S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

WANDA BAKER, SCOTT ZALEWSKI, and ALL OTHERS SIMILARLY SITUATED

Plaintiffs-Appellants,

v

SUNNY CHEVROLET, INC., d/b/a WAYLAND CHEVROLET,

Defendant-Appellee.

UNPUBLISHED
September 13, 2005

No. 247229
Allegan Circuit Court
LC No. 01-030484-CP

Before: Fort Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal from the trial court's order denying their motion for class certification. We affirm.

Plaintiffs filed this litigation, alleging that the contract involving the sale of a used car was not provided at the consummation of the sale or upon request. Plaintiffs alleged that defendant deliberately had its sales personnel withhold the contract from purchasers and would modify the terms of the contract or threaten repossession after the transaction had occurred. Plaintiff filed a multi-count complaint alleging statutory and common law causes of action. However, the trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) of the majority of the claims. The trial court allowed plaintiffs to proceed on the Michigan Consumer Protect Act claim (MCPA), MCL 445.901 *et seq*, and the Michigan Motor Vehicle Retail Installment Sales Contract Act (MVRISC), MCL 566.301 *et seq*. Plaintiffs did not appeal the trial court's ruling on the motion for summary disposition. After the decision, plaintiff moved for certification as a class action. After entertaining oral arguments, the trial court denied the motion, stating as follows:

> The motion to certify this as a class is denied for the following reasons: First of all the Court reads the provision of the Motor Vehicle Installment Sales Contract as providing for penalty or a minimal amount of recovery without regard to actual damages imposed or authorized under the statute. For that reason I don't believe that portion of the lawsuit could be [sic] qualify as a class because of the prohibition.

> Secondly, under the Consumers Protection Act[,] I don't believe that for the reasons stated by defense there's the commonality and the other requirements in respect to each of the cases that might be certified if this were certified as a class.
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> Thirdly, it seems to this Court that the wherewithal of the Court and this court clerk's office in certifying this action is –as a class would over burden it, and for those reasons the motion to certify is denied.

On February 18, 2003, plaintiffs entered into a consent judgment with defendant. The judgment provided:

> The parties, by and through their attorneys, hereby consent to entry of judgment in the above captioned case in favor of Plaintiff and against Defendant in the amount of $6783.32, plus a reasonable attorney fee to be taxed by the Court. The judgment is based on damages of $6533.32 for violation of the Michigan Motor Vehicle Installment Sales Contract Act (MCL § 566.302), and, for violation of the Michigan Consumer Protection Act (MCL § 445.901 et seq.), damages of $250.00 plus a reasonable attorney's fee.
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> Within twenty-one (21) days following entry of Judgment, Plaintiff will petition the court for a reasonable attorney's fee pursuant to MCL § 445.911(2).

On April 2, 2003, plaintiff filed a satisfaction of judgment, acknowledging that defendant had satisfied the judgment. Despite the acknowledgment of satisfaction of judgment, on April 4, 2003, plaintiff filed an amended consent judgment with the trial court. At this time, plaintiff reserved the right to appeal the trial court's denial of the class certification issue.[1]

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[1] Generally, a satisfaction of judgment is the end of proceedings and bars any further effort to alter or amend the judgment. *Becker v Halliday*, 218 Mich App 576, 578; 554 NW2d 67 (1996). The purpose of the enforcement of the satisfaction of judgment rule is the promotion of certainty and finality because the satisfaction of judgment extinguishes the claim. *Id*. at 579. Further, it is judicial policy to further the intent and the expectations of the parties, and the intent of any party entering into the satisfaction of judgment extends to the entire claim. *Id*. A party who accepts satisfaction in whole or in part waives the right to maintain an appeal or seek review of any error in the judgment where the appeal or review might result in putting at issue the right to the relief already received. *Id*. at 578. An exception does exist; an appeal is not waived where the appeal addresses an issue collateral to the benefits already accepted. *Id*. In the present case, plaintiffs filed a consent judgment and acknowledged acceptance of that judgment. After the satisfaction of judgment was filed, plaintiffs filed an amended judgment reserving the right to challenge the class certification order on appeal. Presumably, if the class action were certified, the issue of entitlement to benefits for the class based on the alleged statutory violations would be at issue, the same issues for which plaintiffs received a judgment. However, we also note that defense counsel stipulated to the entry of the amended consent judgment. Because of defense counsel's stipulation, this appeal was filed. However, on appeal, defendant objects to the propriety of this claim of appeal. Because of defense counsel's stipulation in the record below *after* the filing of

