Circuit Court for Baltimore County
Case No. 03-C-10-008590 CN JT

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 02086

September Term, 2015

HENRY JAMES DUPREEZ, JR.

v.

GMAC, INC.

Meredith,
Kehoe,
Beachley,
JJ.

Opinion by Kehoe, J.

Filed: December 5, 2017

Henry James Dupreez, Jr. appeals from a judgment of the Circuit Court for Baltimore County, the Honorable H. Patrick Stringer, Jr., presiding, entered in favor of GMAC, Inc. He presents ten issues and sub-issues in his brief but they boil down to the following:

> I. Do the provisions of Maryland's Usury Statute, Md. Code (1975, 2013 Repl. Vol.) § 12-101 through 12-127 of the Commercial Law Article ("CL"), apply to installment sales of motor vehicles?
>
> II. Does the Maryland Retail Installment Sales Act, CL § 12-601 through 12-636, prohibit a lender from charging late fees and repossession expenses for vehicles that had a sales price in excess of $25,000?

The circuit court answered "no" to both of these questions and granted GMAC's motion to dismiss all but one of the counts contained in Dupreez's operative counterclaim. (The parties subsequently voluntarily dismissed all remaining claims resulting in a final judgment in GMAC's favor.)

We believe that Judge Stringer was correct and will affirm the judgment of the circuit court.

Some Acronyms

The parties' contentions and our analysis traverse an acronym-rich environment. We will refer to:

- The Maryland Retail Installment Sales Act, found at Md. Code Commercial Law Article ("CL") §§ 12-601–12-636, as "MRISA";
- The Maryland Interest and Usury Statute, CL §§ 12-101–12-127, as the "Usury Statute"; and
- The Maryland Uniform Commercial Code, CL Titles 1 through 9, as "the UCC."

From time to time in this opinion, we will quote from the parties' briefs. For the sake of consistency, we will substitute our acronyms without bracketing.

Background

The trial court dismissed the amended counterclaim. In reviewing the court's decision, "we must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Adamson v. Corr. Med. Servs.*, 359 Md. 238, 246 (2000) (citations omitted).

The pertinent factual allegations of the amended counterclaim are:

On October 4, 2004, Dupreez purchased a 2004 Silverado Truck (the "Truck") from Bob Bell Chevrolet/Nissan, Inc. (the "Dealer") for $32,070. He intended to use the Truck primarily for personal and family uses. Dupreez financed a portion of the purchase price of the Truck pursuant to a retail installment sales contract (the "RISC") between himself and the Dealer. In addition to requiring Dupreez to make monthly payments, the RISC provided that he would be required to pay late fees if payments weren't made when due.

As part of the RISC, Dupreez also purchased a "GAP" policy,[1] the cost of which was separately itemized. Additionally, the amended counterclaim alleged that, as part of the RISC, Dupreez purchased *two* mechanical repair warranty insurance policies. The cost of one policy ($1095) was separately itemized in the RISC but the cost of the other—alleged to be "an amount greater than $750"—was not.

[1] "GAP policies" pay the insured the difference between the cash value of the vehicle and the balance due on the installment sale contract if the vehicle is totaled in an accident.

Dupreez had difficulty making the payments. On several occasions, GMAC charged and collected late fees from Dupreez. {E. 17}. The amended counterclaim alleges that GMAC was without legal authority to charge or collect late charges because MRISA "does not allow any charge for late fees to any person whose vehicles have a cash price greater than $25,000."

Eventually, GMAC repossessed the Truck in December 2005. {E. 18}. After repossessing the Truck, GMAC sent a written notice to Dupreez that it would sell the Truck unless he paid past due payments, late charges, and the cost of repossession of the Truck. {E. 18}. The notice to Dupreez stated that the Truck would be sold at "Baltimore-Washington Auto Exchange, 751 Brookdale Drive, Baltimore, Maryland," when in fact the Truck was sold at the Baltimore-Washington Auto Exchange located at 751 Brookdale Drive, Elkridge, Maryland. {E. 18}. GMAC applied the proceeds of the sale toward the amount Dupreez owed, but there was a deficiency. {E. 19}. This brings us to the current litigation.

