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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**



ROBERT WAGNER
Plaintiff

Case No: CV-11-758513

FORD MOTOR COMPANY
Defendant

Judge: BRENDAN J SHEEHAN

JOURNAL ENTRY

OPINION AND JUDGMENT ENTRY, O.S.J.

Judge Signature

Date

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROBERT S. WAGNER,)	CASE NO. CV 11 758513
)	
Plaintiff,)	JUDGE BRENDAN J. SHEEHAN
)	
v.)	
)	OPINION AND JUDGMENT
FORD MOTOR COMPANY,)	ENTRY
)	
Defendant.)	

I. ISSUES PRESENTED.

This matter is before the Court on Defendant's Motion for Summary Judgment. The issues have been fully briefed by the parties.

Plaintiff Robert S. Wagner leased a 2008 Lincoln MKX from Nick Mayer Lincoln-Mercury, Inc., an authorized dealership of Defendant Ford Motor Company, on or about March 31, 2008. During the course of the next three years, Plaintiff experienced numerous problems that necessitated warranty repairs on the vehicle. The required work was performed by an authorized Ford dealer at no cost to Plaintiff and Plaintiff was given use of a loaner car whenever the leased vehicle was in for repairs.

On June 28, 2011, Plaintiff brought this action under the Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., §2301, *et seq.* for damages incurred as a result of the numerous defects in the vehicle.

Defendant seeks summary judgment on the grounds that Plaintiff has incurred no damages because he did not have an ownership interest in the car or incur any out of pocket expenses as a result of the alleged defects.

II. LAW AND ANALYSIS.

A. Standard for Summary Judgment.

Under Civ.R. 56, summary judgment is appropriate when, (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the non-moving party. *Holliman v. Allstate Ins. Co.*, 86 Ohio St.3d 414, 715 N.E.2d 532 (1999); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1997). When a motion for summary judgment is properly made and supported, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial and may not merely rest on allegations or denials in the pleadings. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The nonmoving party must produce evidence on any issue for which that party bears the burden of production at trial. *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). Further, to survive summary judgment, a plaintiff must produce more than a scintilla of evidence in support of his position. *Markle v. Cement Transit Co., Inc.*, 8th Dist. No. 70175, 1997 WL 578940, 2 (Sept. 18, 1997), citing *Redd v. Springfield Twp. School District*, 91 Ohio App.3d 88, 92, 631 N.E.2d 1076 (9th Dist. 1993).

B. Analysis of Issues Presented.

It is well established in Ohio that a lessee qualifies as a “consumer” who may bring an action under the Magnuson-Moss Act. See *Szubski v. Mercedes-Benz, U.S.A., L.L.C.*, 124 Ohio Misc.2d 82, 2003 -Ohio- 4640, 796 N.E.2d 81 (C.P.). Thus, Plaintiff’s status as a lessee does not bar his claims as a matter of law.

Defendant also contends that it is entitled to summary judgment because Plaintiff has suffered no damages. Plaintiff admits that the repairs were all completed at no cost to him and that he was provided with a loaner car whenever his vehicle was being repaired. The lack of expense at the point of repair, however, is not exhaustive of potential damages. The measure of damages for breach of warranty is provided by statute as:

(D) Except as otherwise agreed, the measure of damages for breach of warranty is the present value, at the time and place of acceptance, of the difference between the value of the use of the goods accepted and that value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

R.C. 1310.65.

Therefore, Plaintiff's lack of out of pocket expenses diminishes his potential damages but does not entirely negate his claim for damages under the law and summary judgment may not be granted.

III. CONCLUSION.

For the foregoing reasons, **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.**

Trial in this matter to proceed as scheduled on February 16, 2012 at 8:30 AM. Parties to submit all trial materials by February 9, 2012 in accordance with the Court's Standing Orders.

IT IS SO ORDERED.


JUDGE BRENDAN J. SHEEHAN

Dated: 1/23/12

RECEIVED FOR FILING

JAN 25 2012

GERALD E. FUERST, CLERK
By  Deputy

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 23rd day of January, 2012:

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