IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

CARL E. BACCELLIERI, JR. and REBECCA B. BACCELLIERI,))
Plaintiffs,))
V.) C.A. No. N10C-01-181 MMJ
HDM FURNITURE INDUSTRIES, INC. d/b/a DREXEL HERITAGE FURNITURE, a corporation of the State of Delaware, and GENERAL ELECTRIC CAPITAL CORPORATION d/b/a GE MONEY BANK t/a DREXEL HERITAGE FURNITURE CREDIT CARD, a corporation of the State of Delaware,))))))))))
Defendants.)

Submitted: November 30, 2012 Decided: February 28, 2013

On Defendants' Joint Motions to Dismiss Pursuant to Rule 12(c) GRANTED

MEMORANDUM OPINION

Christopher J. Curtin, Esquire, MacElree Harvey, Ltd., Centreville, Delaware, Attorney for Plaintiff

George Pazuniak, Esquire, Pazuniak Law Office LLC, Wilmington, Delaware, Attorney for Defendants HDM Furniture Industries, Inc. and General Electric Capital Corporation

JOHNSTON, J.

This litigation involves a dispute over a custom-made sectional sofa manufactured by HDM Furniture Industries, Inc. ("HDM"). Plaintiffs Carl Baccellieri and his wife Rebecca Baccellieri contend that the sofa did not conform to the specifications provided to the retailer, Delaware Home Furnishings. Plaintiffs filed suit against HDM and the Plaintiffs' credit issuer, General Electric Capital Corporation, alleging *inter alia*, breach of warranties, violations of Delaware's consumer protection laws, and violation of the Truth in Lending Act. ¹

Pursuant to Superior Court Rule of Civil Procedure 12(c), HDM and GE moved to dismiss Plaintiffs' Complaint. The Court held oral argument on the motion on November 30, 2012.

FACTUAL BACKGROUND

For purposes of this motion, all facts are set forth in the light most favorable to the non-moving party. HDM manufactures custom-made furniture. HDM sells its furniture exclusively through factory-authorized dealers. One such authorized dealer – Delaware Home Furnishings, LLC d/b/a Drexel Heritage Delaware ("DHF") – was located in Wilmington, Delaware.

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¹ Counts VII and VIII of Plaintiffs' Complaint assert claims under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq*. Specifically, Plaintiffs allege a violation of Section 1666i, and a violation of Regulation Z, the implementing regulation for Section 1666i.

In December 2007, Plaintiffs Carl Baccellieri and his wife Rebecca Baccellieri (collectively referred to as "Plaintiffs") visited DHF to purchase a custom-made sectional sofa for their living room. On DHF's showroom floor, Plaintiffs observed a sectional sofa featuring a "right arm sofa" and a "left arm chaise." Barbara Terrell ("Terrell"), DHF's sales representative, erroneously identified the floor model as a "left arm sofa" and a "right arm chaise"

Mrs. Baccellieri returned to DHF a second time in December 2007 and provided Terrell with a diagram depicting the set-up of Plaintiffs' living room. Terrell advised Mrs. Baccellieri that the orientation of the sofa was to be determined from the point of view of the person seated in the chaise or sofa.

On January 2, 2008, Mrs. Baccellieri returned to DHF a third time to select fabric colors. Mrs. Baccellieri also presented Terrell with a drawing depicting the configuration of the sectional sofa Plaintiffs wished to order. The drawing was the "mirror image" of the DHF floor model.

Plaintiffs returned to DHF on January 4, 2008 to finalize the order and purchase the sectional sofa. The purchase price of the sectional sofa was

² This configuration refers to the position of the arm rest on the chair from the point of view of a person standing in front of it and looking at the chair.

³ Terrell's description of the sofa refers to the position of the arm rest from the point of view of a person seated in the chaise or sofa.

\$7,858.00. At the time of purchase, Mr. Baccellieri applied for, and was granted, a line of credit through General Electric Capital Corporation ("GE").

The following day, Mr. Baccellieri's GE account was charged forty percent of the purchase price of the sectional sofa. On February 10, 2008, Mr. Baccellieri paid another \$800.00 towards the purchase price of the sofa. On February 16, 2008, Terrell charged the balance of the purchase price to the GE account. Due to a miscalculation by Terrell, the GE account was charged an additional \$540.00 on February 19, 2008, constituting payment of the outstanding balance.