GMAC filed suit against Dupreez in the District Court of Maryland for Baltimore County to collect the deficiency, interest, and attorney's fees plus court costs. {E. 19}. Dupreez prayed a jury trial and the case was transferred to the circuit court. Dupreez then filed a class action counterclaim and later an amended class action counterclaim, which is the pleading that concerns us in this appeal. {E. 5}.

In Count 1, Dupreez alleged that GMAC violated the Usury Statute when it repossessed and subsequently sold the Truck because it provided incorrect information in its pre-sale notices to Dupreez. {Amended Counterclaim, ¶ 92)[2]

In Count 2, Dupreez alleged that the RISC violated MRISA, by requiring him to pay late fees, repossession costs, charges for the repair warranty and debt-cancellation insurance without specifically itemizing the amounts. Dupreez also sought injunctive relief and certification of his counterclaim as a class action.[3]

In Count 3, appellant alleged that the RISC violated Maryland's Consumer Protection Act, CL §§ 13-101–501, because the contract violated MRISA. Count 4 asserted an unjust enrichment claim, again, based on the premise that the terms of the RISC violated MRISA, and Count 5 alleged that GMAC made negligent misrepresentations to appellant. This claim also was based upon the premise that the RISC violated MRISA.

[2] Specifically, Dupreez alleged that GMAC's pre-sale notices: (1) contained inaccurate amounts as to what he would be required to pay to redeem the Truck; (2) stated that he was required to pay repossession expenses in order to redeem the Truck when he was not required to do so; (3) failed to provide accurate information as to the place of sale of the Truck; and (4) misrepresented that GMAC was entitled to a deficiency balance.

[3] The amended counterclaim alleged three additional causes of action: violations of the Maryland Consumer Protection Act, C.L. §§ 13-101–501, (Count 3); unjust enrichment (Count 4); and negligent misrepresentation (Count 5). All of these claims were based on the alleged violations of the Usury Statute and MRISA.

Dupreez sought to recover compensatory damages, attorney's fees, and injunctive relief.[4]

GMAC filed a motion to dismiss the amended counterclaim. Among its other contentions, GMAC asserted that the Usury Statute did not apply to the RISC and that the terms of the RISC that were challenged by appellant did not violate MRISA.

The circuit court conducted a hearing on the motion to dismiss on April 17, 2015. After oral argument, the circuit court granted GMAC's motion in part and denied it in part. Specifically, the court concluded that the Usury Statute did not apply to the case because the RISC was not a loan. Therefore, it dismissed Count 1 in its entirety. The circuit court also dismissed Counts 2, 3, 4 and 5 insofar as they alleged that GMAC's imposition of late fees and repossession costs violated MRISA. The court also dismissed the portion of the same counts that were based on the allegation that the RISC charged for a debt cancellation insurance policy that was purportedly not separately itemized.

However, the court denied GMAC's motion to dismiss in so far as it related to Dupreez's allegations in Counts 2, 3, 4, and 5 that the RISC did not itemize the cost of the alleged second mechanical repair contract. Discovery revealed that in fact, there was no second warranty contract. The parties consented to the dismissal of all outstanding claims with prejudice, thus clearing the decks for this appeal.

[4] The amended counterclaim also contained extensive allegations pertinent to appellant's request that the trial court certify the case as a class action, and that the court designate him as the named plaintiff.

Analysis

This Court reviews *de novo* a judgment granting a motion to dismiss. *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 173-74 (2015) (internal citations omitted). In reviewing the circuit court's decision to grant a motion to dismiss, an appellate court:

> must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.,* the allegations do not state a cause of action for which relief may be granted.

State Center, LLC v. Lexington Charles Ltd. Partnership, 438 Md. 451, 496-497 (2014) (quoting *RRC Ne. v. BAA Maryland,* 413 Md. 638, 643–44 (2014).

The parties present a variety of arguments in their briefs but, as we have indicated, there are two dispositive questions. This first is whether the Usury Statute applies to appellant's contract with the Dealer. The statute clearly does not. The second query is whether any of the practices of which appellant complains violated the relevant terms of MRISA. Although the analysis on this question is a bit more complicated, we conclude that the terms of the RISC did not violate the statute.

