

JUL 21 1988



IN THE JUSTICE OF THE PEACE COURT #16  
OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Diamond Rental Center )  
1046 S. DuPont Highway )  
Dover, DE 19901 )  
  
PLAINTIFF )  
  
vs )  
  
Lisa Rodgers )  
Lakeland Trailer Park, Lot #38 )  
Dover, DE 19901 )  
  
DEFENDANT )

Civil Action JP 16 88 C1248

Jeremy Homer, Esquire of Parkowski, Noble & Guerke, Dover, DE  
for defendant.

Trial held June 23, 1988; decided July 15, 1988.

Judge Ernst M. Arndt, presiding.

Plaintiff, Diamond Rental Center, has brought against defendant, Lisa Rodgers, a replevin action to recover a living room set. Plaintiff rented the living room set to defendant on August 22, 1987. The term of the lease was weekly, with rental payments of \$20.35 a week. The lease had a clause to allow renewal of the lease by making the weekly rental payment in advance. The lease also included a purchase option clause. The terms of this clause transferred ownership of the furniture to the defendant after the lease had been renewed for 78 weeks. Plaintiff claims that no payments have been made since May 14, 1988 and seeks return of the furniture.

Defendant claims she went to plaintiff because she did not have sufficient credit to purchase living room furniture. Defendant was advised that the plaintiff did not require a credit check. Defendant was advised the purchase price of the furniture, and that if she paid \$20.35 for 78 weeks the furniture would be hers.

In February 1988, defendant requested the balance on her account. At this time defendant claims it was explained to her, for the first time, that only 50% of her rental payment was being applied to the purchase price. Defendant claims when she signed the contract she was told all of the payment was being applied to the purchase price.

In April of 1988, defendant, through her lawyer, advised plaintiff she had made payments of \$698.00 toward the \$718.00 purchase price. Defendant also advised she was willing to pay, in full, the remaining \$60.00 if plaintiff gave her written confirmation that the title of the furniture would pass to her.

Defendant also advised plaintiff the contract she signed violates the Delaware Retail Installment Sales Act (6 Del. C. § 4301 et seq.). Defendant alleges that even though her contract is titled a "Rental Agreement", the definition in 6 Del. C. § 4301 (6) would encompass her rental agreement as a "Retail Installment Contract". The contract must make disclosures of the cash sale price of the goods, service charges, and the total cost of the goods. In addition to the deficiency of the contract, defendant alleges deceptive trade practices and seeks relief under 6 Del. C. § 2533; the Delaware Uniform Deceptive Trade Practices Act.

The Court was unable to find any Delaware Case Law on the issues raised by the defendant. The defense did provide two cases from other states; Chandler, et al. v Riverview Leasing, Inc. an unreported opinion from Pennsylvania Court of Common Pleas of Northampton County and Murphy V McNamara, 416 A. 2d 170, a case out of Superior Court of Connecticut.

Looking at Chandler, et al. v. Riverview Leasing, Inc. we find a case very similar to the one before this Court. Pennsylvania's definition of a Retail Installment Contract in their Amended Pennsylvania Goods and Services Sales Act of 1966, as amended in 1982, §1201 (6) is almost identical to Delaware as defined in 6 Del. C. §4301 (6). Pennsylvania defines a Retail Installment contract as follows:

"Retail installment contract" or "contract" means any contract for a retail installment sale between a buyer and a seller which provides for repayment in

installments whether or not such contract contains a title retention provision, and in which a time price differential is computed upon and added to the unpaid balance at the time of sale or where no time price differential is added but the goods or services are available at a lesser price if paid by cash or where the buyer, if he had paid cash, would have received any additional goods or services or any higher quality goods, or services at no added cost over the total amount he pays in installments. When taken or given in connection with a retail installment sale, the term includes but is not limited to a security agreement and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract. The term also includes any contract, obligation or agreement in the form of bailment or lease if the bailee or lessee has the option to renew the contract by making the payments specified in the contract, the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration upon full compliance by the bailee or lessee with his obligations under the contract, including an option by the bailee or lessee to renew the contract, and those payments contracted for by bailee or lessee, including those payments pursuant to the exercise of an option by the bailee or lessee to renew the contract, are substantially equivalent to or in excess of the aggregate value of the property and services involved. With respect to a sale described in the previous sentence, the disclosures required under this title shall be calculated on the assumption that the bailee or lessee will exercise all of his options to renew the contract, make all payments specified in the contract, and become the owner of the property involved. (emphasis ours)

