

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARLA PAVESE, Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
GENERAL MOTORS CORPORATION and TIARA MOTOR COACH CORPORATION, Defendants.	:	No. 97-3688
	:	

MEMORANDUM AND ORDER

Yohn, J.

February , 1998

Carla Pavese (“Pavese”) brings this action against Chevrolet Motor Division of General Motors Corporation (“GM”) and Tiara Motor Coach Corporation¹ to recover damages for alleged breach of warranty stemming from her lease of a new 1994 Chevrolet G20 Tiara Conversion van. In her four-count complaint, Pavese seeks recovery based upon the Pennsylvania Automobile Lemon Law (“the Lemon Law”), 73 PA. CONS. STAT. ANN. § 1955 (West 1996) (Count I), the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. § 2310(d)(1) (Count II), the Pennsylvania Uniform Commercial Code (“PUCC”), 13 PA. CONS. STAT. ANN. § 2101, et seq. (West 1996) (Count III), and the Pennsylvania Unfair Trade Practices and Consumer Protection Law

¹ On July 11, 1997, Tiara Motor Coach Corporation (“Tiara”) filed for bankruptcy. See Notice of the Stay of all Proceedings against Tiara Motorcoach Corporation, Aug. 21, 1997. All proceedings against Tiara are therefore stayed.

("UTPCPL"), 73 PA. CONS. STAT. ANN. §§ 201-1 et seq. (West1996) (Count IV).

Pavese filed a motion for leave to amend the jurisdictional allegations in her complaint.² In response to Pavese's motion, GM filed a cross-motion to dismiss all counts: Count I for failure to state a claim upon which relief can be granted, see Fed. R. Civ. P. 12(b)(6), and all other counts for lack of subject matter jurisdiction, see Fed. R. Civ. P. 12(b)(1). For the reasons below, the court will grant GM's motion with respect to Count I, but will deny GM's motion with respect to all other counts.

I. Standards of Review

In deciding a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), the court must "determine whether, under any reasonable reading of the pleadings, the plaintiff[] may be entitled to relief" Nami v. Fauver, 82 F.3d 63, 65 (3d Cir.1996). All of the allegations in the plaintiff's complaint must be accepted as true, as well as all reasonable inferences that may be drawn therefrom. Id. Dismissal of claims under Rule 12(b)(6) should be granted only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

The court uses a different standard when deciding motions to dismiss for failure to establish the jurisdictional amount in controversy required for diversity jurisdiction

² In her original complaint, Pavese alleged that jurisdiction was founded upon 28 U.S.C. § 1332. See Complaint ¶ 4. After this court granted Pavese's motion for leave to amend the complaint, see Pavese v. General Motors, 97 Civ. 3688, Order, Nov. 5, 1997, she filed an amended complaint alleging that this court's subject matter jurisdiction is based upon both 28 U.S.C. § 1332 and 28 U.S.C. § 1331. See First Amended Complaint ¶ 4.

pursuant to 28 U.S.C. § 1332:

The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.

St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938). The court will uphold a reasonable, good faith estimate of plaintiff's claims at the time the action begins, even if the ultimate award departs from that estimate. See, e.g., McNulty v. Travel Park, 853 F.Supp. 144, 146 (E.D. Pa. 1994). The court construes all facts and reasonable inferences in favor of the non-moving party. See, e.g., Rock v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir.1989).

II. Discussion

A. Pennsylvania Automobile Lemon Law

In Count I, Pavese brings a cause of action pursuant to § 1955 of the Lemon Law.³ This section provides, in relevant part:

If a manufacturer fails to repair or correct a non-conformity after a reasonable number of attempts, the manufacturer shall, at the option of the purchaser, replace the motor vehicle . . . or accept return of the vehicle from the purchaser, and refund to the purchaser the full purchase price, including all collateral charge, less a reasonable allowance for the purchaser's use of the vehicle, not exceeding \$.10 per mile driven or 10% of the purchase price of the vehicle, whichever is less.

