

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SHAWN MANLEY,

Plaintiff,

-v-

Case Number 2004-059092-NZ  
Honorable Nanci J. Grant

DAIMLER CHRYSLER CORPORATION,  
a Delaware corporation,

Defendant.

DANI K LIBLANG (P33713)  
MICHAEL J CARELLI (P64248)  
ATTORNEYS FOR PLAINTIFF  
260 EAST BROWN ST SUITE 320  
BIRMINGHAM MI 48009

SCOTT M ERSKINE (P54734)  
ATTORNEY FOR DEFENDANT  
13957 HALL ROAD SUIT 298  
SHELBY TOWNSHIP MI 48315

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**ORDER AND OPINION**

At a session of said Court, held in the  
Courthouse in the City of Pontiac, County of  
Oakland, State of Michigan on the 30th day of  
August, 2005.

PRESENT: THE HONORABLE NANCI J. GRANT, CIRCUIT JUDGE

This matter comes before the Court on the parties' cross motions for summary disposition. For the following reasons, both motions are DENIED.

Defendant bases its motion on an arbitration clause in the parties' agreement. Plaintiff argues that the arbitration clause is not enforceable because the language was not contained in the separate written warranty provided by Defendant. In support, Plaintiff correctly cites *Cunningham v Fleetwood Homes of Georgia, Inc*, 253 F3d 611 (CA 11 2001), for the

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proposition that the "single document rule" prohibits enforcement of such an arbitration provision. Defendant responds by arguing that *Cunningham* relied on "flawed reasoning" as it characterized the arbitration agreement as "an informal dispute resolution mechanism," and that the ruling was "effectively overruled" in *Davis v Southern Energy Homes, Inc.* 305 F3d 1268 (CA 11 2002).

In considering this issue, the Court first notes that there does not appear to be binding precedent addressing this situation. The Court finds, however, the reasoning of *Cunningham* to be persuasive. Moreover, the *Davis* ruling does not affect this analysis as the arbitration agreement in that case was contained in the written warranty. Therefore, the arbitration clause is unenforceable and Defendant's motion is denied.

In his partial summary disposition motion, Plaintiff argues that the problems with the vehicle establish a violation of the Michigan Lemon Law, the Magnuson-Moss Warranty Act, and the Consumer Protection Act. Defendant responds not so much by presenting contradictory evidence, but rather by pointing out that, at least at the time the responses were filed, discovery had not been completed and Defendant had not had the opportunity to depose Plaintiff or formally inspect the vehicle.


The Court agrees that it would be improper to grant Plaintiff's motion without first allowing the discovery Defendant seeks. Therefore, Plaintiff's motion is also denied, albeit without prejudice.

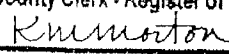
**NANCI J. GRANT**

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NANCI J. GRANT, Circuit Judge

**PROOF OF SERVICE**

I certify that a copy of the above instrument was served upon the attorneys of record in the above case by mailing it to the attorneys at their business address as disclosed by the pleadings of record, with prepaid postage on 8/30/05.

  
Kathleen M. Morton, Secretary to the Hon. Nanci J. Grant

**A TRUE COPY**  
**RUTH JOHNSON**  
Oakland County Clerk - Register of Deeds  
By:   
Deputy