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Florida District Court of Appeal Rejects Consumer's Claim that Motor Vehicle Dealer is an Agent of Manufacturer and Dismisses Consumer's Express and Implied Warranty Claims

Florida's Third District Court of Appeal has rejected a consumer's claim that a motor vehicle dealer is an agent of a manufacturer, even though the manufacturer retained some control over a dealer with respect to manufacturer trademarks, employee training, and other activities commonly addressed in dealer sales and service agreements. In *Ocana v. Ford Motor Co.* 2008 WL 4412454 (Fla. 3rd DCA) (not final and subject to a timely filed motion for rehearing), after dismissing the consumer's express warranty claims, the court concluded that such activities did not create an actual or apparent agency relationship. Therefore, under Florida law, the consumer had no cause of action for breach of implied warranty. To view the court's opinion, click [here](#).

In *Ocana*, the consumer sued the manufacturer, Ford Motor Company, and the dealer, Warren Henry Automobiles, Inc., alleging breach of express and implied warranties with regard to the 2006 Land Rover he leased from the dealer. In the lease contract, the dealer had conspicuously disclaimed all express and implied warranties, and the court upheld the lower court's dismissal of the consumer's breach of warranty claims against the dealer.

As to Ford, the court explained that the consumer must allege and prove that Ford did not comply with the terms of its New Vehicle Limited Warranty. Ford's warranty limited the consumer's remedies to repair or replacement of parts defective in material or workmanship, at no cost to the consumer, if the vehicle was brought to an authorized repair facility during the warranty period. Notwithstanding these terms, the consumer argued that section 2304(a) of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301-2312 (1976) required Ford to repair the vehicle within "a reasonable number of attempts," or to permit the consumer to elect a refund or replacement vehicle.

The court rejected this argument, noting that the Magnuson-Moss Act does not require a manufacturer or seller to extend a written warranty. However, if the manufacturer does, the warranty must be conspicuously labeled as "full" or "limited," and the "reasonable number of repair attempts" requirement of section 2304(a) applies to full, not limited, warranties.¹ Therefore, the consumer had no cause of action against Ford for breach of express warranty, unless he could allege and prove that Ford did not comply with the warranty terms. Instead, the consumer merely alleged that he had returned the vehicle to the dealership for repairs at least four times, and produced repair records showing that the vehicle had been at the dealership a total of 42 days. Because the consumer would not, or could not, amend his complaint to allege that Ford either refused to repair the vehicle, or otherwise failed to adequately repair the vehicle under the terms of the limited warranty, the court dismissed the consumer's express warranty claims against Ford.

¹ The Third DCA expressly rejected the statement made by Florida's Fourth DCA, that "a cause of action exists under Magnuson-Moss where there has been a breach of warranty which has not been remedied although the warrantor has been given a reasonable opportunity to cure the breach." *Gates v. Chrysler Corp.*, 397 So.2d 1187, 1189 (Fla. 4th DCA 1981); see also *Rentas v. DaimlerChrysler Corp.*, 936 So.2d 747 (Fla. 4th DCA 2006). The Third DCA noted that these decisions lacked any analysis concerning the circumstances under which section 2304(a) may be applied, and stated that it considered *Gates* to be an "outlier, and . . . the only decision contrary to the overwhelming weight of authority available for consideration from other courts all over the United States." In Florida, Third DCA decisions are not binding on the Fourth DCA, and therefore *Gates* remains good law in that jurisdiction unless the Florida Supreme Court resolves the conflict.

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The court then addressed the consumer's allegations that Ford had made and breached implied warranties. The court first reaffirmed that under Florida law, in order to maintain an action against Ford for breach of implied warranty, the consumer must be in privity of contract with Ford. Here, there was no privity of contract because the consumer purchased the vehicle from an independent dealer, not Ford.

The consumer recognized this obstacle to his implied warranty claims and attempted to avoid it by alleging that the dealer was Ford's agent. In support, the consumer alleged:

1. Ford exercises control over dealer location, size and number of dealer logos on dealer's premises;
2. Ford exercises control over prizes given to dealer's employees;
3. Ford exercises control over the number of bathrooms dealer must make available to the public;
4. Ford exercises control over training and certification of the dealer's sales and service personnel;
5. Ford requires the dealer to use Ford-supplied computer software;
6. Ford requires the dealer to report vehicle sales and sale details, including name and address of purchaser and related information;
7. Ford requires the dealer to provide warranty service paid for by Ford;
8. Ford requires the dealer to allow Ford to enter the dealer's business premises to audit the records and operations of the dealership as to sales and service.

The court concluded that even if these facts were true, such facts did not support the existence of an actual agency relationship between Ford and the dealer. In particular, the court noted that the complaint is devoid of the "tell-tale signs of a principal-agent relationship, such as the ability of [Ford] to hire, fire, or supervise dealership employees or dealer ownership."

The consumer also claimed that an apparent agency relationship existed between Ford and the dealer, because the consumer could "reasonably conclude" that the dealer was Ford's agent. In support, the consumer alleged:

1. Ford permitted the dealer to hold itself out as an "authorized dealer," and to display Ford logos and other advertising materials prepared by Ford on its premises;
2. Ford trained dealer personnel and provided them with technical bulletins; and
3. Ford required automobile purchasers to seek redress of warranty issues in the first instance from the dealer.

In rejecting this argument, the court concluded that even if these facts were true, such facts do not constitute a representation by Ford to the consumer that the dealer is its agent.

Therefore, since the consumer could not establish privity of contract with Ford, or an agency relationship between Ford and the dealer, the court upheld the trial court's dismissal of the consumer's implied warranty claims against Ford.

In addition to providing a strong defense in breach of warranty claims, *Ocana's* broad rulings on the lack of an agency relationship between a motor vehicle manufacturer and dealer could assist in the defense of other vicarious liability claims brought by a consumer against a manufacturer for the wrongful conduct of the dealer, such as the dealer's failure to pay off the outstanding lien on the consumer's trade-in vehicle, or otherwise failing to live up to the dealer's obligations to the consumer.



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