I. The Usury Statute

Maryland's statutory scheme for regulating the interest rates that lenders can charge borrowers is found in subtitle 1 of Title 12 of the Commercial Law article. The conceptual core of the Usury Statute is CL § 12-102, which reads (emphasis added):

> Except as otherwise provided by law, a person may not charge interest in excess of an effective rate of simple interest of 6 percent per annum on the unpaid principal balance of a *loan*.

Maryland courts have long held that the term "loan" in the Usury Statute does not extend to installment sales contracts for personalty. This is because under Maryland law, a retail installment sale contract, that is, "a bona fide sale of goods on credit at a price which is greater than the cash price by an amount in excess of the legal rate of interest on the cash price is not subject to the usury laws because it is not a loan of money but a sale." *Rothman v. Silver*, 245 Md. 292, 299 (1967); s*ee also Financial Credit Corp. v. Williams*, 246 Md. 575, 586 (1967); *Falcone v. Palmer Ford, Inc.*, 242 Md. 487, 496 (1966). Appellant argues that subsequent events have undercut the validity of these holdings. He points to CL § 12-103, which states in pertinent part (emphasis added):

> (a)(1) Except as provided in subsections (b), (c), (d), (e), and (f) of this section, a lender may charge interest at an effective rate of simple interest not in excess of 8 percent per year on the unpaid principal balance of a *loan* if there is a written agreement signed by the borrower which sets forth the stated rate of interest charged by the lender.
>
> . . . .
>
> (c)(1) Subject to paragraph (2) of this subsection, a lender may charge interest at an effective rate of simple interest not in excess of 18 percent per year on the unpaid principal balance of the *loan*. However, on a *loan* made on or after July 1, 1982, a lender may charge an effective rate of simple interest not in excess of 24 percent per year on the unpaid principal balance of the loan provided that:
>
> . . . .
>
> (iii) Upon the borrower's default, if the *loan* is secured by personal property, the lender complies with § 12-115 of this subtitle concerning repossession and redemption of the goods securing the loan; [and]
>
> (iv) If the loan is for the purchase of consumer goods, *the loan contract* complies with § 12-117 of this subtitle[.]

Appellant argues that these provisions were added in 1982[5] and that, as a result,

> These amendments to I & U make it clear that after 1982 the term loan as used in Usury Statute included any credit offered in connection with "the purchase of consumer goods[.]" [CL] § 12-103(c)(1)(iv). Accordingly, the entire premise of Appellee's argument that the Usury Statute does not apply to the sale of goods on credit is specifically rebutted by the current language of § 12-103(c)(1)(iv).

We do not agree. There is no doubt that subsection (c) added additional requirements upon lenders which wished to charge interest in excess of the Maryland default rate of 6 percent per annum. However, there is nothing in CL § 12-103(c)(1) that suggests that the statute is intended to apply to anything other than "loans," as that term is used in the Usury Statute. Moreover, by 1982, the Court of Appeals had made it clear on several occasions that the Usury Statute did not apply to retail installment sales contracts because such contracts were not "loans." *See Rothman,* 245 Md. at 299*; Finance Credit Corp. v. Williams,* 246 Md. at 586*; Falcone,* 242 Md. at 496.

It is a precept of statutory interpretation in Maryland that the General Assembly "is presumed to be aware of our prior holdings when it enacts new legislation and, where it does not express a clear intention to abrogate the holdings of those decisions, to have acquiesced in those holdings." *Allen v. State*, 402 Md. 59, 72 (2007). We agree with GMAC's observation that "[i]f the legislature wanted to make the Usury Statute applicable to installment sales contracts, it would not have used the term 'loans' when adding CL § 12-103(c)(1)(iii) and (iv) to the statute."

[5] Specifically, by Chapter 753 of the Laws of 1982.

The court was correct when it decided that the allegations in Count 1 of the amended counterclaim did not set out "a claim upon which relief can be granted." Md. Rule 2-322(b).

