vehicle still manifested these problems. The plaintiff informed Adzam that he wanted to be issued another car or he would terminate the lease. Adzam declined to issue a new car, whereby the plaintiff informed Daimler that he was revoking acceptance of the vehicle. The plaintiff did not, however, inform Adzam that he was revoking acceptance of the vehicle.[11] The plaintiff commenced an action in response to Daimler's refusal to accept his revocation.[12]

Plaintiff alleged five causes of action: (1) breach of written warranty against Daimler under the Magnuson-Moss Warranty Act[13] ("Warranty Act"); (2) breach of implied warranty against defendants under the Warranty Act and N.Y. U.C.C. §§ 2-314, 2-318; (3) revocation of acceptance against defendants under the Warranty Act; (4) costs, fees, and expenses against defendants under the Warranty Act; and (5) improper delivery against defendants under N.Y. U.C.C. § 2-601.[14]

Defendants Adzam and Daimler Corp. moved to dismiss the complaint.[15] The New York Supreme Court denied the defendants'

10. *DiCintio*, 97 N.Y.2d at 467.
11. *Id.*
12. *Id.*
13. 15 U.S.C. §§ 2301-2312 (McKinney 2002).
14. DiCintio v. DaimlerChrysler Corp., 713 N.Y.S.2d 808, 810 (Sup. Ct. 2000).
15. *Id.* at 810.

motion to dismiss the first cause of action and held that the Warranty Act was designed to protect "the public interest against manufacturer's abuses by enforcing warranties on consumer products regardless of whether an individual is a lessee or a consumer." Further, the court held that the Warranty Act was applicable to the plaintiff, despite the fact that plaintiff's lease provided him with an option to buy at the end of the leasing agreement.[16] Also, the court denied defendant Adzam's motion to dismiss the second cause of action and held that where privity of contract exists, New York recognizes a claim for breach of implied warranty when economic losses are claimed.[17] For the same reason, the court granted defendant Daimler's motion to dismiss the second and third causes of action because there was no privity of contract. Further, the court granted defendant Adzam's motion to dismiss the third cause of action, because plaintiff "failed to allege that he notified Adzam of his intent to revoke his prior acceptance of the car," citing N.Y. U.C.C. § 2-608(2).[18] As to the fourth cause of action, the court denied the defendants' motion because the Warranty Act "permits a prevailing party to recover costs and expenses, including attorneys' fees."[19] Finally, the court granted the defendants' motion to dismiss the fifth cause of action.[20] Citing N.Y. U.C.C. §§ 2-711 and 2-713,[21] the court held that "the only remedies available for improper delivery are against the seller," thus precluding a cause of action against Daimler.[22] Furthermore, the court held that according to N.Y. U.C.C. § 2-602(1),[23] for plaintiff to have properly rejected the vehicle, he must have notified the seller, which plaintiff did not.

On appeal by both parties to the New York Supreme Court, Appellate Division, First Department, the court affirmed the denial of the motion to dismiss as to the first cause of action, holding that the lease entered into, which resembled an ownership interest and had an option to purchase the vehicle at the lease's conclusion, suf-

16. *DiCintio*, 713 N.Y.S.2d at 812.
17. *Id.*
18. *Id.* (citing N.Y. U.C.C. § 2-608(2) (McKinney 2002)).
19. *DiCintio*, 713 N.Y.S.2d at 812.
20. *Id.* at 813.
21. N.Y. U.C.C. §§ 2-711, 2-713 (McKinney 2002).
22. *DiCintio*, 713 N.Y.S.2d at 812-13.
23. N.Y. U.C.C. §§ 2-711, 2-713 (McKinney 2002).

ficiently resembled a sale to place the plaintiff under the protection of the Warranty Act.[24] The court also affirmed the denial of defendant Adzam's motion as to the second cause of action because privity of contract existed between plaintiff and Adzam.[25] However, the court reversed the granting of defendant Daimler's motion to dismiss the second cause of action. In doing so, the court ruled that privity could exist between plaintiff and Daimler to sustain a cause of action for implied warranty if Adzam was found to have been a sales or leasing agent of Daimler, and that dismissal was premature as discovery would be needed to determine whether privity existed.[26] In addition, the court reversed the granting of defendants' motion to dismiss the third cause of action, and ruled that the remedy of revocation does not require privity for a breach of an express warranty. Moreover, even though privity would be required to sustain a breach of an implied warranty, discovery would be necessary to determine if such privity existed.[27] Finally, the court reversed the denial of the defendants' motion to dismiss the fourth cause of action, holding that "an award of costs, fees and expenses under 15 USC § 2310(d)(2) . . . does not allege an actionable wrong to be separately sued for but simply amounts to a prayer for relief redundant of the complaint's general demand for relief."[28]

On appeal by defendants and upon the appellate division certifying the appeal for review, the court of appeals dismissed the plaintiff's first three causes of action and answered the certified question on appeal, "whether the Magnuson-Moss Warranty Act . . . applies to plaintiff['s] . . . automobile lease,"[29] in the negative, thus reversing the appellate division's ruling.