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The trial court's decision on a motion for certification as a class action is reviewed for clear error. *Hamilton v AAA Michigan*, 248 Mich App 535, 541; 639 NW2d 837 (2001). A finding is clearly erroneous when, although there is supportive evidence, the appellate court is left with a definite and firm conviction that a mistake has been made. *Tinman v Blue Cross & Blue Shield*, 264 Mich App 546, 555; 692 NW2d 58 (2004). The party requesting certification of the class action bears the burden of demonstrating that the conditions for certification found in MCR 3.501 are satisfied. *Neal v James*, 252 Mich App 12, 16; 651 NW2d 181 (2002). If a trial court properly finds that any one of the five factors enumerated in MCR 3.501(a)(1) prevent class certification, it is not necessary for the trial court to address the remaining factors. *Salesin v State Farm Fire & Casualty Co*, 229 Mich App 346, 372 n 13; 581 NW2d 781 (1998).[2]

MCR 3.501 governs class certification and provides in relevant part:

> **(A) Nature of Class Action.**
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> (1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
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> (a) the class is so numerous that joinder of all members is impracticable;
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> (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
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> (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
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> (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
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> (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.
>
> (2) In determining whether the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice, the court shall consider among other matters the following factors:
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> (a) whether the prosecution of separate actions by or against individual members of the class would create a risk of

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the satisfaction of judgment, we will nonetheless address the merits of the claim.

[2] However, review of all five factors by the trial court aids in appellate review. See *Salesin, supra*.

(i) inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; or

(ii) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(b) whether final equitable or declaratory relief might be appropriate with respect to the class;

(c) whether the action will be manageable as a class action;

(d) whether in view of the complexity of the issues or the expense of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(e) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action;

and

(f) whether members of the class have a significant interest in controlling the prosecution or defense of separate actions.

* * *

(5) An action for a penalty or minimum amount of recovery without regard to actual damages imposed or authorized by statute may not be maintained as a class action unless the statute specifically authorizes its recovery in a class action.

In *Zine v Chrysler Corp*, 236 Mich App 261, 263; 600 NW2d 384 (1999), the plaintiffs purchased Chrysler vehicles. The defendant placed information about lemon laws in states that required the information be provided to consumers. The booklet also contained a notice to all consumers, regardless of the location of purchase. The *Zine* plaintiff filed a proposed class action alleging that the information distributed was misleading. With regard to the requirement that class members have common questions of law or fact that predominate over individual questions, this Court concluded:

> The second factor is common questions of law or fact that predominate over individual questions. The common question factor is concerned with whether there "is a common issue the resolution of which will advance the litigation." It requires that "the issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, must predominate over those issues that are subject only to individualized proof."

> The common question here is whether the new car documents supplied by Chrysler violated the MCPA. Even if that question were to be resolved in plaintiffs' favor, the trial court would have to determine for each class member who had purchased a new vehicle, whether the vehicle was bought primarily for personal, family, or household use, … whether the plaintiff had a defective vehicle and reported the defect to the manufacturer or dealer, … had the vehicle in for a reasonable number of repairs, … was unaware of Michigan's lemon law, read the documents supplied by Chrysler, and was led to believe that Michigan did not have a lemon law, and chose not to pursue a remedy under the lemon law because of that belief. These factual inquiries, all of which were subject to only individualized proof, predominate over the one common question and would render the case unmanageable as a class action. Therefore, we hold that the trial court properly denied the motion for class certification on this ground as well. [*Id*. at 289-290 (citations omitted).]

Additionally in *Edgcumbe v Cessna Aircraft Co*, 171 Mich App 573, 575-576; 430 NW2d 788 (1988), the plaintiff purchased a used airplane manufactured by the defendant and sought to certify a class action because there were allegedly three hundred reports to the governing federal agency concerning engine problems from this type of airplane. This Court concluded that the denial of the class certification was proper:

> The requirement of MCR 3.501(A)(1)(e), that the class action be superior to other methods of adjudication in promoting the convenient administration of justice, is an outgrowth of the equitable heritage of class actions and a recognition of the practical limitations on the judiciary's capability to resolve disputes. Such matters as diversity of defenses, counterclaims, etc., may bear upon the determination of whether a class action suit will promote the convenient administration of justice is whether the issues are so disparate as to make a class action suit unmanageable.
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> * * *
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> Further, each potential class member may present unique factual and legal issues that would make a class action lawsuit inconvenient. Using plaintiff as an example, plaintiff bought his aircraft in a used condition. What role this will play factually and as to the application of warranties presents a complicated legal question. Additionally, plaintiff has used his airplane as part of a commercial venture. The increased use may alter the rate at which the alleged defect developed. Plaintiff's damages may be affected in a way that noncommercial plaintiffs to the suit would not be affected. The trial court was correct in ruling that it would not serve the convenient administration of justice to certify the instant case as a class action. [Id. at 575-576 (citations omitted).]

Based on the above cited case law, we cannot conclude that the trial court's denial of the motion was clearly erroneous. *Hamilton, supra*. The nature of any representations made during the course of a transaction and whether the vehicle was utilized for a purpose governed by the MCPA will vary based on the individual transaction. Because of our conclusion, we need not address plaintiff's challenge based on MCR 3.501(A)(5).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello