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Statute of limitations runs from date of sale in Michigan Consumer Protection Act claims

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The Michigan Court of Appeals has held that the six-year statute of limitations, applicable to a Michigan Consumer Protection Act (MCPA) claim that is based on a seller's failure to reveal a material fact, runs from the date of the sale transaction, not when the material fact first occurs.

In *Laura v DaimlerChrysler Corp*, __ Mich App __ (2006), the plaintiff bought a used Dodge Neon from one of the defendant's dealers in August 1997. Four months later, the plaintiff brought the Neon to the dealer because it was leaking oil. The dealer replaced the head gasket at no charge to the plaintiff. In January 1999, the plaintiff brought the Neon back to the dealer for service. The service technicians recorded another head gasket leak that they repaired, rather than replacing it. In January 2001, the dealer replaced the head gasket for a second time, without charging the plaintiff. The plaintiff traded in the Neon in August 2003.

In November 2003, the plaintiff brought suit against the defendant, alleging that its failure to warn of the car's allegedly defective head gasket design violated MCL 445.903(1)(s) of the MCPA, MCL 445.901, *et seq*.

The defendant moved for summary disposition, arguing that the six-year statute of limitations that applies to a MCPA claim had expired. The trial court disagreed, finding that the occurrence for the plaintiff's claim of failure to reveal a material fact occurred when the gasket first failed.

The defendant appealed, which the Michigan Court of Appeals initially denied to review. The defendant sought leave from the Michigan Supreme Court, which, instead of granting leave, ordered that the appellate court consider the defendant's appeal. *Laura v DaimlerChrysler Corp*, 472 Mich 926 (2005).

On remand, the appellate court first analyzed the statute at issue – MCL 445.903(1)(s). Section 903(1)(s) defines an unfair, unconscionable, or deceptive method, act, or practice in the conduct of trade or commerce as "failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer."

The court next noted that the MCPA bars claims that are brought more than "six years after the occurrence of the method, act, or practice which is the subject of the action." MCL 445.911(7).

Reading these statutes together, the appellate court concluded that an action under the MCPA, based on the failure to reveal a material fact, "shall not be brought more than six years after the occurrence of 'failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer.'"

The court next noted that in *Zine v Chrysler Corp*, 236 Mich App 261, 279-281 (1999), it had defined the term "material" for purposes of the MCPA as "one that is important to the transaction or affects the consumer's decision to enter into the transaction."

Applying this law to the facts, the court noted that the transaction at issue was undisputedly the negotiation that led to the plaintiff's purchase of the Neon and that the plaintiff had alleged that the "material fact" that should have been revealed was that the head gasket design was flawed. Thus, the court explained "the failure to reveal the alleged head gasket design flaw, a fact that was 'important to the transaction,' ... and would have affected the plaintiff's 'decision to enter the transaction,' ... occurred at that time."

The sale transaction occurred in August 1997, which is when the failure to reveal the material fact allegedly occurred. This required the plaintiff to bring his suit by August 2003, three months before the plaintiff actually filed suit. Accordingly, the appellate court concluded that the claim was not timely filed and the defendant was entitled to summary disposition.

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