IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY,
FLORIDA

TOM GALATI,

Appellant,

v.

WEST COLONIAL AUTO, INC. d/b/a
ORLANDO KIA WEST, JOSEPH ROSSI, and
YOUSSEF MNASS,

Appellees.
_____/

CASE NO.: 2014-CV-000077-A-O
Lower Case No.: 2013-SC-005104-O

Appeal from the County Court, in and for Orange County, Florida, A. James Craner, County Judge.

Nikie Popovich, Esquire, for Appellants.

Jeremy Kespohl, Esquire, for Appellees.

Before LATIMORE, DOHERTY, and SCHREIBER, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Tom Galati ("Galati"), filed a timely appeal of the trial court's Final Judgment entered on October 6, 2014 in favor of Appellees, West Colonial Auto, Inc. d/b/a/ Orlando Kia West, Joseph Rossi, and Yousseff Mnass ("West Colonial Auto et al."). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

This appeal arose from Galati's pro se Statement of Claim filed in the lower court on June 12, 2013 pertaining to a used vehicle that he purchased from West Colonial Auto. While some of Galati's allegations addressed the vehicle's steering problem, Galati stated in his Statement of Claim that he was pursuing that issue through another avenue. Instead, the only claim in the lower court that Galati pursued was his fraud claim against West Colonial Auto and its general manager Joseph Rossi ("Rossi"), and salesperson Yousseff Mnass ("Mnass"), alleging that Mnass intentionally misrepresented that the vehicle had a six cylinder engine to induce him to purchase it when in fact, the vehicle had a four cylinder engine.

Ultimately, on April 23, 2014, West Colonial Auto filed its Motion for Final Summary Judgment ("MSJ") arguing that the facts were undisputed including that a window sticker was affixed to the subject vehicle clearly indicating that it was equipped with a four cylinder engine and argued that the window sticker was part of the written contract for the subject vehicle. West Colonial Auto also argued that while there may be a dispute as to whether Rossi and Mnass committed the alleged specific acts, they could not be held personally liable while acting within the scope of their employment. Galati, in his Response in Opposition to the MSJ argued: 1) A window sticker was not affixed to the subject vehicle; 2) Mnass knew that he was only interested in purchasing a vehicle equipped with a six cylinder engine; and 3) Mnass intentionally misrepresented the type of engine in the subject vehicle to induce him to purchase it.

The MSJ was heard on June 3, 2014, where Galati appeared pro se and counsel for West Colonial Auto appeared. There was no court reporter present at the hearing; thus, no transcript of the proceeding. On June 18, 2014, following the hearing, the trial court entered the "Order Granting Defendants' Motion for Final Summary Judgment" finding: 1) There were no genuine

issues of material fact; 2) Rossi and Mnass, could not be held personally liable while acting within the scope of their employment; 3) The fraudulent inducement exception to the parol evidence rule did not apply; 4) Defendants were not responsible for any warranties for the subject vehicle; and 5) Plaintiff failed to properly allege a negligence action. Thereafter, on July 7, 2014, West Colonial Auto moved for entry of final judgment whereupon on October 6, 2014, the trial court entered the Final Judgment.

Summary of Arguments on Appeal

Galati argues that the trial court erred in granting summary judgment because: 1) there are genuine issues of material fact pertaining to whether the window sticker was affixed to the subject vehicle and whether Mnass intentionally misrepresented to him that the subject vehicle was equipped with a six cylinder engine to induce him to purchase the vehicle; 2) the trial court incorrectly applied negligence law instead of intentional tort law in finding that Mnass and Rossi could not be held personally liable for an intentional misrepresentation while acting within the scope of their employment; 3) the trial court incorrectly relied on the window sticker in finding that Galati's allegation of intentional misrepresentation was inadmissible under the parol evidence rule; and 4) the trial court entered judgment without providing Galati an opportunity to amend his pleading.

Conversely, West Colonial Auto, Rossi, and Mnass argue: 1) No fundamental errors appear on the face of the order granting the FSJ and all of Galati's arguments require consideration or the assumption of factual findings and legal conclusions that are not apparent on the face of the judgment; 2) Galati in his Initial Brief, misrepresents the basis for the trial court's order granting the FSJ and focuses upon non-relevant facts that were not relied upon in the court's ruling, i.e. the trial court did not consider disputed facts in its determination that Mnass

and Rossi were employees acting within the scope of their employment nor did it consider disputed facts as to the fraud claim that as a matter of law fails because the fraud inducement exception does not apply; 3) The trial court was not required to consider the type of engine because that issue was not relevant in light of its determination that the fraud claim failed as a matter of law; and 4) Galati did not request the opportunity to amend his pleadings; thus, the trial court was not obligated to allow him to do so.

Standard of Review

The standard of review for summary judgment is de novo. *Krol v. City of Orlando,* 778 So. 2d 490, 491 (Fla. 5th DCA 2001); *Volusia County v. Aberdeen at Ormond Beach, L.P*., 760 So. 2d 126, 130 (Fla. 2000). Accordingly, the appellate court must determine if there is any genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Krol* at 491, 492, citing Fla. R. Civ. P. 1.510(c). Also, the standard of review applicable to the amendment of pleadings is abuse of discretion. *Gate Lands Co. v. Old Ponte Vedra Beach Condo*., 715 So. 2d 1132 (Fla. 5th DCA 1998).

