

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) THIRTEENTH JUDICIAL CIRCUIT

Jessie J. Carter,

) C.A. NO. 2019-CP-23-07116

) Plaintiff,

) vs.

) ORDER

) Marco A. Quiroga, et al

) RECEIVED

) Defendants.

) Jan 04 2022

) SC Court of Appeals

_____)
This matter was before the Court on November 9, 2021 for Defendant Palmetto Surety Corporation’s (“PSC’s”) Motion to Dismiss and Plaintiff Jessie Carter’s (“Plaintiff’s”) Motion for Summary Judgment. This matter concerns a dispute regarding the attempted purchase of an automobile at Oscar’s Auto Sales (“OAS”) owned by Defendant Marco Quiroga (“MQ”) and run by Oscar Quiroga (“OQ”). Plaintiff alleges that that the Defendants OAS, MQ, and OQ defrauded the Plaintiff by wrongfully keeping money paid to them by the United States Automobile Association (“USAA”) as part of a loan to Plaintiff after Plaintiff attempted to cancel the transaction. Plaintiff has similarly brought a claim under S.C. Code 56-15-320 against PSC, who is the surety for OAS.

I. DISCUSSION

A. The Claim against PSC is Dismissed for Failure to State a Claim

The claim against PSC is rooted in S.C. Code 56-15-320(b), which states that

Each applicant for licensure as a dealer or wholesaler shall furnish a surety bond in the penal amount of thirty thousand dollars on a form prescribed by the director of the department. The bond must be given to the department and executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered **by an owner of a motor vehicle**, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter. **An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter.** (emphasis added)

PSC argues that Plaintiff's claim cannot stand because Plaintiff was never the owner of this motor vehicle. The Court agrees. "It is clear the legislature intended to provide only the owner of a motor vehicle . . . with a cause of action against the surety on a bond issued pursuant to that statute. *Mid-State Auto Auction of Lexington v. Altman* 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

Plaintiff argues that he was an owner in the sense that he acquired an ownership interest when he paid the deposit for the vehicle. The Court need not address that contention. Whether the Plaintiff was or wasn't an owner at the time he paid the deposit, he was not an owner after he rescinded the contract. The Plaintiff's own complaint stated that he "became frustrated and determined to cancel the transaction." Pl's 3rd Amended Complaint, paragraph 12. He would certainly have been more frustrated if, after OAS agreed to cancel the sale, they had brought a suit for the price of the vehicle with the argument that Plaintiff had taken ownership. Similarly, Plaintiff

cannot now argue that he retains an ownership interest today even after the sale contract has been rescinded by both parties.

In conclusion, any alleged fraud that occurred would have occurred after the Plaintiff had already cancelled the purchase, and thus after the Plaintiff had rescinded any ownership interest he may have had. Therefore, the Court finds that Plaintiff was not an owner of an automobile at the time of the alleged fraud for the purposes of S.C. Code 56-15-320(b), and PSC's Motion to Dismiss the claim against it is GRANTED.

B. There Exist Genuine Issues of Material Fact Such that Summary Judgment is Inappropriate at this Time.

Plaintiff also moves for Summary Judgment against all Defendants. Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c). SCRPC. “The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” *Matsell v. Crowfield Plantation Cmty. Servs. Ass’n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in the pleadings to withstand a summary judgment motion but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.,2d 581, 584 (Ct. App. 1994). “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). “[W]hen

the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.” *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

Here, there exist genuine issues of material fact which preclude summary judgment at this time. Several remaining factual disputes are that: The Defendants argue that the Plaintiff is to blame for the USAA loan going to OAS because he failed to follow up with his own finance company; OQ argues that he is not the owner or operator of OAS; OAS denies that they have kept the Plaintiff’s money and contend that they do not owe him any refund. Therefore, genuine issues of material fact remain and Plaintiffs Motion for Summary Judgment is DENIED.

II. CONCLUSION

In conclusion, Palmetto Surety Corporation’s Motion to Dismiss is GRANTED and Jessie Carter’s Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

Letitia H. Verdin
Thirteenth Circuit Court Judge

November ____, 2021

Greenville, South Carolina



Greenville Common Pleas

Case Caption: Jessie J Carter vs. Marco A Quiroga, defendant, et al

Case Number: 2019CP2307116

Type: Order/Summary Judgment

So Ordered

s/Letitia H. Verdin, SC Judge 2162