II. Dupreez's MRISA Contentions

Dupreez's reasoning as to why his RISC violated MRISA is complicated. This is understandable because the law itself has a number of moving parts. We summarize his contentions as follows:

First, MRISA draws a distinction between "goods"[6] and "motor vehicles."[7] The Act generally applies to sales of goods that have a cash sale price of $25,000 or less. CL § 12-601(k). Because the purchase price of Dupreez's vehicle was more than $25,000, the only relevant part of MRISA that is applicable to Dupreez's RISC is CL § 12-609, which applies to sales of all motor vehicles. However, because the sales price of the Truck exceeded $25,000, the only parts of § 12-609 that apply are those relating to finance

[6] CL § 12-601(k) states:

> (1) "Goods" means all tangible personal property that has a cash price of $25,000 or less.
> (2) "Goods" does not include money or things in action.

[7] CL § 12-601(o) provides that "motor vehicle" "has the meaning stated in Title 11 of the Transportation Article." There is no dispute that the Truck is a motor vehicle under Title 11. *See* Transportation Article § 11-135(a)(1):

> (1) "Motor vehicle" means, except as provided in subsection (b) of this section, a vehicle that:
> (i) Is self-propelled or propelled by electric power obtained from overhead electrical wires; and
> (ii) Is not operated on rails.

charges and insurance costs. (This is the holding of *Sampson v. First Credit Corp.*, 244 Md. 317, 320 (1966)). "Finance charge" is a term of art in MRISA. It means "the amount in excess of the cash price of goods . . . to be paid by the buyer for the privilege of purchasing the goods under an installment sale agreement." CL § 12-601(j).

Second, based upon the analysis that we have summarized in the previous paragraph, Dupreez focuses on what he asserts are the three critical provisions in MRISA. The first is CL § 12-609(b), which provides in pertinent part (emphasis added):

> (b)(1) A service or other charge not specifically provided for in this section may not be included in a retail installment sale of a motor vehicle.
>
> (2)(i) This section does not prohibit a seller from financing the cost to the buyer of a *mechanical repair contract* sold in connection with a motor vehicle, provided that the cost of the mechanical repair contract *is separately itemized* in the financing agreement.
>
> (ii) A seller may finance the cost of a mechanical repair contract sold in connection with a motor vehicle whether or not the motor vehicle is covered by an original manufacturer's warranty.
>
> (3) A seller may not require a buyer of a motor vehicle, as a condition of receiving a loan, to enter a mechanical repair contract.
>
> (4) A seller may contract for, charge for, receive, and finance the cost to the buyer of an *optional debt cancellation agreement* sold in connection with a motor vehicle, provided that the cost of the debt cancellation agreement is *separately itemized* in the financing agreement.

The second statute is CL § 12-623, which permits the "holder" of an "agreement" to collect late charges, attorney's fees and court costs "if the agreement . . . so provides[.]"

The third statute is CL § 12-626, which states in pertinent part (emphasis added):

> (a) [T]he holder shall sell any repossessed goods at public auction. . . .
>
> (e)(1) The provisions of this subsection (e) apply to:
>
> (i) A public sale held under the provisions of this section; and

. . . .

> (2) The proceeds of a sale to which this subsection applies, including the deposit required by subsection (b) of this section, shall be applied, in the following order, to:
>
> (i) The *actual and reasonable cost of the sale*;
>
> (ii) The *actual and reasonable cost of retaking and storing the goods*; and
>
> (iii) The unpaid balance owing under the agreement at the time the goods are repossessed.

When Dupreez failed to make his payments on time, GMAC imposed late charges. When Dupreez went into default under the RISC, GMAC repossessed the Truck and added the repossession charges to the amount due. Dupreez asserts that GMAC had no right to do so because:

> MRISA § 12-614 only applies to the "holder" of an "agreement[.]" MRISA § 12-623 only applies to an "agreement" and MRISA § 12-626 only applies to the "holder[.]" "Holder" is defined as any person that is "entitled to enforce an agreement[." MRISA § 12-601(1). "Agreement" is defined as an "installment sales agreement[.]" MRISA § 12-601(b). "Installment sale agreement" is defined in part as contracting for "consumer goods[.]" MRISA § 12-601(m). "Consumer goods" is defined as "goods[.]" MRISA § 12-601(1). "Goods" is defined as "all tangible personal property that has a cash price of $25,000 or less." Therefore, the assessment and collection of charges purportedly permitted under MRISA § 12-614(b)(5)(i) (delinquency charges and repossession charges) are not specifically permitted to a motor vehicle RISC with a cash price greater than $25,000.00.