³ The Lemon Law provides that the “manufacturer of a new motor vehicle sold and registered in the Commonwealth shall repair or correct, at no cost to the purchaser, a nonconformity which substantially impairs the use, value or safety of said motor vehicle which may occur within a period of one year following the actual delivery of the vehicle to the purchaser, within the first 12,000 miles of use or during the term of the warranty, whichever may first occur.” 73 PA. CONS. STAT. ANN. § 1954.

74 PA. CONS. STAT. § 1955. The right to bring such an action rests with a “purchaser,” who is defined as “[a] person or his successor or assigns, who has obtained ownership of a new motor vehicle by transfer or purchase or who has entered into an agreement or contract for the purchase of a new motor vehicle which is used or bought for use primarily for personal, family or household purposes.” 73 PA. CONS. STAT. ANN. § 1952.

GM argues that Pavese may not recover under this statute because Pavese is not a “purchaser.” Defendant, General Motors Corporation's Memorandum in Response to Plaintiff's Motion to Amend the Complaint and Cross-Motion of Defendant, General Motors to Dismiss Plaintiff's Complaint or in the Alternative to Dismiss Count I (“Defendant's Mem.”) at 2-4. Pavese responds that “the issue of whether a lessee may invoke the Lemon Law in Pennsylvania has never been resolved” and “[n]othing in the Lemon Law's legislative history indicates that lease consumers were intentionally excluded from its protections.” Plaintiff's Response in Opposition to Defendant's Cross-Motion to Dismiss for Lack of Jurisdiction (“Plaintiff's Mem.”) at 5.

The Supreme Court of Pennsylvania has not yet ruled on this issue. The Superior Court, however, has held that “[n]either lessee nor lessor in a lease situation qualifies as a purchaser within the clear meaning of the language in 74 P.S. § 1952.” Industrial Valley Bank and Trust Co. v. Howard, 533 F.2d 1055, 1059 (Pa. Super. Ct. 1987), appeal denied, 549 A.2d 136 (Pa. 1988).⁴ In Howard, the court rejected the

⁴ A federal court sitting in diversity is required to apply the substantive law of the forum state. See Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); McKenna v. Pacific Rail Serv., 32 F.3d 820 (3d Cir. 1994). Absent controlling statutory authority, the federal court must “turn to the decisions of the highest state tribunal to answer a question of state law.” United States Underwriters Insurance Co. v. Liberty Mutual Insurance, 80 F.3d 90, 93 (3d Cir. 1996). “Absent clear guidance from the

appellant-lessee's argument that the appellee-lessor had both the right and the responsibility to assert claims under the Lemon Law. See id. at 1059. The court explained that “[w]hile the lessor retains legal possession [of a leased vehicle], it is not a purchaser for use primarily for personal or household purposes.” See id. The court went on to explain that the appellant-lessee could not bring a claim under the Lemon Law either: “[w]hile the lessee may be using the vehicle for . . . [the] purposes [specified in the statute], he is not a purchaser.” Id. The court noted that the case “call[ed] out for legislative action to resolve any possible ambiguity in th[e] term,” but concluded that it was “constrained to go further than the plain language of the statute.” Id. at 1060 n.3.⁵

Pennsylvania Supreme Court, [this court] must predict how [the supreme court] would decide the issues.” Fleck v. KDI Sylvan Pools, Inc., 981 F.2d 107, 113 (3d Cir. 1992) (citing West v. American Telephone & Tel. Co., 311 U.S. 223, 237 (1940)), cert. denied sub nom. Doughboy Recreational, Inc. v. Fleck, 507 U.S. 1005 (1993). The court should rely on decisions of the intermediate appellate courts when they are persuasive, unless the court is convinced that the supreme court would decide otherwise. See id.; Surace v. Caterpillar, Inc., 111 F.3d 1039, 1044 (3d Cir. 1997) (noting superior court opinions are entitled to “due regard”); Ragan v. Tri-County Excavating, Inc., 62 F.3d 501, 513-14 (3d Cir. 1995) (noting that opinions by the Pennsylvania Superior Court “are persuasive precedent . . . and are ‘not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise.’” (quoting West, 311 U.S. at 237)).

