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Closing the Door on Hybrid Product Defect-Fraud Claims

By **Erin Bosman, Julie Park, Kai Bartolomeo and Austin Marsh**

Erin Bosman

Julie Park

Kai Bartolomeo

Austin Marsh

Law360, New York (May 24, 2017, 11:36 AM EDT) -- On April 13, 2017, in Azoulai v. BMW of N. Am. LLC (Case No. 16-cv-00589), the U.S. District Court for the Northern District of California dismissed a proposed consumer fraud class action against BMW of North America LLC (BMW) concerning the soft-closing automatic doors (SCA) in various BMW models.

While many automotive defect claims are brought as pure product liability actions, the plaintiffs in Azoulai sought to "hybridize product liability and consumer fraud doctrines" in pursuit of a more lucrative fraud-based class action damages award. Encouragingly, the court rejected these efforts, finding that slamming doors are a known hazard (that was warned against) and that the consumer fraud doctrine was inapplicable.

Background

In 2002, BMW introduced SCA on certain automobile models. The SCA feature "auto-activates and pulls the door of the vehicle to the frame of the automobile and firmly closes it when the door is within 6mm of the closed position." The Azoulai plaintiffs claimed that the "SCA crushed their fingers while drawing the doors of their vehicles to the closed position." They contended that the SCA should have included a sensor that halted its operation if it detected small objects (like fingers) between the door and the frame of the vehicle.

But rather than focus on their physical injuries, the plaintiffs alleged deception in their lawsuit against BMW. Specifically, they claimed that BMW "wrongfully induced Plaintiffs to purchase and/or lease their vehicles by concealing [the alleged defect], and that Plaintiffs would have paid less for their vehicles or would not have purchased or leased them at all had they known of the defect."

The plaintiffs sued for breaches of warranties, as well as violations of the California Consumer Legal Remedies Act (CLRA) and the California Unfair Competition Act (UCL). The plaintiffs did not bring product liability claims.

Standing

The court held that the plaintiffs lacked standing because they did not allege facts showing an injury derived from the legal theories alleged in their pleading. To allege standing for fraud-based claims, a plaintiff must plead facts that establish an economic, as opposed to purely physical, injury. The court found that the plaintiffs failed that test.

Although their physical injuries might have conferred standing under a traditional product liability theory, the plaintiffs "expressly decline[d] to assert [a product liability] claim," opting instead to pursue fraud-based claims. As the court stated, "[r]ather than seeking to recover for their injuries, Plaintiffs bring this suit grounded in consumer fraud[.]" In short, the plaintiffs' actual injuries and theories of liability didn't match.

The court's holding should have come as no surprise to the plaintiffs. Several months earlier, the court first dismissed the plaintiffs' complaint (without prejudice) for lack of standing, noting the plaintiffs' focus on economic, rather than physical, harm.

As the court stated in its Aug. 8, 2016, order, "both parties agree that personal injury is not what drives this case." But rather than modify their theory, plaintiffs held fast to fraud, presumably to avoid thorny issues at the class certification stage.

As the court remarked, "[t]his was a strategic decision since individual issues routinely predominate in products liability class actions for personal injuries." The court further noted that even if the SCA were defective under "products principles," the "lack of an unpromised safety feature can never constitute a design defect that required disclosure in the consumer fraud context."

The court also concluded that the plaintiffs had no basis for their contention that their vehicles "declined in value because the SCA lacked a [safety] sensor." The court noted that the plaintiffs did not allege that an added safety sensor was bargained for or was built into the purchase price of the vehicles.

Instead, the plaintiffs sought an "'alternative design,' which can only be established by retrospective standards of products liability law." The court ruled out another avenue of devaluation: the plaintiffs didn't allege that the SCA design received negative attention from the media, which would have decreased the value of their vehicles.

Accordingly, the court rejected the plaintiffs' hybridization attempt, holding that they suffered no injury in fact related to BMW's alleged fraud, and therefore lacked standing.

Plaintiffs' Deficient Claims

The court further rejected arguments that BMW overstated the safety of the SCA and concealed a design defect in the technology. Specifically, the plaintiffs alleged that BMW misrepresented that the SCA "safely" closes the doors of the vehicles and that BMW actively concealed that the SCA lacked a safety sensor. The court rejected these claims.

BMW argued that its marketing statement that the SCA operates "safely" was mere puffery and, therefore, not actionable under the CLRA or UCL, and did not create a warranty. In order to be actionable (and not considered puffery), a statement must be "specific and measurable" — it cannot be

generalized, vague or unspecified.[1] The court held that there is nothing "specific and measurable" about the word "safely." This determination proved fatal to all of the plaintiffs' claims.

To allege a concealment or "failure to disclose" claim under the CLRA or UCL, plaintiffs are required to allege that the undisclosed defect posed an unreasonable safety hazard. The plaintiffs' claims in this case failed for two reasons.

First and foremost, they did not adequately allege existence of a defect in the design of the SCA. Second, the court noted that even if the plaintiffs had established the existence of a defect, their claims would still fail because they were unable to allege an unreasonable safety risk posed by the SCA.

"Humans have been slamming their fingers in doors since doors were invented," noted the court. Pointing out the warnings in BMW's owner manual, the court further observed that "[s]lamming one's finger in a car door, while plausibly hazardous, is an anticipated risk of using any door, and is a risk of which BMW expressly warns consumers."

On whether leave to amend should be granted, the court found that "repeated failure to cure deficiencies by amendments previously allowed, and futility of the amendment" were dispositive. Because the plaintiffs' various filings contained "no set of facts that could constitute sufficient allegations in support of the claims dismiss here," the court found that "amendment would be futile."

Conclusion

Azoulai illustrates the perils of overreaching. Had the plaintiffs brought product (or strict) liability claims for the injuries allegedly caused by the SCA, and sought damages to compensate for their medical bills and reasonable related expenses, the outcome might have been different. However, electing to bring fraud-based class action claims with the hope of a larger payoff closed the door on any plaintiff recovery.

Erin M. Bosman and Julie Y. Park are partners, and Kai S. Bartolomeo and Austin James Marsh are associates, at Morrison & Foerster LLP in San Diego, California.

[1] Anunziato v. eMachines Inc., 402 F. Supp. 2d 1139 (C.D. Cal. 2005).
