

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

File No. CT 01-1519

Thomas Reinke and Kelly
Reinke, on behalf of themselves
and all others similarly situated,

Plaintiffs,

**ORDER AND
MEMORANDUM**

vs.

Harold Chevrolet - Geo, Inc. d/b/a
Southtown Suzuki and all Related
Dealerships,

Defendant.

The above-entitled matter came before the Honorable Bruce Hartigan, one of the judges of this Court, on September 20, 2001 upon the Defendant's Motion for Summary Judgment.

Thomas Lyons, Sr., Esq., appeared on behalf of the Plaintiff. Gregory J. Johnson, Esq., appeared on behalf of the Defendant.

Upon all of the files, memoranda and proceedings herein, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED THAT:

1. The Defendant's Motion for Summary Judgment is **PARTIALLY GRANTED**. The Plaintiffs' claims of a violation the Deceptive Trade Practices Act, breach of contract and unjust enrichment are dismissed. Summary judgment is denied as to the Plaintiffs' Consumer Fraud Act claim.

MEMORANDUM

Plaintiffs Thomas Reinke and Kelly Reinke (“the Reinkes”) purchased a 1996 Suzuki Sidekick from Defendant Harold Chevrolet (“Harold”) on September 18, 1997. Along with the automobile, the Reinkes purchased a 6-year/100,000 mile extended service contract for \$841.00. The parties’ retail installment contract lists this amount as an “amount paid on your [the Reinkes’] behalf” to a third-party provider. Affidavit of Thomas J. Lyons, Jr. dated September 12, 2001, Exhibit 5. In fact, Harold retained a \$200.00 profit on the sale of the extended service contract.

Plaintiffs bring suit claiming breach of contract, unjust enrichment, violation of the Deceptive Trade Practices Act and violation of the Consumer Fraud Act. Defendant moves for summary judgment dismissing the claims. Summary judgment is proper where there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; DLH, Inc. v. Russ, 566 N.W.2d 60, 69 (Minn. 1997).

Plaintiffs do not oppose entry of judgment dismissing three of the four counts: the Deceptive Trade Practices Act claim, the breach of contract claim and the unjust enrichment claim. Judgment shall accordingly be entered dismissing those claims. Plaintiff, however, opposes summary judgment on the Consumer Fraud Act claim.

The Minnesota Consumer Fraud Act prohibits:

“The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged”

Minn. Stat. § 325F.69, Subd. 1. Although the statute authorizes actions by the attorney general to prosecute violations of the Act, “any person” who is injured by a violation of the Act may sue for damages. Minn. Stat. § 8.31, Subd. 3a.

This Court recently had occasion to review a similar Consumer Fraud Act claim in the case of Webb v. Harold Chevrolet, Inc., Fourth District Court File No. 00-8398. There, summary judgment was granted dismissing a claim based on a dealer’s alleged failure to disclose that a portion of a service contract price was kept as profit. In Webb, however, the written agreement disclosed that some portion of the extended warranty price might be retained by the dealer. Moreover, there was nothing in the record in Webb to suggest that the party bringing suit incurred any out-of-pocket damages as a consequence of the alleged fraud.

In the instant case, Harold failed to disclose in the retail installment contract that it might retain a portion of the price of the extended service contract. According to the Reinkes, the Harold employee who sat with them when the parties went over the contract told the Reinkes that the cost of the extended service contract was an amount charged by the third-party provider, leaving no room for negotiation on the price. Affidavit of Gregory J. Johnson, Exhibit A, p. 85. Thomas Reinke stated in his deposition that had he known the dealer had raised the price by \$200, he would have attempted to negotiate to obtain a lower price. Id at pp. 90-91.

By misleading them as to the true cost of the extended service contract, Harold gave the Plaintiffs no meaningful opportunity to try to obtain a lower-priced extended warranty. Plaintiffs were led to believe that the \$841 price was the price charged by the provider, allowing for the reasonable inference that they believed no lower price was

available. The record in this case demonstrates a genuine question of material fact on the essential elements of the Plaintiffs' Consumer Fraud Act claim. The motion for summary judgment dismissing that claim therefore must be denied.

B.H.