III. Discussion

The issue on appeal to the New York State Court of Appeals was "whether the Magnuson-Moss Warranty Act . . . applies to plaintiff['s] . . . automobile lease."[30] To determine whether the plain-

24. *DiCintio*, 724 N.Y.S.2d at 718.
25. *Id.* at 718.
26. *Id.*
27. *Id.*
28. *Id.* at 718-19.
29. *DiCintio*, 97 N.Y.2d at 466.
30. *Id.*

tiff's lease fell under the protection of the Warranty Act, the court addressed the purpose of the Warranty Act and whom it serves to protect. The Warranty Act was a response to complaints from automobile owners who claimed that automobile dealerships and manufacturers were not honoring their warranties on the vehicles.[31] The court noted that the Warranty Act is driven by disclosure, with the purpose of "improv[ing] the adequacy of information available to consumers, prevent[ing] deception, and improv[ing] competition in the marketing of consumer products."[32] The Warranty Act does not require the issuance of warranties, however, if manufacturers or dealerships decide to issue warranties, they must comply with the requirements of the Warranty Act, including disclosure requirements.[33] Namely, "any warrantor warranting a consumer product to a consumer by means of a written warranty shall . . . disclose in simple and readily understood language the terms and conditions of such warranty."[34] Furthermore, the Warranty Act "provides that 'to meet the Federal minimum standards for warranty' a warrantor 'must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty' and that, if the warrantor's repair attempts do not remedy the defects reasonably promptly, the warrantor must provide a refund or replacement."[35] If a consumer is damaged due to noncompliance with the Warranty Act, the consumer can "sue warrantors for damages and other relief."

The court focused on the language of the statute, specifically, "consumer,"[36] "written warranty,"[37] and "implied warranty."[38] The

31. *DiCintio*, 97 N.Y.2d at 468.

32. *Id.*

33. *Id.*

34. *Id.* (citing 15 U.S.C. § 2302(a) (2002)).

35. *Id.* at 468-69 (citing 15 U.S.C. § 2304(a)(1),(4) (2002)).

36. The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract). 15 U.S.C. § 2301(3) (2002).

37. The term "written warranty" means: (A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a

Warranty Act requires a plaintiff to be a "consumer."[39] The definition of consumer delineates three tests to determine a "consumer" (a rightful plaintiff under the Warranty Act).[40] The first test within the definition of "consumer" requires that "a buyer" exist, which "directly raises the question whether a sale has occurred."[41] The second and third tests assume a "sale" has taken place, because they require that a written or implied warranty must exist. Similarly, both written and implied warranties, also defined in the Warranty Act, require a sale to have occurred.[42] Thus, the court highlighted that to determine whether a plaintiff is a "consumer" requires the determination of whether a "sale" occurred, because every definition of "consumer" incorporates the necessity of a sale. Therefore, the "case hinges on whether [the plaintiff's] lease qualifies as a 'sale.'"[43]

The plaintiff raised three arguments as to why the Warranty Act should apply to him: (1) his lease was a sale; (2) alternatively, if it is not a sale, the Warranty Act should still apply because a sale occurred between Chrysler Financial Company L.L.C. and Adzam; and (3) he is entitled to enforce the obligations of the warranty.[44]

In response to the plaintiff's first argument, the court analyzed the plain language of the Warranty Act.[45] Noting that the terms

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buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or (B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product. 15 U.S.C. § 2301(6) (2002).

38. *DiCintio*, 97 N.Y.2d at 469. The term "implied warranty" means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product. 15 U.S.C. § 2301(7) (2002).

39. *DiCintio*, 97 N.Y.2d at 469.

40. *Id.*

41. *Id.*

42. *Id.* at 469-70. The operative language in the statute requiring a sale in the definitions of a "written warranty" and "implied warranty" is "in connection with the sale." *Id.*

43. *Id.* at 470.

44. *DiCintio*, 97 N.Y.2d at 471-74.

45. *Id.* at 470-71.