On March 3, 2008, the sectional sofa was delivered to Plaintiffs' home. The sofa was in the same configuration as that of the DHF floor model, rather than the "mirror image" configuration requested by Plaintiffs. Attached to the sofa was HDM's written warranty information. The warranty provides:

The Limited Warranty applies to Drexel Heritage Furniture Industries, Inc. upholstered furniture that has been purchased from an authorized Drexel Heritage dealer. Rights under this warranty apply only to the original purchaser and only upon submission of dated proof of purchase and delivery receipt subject to the conditions below. ...

Under the terms of this limited warranty, Drexel Heritage may[,] at its sole discretion, offer to either repair or replace the defective item. ...

All warranty action must be presented to the authorized Drexel Heritage dealer of original purchase, along with dated proof of purchase and delivery receipt. THIS WARRANTY IS NON-TRANSFERRABLE.

That same day, Plaintiffs contacted the DHF store to complain about the sofa. DHF employees instructed Plaintiffs to keep the sofa while DHF worked to resolve the problem in the interim.

On March 17, 2008, Plaintiffs again contacted DHF and requested that DHF replace the sofa or cancel the sale. Plaintiff was offered a replacement couch, but declined.⁴

By letter dated May 21, 2008, Plaintiffs demanded that GE cancel the sale and refund the purchase price. GE refused. Thereafter, on August 19, 2009, GE charged off \$7,058.00 – the amount of the sofa charged to the GE account – from Plaintiffs' account. Plaintiffs, however, did not recover the \$800.00 paid directly to DHF.

PROCEDURAL CONTEXT

On May 5, 2008, Plaintiffs filed suit against DHF and Terrell in the Court of Common Pleas. On August 13, 2009, DHF filed for bankruptcy.

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⁴ The record is unclear as to whether Plaintiffs were offered an even exchange for the replacement couch or whether Plaintiffs would need to pay an additional fee for the replacement couch.

As there were no assets in the bankrupt estate, the bankruptcy terminated without any recovery to creditors.

Thereafter, on January 21, 2010, Plaintiffs filed suit against HDM and GE (collectively referred to as "Defendants"). As to both Defendants, Plaintiffs raised the following claims: Consumer Contracts Act⁵ violation (Count V); and Consumer Fraud Act⁶ violation/negligent misrepresentation (Count VI). As to HDM, Plaintiffs raised the following claims: breach of express and written warranty (Count I); breach of warranty of merchantability (Count II); breach of warranty of fitness for a particular purpose (Count III); Magnuson-Moss Act⁷ violation (Count IV); and negligence/recklessness (Count IX). Plaintiffs have raised the following additional claims against GE: right of action pursuant to Section 1666(i) of Title 15 of the United States Code (Count VII); and violation of Regulation Z, 12 C.F.R. §226.12(c)(2) (Count VIII).

On August 20, 2012, Defendants moved to dismiss the Complaint.

Defendants argue that Plaintiffs have failed to state valid claims against either GE or HDM. Specifically, Defendants contend that the Complaint

⁵ 6 Del. C. § 2731, et seq.

⁶ 6 Del. C. § 2511, et seq.

⁷ 15 U.S.C. § 2310(d).

fails to sufficiently allege that either GE or HDM was acting as an agent for DHF. In the alternative, Defendants argue that even if an agency relationship existed between DHF and Defendants, Plaintiffs have failed to demonstrate that they are entitled to relief as a matter of law. Therefore, Defendants seek dismissal of all claims asserted in the Complaint pursuant to Superior Court Civil Rule 12(c).

The Court held oral argument on November 30, 2012.

STANDARD OF REVIEW

Superior Court Civil Rule 12(c) permits a party to move for judgment on the pleadings "[a]fter the pleadings are closed but within such time as not to delay trial." In considering a Rule 12(c) motion, the Court must evaluate the legal sufficiency of the facts "while ignoring wholly conclusory statements." The non-moving party is given the benefit of any inferences to be drawn from the pleadings. "A motion for judgment on the pleadings should be granted if the movant establishes that, based on the pleadings,

⁸ Super. Ct. Civ. R. 12(c).

⁹ Wilmington Sav. Fund. Soc'y., F.S.B. v. Meconi, 1989 WL 124888, at *1 (Del. Super.) (citing Speiser v. Baker, 525 A.2d 1001, 1006 (Del. Ch. 1987)); Gonzalez v. Apartment Communities Corp., 2006 WL 2905724, at *1 (Del. Super.) (citing Harman v. Masoneilan Intern., Inc., 442 A.2d 487 (Del. 1982)).

¹⁰ *Id*.

there are no material issues of fact and that [movant] is entitled to judgment as a matter of law."

