


Farnan, District Judge.

Presently before the Court is the Motion For Summary Judgment (D.I. 29) filed by Defendant Reasonable Rides, Inc. For the reasons discussed, the Motion will be granted in part and denied in part.

BACKGROUND

This lawsuit arises from the events surrounding the attempted repossession of a car owned by Plaintiff Stephanie Robertson. In their Complaint (D.I. 1), Plaintiffs allege that on or about March 20, 2002, Ms. Robertson purchased the car from Defendant Reasonable Rides, Inc. ("Reasonable Rides"). Plaintiffs allege that on or about May 1, 2002, the engine of the vehicle failed, rendering the vehicle inoperable. Plaintiffs allege that Ms. Robertson informed Reasonable Rides that she would not continue to make scheduled payments on the vehicle until it was repaired, and that the vehicle was located at a local car dealership. Plaintiffs allege that on June 4, 2002 and during the week following, Defendant Richard Baxendale, representing Defendant Horton Brothers Recovery, Inc. ("Horton Brothers"), harassed the Robertson family in an attempt to repossess the vehicle. At the time of the events at issue, Ms. Robertson resided with her parents, Plaintiffs Mary Ann Robertson and Samuel Robertson, and her brother, Plaintiff Matthew Robertson.

On November 26, 2002, Plaintiffs filed suit against Reasonable Rides, Horton Brothers, and Richard Baxendale. The Complaint (D.I.

1) contains 6 counts: Count I - Violation of Fair Debt Collection Practices Act; Count II - Violation of the Uniform Commercial Code; Count III - Trespass, Assault, and Invasion of Privacy; Count IV - Negligence; Count V - Defamation; Count VI - Intentional Infliction of Emotional Distress.

On November 17, 2003, Defendant Reasonable Rides filed a Motion For Summary Judgment (D.I. 29).

DISCUSSION

I. Standard Of Law

In pertinent part, Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-

movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000).

To defeat a motion for summary judgment, the non-moving party must:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). However, the mere existence of some evidence in support of the non-movant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the non-movant on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Thus, if the evidence is "merely colorable, or is not significantly probative," summary judgment may be granted. Id.

II. Whether Reasonable Rides Is Entitled To Summary Judgment With Respect To The Fair Debt Collection Procedures Act Claim

The Court will deny the Motion For Summary Judgment with regard to the claim that Defendants violated the Fair Debt Collection Procedures Act made by Plaintiffs Mary Ann Robertson, Samuel Robertson, Matthew Robertson, and Stephanie Robertson.

By its Motion, Reasonable Rides contends that at the time of the attempted repossession, it had a present right to possession of

the property as collateral, and, therefore, is not subject to the provisions of the Fair Debt Collection Procedures Act ("FDCPA"), 15 U.S.C. §§ 1692, et seq. Further, Reasonable Rides contends that, because it contracted with Horton Brothers to repossess the car, Reasonable Rides is not a "debt collector" for the purposes of the FDCPA.

In response, Plaintiffs contend that Defendants had no "present right" to repossess the car because, before the events at issue in this lawsuit, Reasonable Rides asked Horton Brothers not to repossess the vehicle. Plaintiffs argue that Reasonable Rides allegedly made this request because it knew the vehicle was at the dealership, and that Stephanie Robertson had no interest in retaining the vehicle. Thus, Plaintiffs contend that Horton Brothers, as the agent of Reasonable Rides, had no "present right" to possession of the vehicle and, thus, is subject to the FDCPA.

In the Third Circuit, an automobile repossession business is subject to § 1692f(6), but not the remaining provisions of the FDCPA. Jordan v. Kent Recovery Servs., 731 F. Supp. 652 (D. Del. 1990); see also Piper v. Portnoff Law Assoc., Ltd., 396 F.3d 227, 236 (3d Cir. 2005). In interpreting the statute, the Jordan court held that Congress sought to proscribe the conduct of repossession agencies that have "no present right to the possession of the property claimed". Jordan, 731 F.Supp at 657. Section 1692f(6) provides in relevant part that:

A debt collector may not use unfair or unconscionable means to

collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: ...

