

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

DIMAL, INC. : CIVIL ACTION
v. :
SPECIALTY EQUIPMENT COMPANY :
and ECONO-PRIDE CAR WASH :
SYSTEMS, INC. : NO. 96-4616

MEMORANDUM OF DECISION

McGLYNN, J.

NOVEMBER , 1998

This matter came on for trial before the Court without a jury. After consideration of the evidence and the briefs and argument of counsel, the court makes the following

FINDINGS OF FACT

1. Plaintiff is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. It operates manually operated self-service car washes at several locations in the Philadelphia Metropolitan area.
2. Specialty Equipment Company is a corporation with a principal place of business in Mendota Heights, Minnesota.
3. In November, 1995, plaintiff leased an SSA-9100 Specialty Automatic Wash System (hereinafter "wash system") from American Business Leasing, Inc., which was installed adjacent to five manually operates bays at Broad and Brown Streets in Philadelphia.
4. Specialty Equipment Company sold the wash system to American Business Leasing, Inc. in December, 1995.
5. The purchase price for the wash system was \$52,886,50.

6. A commercial water heater for hot pre-soak, with a cost of \$1,595.00 was returned by plaintiff.

7. The net purchase price of the wash system was \$51,291.50.

8. Econo-Pride Car Wash Systems, Inc. is an independent distributor and is not an agent of Specialty Equipment Company.

9. Plaintiff leased the wash system without outer doors.

10. Plaintiff experienced problems with operation of the wash system during freezing weather.

11. At the time of installation, plaintiff received an operating manual, and related documents.

12. A statement included in the documents delivered to plaintiff reads: "Dual Wheel drive -- assures no slippage or jerking, allowing a smooth travel, even during extremely cold weather."

13. Before leasing the wash system from American Business Leasing, Inc., plaintiff did not know of the statement regarding the Dual Wheel drive in the instruction and maintenance materials provided during installation of the wash system.

14. In deciding to lease the wash system, plaintiff was unaware of and did not rely upon the statement, "Dual Wheel drive - assures no slippage or jerking, allowing a smooth travel, even during extremely cold weather."

15. Specialty Equipment Company did not make any express warranties.

16. The statement regarding the Dual Wheel drive relates only to the hydraulic system and not to the entire car wash.

17. The Dual Wheel drive leased to plaintiff does not slip or jerk and allows a smooth travel, even during extremely cold weather.

18. The wash system was leased for commercial purposes only.

19. Plaintiff had no contact with Specialty Equipment Company before plaintiff leased the wash system.

20. Specialty Equipment Company is a merchant of wash systems.

21. Plaintiff's wash system is of a quality comparable to that generally acceptable in the trade.

22. Plaintiff's wash system is fit for the ordinary purposes for which such wash systems are used.

23. The spray nozzles on plaintiff's wash system were not properly cleaned or adjusted and plaintiff did not utilize a hot pre-soak in its wash system as recommended by Specialty Equipment Company.

24. Specialty Equipment Company also recommended the use of soft water in its wash system as necessary for the proper cleaning of the cars.

25. Plaintiff does not utilize soft water in its wash system.

26. Plaintiff's wash system has a value of \$51,291.50.

27. Plaintiff presented evidence of its gross receipts for five self-serve wash bays for the time period January, 1996 through February, 1998.

28. Plaintiff presented evidence of its gross receipts for the touchless automatic wash system sold by Specialty Equipment Company for the time period January, 1996 through February, 1998.

DISCUSSION

There does not seem to be any dispute that the car wash mechanism at issue was not continually operating in a proper fashion. The question is whether or not it was the fault of the machine, improper maintenance or both. Initially, the complaints seem to be about the car wash going off the tracks as a result of ice forming on the track in freezing weather. This was caused by lack of adequate heating and/or the absence of a door shielding the tunnel-like structure from the cold winter winds. Pointing to language in one of the manuals supplied with the car wash that “Dual wheel drive assures no slippage or jerking allowing a smooth travel even during extremely cold weather,” plaintiff argues that this statement was a misrepresentation and constituted a breach of the contract of sale. The quick answer is that plaintiff was not aware of this statement before the purchase was made and, therefore, there was no reliance. More significant, however, is that this statement applied to the hydraulic aspect of the machine and not to the car wash as a whole. There was certainly no guarantee that the machine would function properly if ice were permitted to form on the tracks.