DISCUSSION

It is undisputed that neither HDM nor GE was involved in the original transaction or communications between Plaintiffs and DHF for the purchase of the sectional sofa. Rather, Plaintiffs allege that DHF and Terrell, acting as an employee of DHF, misrepresented the configuration of the sectional sofa to Plaintiffs. This misrepresentation, Plaintiffs contend, resulted in the sofa being ordered in the incorrect configuration and Plaintiffs sustaining financial loss.

In order for HDM and GE to be held liable under Counts I, II, III, IV, V, VI, and IX, Plaintiffs must demonstrate that DHF was acting as an agent for HDM and/or GE at the time Plaintiffs purchased the custom-made sectional sofa. Therefore, before addressing the substantive merits of these claims, the Court must determine whether an agent-principal relationship existed between DHF and either of the Defendants.

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¹¹ Wilmington Sav. Fund. Soc'y., 1989 WL 124888, at *1 (citations omitted).

I. Agency Relationship

The existence of an agency relationship generally is an issue of fact.

However, if the facts are undisputed, or if there is no genuine issue of material fact, agency can be decided as a matter of law.

"An agency relationship is created when one party consents to have another act on its behalf, with the principal controlling and directing the acts of the agent." The party asserting the agency relationship bears the burden of proving its existence. 13

In determining whether an agency relationship exists, the Court may consider: "the extent of control, which, by the agreement, the master may exercise over the details of the work;" "whether or not the one employed is engaged in a distinct occupation or business;" and "whether or not the parties believe they are creating the relation of master and servant[.]" This

¹² Fisher v. Townsends, Inc., 695 A.2d 53, 57 (Del. 1997) (citing Sears Mortgage Corp. v. Rose, 634 A.2d 74, 79 (N.J. 1993)); see also Marshall v. Univ. of Del., 1986 WL 11566, at *10 (Del. Super.) ("It is the law that an agency relationship does not exist unless there is a manifestation by the principal that the agent act for him in accomplishing some undertaking, the agent accepts the undertaking, and there is an understanding between the parties that the principal is to be in control of the undertaking.") (citing Restatement (Second) of Agency § 1 (1958)).

¹³ Wilson v. Pepper, 1995 WL 562235, at *3 (Del. Super.) (citing Facciolo v. State, Div. of Revenue, 358 A.2d 880, 881 (Del. 1976)).

¹⁴ WaveDivision Holdings, LLC v. Highland Capital Mgmt., L.P., 49 A.3d 1168, 1177 (Del. 2012) (citing Fisher, 695 A.2d at 61). See also Brown v. Interbay Funding, LLC, 2004 WL 2579596, at *3 (D. Del.) ("It is the element of continuous subjection to the will

determination is necessarily fact-driven.¹⁵ If the evidence establishes that an agency relationship has been created between the parties, "the legal consequences of the agent's actions can be attributed to the principal if ... the agent acts with the principal's ... authority."¹⁶

No Agency Relationship Between DHF and GE

Plaintiffs assert that an agency relationship existed between DHF and GE at the time Plaintiffs purchased the sectional sofa. Plaintiffs' Complaint, however, is devoid of any factual allegations to support this assertion. Such a conclusory allegation is insufficient to withstand a motion to dismiss.¹⁷

No Agency Relationship Between DHF and HDM

Plaintiffs also contend that DHF was acting as an agent for HDM at the time the Plaintiffs purchased the sectional sofa. In support of this contention, Plaintiffs rely on the "Dedicated Store Retailer Agreement" ("DSR Agreement") between HDM and DHF, which sets forth the obligations of each party. According to Plaintiffs, the DSR Agreement

of the principal which distinguishes the ... agency agreement from other agreements.") (quoting Restatement (Second) of Agency § 1 cmt. b (1958)).

¹⁵ See Fisher, 695 A.2d at 59.

¹⁶ Hospitalists of Del., LLC v. Lutz, 2012 WL 3679219, at *17 (Del. Ch.) (quoting Albert v. Alex. Brown Mgmt. Servs., Inc., 2005 WL 2130607, at *10 (Del. Ch.)).

¹⁷ *Doe v. Bradley*, 2011 WL 290829, at *3 (Del. Super.) ("[W]hen considering a motion under Rule 12(c), the Court must decline to construe facts not clearly alleged in the complaint....").

establishes that HDM "controlled the manner and method in which the DHF Store operated, including, but not limited to[,] what the DHF Store could sell and how it could sell, as well as how the DHF Store could train its employees."

