NO. 4001345

CHRISTOPHER ANNELLI ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED

V.

FORD MOTOR COMPANY

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW LONDON AT NEW LONDON

DECEMBER 21, 2006

MEMORANDUM OF DECISION

On September 12, 2005, the plaintiff, Christopher Annelli, filed an amended class action suit against the defendant, Ford Motor Company, on behalf of himself and all consumer owners and lessees of model years 1992 – 2003 "Panther-platform" vehicles registered in the state of Connecticut. The plaintiff alleges in his complaint that on October 22, 2001, Ford issued a Technical Service Bulletin (TSB 01-21-14) for all 1992 – 2001 Ford Crown Victoria, Lincoln Town Car and Mercury Grand Marquis models in an effort to remedy the risk of fuel tank ruptures and fuel-related fires in the event of a rear-end collision. Under TSB 01-21-14, a repair kit was designed to bolster the integrity of the fuel tank which is vertically mounted in the "crush zone" of Panther-platform vehicles, just behind the rear axle. The placement of the fuel tank in these vehicles creates the risk of puncture when the vehicle is exposed to crushing forces from behind. The plaintiff alleges that Ford never communicated the terms of TSB 01-21-14 to the general public and never advised owners and lessees of Panther-platform vehicles of the availability of the repair kit.

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On October 22, 2002, Ford instituted Upgrade Program 02B02 to replace and improve upon TSB 01-21-14, but purportedly limited the availability of the repair kits to law enforcement agencies for installation on Crown Victoria Police Interceptor (CVPI) vehicles. Ford allegedly does not offer installation of the repair kit, or reimbursement of related expenses, for Panther-platform vehicles owned and operated by non-law enforcement consumers. The plaintiff asserts that the repair kit constitutes an "adjustment program" under the Secret Warranty Act, General Statutes § 42-227, therefore Ford was required to notify *all* owners of Panther-platform vehicles of the availability of the repair kit. The plaintiff contends that the defendant violated the Secret Warranty Act and the Connecticut Unfair Trade Practices Act[1] (CUTPA) by failing to inform non-law enforcement owners and lessees of the two repair programs that Ford instituted for the Panther-platform vehicles.

On December 17, 2004, in response to the initial complaint filed by the plaintiff, the defendant filed a motion to strike for failure to state a claim upon which relief could be granted and federal preemption of state law. In its decision filed on July 22, 2005, this court denied the defendant's motion to strike in its entirety. See *Annelli* v. *Ford Motor Co.*, Superior Court, judicial district of New London, Docket No. CV 04 4001345 (July 22, 2005, *Hurley, J.*) (39 Conn. L. Rptr. 724).

On July 3, 2006, the defendant filed a motion for summary judgment accompanied by a supporting memorandum. The defendant has advanced three arguments in support of its

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[1] A violation of any of the provisions of General Statutes § 42-227, the Secret Warranty Act, constitutes a per se violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a, et seq. See General Statutes § 42-227 (h).

motion for summary judgment: (1) the plaintiff is not a "consumer," as defined under the Secret Warranty Act, General Statutes § 42-227 (a) (1), and therefore lacks standing to bring suit under the terms of the act; (2) the plaintiff has failed to demonstrate ascertainable loss; and (3) the plaintiff has not proffered any other evidence sufficient to state a claim under either the Secret Warranty Act or CUTPA. On August 18, 2006, the plaintiff filed a memorandum of law in opposition to the defendant's motion for summary judgment. Both parties have provided evidentiary submissions, including deposition testimony. On August 23, 2006, the defendant filed a reply memorandum. The court heard oral argument on the motion on August 28, 2006. Subsequently, on September 25, 2006, the plaintiff filed a notice of supplemental authority in opposition to the motion for summary judgment.

DISCUSSION

"Practice Book § [17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Larobina* v. *McDonald*, 274 Conn. 394, 399, 876 A.2d 522 (2005). "When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the non-moving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue." (Internal quotation marks omitted.) *Zielinski* v. *Kotsoris*, 279 Conn. 312, 318-19, 901

A.2d 1207 (2006). "In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact, but rather to determine whether any such issues exist." *Nolan* v. *Borkowski*, 206 Conn. 495, 500, 538 A.2d 1031 (1988).

A.

Standing as a "Consumer"

In support of its motion for summary judgment, the defendant first argues that the plaintiff is not a "consumer" under the terms of the Secret Warranty Act, General Statutes § 42-227, and therefore, he has no standing to bring a claim on behalf of himself or anyone else. General Statutes § 42-227 (a) (1) provides "(a) For the purposes of this section: (1) 'Consumer' means the purchaser, other than for purposes of resale, of a motor vehicle, a lessee of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle and any person entitled by the terms of such warranty to enforce the obligations of the warranty."

Ford argues that the act should be "narrowly drawn to include only a subset" of consumers; namely, those vehicle owners or lessees for whom the original manufacturer's warranty was still in effect. Ford avers that the plaintiff obtained title to the subject vehicle in this lawsuit at least three and a half years after the manufacturer's warranty had expired, and since neither the plaintiff nor his wife ever had any rights under that original warranty, the plaintiff cannot be a "consumer" within the meaning of the act.[2]

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[2] The plaintiff purchased the subject vehicle, a used 1995 Lincoln Town Car, as a gift for his fiancee (who is now his spouse) from New London Motors, Inc. in January 2001, years after Ford's four-year/50,000-mile warranty on the vehicle had expired. See Def.'s brief, p. 7-8.

