THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CV-00145(BR)

NATHANIEL COLEMAN, BRITTANIE COLEMAN Plaintiff,	)	
vs.	)	**MEMORANDUM IN RESPONSE TO DEFENDANT'S REPLY TO PLAINTIFFS' RESPONSE MEMORANDUM FOR MOTION TO REMAND**
CHRYSLER LLC Defendant.	)	

NOW COMES PLAINTIFF, Nathaniel Coleman and Brittanie Coleman submits this Memorandum of Law in Response to Defendant's Reply to Plaintiffs' Response Memorandum for Motion to Remand.

NATURE OF THE CASE

1. This case arises from a violation of the North Carolina New Motor Vehicles Warranties Act. Chapter20, Article 15A of the North Carolina General Statutes. N.C. Gen. Stat. §§ 20-351 through 20-351.11.

FACTS THAT PERTAIN TO THE MATTER BEFORE THE COURT FOR RULING

1. Defendant argues in section I of their Reply to Plaintiffs' Response Memorandum for Motion to Remand that lessor's damages should be included in determining the amount in controversy.
2. Defendant argues in section II of their Reply to Plaintiffs' Response Memorandum for Motion to Remand that the statutory definition of consumer includes Lessor. And that Plaintiff is entitled to bring a cause of action on behalf of the lessor.

3. Defendant argues in section III of their Reply to Plaintiffs' Response Memorandum for Motion to Remand that lessor's damages should be trebled.

ARGUMENT

1. Response to Defendant's argument in section I of Reply to Plaintiffs' Response Memorandum for Motion to Remand.

Defendant cites *Alexander v. DaimlerChrysler Corp.*, 2004 WL 179369 (January 30, 2004) in making their argument that the damages of the lessor should be included in determining the amount in controversy. There is a substantial problem when using this case to make this argument. In *Alexander*, the dealerships **were a party to the suit**. *Id.* The dealerships were Hickory Automall Chrysler Plymouth, Inc.; Auto USA, Inc., d/b/a Empire Chrysler Dodge Jeep Eagle; and YSU Automotive, Inc., f/k/a Shelby Chrysler Plymouth Jeep Eagle, Inc. *Id.* Therefore, this unpublished District Court case that Defendant cites is not on point Furthermore, the Court in *Alexander* never states or implies that the computation of damages suffered by the car dealership should be attributed to the Lessee. *Id.* The quotation from the case that Defendant includes is accurate, but useless. Defendant's quotation is the only mention of lessor's damages in the case and the quotation only states that they exist, not that they would be included in the amount in controversy. *Id.* In fact the word lessor never appears in the case outside of the six lines of Defendants quotation. *Id.* Any further interpretation of lessor's damages is Defendant's and the Defendant's alone. The issue is whether the non-party lessor's damages can be included in the amount in controversy. Defendant continues to attempt to respond to this issue without providing any relevant authority on point.

I speculate that the reason that Defendant is not able to come up with any form of relevant authority is because this procedural issue has been settled in the 4th Circuit for nearly 80

years. Plaintiff has no right to recover and no enforceable interest in any money that Defendant owes to the lessor. This law suit is not going to create the duty of the manufacturer to pay damages to the lessor. The law suit may in effect go to establish whether the duty to pay those damages already exists. However, when jurisdiction depends upon the amount in controversy, it is determined by the amount involved in the particular case, and not by any contingent loss either one of the parties may sustain by the probative effect of the judgment, however certain it may be that such loss will occur. *Mutual Life Ins. Co. v. Moyle*, 116 F.2d 434 (4th Cir. S.C. 1940). As a result of the ruling in *Mutual Life Ins*, which is binding on this Court, this Court cannot include the possible damages of the lessor in the amount in controversy, no matter the certainty that Defendant claims they can calculate them as.

Lessor, to this point has suffered no damages. All payments have been made by Plaintiff, on time and in full. Lessor has realized all benefits of the contract up to this point. Whether or not the defendant's duty to pay damages ever arose is the ultimate issue before the Court. When the Court determines that the duty to pay damages under the statute has arisen, it will relate back to the time in which the duty arose. This law suit is about the Plaintiffs enforcing the duties that Chrysler owes to them, not creating them. If it is determined that Defendant owed a duty to Plaintiff, this will only go to show that they also breached a duty owed to the lessor. This does not create the duty; this only shows that the duty previously existed. Plaintiff leaves the lessor to enforce whatever obligations on which Chrysler's dereliction has created an issue for themselves. In fact neither Defendant nor Plaintiff have any idea whether the lessor has any intention of enforcing the duties that Chrysler owes to them. Lessor is with full knowledge of the vehicle in question's violation of the Warranty Act. Plaintiffs had a choice as to whether or

not they would enforce the duties imposed on Defendant by the Warranty Act and opted to enforce those duties. Lessor has a similar choice and has thus far not acted on that choice.

This being said, Plaintiffs still contend that Defendant has no authority to base their assessment of damages of an entity, which is not a party to the suit, to the Plaintiff with respect to the Warranty Act. Plaintiff has never claimed that there is no authority for lessors having damages. Plaintiffs' claim has always been that the damages of the lessor cannot be attributed to a Plaintiff of a suit in which the lessor is not a party to as established by *Mutual Life Ins. Co.*

2. Response to Defendant's argument in section II of Reply to Plaintiffs' Response Memorandum for Motion to Remand.

The defendant has tried to mislead this Court into thinking that the lessor would be a consumer under the Warranty Act. They did so by including in section II of the Reply to Plaintiffs' Response Memorandum for Motion to Remand, a fraudulently altered form of the definition of consumer as defined by the Warranty act. The Defendant Stated:

> Under the Warranty Act, "[c]onsumer means the purchaser…or lessee from a commercial lender, lessor, or from a manufacturer or dealer, of a motor vehicle, and any other person entitled by the terms of an express warranty to enforce the obligations of that warranty." N.C.G.S. § 20-351.1(1)(2007). *See* Exhibit "B".

