

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

BEDFORD AUTO WHOLESALE, INC.,	)	CASE NO. CV 11 759225
	)	
Plaintiff,	)	
	)	JUDGE BRENDAN J. SHEEHAN
v.	)	
	)	
DAVID SEVERY,	)	
	)	<b>OPINION AND JUDGMENT</b>
Defendant.	)	<b>ENTRY</b>
	)	

I. ISSUES PRESENTED.

This matter is before the Court on the parties' cross-Motions for Summary Judgment. The issues have been fully briefed to the Court.

Plaintiff Bedford Auto Wholesale, Inc. is an Ohio corporation located in Cuyahoga County. It is in the business of buying and selling motor vehicles to other automobile dealers.

On or about June 25, 2005, Defendant David Severy met with Plaintiff's agents concerning business relations between the parties. Defendant maintains that he met with Plaintiff "as owner of his own business known as Wholesale Auto Brokers". As a result of the meeting, Plaintiff and Defendant executed a Retail Installment Sales Contract in which Defendant agreed to pay Plaintiff the amount of \$89,550.00 together with interest at the rate of 7% per annum apparently for the purchase of one or more motor vehicles. The copies of the Retail Installment Sales Contract submitted to the Court as exhibits are largely illegible so the Court must rely upon the statements of the parties for purposes of the pending motions.

Plaintiff maintains that the Retail Installment Sales Contract was executed related to the delivery of several motor vehicles. Defendant apparently denies that he received any motor vehicles subject to the Retail Installment Sales Contract.

Plaintiff filed this action on July 8, 2011 claiming that Defendant breached the Retail Installment Sales Contract by failing to make payments upon demand and, further, that Defendant committed fraud upon the Plaintiff by giving Plaintiff a check without sufficient funds in the amount of \$15,000.00 on December 12, 2006.

Defendant counterclaimed against Plaintiff alleging that Plaintiff made material representations to induce Defendant to fund fraudulent activity, that Plaintiff failed to provide Defendant an automobile in breach of the Retail Installment Sales Contract and that Plaintiff violated the Consumer Sales Practices Act, R.C. 1345.02 and R.C. 1345.03 through the Retail Installment Sales Contract.

## 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. Claims Arising Under the Retail Installment Sales Contract.

Defendant seeks summary judgment on Plaintiff's first two claims on the grounds that he, as an individual, was not a party to the Retail Installment Sales Contract. Defendant maintains that: "At all relevant times Bedford did business with Severy's business and never with Severy as an individual."

The Retail Installment Sales Contract is signed by Defendant. There do not appear to be any notations indicating that he signed the document in a representative capacity. It has long been the law that corporate officers avoid individual liability if they sign on behalf of the corporation using "company name, individual's signature, individual's position". *Aungst v. Cheque*, 72 Ohio St. 551, 553-554, 74 N.E. 1073 (1905). Defendant does not appear to have signed the document in a manner recognized to avoid individual liability.

Additionally, the status of Defendant's business has not been sufficiently demonstrated to the Court. A review of public records available from the Ohio Secretary of State does not indicate the existence of Defendant's business during the relevant time period. Defendant does not aver or otherwise offer any proof of the corporate status, if any, of Defendant's business. Absent such proof, Defendant, as the owner of a business entity which is not a limited liability entity under Ohio law, may be personally liable for business accounts. If Defendant's business entity is not a limited liability company or corporation, it "has no legal identity separate from that of the individual who owns it. It may do business under a fictitious name if it chooses, but "  
\* \* \* [d]oing business under another name does not create an entity distinct from the person

operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his obligations.” *Patterson v. V & M Auto Body*, 63 Ohio St.3d 573, 575, 589 N.E.2d 1306 (1992).

Because genuine issues of material fact remain concerning Defendant’s capacity in executing the Retail Installment Sales Contract, summary judgment on Plaintiff’s claims arising from the contract may not be granted.

C. Claims Arising from Defendant’s Alleged Bad Check.

Defendant seeks summary judgment on Plaintiff’s claim that Defendant issued a check on December 12, 2006 from his business with knowledge that the business lacked sufficient funds to honor the check. Defendant maintains that Plaintiff’s fraud claim is barred by the applicable statute of limitations.

The statute of limitations on fraud claims is four years. R.C. 2305.09. Thus, Plaintiff’s claim filed on July 8, 2011 was filed outside the statute of limitations and Defendant’s motion for summary judgment on this claim has merit.

D. Defendant’s Counterclaims.

Plaintiff seeks summary judgment on Defendant’s counterclaims on the grounds that Defendant has failed to state facts sufficient to adequately plead a claim of fraud as required by Civ.R.9(B). Plaintiff relies on the legal assertions of Defendant’s counterclaim and upon the deposition testimony of Defendant in which Defendant asserts that the misrepresentation is the failure to abide by the Consumer Sales Practices Act.

Defendant attempts to evade individually liability by maintaining that he executed agreements in a representative capacity for his business while simultaneously asserting that he was an individual engaged in a consumer transaction subject to the Consumer Sales Practices

Act. Ohio law defines a “consumer transaction” as: “a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual *for purposes that are primarily personal, family, or household*, or solicitation to supply any of these things.” R.C. 1345.01(A). It is undisputed that Defendant was not purchasing motor vehicles for his personal use through the Retail Installment Sales Contract. The Consumer Sales Practices Act is not, as a matter of law applicable to the transaction at issue in this case and summary judgment is warranted as to Defendant’s First and Third Counterclaims.

Defendant’s Second Counterclaims alleges that Plaintiff failed to deliver an automobile to Defendant as required by the Retail Installment Sales Contract. During his deposition, Defendant admitted the following:

Q. Now, when you signed the security agreement, had you already received automobiles from Bedford Auto Wholesale representing what was stated in the security agreement?

A. The business had received the automobiles.

Deposition of David Severy, 36:20-25, 37:1.

Defendant having admitted that he received the automobiles at issue for his business as required by the agreements at issue, Plaintiff is entitled to summary judgment on Defendant’s Second Counterclaim.

### III. CONCLUSION.

For the foregoing reasons:

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT ON DEFENDANT’S COUNTERCLAIMS IS GRANTED.**

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED IN PART AND DENIED IN PART. DEFENDANT IS GRANTED SUMMARY JUDGMENT ON CLAIM THREE OF PLAINTIFF'S COMPLAINT. ALL FURTHER RELIEF IS DENIED.

IT IS SO ORDERED.

TRIAL TO PROCEED AS SCHEDULED ON FEBRUARY 6, 2012 AT 8:30 AM

  
JUDGE BRENDAN J. SHEEHAN

Dated: 1/26/12

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 26<sup>th</sup> day of January, 2012:

Lawrence S. Benjamin  
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Solon, OH 44139

David Watson  
Christopher R Snyder  
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