In response, the plaintiff argues that the act defines "consumer" to include "any person entitled by the terms of such warranty to enforce the obligations of the warranty." General Statutes § 42-227 (a) (1). The act defines "adjustment program" as "any program or policy that expands or extends the consumer's warranty beyond its stated limit . . . ." General Statutes § 42-227 (a) (4). Therefore, the plaintiff contends that the act's definition of consumer must include those vehicle owners or lessees who can enforce the obligations of either an *expanded or extended* warranty. In support of his position, the plaintiff has submitted the deposition testimony of Clarence Ditlow,[3] plaintiff's expert, who testified that Ford's repair programs, TSB 01-21-14 and Upgrade Program 02B02, represent an expansion and extension of the original manufacturer's warranty. The plaintiff avers that by their terms, both repair programs cover Panther-platform vehicles for model years well beyond the time period of the initial warranty for all owners and lessees without regard for whether the owners or lessees acquired the vehicle during the original warranty. As stated by the plaintiff in his memorandum of law in opposition to the motion for summary judgment, "Ford's constrained construction of 'consumer' under the Secret Warranty Act is at odds with [TSB 01-21-14 and the Upgrade Program 02B02]. On its face, the [TSB 01-21-14] applies to all Panther-platform vehicles from model years 1992 to 2001, and explicitly states that it is available 'under the provisions of bumper to bumper warranty coverage [i.e., a manufacturer's original warranty].' . . . Yet, by the time the [TSB 01-21-14] was issued, the standard warranty would have long expired for most of the affected model years." The plaintiff has submitted the deposition

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[3] Plaintiff's expert, Clarence Ditlow, is the executive director of the Center for Auto Safety.

testimony of Richard Cupka, Jr., Ford's designee as the person most knowledgeable regarding the Upgrade Program 02B02, who testified that the repair kit remains available to law enforcement agencies, regardless of the car's warranty status. See Exhibit D of plaintiff's brief where deponent Cupka states: "[S]ometimes you find other [law enforcement] agencies that keep . . . a car for ten years. So that's why [the Upgrade Program] is still in effect. If somebody didn't get it done, they can still get it done." Therefore, the court finds that there are genuine issues of material fact as to whether the plaintiff could be deemed a "consumer" under General Statutes § 42-227 (a) (1) and (4) even though the original manufacturer's warranty has expired, and whether he would be entitled to enforce the obligations of either an expanded or extended warranty under the act. Accordingly, the court denies the defendant's motion for summary judgment on this ground.

B.

Ascertainable Loss

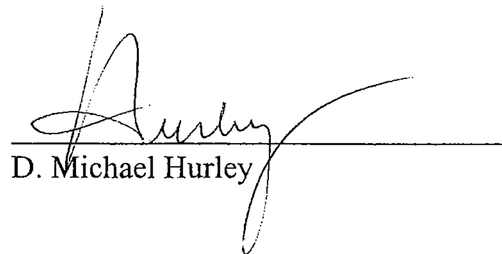
In support of its motion for summary judgment, the defendant additionally advances the argument that the plaintiff has failed to demonstrate ascertainable loss. As aptly noted by the plaintiff in his memorandum of law in opposition to the motion for summary judgment, this court has already recognized the potential loss incurred by the plaintiff in its decision denying the defendant's motion to strike. See *Annelli* v. *Ford Motor Co.*, supra, 39 Conn. L. Rptr. 724. The law of the case doctrine directs that "[w]here a matter has previously been ruled upon interlocutorily, the court in a subsequent proceeding in the case may treat that decision as the law of the case, if it is of the opinion that the issue was correctly decided, in the absence of some new or overriding circumstance." (Internal quotation marks omitted.)

Haggerty v. *Williams*, 84 Conn. App. 675, 683, 855 A.2d 264 (2004).

Nonetheless, after a review of the parties' motion, briefs and supporting evidence, the court finds that the parties' evidentiary submissions demonstrate that there are genuine issues of material fact as to whether the plaintiff, and others similarly-situated, have suffered a loss and whether the defendant truly did not offer installation of the repair kit, or reimbursement of related expenses, for Panther-platform vehicles owned and operated by non-law enforcement consumers. See *Cuellar* v. *Ford Motor Co.*, 2006 WI App. 210 (September 12, 2006) (where Wisconsin appellate court reversed the trial court's granting of summary judgment, holding "[w]hether the class has suffered any pecuniary loss, whether Ford truly would refuse to sell the upgrade kit to the class members, or whether any other equitable relief is appropriate all present issues of fact, which need to be decided by a factfinder after discovery has been completed." Id.) Accordingly, the court denies the defendant's motion for summary judgment on this ground.

<u>CONCLUSION</u>

For the above foregoing reasons, the defendant's motion for summary judgment is denied.



D. Michael Hurley