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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-001063 02/02/2016

HONORABLE JOSHUA D. ROGERS

CLERK OF THE COURT
S. Ortega
Deputy

BROWN & BROWN CHEVROLET SUPERSTITION SPRINGS L L C, et al.

TINA M EZZELL

v.

KENT MICHAEL SHERMAN, et al.

DAVID T PANZARELLA

HYUNG S CHOI

UNDER ADVISEMENT RULING

Pending before this Court is Plaintiff Brown & Brown Chevrolet-Superstition Springs, LLC's Motion for Partial Summary Judgment Regarding Compensatory Damages and Defendant's Cross Motion for Summary Judgment. "Summary judgment is appropriate only if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law." *Johnson v. Earnhardt's Gilbert Dodge, Inc.*, 212 Ariz. 381, 385, 132 P.3d 825, 829 (2006) (quoting *Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 201 Ariz. 474, 482, ¶ 14, 38 P.3d 12, 20 (2002)). Thus, a motion for summary judgment should only "be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). The facts "must be viewed in a light most favorable to the party against whom it was directed and … [summary judgment] is inappropriate if there is any doubt as to whether an issue of material fact exists." *Joseph v. Markovitz*, 27 Ariz. App. 122, 125, 551 P.2d 571, 574 (1976).

The facts in this case are largely undisputed. On March 18, 2014, Plaintiff Alena J. Davis ("Davis") was involved in an automobile accident which was caused by the negligence of Defendant Kent Michael Sherman ("Sherman"). At the time of the accident, Davis was driving a new 2014 Chevrolet Camaro 1SS Coupe (the "Camaro") which had been obtained from Plaintiff

Brown & Brown Chevrolet-Superstition Springs, LLC ("Brown & Brown") just two days prior to the accident. The Camaro sustained significant damage from the accident. Sherman does not deny that he was at fault for the accident and does not contest liability.

Following the accident, the Camaro was returned to Brown & Brown. The Camaro was repaired and was then sold by Brown & Brown to another buyer for $30,450.81. The original price for which Davis had agreed to purchase the vehicle was $35,510.41.

Brown & Brown moves the Court for summary judgment as to Brown & Brown's entitlement to, and the amount of, compensatory damages for the diminution in value and loss of use of the Camaro. Specifically, Brown & Brown claims that it is entitled to compensation for the following losses: (1) $5,059.60 loss in the selling price of the Camaro; (2) $1,000.00 deductible for repairs made to the Camaro; (3) $1,921.00 in attorney fees for unwinding the sale with Davis and for drafting the disclosure of prior accident damages to the second buyer; (4) $695.00 cost ("we owe") on sale to second buyer; (5) $500.00 cost on trade taken on second sale and necessary for sale; (6) $460.50 additional "floor plan" interest at 3% paid by Brown & Brown between March 16, 2014 and August 27, 2014 (the dates of the original and second sales); and (7) $1,163.00 loss sustained from unwinding the deal with Davis (lost sales of other products Davis purchased but second buyer either did not purchase or purchased for less than Davis).

Sherman contests Brown & Brown's claim on essentially two grounds. First, Sherman contends that Brown & Brown cannot assert a claim for diminished value. Sherman admits that he will have to pay the diminished value of the Camaro to someone and admits that the appropriate valuation for the diminished value of the Camaro is $5,059.60, i.e., the difference in the selling price of the Camaro before the accident and after the accident. He believes, however, that the claim for diminished value belongs to Davis and not Brown & Brown. Very simply, Sherman alleges that Davis and not Brown & Brown was the owner of the Camaro at the time of the accident and Brown & Brown does not have an assignment of the claim from Davis.

This argument is now moot because Davis has validly assigned her claims to Brown & Brown for all property damages to the vehicle caused by the accident. As a consequence, Brown & Brown is entitled to compensatory damages which include the $5,059.60 for the diminished value of the Camaro, as well as the $1,000.00 deductible for repairs made to the Camaro. These represent the damages for repair costs and diminution in value for which any owner of the vehicle would be entitled to recover as a result of the accident. *Farmers Ins. Co. of Arizona v. R.B.L. Inv. Co.*, 138 Ariz. 562, 563-64, 675 P.2d 1381, 1382-83 (Ct. App. 1983).

As for the remaining five categories of losses, in addition to asserting that Brown & Brown was not the owner of the Camaro at the time of the accident, Sherman also claims that these losses were not caused by the accident but instead arise solely out of the alleged cancellation of the purchase contract by Brown & Brown. In response, Brown & Brown, asserts that it was in fact the owner at the time of the accident because the contract was not yet binding due the financing condition contained therein and never became binding because the accident caused Davis not to be able to satisfy the financing condition.

The Court agrees that the credit contingency contained in the purchase agreement can operate to preclude the formation of the contract and, if that contingency failed, then the ownership would at no time have transferred to Davis. *See Childress Buick Co. v. O'Connell*, 198 Ariz. 454, 458, 11 P.3d 413, 417 (Ct. App. 2000). However, the mere failure of the contingency does not mean that the these additional claimed losses are compensable; there must also be a causal connection to the accident. Thus, in order for these other categories of losses to be compensable, the failure of the contingency must have been caused by the accident.

Brown & Brown claims that the credit contingency failed and expressly claims in its Supplemental Statement of Facts that "Davis could not get approval for the loan because of the accident." Supplemental Statement of Facts at ¶ 3. The testimony from Davis which is cited by Brown & Brown does not support this assertion, however. Instead, Davis specifically testifies that she does not know if the contract was voided because of the accident. Accordingly, the Court finds that there are genuine issues of material fact regarding whether the credit contingency actually failed and, if so, the reason for that failure.

Therefore,

IT IS ORDERED granting, in part, Plaintiff Brown & Brown Chevrolet-Superstition Springs, LLC's Motion for Partial Summary Judgment Regarding Compensatory Damages; Plaintiff Brown & Brown Chevrolet-Superstition Springs, LLC is entitled to compensatory damages in the amount of $5,059.60 for the diminished value of the Camaro and $1,000.00 for the deductible paid for the repairs made to the Camaro.

IT IS FURTHER ORDERED denying, in part, Plaintiff Brown & Brown Chevrolet-Superstition Springs, LLC's Motion for Partial Summary Judgment Regarding Compensatory Damages, as to all remaining categories of compensatory damages claimed.

IT IS FURTHER ORDERED denying Defendant's Cross Motion for Summary Judgment.