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if -

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

15 U.S.C. § 1692f(6).

The Court concludes that Plaintiffs have established the existence of a genuine issue of material fact, namely whether Defendants violated section 1692f(6) the Fair Debt Collection Procedures Act. Thus, the Court will deny Defendant Reasonable Rides' Motion For Summary Judgment with regard to the claim by Plaintiffs that Defendants violated the Fair Debt Collection Procedures Act.

III. Whether Reasonable Rides Is Entitled To Summary Judgment With Respect the UCC § 9-609 Claim

The Court will grant Defendant Reasonable Rides' Motion For Summary Judgment with respect to the claim made pursuant to UCC § 9-609 by Plaintiffs Mary Ann Robertson, Samuel Robertson, and Matthew Robertson.

A. Whether Reasonable Rides Is Entitled To Summary Judgment With Respect the UCC § 9-609 Claim Filed By Plaintiffs Mary Ann Robertson, Samuel Robertson, and Matthew Robertson

The Court will grant Defendant Reasonable Rides' Motion For Summary Judgment with respect to the claim made pursuant to UCC §

9-609 by Plaintiffs Mary Ann Robertson, Samuel Robertson, and Matthew Robertson. Plaintiffs have brought forth no evidence that contradicts Reasonable Rides' contentions that Stephanie Robertson's family did not help her purchase the car or have any property interest in the car. Thus, the Court concludes that Plaintiffs have not established the existence of a genuine issue of material fact with regard to whether these plaintiffs are "debtors" for purposes of recovering for violations of Article 9 of the UCC. See 6 Del. C. § 9-601(d).

B. Whether Reasonable Rides Is Entitled To Summary Judgment With Respect to the UCC § 9-609 Claim Filed By Plaintiff Stephanie Robertson

The Court will deny Defendant Reasonable Rides' Motion For Summary Judgment with respect to the claim made pursuant to UCC § 9-609 by Plaintiff Stephanie Robertson.

Reasonable Rides contends that, because it notified Horton Brothers not to repossess the vehicle and because no repossession ever took place, Reasonable Rides has not violated section 9-609 of the UCC. In response, Plaintiffs contend that Reasonable Rides is liable for the torts committed by its agent, Horton Brothers, pursuant to the common law doctrine of respondeat superior. Plaintiffs contend that whether Horton Brothers was the agent of Reasonable Rides in these circumstances remains a disputed question of fact.

Pursuant to UCC §9-609, there are four elements which must be established in order for a self-help repossession to be proper: (1)

the creditor must have a security interest in the property repossessed; (2) the debtor must be in default; (3) the creditor's actions must be in conformance with its contract with the debtor; and (4) the repossession must occur without a "breach of the peace". If any one of these elements is missing, then the creditor has committed a wrongful repossession, and is liable to the debtor for the damages incurred as a result of the wrongful repossession. 6 Del. C. § 9-609.

The Court concludes that there are genuine issues of material fact with regard to whether Reasonable Rides committed a wrongful repossession and is liable to Stephanie Robertson for damages incurred as a result.

For these reasons, the Court will grant Defendant Reasonable Rides' Motion For Summary Judgment with respect to the claim made pursuant to UCC § 9-609 by Plaintiffs Mary Ann Robertson, Samuel Robertson, and Matthew Robertson, and deny the Motion For Summary Judgment with respect to the claim made pursuant to UCC § 9-609 by Plaintiff Stephanie Robertson.

IV. Whether Reasonable Rides Is Entitled To Summary Judgment With Respect the UCC Article 2 Claim

The Court will grant Reasonable Rides' Motion For Summary Judgment with respect to the claim made pursuant to UCC Article 2 by Plaintiffs Mary Ann Robertson, Samuel Robertson, and Matthew Robertson. The Court concludes that Plaintiffs have failed to put forth evidence establishing the existence of a genuine issue of

material fact with regard to whether these plaintiffs are "buyers" for purposes of Article 2 of the UCC.

The Court will also grant the Motion For Summary Judgment with respect to the UCC Article 2 claim made by Stephanie Robertson. The Court concludes that Plaintiffs have failed to put forth evidence establishing the existence of a genuine issue of material fact, and Reasonable Rides is entitled to judgment as a matter of law.

