

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

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|-------------------------------------------|---|-----------------------------------------|
| IWOI, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Champion Frame-Align, Inc., an Illinois |) | |
| corporation, George Reich, and William |) | |
| Richoz, |) | No. 10 L 11313 <i>consolidated with</i> |
| |) | 12 L 10165 |
| Defendants. |) | |
| <hr style="width: 40%; margin-left: 0;"/> |) | Commercial Calendar T |
| |) | |
| IWOI, LLC, |) | Judge John C. Griffin |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Barrington Motor Sales RV d/b/a |) | |
| Barrington Motor Sales and Service, |) | |
| Inc., Bryan Bransky, and Sean |) | |
| Bransky, |) | |
| |) | |
| Defendants. |) | |

ORDER

This cause is before the Court on Defendants Barrington Motor Sales RV ("Barrington"), Bryan Bransky, and Sean Bransky's motion for summary judgment on Plaintiff IWOI, LLC's complaint under section 2-1005 of the Illinois Code of Civil Procedure.

I.

The Plaintiff alleges that the Defendants sold the Plaintiff an RV that purportedly contained material defects. In addition, the Plaintiff alleges that the Defendants knew of the defects at the time of sale and omitted disclosure of the defects and actively concealed the defects from the Plaintiff. The Plaintiff filed an eight-count complaint alleging claims for (1) violation of the Illinois Consumer Fraud Act (count I – Barrington; count II – Sean Bransky; count III – Bryan

Bransky); (2) Action to Recover the Price under 810 ILCS 5/2-711(1) (count IV – Barrington); (3) common law fraud (count V – Barrington; count VI – Sean Bransky; count VII – Bryan Bransky); and (4) revocation of acceptance (count VIII – Barrington). The Court notes that the parties, by agreement and with the consent of this Court, submitted complete copies of briefs and related statements that the parties previously filed in the matter of *IWOI, LLC v. Monaco Coach Corp., et al.*, Case No. 07 C 3453 (N.D. Ill. 2007).

II.

Summary judgment is proper when the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in a light most favorable to the nonmovant, fail to establish a genuine issue of material fact, thereby entitling the movant to judgment as a matter of law. 735 ILCS 5/2-1005(c); *Adames v. Sheehan*, 233 Ill. 2d 276, 295-96 (2009). A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or if reasonable persons might draw different inferences from undisputed facts. *Adames*, 233 Ill. 2d at 296. However, summary judgment is a drastic means of disposing of litigation and should be granted only when the right of the moving party is clear and free from doubt. *Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). A party opposing a summary judgment motion is not required to prove their case; but, it is under a duty to present a factual basis which would arguably entitle it to judgment in their favor, based on the applicable law. *Soderlund Bros. v. Carrier Corp.*, 278 Ill. App. 3d 606, 615 (1st Dist. 1995).

A.

Barrington moves for summary judgment on count VIII arguing that the Plaintiff's purported acceptance of the RV, with knowledge of the alleged defects, bars the Plaintiff's revocation claim. In contrast, the Plaintiff contends that material facts exist as to Barrington's (1) knowledge of all of the RV's purported defects; (2) knowledge regarding the severity of the defects; and (3) that acceptance was based on the assurances of Barrington that the defects were cured.

Section 2-608(1) of the Illinois Uniform Commercial Code states that: "[t]he buyer may revoke his acceptance of a . . . commercial unit whose non-conformity substantially impairs its value to him if he has accepted it: (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances." 810 ILCS 5/2-608(1). Whether revocation is justified is ordinarily a question of fact to be determined by the circumstances of the particular case. *Boysen v. Antioch Sheet Metal, Inc.*, 16 Ill. App. 3d 331, 332 (2nd Dist. 1974). The Plaintiff attached the affidavit of Robert Woischke, the Plaintiff's manager who

was involved in purchasing the RV on behalf of the Plaintiff. The affidavit lists the purported defects that Mr. Woischke was allegedly unaware of at the time he "accepted" the RV. Therefore, the Court finds that questions of fact exist as to whether the Plaintiff was justified in revoking his acceptance.

Barrington also argues that under the purchase agreement, the Plaintiff purchased the RV "AS IS," and therefore, because Barrington delivered the good described in the contract, the good can neither be deemed nonconforming nor can there be grounds for the Plaintiff to revoke acceptance. "When the evidence unequivocally demonstrates that the substantially defective nature of the vehicle clearly impaired its value to the Plaintiffs . . . revocation of acceptance is appropriate even if the dealer has properly disclaimed all implied warranties." *Blankenship v. Northtown Ford, Inc.*, 95 Ill. App. 3d 303, 305-07, 420 N.E.2d 167, 50 Ill. Dec. 850 (4th Dist. 1981).