⁵ A number of state and federal courts have been similarly reluctant to extend the definition of “purchaser” to include parties that do not fall within the precise wording of the statute. See Reeves v. Morelli-Hoskins ford, Inc., 609 F.2d 828, 830 (Pa. Super. Ct. 1992) (“Any expansion of the definition of purchaser to include those who no longer own or possess their vehicles must be a legislative decision.”); Berry v. General Motors Corp., 1989 WL 86224, at *1 (E.D. Pa. July 28, 1989) (holding that a plaintiff whose car had been repossessed could not recover under the Lemon Law because he no longer had title to or possession of his motor vehicle); Simons v. Mercedes-Benz of N.A., Inc., 1996 WL 103796 (E.D. Pa. March 7, 1996) (holding that a plaintiff who had “traded in” his automobile could not maintain an action under the Lemon Law); Sinnerard v. Ford Motor Co., 1996 WL 544226 (E.D. Pa. Sept. 23, 1996) (holding that a plaintiff whose

This court finds that the court's reasoning in Howard is sound, and is not “convinced by other persuasive data that the highest court of [this] state would decide otherwise.” Ragan, 62 F.3d at 513-14 (quoting West, 311 U.S. at 237)). Unlike many other state lemon laws, the Pennsylvania statute does not specifically cover lease agreements. Compare 73 PA. CONS. STAT. ANN. § 1951 with FLA. STAT. Ann. §§ 681.101, 681.102 (West 1997); MO. ANN. STAT. § 407.560 (West 1997); N.J. STAT. ANN. §§ 12-29, 12-30 (West 1997); N.Y. GEN. BUS. LAW § 198-a (McKinney 1997); TENN. CODE ANN. §§ 55-24-201, 55-24-204 (1997) . Nor does the existing statutory scheme lend itself to a lease situation. Section 1955 of the Pennsylvania Lemon Law provides that a purchaser may recover the “full purchase price” of the vehicle. See 73 PA. CONS. STAT. ANN. § 1955. It does not make sense to allow a lessee to recover the “full purchase price” when the lessee has made lease payments that do not total the full purchase price. The statute's remedial scheme makes sense only with respect to purchasers. Finally, the Howard decision has been binding on Pennsylvania trial courts for ten years. If the legislature desired to have the Lemon Law cover leases, it has had ample opportunity to do so. Its inaction suggests satisfaction with the current interpretation of the law. Because the court finds that Pavese has failed to state a claim under the Lemon Law, Count I will be dismissed.

B. Pennsylvania Unfair Trade Practices and Consumer Protection Law

Count IV alleges two types of violations of the UTPCPL. First, Pavese invokes §

vehicle was stolen could not maintain an action under the Lemon Law).

1961 of the Lemon Law, which states that any violation of that statute is also a violation of the UTPCPL. See 73 PA. CONS. STAT. ANN. § 1961. The court's discussion of Pavese's Lemon Law claim disposes of Pavese's first claim under the UTPCPL. See discussion, supra Part II.A.

Second, Pavese alleges that GM violated § 201-3 of the UTPCPL, which prohibits “unfair methods of competition.” See First Amended Complaint ¶ 50. This term includes “[f]ailing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made.” 73 PA. CONS. STAT. ANN. § 201-2(4)(xiv). In her complaint, Pavese states that she “believes, and therefore avers, [that] the reckless, wanton and willful failure of Defendants to comply with the terms of the written warranties constitutes an unfair method of competition.” First Amended Complaint ¶ 51. Pavese seeks treble damages pursuant to § 201-9.2(a) of the UTPCPL, which authorizes the court to award “up to three times the actual damages sustained [for violations of the act.]” See First Amended Complaint ¶ 52.