Defendant goes on to say "the lessor is clearly entitled to enforce the obligations of an express warranty. Therefore, the lessor is a consumer as defined by statute." However, if the Court were to examine exhibit "B", the Court would see that the ellipses in Defendants definition is an attempt to deceive the Court. The portion of the statute that Defendant omitted, in fact specifically excludes lessor from being defined as a Consumer. The ellipses in Defendant's

definition take the place of: "other than for the purposes of resale." As the lessor, a car dealership, purchased the vehicle "for the purposes of resale" they cannot be deemed to be a consumer.

Defendant also argues in this section that pursuant to the lease agreement, Plaintiff is authorized to bring a cause of action on behalf of the lessor. The lease agreement is not legal authority. Defendant has provided no statutory or case law authority that the consumer can bring a cause of action of the lessor. Despite what the Defendant would like to think, a lease is not a law license. Whether or not the lease claims that the Plaintiff can bring a cause of action on behalf of the lessor, which it does not, is irrelevant. Defendant's argument that the lessor assigned all of its rights under the warranties to the Plaintiff yet, somehow retained rights that can be represented by plaintiff doesn't make sense. If all rights that the lessor has under the warranty are assigned away, then they have no right to sue under the warranty or have another sue on their behalf.

3. Response to Defendant's argument in section III of Reply to Plaintiffs' Response Memorandum for Motion to Remand.

Plaintiff concedes that the trebling of damages to the consumer should be included in determining the amount in controversy. Defendant argues however, that the trebling of damages should extend to the lessor's damages. They back this argument up with "authority is granted merely by means of an exercise of statutory interpretation." However they provide no evidence that the statute has ever been interpreted in the way they want it to be interpreted. The reason they provide no authority on this point is because in reality the statute currently interpreted to mean the exact opposite of what Defendant represents to the Court. Plaintiffs' argument, in

Plaintiffs' Memorandum of Law in Response to Defendant's Memorandum in Opposition to Plaintiff's Motion to remand, that the lessor's damages cannot be trebled is backed up with precedent from the North Carolina Supreme Court. *Taylor v. Volvo N. Am. Corp*., 339 N.C. 238 (N.C. 1994). In *Taylor* the Supreme Court specifically said that the only damages to be trebled are the damages to the consumer. *Id. Taylor* is currently the ruling case law in North Carolina for computation of damages under the Warranty Act and all computations of damages are bound by it. However, the Defendant is asking this Court to do something that it cannot. Under the Erie Doctrine this Court is bound to interpret the law in this case as it is applied under the laws of North Carolina.

In *Taylor* the NC Supreme Court stated:

> "the reference in the 'Remedies' section to 'monetary damages . . . fixed by the verdict' which are subject to trebling was ***intended by the legislature to refer to the net sum due to an injured consumer from the manufacturer pursuant to the provisions of the 'Replacement or refund' section***, and this sum is the total of the refunds, including consequential damages, due to the consumer minus the reasonable allowance for the consumer's use of the vehicle." Taylor v. Volvo N. Am. Corp., 339 N.C. 238 (N.C. 1994). This case is currently the ruling case law on North Carolina "Lemon Law."

The Court goes on to say:

> "We also believe, however, that the legislature intended the encouragement of private enforcement and settlement be directly proportional to the actual harm suffered by the consumer. This leads us to the conclusion that the legislature intended that, pursuant to the Act, ***only the net loss to the consumer should be trebled***." *Id.*

Again, the defendant makes arguments without any relevant authority. And, with regard to trebling the lessor's damages, the leading authority is actually the opposite of what Defendant argues.

CONCLUSION

There is no legally cognizable claim that Plaintiff could assert to invoke jurisdiction of this Court. Defendant has provided no legal bases, whether it be factually, statutory, case law, or otherwise for any of the arguments that they have heretofore presented to this Court. Defendant makes three separate arguments and in doing so requests this Court to commit three separate counts of reversible error. Because of the frivolous nature of Defendant's removal, along with Defendants continued argument against established precedent, the court should issue an order to remand and include in the order a requirement for Defendant's payment of just costs and any actual expenses, including attorney fees incurred as a result of the removal to the Plaintiff. Plaintiff makes this request pursuant to 28 USCS § 1447(c).

NATHANIEL COLEMAN, BRITTANIE COLEMAN Plaintiff, vs. CHRYSLER LLC Defendant.	)))))))))	**CERTIFICATE OF SERVICE**

The undersigned certifies to the Court that the Memorandum of Law in Response to Defendant's Reply to Plaintiffs' Response Memorandum for Motion to Remand of Nathaniel Coleman was this day filed with the Clerk of Court.

The undersigned further certifies to the Court that the same document identified above was this day served upon the parties to this action *via* First Class U.S. Mail, properly addressed to the parties or the attorney of record for the parties, pursuant to Rule 5 of the Federal Rules of Civil Procedure, as follows:

Jose A. Coker

The Charleston Group

P.O. Box 1762

Fayetteville, NC 28302

Attorneys for Chrysler LLC

This the 29 day of April, 2008

By:_____

Nathaniel Coleman

By:_____

Brittanie Coleman