Subsequent complaints dealt with the ability of the car wash to actually clean the automobiles as the machine passed over them. Specifically, customers complained that the car wash left a film. This is a “touchless” car wash, that is, no brushes or rags are used. The system relies on a chemical cleaning agent (“pre-soak”) to be sprayed on the vehicle after which a series of nozzles spraying water under high pressure removes the dirt loosened by the pre-soak. For an increased price, the customer has the option of having the routine done twice.

When defendant’s experts examined the car wash, they found that the pre-soak was not

pre-heated as recommended and that some nozzles were misdirected and others clogged.

In the final analysis, I am persuaded that on occasion the machine did slip off the tracks even when ice was not present, but I would attribute that to an installation defect and not the machine itself. The installation was the responsibility of co-defendant Econo-Pride Car Wash Systems, against whom a judgment of liability has been entered, and not Specialty Equipment Company. I am also persuaded that the machine's failure to adequately clean is the result of poor maintenance, and short-cuts taken by plaintiff in failing to heat the pre-soak as well as the failure to use a water softener.

But even assuming liability of the part of Specialty Equipment Company, plaintiff's proof of damages is nothing but sheer speculation.

The touchless automatic wash system was new to plaintiff. Plaintiff's damage calculation is based upon the totally unsupported hypothesis that the automatic system should generate three times as much revenue as the less costly self-service system. A fact of life is that customers go to a self-service wash in order to avoid the higher cost of an automatic system. Furthermore, plaintiff's theory does not take into account the negative impact on the self-service bays if the customers switched to the automatic. The bottom line is that there is simply no credible evidence that the touchless automatic wash system would result in increased profits.

At all events, the automatic system is still operating and still producing income but, unfortunately, not as much as the plaintiff had hoped. This disappointing performance arises not because of any inherent defect in the machine, but because plaintiff's universe of clientele prefer the less expensive self-service wash.

Accordingly, the court arrives at the following

CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties and the subject matter of the action.
2. Econo-Pride Car Wash Systems, Inc. is an independent distributor and is not an agent of Specialty Equipment Company.
3. Specialty Equipment Company is a merchant of wash systems.
4. Plaintiff has not set forth a cause of action under Pennsylvania's Unfair Trade Practices Act (73 P.S. § 201-1 et seq.) and plaintiff has withdrawn said cause of action.
5. Plaintiff's wash system is of a quality comparable to that generally acceptable in the trade.
6. Plaintiff's wash system is fit for the ordinary purposes for which such wash systems are used.
7. Specialty Equipment Company did not breach an implied warranty of merchantability under 13 Pa. C.S.A. § 2314.
8. Specialty Equipment Company made no express warranties.
9. Specialty Equipment Company did not make any express warranties to plaintiff.
10. Specialty Equipment Company did not make any express warranties to American Business Leasing, Inc.
11. Specialty Equipment Company did not breach any express warranties.
12. Specialty Equipment Company did not breach an implied warranty of fitness for a particular purpose.
13. Plaintiff did not prove a cause of action under "promissory estoppel" as plaintiff did

not prove any reliance on any statements issued by Specialty Equipment Company.

14. Plaintiff did not prove damages with reasonable certainty.

15. The defendant, Specialty Equipment Company, is entitled to judgment in its favor and against the plaintiff.

16. The plaintiff is entitled to recover nominal damages against Econo-Pride Wash Systems in the amount of \$1.00.

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O R D E R

AND NOW, this day of NOVEMBER, 1998, in accordance with the Findings of Fact and Conclusions of Law filed herewith, it is

ORDERED that Judgment is hereby entered in favor of the defendant Specialty Equipment Company and against the plaintiff Dimal, Inc.

It is further ORDERED that Judgment is entered in favor of the plaintiff Dimal, Inc. and against the defendant Econo-Pride Car Wash Systems, Inc. in the amount of one (1) dollar.

BY THE COURT:

JOSEPH L. McGLYNN, JR. J.