GM argues that this court lacks diversity jurisdiction over Pavese's claim because Pavese cannot recover more than \$75,000 under the UTPCPL. According to GM, Pavese's actual damages are, at best, \$16,637.48, the amount of her total lease payments at the time she filed her amended complaint. See Defendant, General Motors Corporation's Reply in Support of its Motion to Dismiss Plaintiff's Complaint for Lack of Jurisdiction (“Defendant's Reply Mem.”) at 9. GM argues that Pavese may not receive treble damages because her claim is, in essence, one for fraud, and fraud must be pleaded with particularity--which Pavese has not done. See id. GM contends,

however, that even if Pavese received treble damages, she still could not meet § 1332's amount in controversy requirement because "it [is] not reasonable for an attorney to expend more in attorney's fees than the amount the plaintiff could recover." Id. at 10.

Pavese computes her actual damages differently. She contends that she is entitled to \$33,505, the entire purchase price of the vehicle. See Plaintiff's Mem. at 4. She also argues that she may receive treble damages under the UTPCPL without alleging fraud. See id. at 7-8.

The court finds that GM has not demonstrated to a "legal certainty" that Pavese may not recover an amount in excess of \$75,000. Even if the court were to find that Pavese's actual damages total only \$16,637.48, there is no reason why the court could not treble this amount. Pavese need not allege or prove fraud in order to obtain treble damages. See, e.g., Johnson v. Hyundai Motor America, 698 A.2d 631 (Pa. Super. Ct. 1997) (affirming a grant of treble damages where jury found that defendants' actions were "recklessly indifferent," but that defendants had not engaged in any fraudulent conduct). Rather, under Pennsylvania law, Pavese may recover treble damages if she shows that GM's "conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others." Id. at 639. Pavese has alleged that GM's conduct was "reckless, wanton and willful." First Amended Complaint ¶ 51. If Pavese prevails on this claim, she can recover both treble damages and attorneys fees--an amount that may well exceed \$75,000. GM has not demonstrated to a legal certainty that Pavese will not recover more than the jurisdictional amount. The court will therefore deny GM's motion with respect to Count IV.

C. Pennsylvania Uniform Commercial Code

Count III alleges a cause of action under the P.U.C.C. for breach of express and implied warranties. The P.U.C.C. specifically limits the measure of general damages for breach of warranty to the “difference at the time and place of acceptance between the value of the goods accepted and the value they would have had as warranted, unless special circumstances show proximate damages of a different amount.” 13 PA. CONS. STAT. § 2714(b). GM argues that the difference between these two values is \$22,999, the maximum amount that Pavese is required to pay under the lease. See Defendant's Mem. at 6. Pavese responds that she is entitled to recover \$33,500, “the value of the vehicle as set forth in the lease agreement.” Plaintiff's Mem. at 6. Count III, by itself, thus does not meet the jurisdictional amount. However, where diversity jurisdiction exists over state law claims, a federal court may exercise supplemental jurisdiction over “all other claims that are so related to claims in the action within [the court's] . . . original jurisdiction that they form part of the same case or controversy under Article III.” 28 U.S.C. § 1367(a). Because Pavese's UTPCPL claim satisfies the jurisdictional diversity amount, the court can and will assert supplemental jurisdiction over Pavese's P.U.C.C. claim. It will therefore deny GM's motion to dismiss with respect to Count III.