"sale" or "buyer" are not contained in the Warranty Act, the court turned to the U.C.C. law of sales.[46] The Uniform Commercial Code requires passing of title for a sale to occur.[47] Passing of title under the U.C.C. is not a component of a lease, nor part of a lease in the preceding common law before the enactment of the U.C.C.[48] The court concluded that because the plaintiff never received title to the vehicle (due the plaintiff having a lease), no sale occurred according to the U.C.C., and without a sale, the plaintiff cannot be a "consumer."[49] Although the appellate division ruled that the lease sufficiently resembled a sale to satisfy the Warranty Act, and that the plaintiff argued that his lease resembled an installment sale because of the option to buy, the court differentiated the plaintiff from a buyer in stating that a lessee is "free not to exercise the option to buy," that buying the same vehicle would cost almost three times more per month, and that lessees enjoy less rights than buyers.[50]

To further demonstrate that the Warranty Act excludes leases, the court compared the Warranty Act with the Truth in Lending Act,[51] ("TILA"), a precursor bill[52] to the Warranty Act, and to the New Car Lemon Law, (the "Lemon Law").[53] TILA was enacted seven years prior to the Warranty Act and defines "consumer lease" in a manner that the court concluded would likely encompass the

46. *DiCintio*, 97 N.Y.2d at 470.

47. *Id.* "A 'sale' consists in the passing of title from the seller to the buyer for a price (Section 2-401)." U.C.C. § 2-106(1) (2002). "'Buyer' means a person who buys or contracts to buy goods." U.C.C. § 2-103(1)(a) (2002).

48. *DiCintio*, 97 N.Y.2d at 470-471. "'Consumer lease' means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee, except an organization, who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000." U.C.C. §2A-103(1)(e) (2002). "'Lease' means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease." U.C.C. §2A-103(1)(j) (2002).

49. *DiCintio*, 97 N.Y.2d at 471.

50. *Id.*

51. 15 U.S.C. §1601 (2002).

52. H.R. CONF. REP. 93-20 (1973).

53. N.Y. Gen. Bus. Law §198-a (McKinney 2002).

plaintiff's lease.[54] Clearly, Congress was aware of the trend in leasing vehicles and "knew how to draft consumer protection statutes that cover leases and opted not to include such protection in the Warranty Act."[55] Additionally, hearings in the House of Representatives for a precursor bill of the Warranty Act reveal that advice[56] was given to include leases in the Warranty Act, but that Congress made a policy choice not to include leases in the definition of "consumer."[57] Finally, to further illustrate the purposeful exclusion of leases from the Warranty Act, the court compared the New York Lemon Law to the Warranty Act.[58] In 1986, the definition of "consumer," in the Lemon Law, which was substantially similar to the definition in the Warranty Act, was amended to include lessees.[59] The court noted that the legislative history of the Lemon Law delineates that without the amendment of "consumer," lessees would not be covered under the Lemon Law, which further demonstrates that legislatures "can expand consumer protection laws to cover leases when they wish."[60]

The plaintiff's second argument was that even if the lease is not a sale, the Warranty Act should still apply because the lease states that a sale occurred (or would occur) between Chrysler Financial Company L.L.C. and Adzam, thus creating a written warranty. The court gave two reasons why the plaintiff's argument failed.[61] The court stated that the lease provides for a sale to occur between Chrysler Financial Company L.L.C. and Adzam after the execution of the lease.[62] The plaintiff would no longer be in the lease agreement if the sale occurred. Second, the court questioned if the written warranty would even " 'become part of the basis of the bargain

54. *DiCintio*, 97 N.Y.2d at 471.

55. *Id.*

56. The suggested terminology that was advised to be included in the Warranty Act but was ultimately not included was "first buyer or lessee of a consumer retail product." *DiCintio*, 97 N.Y.2d at 473 (citing Consumer Warranty Protection – 1973: Hearings on H.R. 20 and H.R. 5021 Before the Subcomm. on Commerce and Finance of the Comm. on Interstate and Foreign Commerce, 93d Cong., at 95 (1973)).

57. *DiCintio*, 97 N.Y.2d at 472-73.

58. *Id.* at 473.

59. *Id.*

60. *Id.* 473-4.

61. *Id.* at 474.

62. *Id.*

between a supplier and a buyer for purposes other than resale' when the vehicle is sold to" Chrysler Financial Company L.L.C., which is part of the definition of a written warranty.[63]

Plaintiff's third argument that he is "a person who is entitled by the terms of such warranty . . . to enforce against the warrantor . . . the obligations of the warranty" under the definition of "consumer" in the Warranty Act was dismissed by the court since both types of warranties, written or implied, require the existence of a "sale."[64]

IV. CONCLUSION

The court of appeals dismissed the plaintiff's first three causes of action and answered the certified question on appeal, "whether the Magnuson-Moss Warranty Act . . . applies to plaintiff['s] . . . automobile lease,"[65] in the negative, thus reversing the appellate division's ruling. Although having his initial five causes of action dismissed throughout the judicial process, the plaintiff amended his complaint and included additional claims under the Lemon Law and the U.C.C. Article 2-A, which Daimler answered.

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63. *DiCintio*, 97 N.Y.2d at 474.
64. *Id.* (citing 15 U.S.C. § 2301 (3) (2002)).
65. *Id.* at 466.