Reasonable Rides has submitted evidence that the "Buyer Order" that Stephanie Robertson signed at the time of the purchase conspicuously stated that the vehicle was being sold "As Is." (D.I. 31 at A340.) Pursuant to Delaware law, "all implied warranties are excluded by expressions like 'as is', 'with all faults' or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty" 6 Del. C. § 2-316 (3)(a).

For these reasons, The Court will grant Reasonable Rides' Motion For Summary Judgment (D.I. 29) with respect to the claims made pursuant to UCC Article 2.

V. Whether Reasonable Rides Is Entitled To Summary Judgment With Respect To Counts III, V, and VI

The Court will deny Reasonable Rides' Motion For Summary Judgment (D.I. 29) with regard to counts III, V, and VI of the Complaint. In Counts III, V, and VI of the Complaint (D.I. 1),

Plaintiffs allege that Reasonable Rides committed trespass, assault, invasion of privacy, defamation, and intentional infliction of emotional distress.

Reasonable Rides contends that it cannot be held liable for torts committed by Horton Brothers or Richard Baxendale because Horton Brothers was acting as an independent contractor. In response, Plaintiffs contend that Defendants have failed to establish the absence of a genuine issue of material fact with regard to the relationship between the Defendants for the purposes of determining liability.

The Court agrees with Plaintiffs that a material issue of fact exists with regard to the relationship between the Defendants for the purposes of determining any liability for Counts II, V, and VI of the Complaint. Thus, the Court will deny Reasonable Rides' Motion For Summary Judgment with regard to counts III, V, and VI of the Complaint.

V. Whether Reasonable Rides Is Entitled To Summary Judgment With Respect To The Negligence Claim

The Court will deny Reasonable Rides' Motion For Summary Judgment with regard to the Negligence claim pled in Count IV of the Complaint.

Reasonable Rides contends that it lacks the requisite knowledge and disregard of that knowledge necessary for liability for the tort of negligent hiring. In support of its contention, Reasonable Rides has submitted evidence that a locksmith

recommended Horton Brothers to Reasonable Rides, and of a conversation that the owner of Reasonable Rides subsequently had with Horton Brothers' representative, Jason Glover. In response, Plaintiffs have offered evidence that Reasonable Rides had no knowledge of the law with regard to repossession of vehicles. Thus, Plaintiffs contend that there is a genuine issue of material fact whether either Horton Brothers or Reasonable Rides knew about FDCPA and UCC requirements. Further, Plaintiffs contend that, because they have not been able to depose Horton Brothers, they do not know what representations Reasonable Rides relied upon and whether they were accurate.

The Court concludes that Reasonable Rides has not adduced evidence sufficient to establish that no genuine question of material fact exists with regard to Plaintiff's negligence claim. Thus, the Court will deny Reasonable Rides' Motion For Summary Judgment with regard to Count IV, Negligence.

CONCLUSION

In sum, the Court will deny Reasonable Rides' Motion For Summary Judgment (D.I. 29) with regard to Count I, Violation of Fair Debt Collection Practices Act.

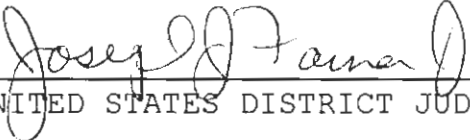
The Court will grant Defendant Reasonable Rides' motion with regard to UCC Article 2 claims in Count II, Violation of the Uniform Commercial Code. The Court will also grant the motion with regard to the UCC Article 9 claims made by Plaintiffs Mary Ann Robertson, Samuel Robertson, and Matthew Robertson in Count II.

However, the Court will deny the motion with regard to the UCC Article 9 claim made by Plaintiff Stephanie Robertson in Count II.

Finally, the Court will deny Defendant Reasonable Rides' motion with regard to Counts III, IV, V, and VI.

An appropriate Order will be entered.

Procedures Act; b) the UCC Article 9 claim made by Plaintiff Stephanie Robertson in Count II of the Complaint; and c) Counts III, IV, V, and VI of the Complaint.


UNITED STATES DISTRICT JUDGE