For its part, GMAC asserts that Dupreez's reasoning is flawed in two respects.

First, GMAC discounts the significance of Dupreez's contention that CL § 12-609(b) prohibits it from charging late fees or repossession expenses. It notes that CL § 12-609(b) by its plain terms refers to the imposition of charges or fees at the time of "the retail installment sale of a motor vehicle." GMAC's reading of CL § 12-609 is correct. The

statute does not address the ability of the holder of an agreement to assess late charges or repossession fees subsequent to the execution of the contract.

Second, GMAC asserts that Dupreez's arguments regarding the interaction of CL §§ 12-601, 12-209, 12-614, 12-623 and 12-626 are inconsistent with the Court's opinion in *Hawkins v. GMAC*, 250 Md. 146, 148–49 (1968). We agree. In that case, Hawkins made arguments similar to those presented by Dupreez: he claimed that the finance charges imposed by GMAC and GMAC's notice of sale of his repossessed truck violated the then-extant version of MRISA. *Id.* at 148. However, like Dupreez, the price of the truck Hawkins purchased exceeded the maximum purchase price of MRISA's definition of "goods," which was $2,000 at the time of the sale. The Court was unpersuaded:

> We have previously held that the Act [that is, MRISA], as it read prior to 1 June 1965, did not apply to sales of motor vehicles where the cash price was more than $2,000.00, except insofar as finance charges and insurance costs are concerned. *Sampson v. First Credit Corporation*, 244 Md. 317 (1966); *Nuttall v. Baker*, 217 Md. 454 (1958); *Auto. Accept. Corp. v. Univer. C.I.T. Credit Corp.*, 216 Md. 344 (1958). Since the notice to which Hawkins claims he was entitled is provided for by the Act, and not by his contract, this contention is not persuasive.
>
> The Uniform Commercial Code (UCC), Maryland Code (1957), 1964 Replacement Volume) Art. 95B, §§ 9-503, 9-504 controlled the repossession and sale of the truck. . . . The letter sent by GMAC to Hawkins was sufficient notice of the sale under the requirements of UCC § 9-504(3).

250 Md. at 149 (footnote omitted).

The passage that we have quoted from *Hawkins* is dicta, because the Court ultimately dismissed the appeal as untimely. However, it is nonetheless fully persuasive. That the price of the Truck exceeded the $25,000 ceiling imposed by MRISA does not mean that

GMAC is prohibited from charging late fees or repossession expenses. It means only that MRISA does not regulate GMAC's ability to charge such fees. Instead, GMAC's ability to do so is governed by the Uniform Commercial Code. We base our conclusion on UCC § 9-109, which states in pertinent part (emphasis added):

> (a) Except as otherwise provided in subsections (c) and (d), this title applies to:
> (1) A transaction, regardless of its form, that creates *a security interest in personal property* or fixtures *by contract*;
>
> . . . .
>
> (b) The application of this title to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this title does not apply.[8]

As to Dupreez's contention that GMAC was without legal right to assess fees for the repossession of the Truck, UCC § 9-615 states in pertinent part:

> (a) A secured party shall apply or pay over for application the cash proceeds of disposition under § 9-610 in the following order to:
>
> (1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

Similarly, UCC § 9-601 provides that, upon default, a secured party not only has the rights granted under the UCC but also has the rights "provided by the agreement of the parties." The RISC signed by Dupreez explicitly authorized the holder to assess a 5 percent late fee. The circuit court was correct when it concluded that GMAC had the

[8] UCC § 9-109(c) and (d) set out a number of exceptions to Article 9's general applicability, e.g., federal preemption, liens by state and local government entities, and common law and statutory liens, such as mechanics liens. Dupreez does not contend that any of the exceptions in subsections (c) and (d) apply in this case.

right to charge late fees and costs of repossession and sale, and did not err in dismissing Count 2 of the amended counterclaim.

In his amended counterclaim, Dupreez also alleged that GMAC had violated the Maryland Consumer Protection Act, CL §§ 13-101–501. In Counts 4 and 5, he set out claims for unjust enrichment and negligent misrepresentation. Because all of these claims were premised upon GMAC's asserted violations of MRISA and the Usury Statute, the circuit court did not err in dismissing them.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.