



# In the Missouri Court of Appeals Eastern District

## DIVISION FOUR

TARA L. WARD, ET AL.,	)	No. ED97592
	)	
Appellants,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	
WEST COUNTY MOTOR COMPANY, INC. D/B/A WEST COUNTY BMW,	)	Honorable Richard C. Bresnahan
	)	
	)	
Respondent.	)	Filed: May 22, 2012

Tara L. Ward, Kamal Yassin, Mona Yassin, Matthew F. Toole, Curt S. Zargan, and Larry L. LaBarge (collectively referred to as “Plaintiffs”) appeal the judgment of the trial court granting West County Motor Company, Inc. d/b/a West County BMW’s (“West County BMW”) motion to dismiss their claim for violation of the Missouri Merchandising Practices Act. We affirm.<sup>1</sup>

### **I. BACKGROUND**

Viewed in the light most favorable to the allegations contained in their petition, Plaintiffs each visited West County BMW with the possible intention to purchase a vehicle. Each of the Plaintiffs paid a deposit to secure the purchase of the vehicle of their

---

<sup>1</sup> Plaintiffs filed a motion for attorney’s fees on appeal based upon Section 407.025.1 RSMo (2000), which allows for an award of attorney’s fees to the “prevailing party.” Plaintiffs are not the “prevailing party” here, and therefore, the motion is denied.

choice. Plaintiffs also each signed a vehicle buyer's order, which noted, "ALL DEPOSITS ARE NON REFUNDABLE." When Plaintiffs decided not to purchase their intended vehicles, they were told their deposits would not be refunded. Plaintiffs filed suit against West County BMW for violation of the Missouri Merchandising Practices Act ("MMPA") and for conversion. West County BMW filed a motion to dismiss Plaintiffs' claim of violation of the MMPA for failure to state a claim upon which relief could be granted. The trial court granted West County BMW's motion. Plaintiffs subsequently voluntarily dismissed their claim for conversion and filed the instant appeal.<sup>2</sup>

## II. DISCUSSION

### A. Standard of Review

We review the trial court's decision to grant West County BMW's motion to dismiss *de novo*. *State ex rel. Koster v. Professional Debt Management, LLC*, 351 S.W.3d 668, 670 (Mo. App. E.D. 2011). If the petition is dismissed for failure to state a claim, we accept the facts alleged in the petition as true, and we construe the facts liberally in favor of the plaintiffs. *Id.* Our review of a dismissal for failure to state a claim is solely a test of the adequacy of the petition. *Id.* A petition states a claim for relief if the allegations invoke principles of substantive law that may entitle the plaintiffs to relief. *Id.*

---

<sup>2</sup> We note that in its response to Plaintiffs' claims on appeal, West County BMW argues this Court lacks jurisdiction to hear the appeal because Plaintiffs' voluntary dismissal of the remaining count of conversion did not dispose of a "distinct judicial unit." This issue has already been raised in West County BMW's previous motion to dismiss, which was denied by our Court.

**B. Plaintiffs Failed to State a Claim Under the MMPA**

The MMPA was created to serve as a supplement to the common law definition of fraud. *State ex rel. Koster*, 351 S.W.3d at 671. Its purpose is to “preserve fundamental honesty, fair play and right dealings in public transactions.” *Id.* (internal citation omitted).

Section 407.025.1 RSMo (2000)<sup>3</sup> of the MMPA creates an individual right to an action under the MMPA in favor of any person “who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020.” In relevant part, Section 407.020 makes it unlawful to use any deceptive or unfair practices “in connection with the sale or advertisement of any merchandise in trade or commerce.”

There is no specific definition of deceptive practices contained in the MMPA, and the Act was intentionally drafted broadly in scope to prevent evasion by use of precise definitions. *State ex rel. Koster*, 351 S.W.3d at 672. However, 15 CSR 60-8.020, promulgated in conjunction with the MMPA, defines “unfair practice” as a practice which either: “1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or 2. Is unethical, oppressive or unscrupulous. . . .” In the present case, Plaintiffs premised West County BMW’s liability under the MMPA upon the alleged violation of Section 365.070.4 RSMo (Cum. Supp. 2008). According to Plaintiffs, pursuant to Section 365.070.4, they were provided a limited right of rescission, and they were entitled to a refund of their deposit upon such rescission. We disagree.

---

<sup>3</sup> All further statutory references are to RSMo (2000), unless otherwise indicated.

As the parties both note, the question of whether Section 365.070.4 applies to the circumstances in the present case appears to be one of first impression. However, the law with respect to statutory interpretation is well settled. The primary rule of statutory interpretation is to determine the legislature's intent from the language used and to give effect to that intent. *Finnegan v. Old Republic Title Co. of St. Louis, Inc.*, 246 S.W.3d 928 (Mo. banc 2008). In determining the legislature's intent we consider the language used in the statute, and we give the words their plain and ordinary meaning. *Id.*

Section 365.070.4 requires a seller to deliver a copy of "the contract" to the buyer. Until such delivery, Section 365.070.4 provides the buyer may "rescind his agreement and receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract . . ." Section 365.020(10) RSMo (Cum. Supp. 2011) defines "contract" in relevant part as: "an agreement evidencing a retail installment transaction entered into in this state pursuant to which the title to or a lien upon the motor vehicle, which is the subject matter of the retail installment transaction is retained or taken by the seller from the buyer as security for the buyer's obligation." Plaintiffs concede they did not enter into a retail installment contract with West County BMW. However, they argue Section 365.070.4 still applies because they entered into an "agreement" with West County BMW by signing the vehicle buyer's order which reflected the payment of the deposit and the order of the vehicle. According to Plaintiffs the language of Section 365.070.4 allows them the right to rescind this "agreement" and obtain a refund of any money paid in contemplation of entering into a retail installment contract. Plaintiffs' interpretation of Section 365.070.4 ignores the plain language of the statute.

Section 365.070.4 clearly provides a limited right of rescission and refund to a buyer who enters into a retail installment contract. The use of the phrase “in contemplation of the contract” does not require a different conclusion. Instead, it is simply an acknowledgement that a deposit of money or other property could have been made in contemplation of the retail installment contract ultimately entered into between the parties. After such a contract is executed, Section 365.070.4 requires the seller to deliver a copy of the contract to the buyer. The statute itself concerns the form and content of retail installment contracts. In addition, when read in conjunction with the definitions contained in Section 365.020, it is clear the legislature intended Section 365.070.4 to apply only to retail installment contracts. It would be an unreasonable reading of the plain language of the statute to conclude Plaintiffs had the right to rescind the agreement evidenced by the vehicle buyer’s order alone and obtain a refund of any deposit.

Here, Plaintiffs were not entitled to a limited right to rescind or to a refund of their deposit under Section 365.070.4 based upon the signed vehicle buyer’s order alone. The vehicle buyer’s order specifically stated the deposits were non refundable, and Plaintiffs did not make any other allegation of misrepresentation by West County BMW in their petition concerning the refund of the deposits. The remaining allegations of unfair practices by West County BMW related to the alleged violation of Section 365.070.4. Therefore, Plaintiffs’ second amended petition fails to state a claim for relief, and the trial court did not err in granting West County BMW’s motion to dismiss. Plaintiffs’ sole point on appeal is denied.

**III. CONCLUSION**

The judgment is affirmed.

A handwritten signature in black ink, appearing to read "Robert M. Clayton III". The signature is written in a cursive style with a horizontal line underneath it.

ROBERT M. CLAYTON III, Judge

Kurt S. Odenwald, C. J. and  
Patricia L. Cohen, J., concur.