Analysis

To prevail in a fraud in the inducement claim, the plaintiff must prove by the greater weight of the evidence that: 1) a false statement was made regarding a material fact; 2) the individual who made the statement knew or should have known that it was false; 3) the maker intended that the other party rely on the statement; and 4) the other party relied on the false statement to its detriment. *Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corporation*, 850 So. 2d 536, 542 (Fla. 5th DCA 2003).

The subject retail sales agreement ("contract") that Galati signed in purchasing the vehicle included the following disclaimers:

> If the above described purchased vehicle is used, purchaser certifies that the "Buyers Guide" label was affixed to said vehicle on delivery. The information you see on the window form for this vehicle is part of the contract. Information on the window form overrides any contrary provision in the Contract of Sale. FTC Rule Sec. 455.3(b); 49FR45728; see also: 49FR45710-45711.
>
> I understand that verbal promises by the salesmen are not valid. Any promises or understanding not specified in writing on the contract are hereby expressly waived, and the same shall in no manner constitute a part of this agreement.
>
> The purchaser hereby agrees that they [sic] have verified the description of the vehicle to their satisfaction, and it is the vehicle they desire to purchase.

Notwithstanding the existence of these disclaimers, they do not automatically preclude Galati's claim for fraud in the inducement. *Tinker v. De Maria Porsche Audi, Inc*., 459 So. 2d 487, 490-491 (Fla. 1984) (discussing that when fraud enters into a transaction to the extent of inducing a written contract, the parol evidence rule is not applicable and holding that the clause inserted into the sales contract which disclaimed oral representations made with respect to the condition or fitness of the vehicle was not a bar against an action for fraud or misrepresentation based on the oral representations that were alleged to be fraudulent and made for the purpose of inducing the sale).

However, there are factors that can preclude a fraud in the inducement claim. The parol evidence rule precludes consideration of oral representations when proper disclosure of the truth is subsequently and adequately revealed in a written agreement between the parties. *Taylor*, 850 So. 2d at 542-543. From review of the record in the instant case, the only document that reveals the vehicle's four cylinder engine is the window sticker. Galati states that there was no window sticker on the subject vehicle. However, he did sign the contract with the provision acknowledging that the Buyer's Guide label/window form ("sticker') was affixed to the vehicle

upon delivery. Also, he did not file an affidavit attesting that there was no window sticker. Further, Rossi confirmed in his Affidavit that the window sticker was part of the contract and included it as an exhibit. However, Rossi did not actually state that Galati was provided with the window sticker. Also, it appears that Rossi did not conduct the paperwork transaction, therefore, he did not have personal knowledge as to this issue. Further, notwithstanding the provision that the window sticker was affixed to the vehicle upon delivery, it is unclear whether the vehicle was delivered to Galati prior to him signing the contract. Thus, a genuine issue of material fact exists as to whether Galati was provided the window sticker prior to or with the contract documents or not at all. This issue is genuine and material because if the sticker was provided to Galati timely, then the parol evidence rule precludes the oral representation from being admissible; thus, the fraud claim fails. If the window sticker was not timely provided, then the fraud claim may be considered via trial testimony as to the alleged oral representations that can be admitted into evidence.

Further, the next issue precluding summary judgment would be whether the oral representations were made by mistake or intentionally. If the representations are proven to be made by mistake, then West Colonial Auto et al.'s argument that Mnass and Rossi could not be held personally liable has merit. However, that argument fails if the oral representations are proven to be intentional which could subject Mnass and possibly Rossi to personal liability. *La Pesca Grande Charter, Inc. v. Moran*, 704 So. 710, 712 (Fla. 5th DCA 1998) (addressing alleged false representations about the condition of a vessel and explaining that under Florida law, individual officers and agents can be personally liable for false representations made intentionally even if such representations were made within the scope of their employment or as corporate officers).

Lastly, Galati argues that the trial court erred by not allowing him to amend his pleading to clarify that he was not alleging a breach of warranty claim. From review of the record, this Court finds that his argument lacks merit because he did not timely motion the court to amend his pleadings. Further, this Court finds that the amendment was not necessary as Galati's allegations in his Statement of Claim were sufficiently clear that he was only pursuing the fraud claim in the lower court and not the vehicle's steering problem claim.

In conclusion, because of the remaining issues as discussed above, the trial court erred in entering summary judgment. Therefore, based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's Final Judgment entered on October 6, 2014 is **REVERSED** and remanded for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 24th day of June, 2015.

/S/
ALICIA L. LATIMORE
Presiding Circuit Judge

DOHERTY and SCHREIBER, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Nikie Popovich, Esquire,** Popovich Law Firm, P.A., 390 N. Orange Avenue, Suite 2300, Orlando, Florida 32801; **Jeremy Kespohl, Esquire**, Bromagen & Rathet, P.A., 135 2nd Avenue North, Suite 1, Jacksonville Beach, Florida 32225; **The Honorable A. James Craner** (presiding Judge previously assigned to lower court case) Osceola Two Courthouse Square, Kissimmee, Florida 34741; and **The Honorable Steve Jewett** (Judge currently assigned to lower court case), 425 N. Orange Avenue, Orlando, Florida 32801, on this 25th day of June, 2015.

/S/
Judicial Assistant