

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Case No: 07-14682 (04)

DAIMLER-CHRYSLER MOTORS
COMPANY, LLC,
Petitioner/Counter Respondent

v.

G.V. TECH, INC.,
Respondent/Counter Petitioner

ORDER DENYING MOTION TO STRIKE DEMAND FOR JURY TRIAL

At issue before the court is a request for jury trial by counter plaintiff (hereinafter G.V. Tech.) on two causes of action – the first being Florida’s Lemon Law and the second being the Magnuson-Moss Warranty Act. Plaintiff, Counter-Defendant, (hereinafter Daimler-Chrysler) argues that G.V. Tech is not entitled to a jury trial on either count. Florida’s first Constitution was written in 1838 and became effective upon Florida’s entry into the Union in 1845. Florida’s Constitution in Article 1 Section 22 provides in part: “The right of trial by jury shall be secure to all and remain inviolate.” The right is not absolute, however. “This provision guarantees the right to trial by jury in those cases in which the right was enjoyed at the time this state’s first constitution became effective in 1845”. *In re Forfeiture of 1978 Chevrolet Van*, 493 So.2d 433 at 434 (Fla. 1986). The courts have generally construed this to mean that causes of action that existed at common law before or at 1845 are insured a right to trial by jury. Causes of actions that came into being after 1845 that did not exist at common law or are wholly equitable in nature are not entitled to a jury trial. *Fox v. City of Pompano Beach*, 984 So.2d 664 (Fla. 4th DCA 2008).

The words "common law" appear in the United States Constitution's Seventh Amendment but not in Article 1 Section 22 of the Florida Constitution. Nevertheless, the Florida's courts have construed Article 1 Section 22 in line with the Federal Constitution's Seventh Amendment as preserving suits at common law that existed before 1845 to post 1845. See, *In Re Forfeiture, supra*. "The constitutional right to a trial by jury is not to be narrowly construed... This right is not limited strictly to those specific proceedings in which it existed before the adoption of our constitution, but should be extended to proceedings of like nature as they may arise." *In Re Forfeiture* at 435. Emphasis added.

With this guidance, the court sees little difficulty with Count II, the Magnuson-Moss claim. As Chrysler-Daimler points out in its brief, "The Magnuson-Moss Warranty Act...is a federal statute that, in essence, requires manufacturers to honor the written warranties that accompany their products at the time of sale." In the courts view, this is a contract claim which was existent at common law prior to 1845. While those who may be sued have been expanded by Magnuson-Moss, the character of the action is still sounded in contract. G.V. Tech is clearly entitled to jury trial on this claim.

The Lemon Law claim is more problematic. The problem is that some of the remedies are equitable in nature. Justice Overton in *Chrysler Corporation v. Pitsirelos*, 721 So.2d 710 (Fla. 1998) noted in a dissenting opinion:

The majority opinion does not address whether the Lemon Law trial de novo may be conducted before a jury. The replacement and refund remedies available to consumers under Lemon Law are analogous to the equitable remedies of specific performance and rescission to restore the status quo...Moreover, the Lemon Law does not direct a jury to serve as the finder of fact, and there is no common law right to a jury trial because this is not an action that existed at common law. I find that there is no right to a jury in a Lemon Law trial de novo.

This court recognizes that Justice Overton's dissent is just that, a dissent and not the holding of the court, but he does make a persuasive argument. However, G.V.Tech seeks damages under F.S. 681.112 which awards money damages for any pecuniary loss. This is law and not equity and while this is a statutory claim, the underpinning of the statute is an action for money damages for defective goods. In the court's view, this also

was available as a cause of action at common law prior to 1845. Consequently, the G.V. Tech is entitled to jury trial on this claim, too.

DONE AND ORDERED this 19th day of March 2009, in Fort Lauderdale, Broward County, Florida.

Robert B. Carney
Circuit Court Judge

Copies Furnished:
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