

STATE OF MICHIGAN  
COURT OF APPEALS

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RUBY GOINS,

Plaintiff-Appellant,

September 22, 1993

v

No. 141584

LC No. 90-020410-CZ

GREENFIELD JEEP EAGLE, INC., a  
Michigan corporation, and JOHN GRIFFIN,  
jointly and severally,

Defendants-Appellees.

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Before: Holbrook, Jr., P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting defendants' motion for summary disposition. MCR 2.116(C)(8) and (10). We reverse.

The underlying facts are not in dispute. On September 1, 1988, defendant Greenfield Jeep Eagle, Inc., acting through its salesman, defendant John Griffin, sold a 1988 four door Eagle Medallion to Jerome Parker. Parker claimed that he had insurance for the vehicle. Jeep Eagle did not obtain verification or require presentation of the certificate of insurance. Based on Parker's claim, Jeep Eagle issued Parker a temporary 10 day registration and a rear window license sticker. Jeep Eagle gave Parker possession of the car on September 1, 1988.

Jeep Eagle also completed form RD-108 on the sale and submitted it to the Secretary of State's office. On the form, Jeep Eagle stated that the car was insured by Farmer's Insurance Company and stated that the policy was "new" rather than listing a policy number. In reliance on the information provided by Jeep Eagle, the Secretary of State issued a certificate of title to Parker on September 8, 1988.

On September 10, 1988, Parker struck and permanently injured Ruby Goins. Parker was drunk when he struck Goins. He had never obtained insurance coverage and neither Goins nor any member of her family had any coverage for the accident and injuries she sustained.

Goins successfully brought a personal injury suit against Parker, and was awarded a judgment of \$250,000. Parker was also found guilty of felonious driving and driving under the influence of intoxicating liquors as a result of the accident.

On June 14, 1990, Parker filed a petition in bankruptcy. The judgment in favor of Goins was included in the matters discharged in bankruptcy.

Goins brought suit against Jeep Eagle and Griffin alleging, among other things, that because Jeep Eagle failed to comply with the statute providing for transfer of ownership and erroneously completed form RD-108, Jeep Eagle never effectively transferred ownership of the vehicle to Parker and was therefore liable for the judgment against Parker. The trial court granted defendants' motion for summary disposition and denied plaintiff's subsequent motion for reconsideration, ruling that Parker became owner of the vehicle when the Secretary of State issued the title. We disagree and reverse.

A motion for summary disposition pursuant to MCR 2.166(C)(8), tests the legal sufficiency of a claim by the pleading alone. Scameheorn v Bucks, 167 Mich App 302, 306; 421 NW2d 918 (1988). All factual

allegations in support of a claim are accepted as true, along with any reasonable inferences which can be drawn from the facts. A court may only grant the motion when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. Wade v Dept of Corrections, 439 Mich 158, 163; 483 NW2d 26 (1992).

A motion for summary disposition pursuant to MCR 2.116(C)(10), tests whether there is factual support for a claim. The court must consider the affidavits, pleading, depositions, admissions and other documentary evidence, and grant the motion only when the court is satisfied that it is impossible for the claim to be supported at trial because of some deficiency that cannot be overcome. Pete v Iron Co., 192 Mich App 687, 688-689; 481 NW2d 731 (1992). Courts are liberal in finding that a genuine issue exists, giving all benefits of doubt and resolving all reasonable inferences in favor of the nonmoving party. Slaughter v Smith, 167 Mich App 400, 403; 421 NW2d 702 (1988).

It is well settled that automobile dealers retain ownership of the cars they sell until they comply with the statutory provisions for transferring title to the purchasers. Zechlin v Bridges Motor Sales, 190 Mich App 339, 341; 475 NW2d 60 (1991), lv den 439 Mich 948 (1992). We recognize that the courts are generally "reluctant to find lesser defects, even those involving statutory violations, fatal to the transfer of ownership". Basgall v Kovach, 156 Mich App 323, 327; 401 NW2d 638 (1986). However, we find it significant that this case involves allegations of fraud and false statement rather than mere mistake or oversight. A valid certificate of title cannot be issued if the application contains a false or fraudulent statement. MCL 257.219(2)(a); MSA 9.1919(2)(a). MCL 257.217(1); MSA 9.1917(1). Here, Jeep Eagle allegedly failed to comply with specific instructions in the dealer's manual regarding retailing a new vehicle, improperly completed a required form, and submitted false information about an essential matter to the Secretary of State. The false information caused the Secretary of State to issue a title to Parker that it was prohibited from issuing under the statute. We believe the allegations in this case are sufficient to create a question of fact regarding whether the attempted transfer of title in this case actually transferred ownership of the vehicle from Jeep Eagle to Parker. Accordingly, summary disposition was improperly granted.

Plaintiff's argument that dealership employees should be considered agents of the Secretary of State was not ruled on below and is not preserved for appellate review. Lowman v Karp, 190 Mich App 448, 454; 476 NW2d 428 (1991).

Reversed.

/s/ Donald E. Holbrook, Jr.  
/s/ Roman S. Gribbs  
/s/ David H. Sawyer