"Latent" Defects Discovered After Duration of Warranty Period Are Actionable Under California's Lemon Law Statute

David Ramirez

Recently, in ***Daniel v. Ford Motor Company***, the Ninth Circuit Court of Appeal resolved the issue of whether consumers may sustain a breach of implied warranty claim under California's Song Beverly Consumer Warranty Act (the "Lemon Law" statute) for "latent" defects discovered after the warranty period had expired. The Circuit Court followed the holding in the California state appellate court decision of *Mexia v. Rinker Boat Co.* (2009) 174 Cal.App4th 1297, which previously determined there is nothing in California's lemon law that requires a consumer to discover a latent defect during the duration of the warranty.

Facts:
A class action lawsuit was brought in federal district court by purchasers of Ford Focus vehicles. The Court noted, plaintiffs contend they bought "a pig in the poke" when each of them purchased a Ford Focus. Plaintiffs alleged Ford was aware of, but failed to disclose, a rear suspension defect in the Focus that resulted in premature tire wear which can cause decreased vehicle control, catastrophic tire failure and drifting on wet or snowy roads. Plaintiffs alleged a number of claims including violations of California's Song Beverly Consumer Warranty Act and Magnuson Moss Warranty Act. Ford successfully moved for summary judgment on all claims prompting an appeal by Plaintiffs.

Issues:
On review, the Ninth Circuit Court of Appeal identified three key issues it would decide:

1) whether summary judgment was proper where the district court had declined to follow the precedent in *Mexia*, which held "latent" defects may still breach the implied warranty even when they are not discovered within warranty's duration period;

2) whether summary judgment was proper where the district court misinterpreted the language of Ford's express warranty; and

3) whether the district court properly credited certain evidence presented by the plaintiffs.

Ruling:
Turning to issue one, the Ninth Circuit Court of Appeal acknowledged the Song-Beverly Consumer Warranty Act contains a one year limit for the implied warranty of merchantability under California Civil Code §1791.1(c). The Court went on to emphasize the controlling authority in *Mexia*, which stated, *"[t]here is nothing [in §1791.1] that suggests a requirement that the purchaser discover and report to the seller a latent defect within that time period."*

In response to Ford's argument that a number of federal district court cases had distinguished and rejected *Mexia* outright, the Ninth Circuit Court of Appeal noted it was bound to follow the intermediate courts of the State of California, i.e. *Mexia*, unless there was convincing evidence the California Supreme Court would have decided the matter differently had it granted review. However, the California Supreme Court had denied review. Finding no published or unpublished California court opinions disapproving or rejecting *Mexia*, the Ninth Circuit Court of Appeal upheld *Mexia* emphasizing the case was in line with the legislative intent to expand consumer protections and remedies.

With respect to issue two, the Ninth Circuit Court of Appeal found Ford's express warranty was ambiguous as it was unclear whether it was limited to manufacturing defects or if it also included design defects upon which plaintiffs' claims were premised. The Court determined that under contract interpretation

principles, the ambiguous warranty must be construed against the drafter, i.e., Ford, and thus the warranty was deemed to include both manufacturing and design defects, allowing plaintiffs to proceed with their claims.

Finally, analyzing issue three, the Ninth Circuit Court of Appeal determined, contrary to the district court, that plaintiffs had presented sufficient evidence to create a triable issue as to the element of reliance with respect to their fraudulent omission claims under California's Consumer Legal Remedies Act and Unfair Competition Law (B&P Code Sections 17200, et seq.). Because there was sufficient evidence to allow a reasonable trier of fact to conclude the plaintiffs relied on Ford's failure to disclose the alleged defect in purchasing the vehicle, summary judgment was improper.

Conclusion:
This decision now establishes a uniform rule in California in both state and federal courts that consumers may bring a breach of implied warranty claim under California's statutory Lemon Law for latent defects discovered after the warranty period has expired.

ABOUT THE AUTHOR
David Ramirez is a Senior Counsel at TYSON & MENDES, LLP, and primarily represents clients in complex litigation, including construction defect, insurance law, property disputes, and product liability. Mr. Ramirez was recently named as a "Top Lawyer" in California for "Litigation" in the February 2015 issue of San Diego Magazine.