D. Magnuson-Moss Warranty Act

Count II alleges a violation of the Magnuson-Moss Warranty Act (“MMWA”). This statute provides a cause of action to an injured consumer when a warrantor fails to

comply with a written or implied warranty. See 15 U.S.C. § 2310(d)(1).⁶ However, Pavese cannot bring this action in federal court if "the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in the suit." 15 U.S.C. § 2310(d)(3)(B).⁷

GM contends that damages recoverable under the MMWA are limited to \$22,999, the maximum amount that Pavese is required to pay under the lease. See Defendant's Mem. at 6. GM thus argues that "even if plaintiff suffered damages recoverable under the Magnuson-Moss Warranty Act, the actual damages suffered by plaintiff does [sic] not give rise to jurisdiction in the district courts as required under 28 U.S.C. § 1331 and 15 U.S.C. § 2310" Id. at 7. Pavese responds that "[u]nder the plain language of this statute, the amount in controversy in the instant matter can be computed as: the value of the vehicle as set forth in the lease agreement (\$33,500), plus any other damages authorized by 'all claims to be determined in this suit.'" Plaintiff's Mem. at 6. Specifically, Pavese contends that she "need only demonstrate \$5,500 in actual damages under the UTPCPL, which--when trebled and added to the

⁶ Section 2310(d)(1) provides, in relevant part:
Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a . . . warrantor . . . to comply with any obligation under this chapter, or under a written warranty, implied warranty . . . may bring suit for damages and other legal and equitable relief
15 U.S.C. § 2310(d)(1).

⁷ Section 2310(d)(3) limits federal jurisdiction over actions prosecuted under the MMWA to those in which: (A) the amount of each individual claim is at least \$25; (B) the total amount in controversy is at least \$50,000; and (C) if the action is brought as a class action, the number of named plaintiffs is less than one hundred. See 15 U.S.C. § 2310(d)(3).

vehicle's \$33,500 value in accordance with 15 U.S.C. § 2310(d)(3)(B) -- push the claims to be determined in this suit over the \$50,000 Magnuson-Moss threshold.” Id.

Only certain items may be counted to arrive at the \$50,000 minimum required for federal question jurisdiction over MMWA claims. Because the MMWA involves a breach of warranty, the standard measure of damages is the difference between the value of goods as warranted and the value of the defective goods. See Neilon v. Chrysler Corp., 1997 WL 798266, at *1 (E.D. Pa. Dec. 11, 1997) (citing 13 PA. STAT. ANN. § 2714(b)). Attorneys' fees cannot be added toward the requirement, as they are excluded costs. See id.; Hatcher v. Chrysler Motor Corp., 1990 WL 21164, at *1 (E.D. Pa. Mar. 7, 1990). In addition, a number of courts have held that, for jurisdictional purposes under the MMWA, a plaintiff may not count the treble damages allowed under the UTPCPL. See Neilon, 1997 WL 798266, at *1; Rose v. A&L Motor Sales, 699 F. Supp. 75, 76 (E.D. Pa. 1988) (“We find no basis in logic or authority in the [MMWA] . . . to allow plaintiff to incorporate damages recoverable under a pendent claim when calculating the amount in controversy with respect to a federal claim under the Act.”).

However, even if this court were to conclude that Pavese could not count her treble damages under the UTPCPL toward the MMWA's \$50,000 minimum jurisdictional requirement, there is another basis for jurisdiction over the MMWA claim. Because Pavese's UTPCPL claim satisfies the jurisdictional diversity amount, this court can and will assert supplemental jurisdiction over her MMWA claim. See Rudder v. American Honda Motor Company, Inc., 1995 WL 216955, at *4 (E.D. Pa. April 12, 1995); Wetzel v. American Motors Corp., 693 F. Supp. 246, 250 (E.D. Pa. 1988); Levin v. American Honda Motor Co., 1994 WL 719856, at *3 (E.D. Pa. Dec. 21, 1994). But

see Lieb v. American Motors Corp., 538 F. Supp. 127, 139-49 (S.D.N.Y. 1982)

(declining to assert supplemental jurisdiction over MMWA claims in diversity case). It will therefore deny GM's motion to dismiss with respect to Count II.

An appropriate order follows.