The Court finds that questions of fact exist regarding Barrington's argument for the following reasons. First, the trier of fact must determine whether the alleged defects in the goods caused *substantial impairment* to the buyer. *See GNP Commodities, Inc. v. Walsh Heffernan Co.*, 95 Ill. App. 3d 966, 978 (1st Dist. 1981) (substantial impairment is measured in terms of the particular needs of the buyer). Specifically, the Court finds that questions of fact exist regarding whether or not the evidence demonstrates that the purported defects in the RV substantially impaired its value to the Plaintiff. Similarly, factual questions of whether the attempted revocation of acceptance was timely or whether delay in buyer's attempted revocation of acceptance was reasonably induced by the seller's continued assurances that repairs would be successful must also be resolved. *See Id.* at 974 (the reasonable time for revocation of acceptance may be extended if the seller gives continuous assurances). The Court finds that because factual questions regarding whether or not the defects had a substantial impairment on the Plaintiff's value must first be determined, the Court is unable to determine, as a matter of law, whether or not the disclaimer precluded the Plaintiff's ability to revoke his acceptance.

Secondly, the Court finds that questions of fact exist regarding whether or not Barrington delivered the RV as required under the purchase agreement because presumably, the purchase agreement required Barrington to tender a fully conforming RV, which based on the allegations within the Plaintiff's complaint, Barrington did not. Therefore, Barrington's motion for summary judgment on count VIII of the Plaintiff's complaint is denied.

B.

The Plaintiff argues that the Defendants are not entitled to summary judgment on counts I-III because questions of material fact exist as to what the

Defendants purportedly concealed and failed to disclose to the Plaintiff, including (1) the existence of unfixable defects on the RV and (2) improper modifications made in an attempt to mask the defects. In order to state a cause of action under the Illinois Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act"), a plaintiff must show: (1) that the defendant engaged in a deceptive act or practice; (2) that the defendant intended the plaintiff to rely on the deception; (3) that the deception occurred in the course of conduct involving trade or commerce; and (4) actual damage to the plaintiff; (5) proximately caused by the deception. *Capiccioni v. Brennan Naperville, Inc.*, 339 Ill. App. 3d 927, 933 (2nd Dist. 2003). An omission or concealment of a material fact in the conduct of trade or commerce constitutes consumer fraud. *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 501 (1997). Concealment is actionable where it is employed as a device to mislead. *First Midwest Bank, N.A. v. Sparks*, 289 Ill. App. 3d 252, 257 (2nd Dist. 1997). A car dealer that "conceals, suppresses, or fails to disclose a material fact to a consumer violates section 2 of the [Consumer Fraud Act] if the dealer intended the consumer to rely upon the concealment, suppression, or omission." *Totz v. Cont'l Du Page Acura*, 236 Ill. App. 3d 891, 903 (2nd Dist. 1992).

The Court finds that questions of material fact exist regarding whether the Defendants knew that the RV had unfixable defects. In addition, the Court finds that if the Defendants knew of unfixable defects, questions of material fact exist regarding whether the Defendants concealed and failed to disclose them to the Plaintiff. Further, the Court finds that questions of fact exist regarding Defendant Bryan Bransky's liability under the Consumer Fraud Act because it is unknown whether, at the time he prepared and signed an inspection report stating that there were no defects to the RV, he knew that unfixable defects existed on the RV. Therefore, the Defendants' motion for summary judgment on counts I - III of the complaint is denied.

C.

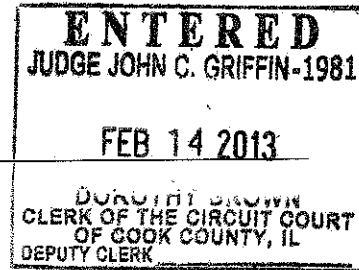
The Court notes that the Defendants moves for summary judgment on counts V – VII by including a one sentence citation, without a supporting argument, to an Illinois Appellate Court opinion regarding the element of justifiable reliance. The Court finds that the Defendants failed to meet their burden of establishing that no questions of material fact exist regarding counts V – VII. Therefore, the Defendants' motion for summary judgment on counts VI – VII of the complaint is denied.

III.

For the foregoing reasons, it is hereby **ORDERED**:

- (1) Barrington's motion for summary judgment on count VIII of the Plaintiff's complaint is **DENIED**;
- (2) Defendants' motion for summary judgment on counts I - III of the Plaintiff's complaint is **DENIED**;
- (3) Defendants' motion for summary judgment on counts VI - VII of the complaint is **DENIED**;
- (4) The parties have until February 22, 2013 to pick up the unmarked courtesy copies tendered to the Court, otherwise they will be discarded;
- (5) This case is continued for a case management date of March 1, 2013 at 9:30 a.m. without further notice.

ENTERED,



Judge John C. Griffin, No. 1981