6 Del. C. § 4301 (6) defines a Retail installment Contract as follows:

"Retail installment sale" or "contract" means any contract for a retail installment sale between a buyer and seller, entered into or performed in this State, which provides for repayment in installments, whether or not such contract contains a title retention pro-

vision, and in which a time price differential is computed upon and added to the unpaid balance at the time of sale or where no time price differential is added but the goods or services are available at a lesser price if paid by cash. When taken or given in connection with a retail installment sale, the term includes but is not limited to a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract.

Plaintiff contends that this is not a retail installment contract but a rental agreement. Plaintiff contends the defendant had rented other items from them without any problems. On cross examination plaintiff testifies that the intent of their business is for the customer to complete the entire rental period and take title to the goods. Plaintiff stated they did not wish to take back "used furniture".

The Court determines this is a retail installment contract. The defendant is leasing goods by contracting to pay for their use a sum in excess of their value, and has the option to become the owner of the goods if all the terms of the contract are complied with. The contract, before the Court, is deficient in that it fails to disclose the purchase price, service charges, and deferred purchase price of the goods. This contract fails to meet the requirements set forth in 6 Del C. § 4305 which defines the information necessary in a retail installment contract.

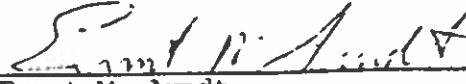
In Murphy v McNamara a person had purchased a television by paying \$16.00 weekly. The Court held that since "the buyer was required to pay over 2½ times

the regular retail sales price off the set, that she had not been advised by seller of such true purchase price and at the time she had unequal bargaining power because of her economic circumstances . . . , constituted an unfair trade practice.

The Court finds that in this case the defendant would be paying \$1,587.30 for goods that she was told cost \$718.00. Nowhere on the contract is this disclosed. As plaintiff has testified, the intent of the contract is for the customer to make all payments and take title to the goods. This is also confirmed by their "depreciation chart" they use to quote an early purchase of the goods before the end of the contract's term. Plaintiff totally depreciates a living room set in 78 weeks, while the standard used by the insurance claims industry is 10 years. In fact, the terms of the lease are such that the only sensible course at the end of the lease is to exercise the purchase option. The lease thereby intentionally creates a security interest.

The Court finds the contract falls within the definition of 6 Del C § 4301 (6) and is subject to all requirements and restrictions of 6 Del C Chapter 43. By failing to comply with these requirements the plaintiff has engaged in deceptive trade practices. Plaintiff is ordered to return all monies paid by defendant to her upon return of the furniture. This amount \$814.73 will be tripled, as called for in 6 Del C § 2533 (c), total \$2,444.19. Defendant's request for attorney's fees, as provided in 6 Del C § 2533 (b), is denied as the Court does not find this an exceptional case.

IT IS SO ORDERED THIS 19th DAY OF JULY 1988.

  
Ernst M. Arndt  
Justice of the Peace

Diamond Rental Center Vs Lisa Rodgers  
JP 16 88 C1248  
PAGE 6

Either party has 15 days starting on the date the judgment is signed, to appeal this judgment to the Superior Court. To make an appeal, the appellant must appear in this Court, make the appeal in writing, post an appeal bond, if appropriate, and arrange for a transcript of the record.

cc: Diamond Rental Center  
Jeremy Homer, Esquire  
File

EMA/saf