The DSR Agreement, entered into by HDM and DHF, expressly provides:

[DHF] acknowledges that it is an independent contractor autonomously operating its retail business and that this Agreement does not make or appoint [DHF] as an agent or representative of [HDM] for any purpose. Retailer is not authorized to act for, or incur debt of liability for[,] [HDM].... [DHF] shall identify itself on all Retailer letterhead, contracts and advertisements as an independently owed business and in a manner acceptable to [HDM]. (Emphasis added).

The plain language of the DSR Agreement makes clear that HDM did not consent to allow DHF to act as its agent. Rather, the DSR Agreement explicitly states that DHF was prohibited from acting on behalf of HDM *for any purpose*.

In finding that the DSR Agreement clearly and unambiguously reflects the parties' intent, the Court "must refrain from destroying or twisting the contract's language, and confine its interpretation to the contract's 'four corners.'" Construing the contract terms according to their

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¹⁸ Middletown Square Assocs., LLC v. Jasinski, 2012 WL 6042639, at *2 (Del. Super.) (citing Doe v. Cedars Academy, LLC, 2010 WL 5825343, at *5 (Del. Super.)).

plain and ordinary meaning,¹⁹ the Court finds that there is no legal basis supporting a finding that DHF was an agent of HDM.

II. Warranty, Consumer Protection, and Negligence Claims

Even if DHF were an agent of HDM and/or GE, which it is not, the allegations set forth in the Complaint do not give rise to any reasonable inference that DHF acted in contravention of Delaware's consumer protection laws. Further, Plaintiffs fail to provide any legal basis for imposing liability on HDM for any wrongful conduct on the part of DHF.

Delaware Consumer Protection Laws

Delaware's Consumer Fraud Act²⁰ was enacted in 1965 for the primary purpose of "protect[ing] consumers and legitimate business enterprises from unfair or deceptive merchandising practices in the conduct of any trade or commerce in part or wholly within this State."²¹

The Consumer Fraud Act defines an unlawful practice as:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of

¹⁹ See Middletown Square Assocs., 2012 WL 6042639, at *3 (citations omitted).

²⁰ 6 Del. C. § 2511 et seq.

²¹ 6 Del. C. § 2512.

any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice.²²

Injunctive and restitutional relief are available for violations of the Consumer Fraud Act. 23

Similarly, the Consumer Contracts Act²⁴ seeks to protect consumers from deceptive practices in consumer contracts. The Consumer Contracts Act prohibits a person, in a contract for the sale of merchandise, from engaging in a deceptive practice by knowingly or recklessly distorting or obscuring the terms, conditions or meaning of the contract or creating a likelihood of confusion or misunderstanding by the use of unintelligible words, phrases or sentences.²⁵ Further, the Consumer Contracts Act prohibits a person from knowingly or recklessly omitting information required by law to be disclosed in the contract.²⁶ Treble damages are available for any person found to have violated the Consumer Contracts Act.²⁷

 ²² 6 Del. C. § 2513(a).
 ²³ 6 Del. C. §§ 2523, 2524. See also State ex rel. Brady v. Gardiner, 2000 WL 973304, at *5 (Del. Super.).

²⁴ 6 Del. C. § 2731 et seg.

²⁵ 6 Del. C. § 2732.

 $^{^{26}}$ *Id*

²⁷ 6 Del. C. § 2734(a).

Even if DHF were the agent of HDM and GE, which it is not, the allegations set forth in the Complaint do not give rise to any reasonable DHF Defendants) inference that (or concealed facts. made misrepresentations, or acted in a deceptive manner. The only reasonable inference to be drawn from the Complaint and the parties' briefs is that DHF made a mistake and gave HDM the wrong specifications for the furniture. There is no suggestion whatsoever that HDM knew of DHF's error, or that HDM or GE acted in a manner that would trigger the enhanced protections and penalties set forth in Delaware's Consumer Fraud Act or Consumer Contracts Act. Therefore, Counts V and VI must be dismissed.

Express and Implied Warranty Claims

Plaintiffs' Complaint asserts several express and implied warranty claims against HDM stemming from DHF's conduct. Relying on Delaware's counterpart to the Uniform Commercial Code, Plaintiffs allege that HDM breached express and written warranties, the implied warranty of merchantability, and the implied warranty of fitness for a particular purpose.

DHF's "Sales Order" form provides:

DREXEL HERITAGE **DELAWARE DISCLAIMS** WARRANTIES, ALL OR IMPLIED, **INCLUDING** ANY WARRANTIES OF FITNESS OF PURPOSE OF MERCHANTABILITY, ASSOCIATED **GOODS** WITH ANY **SOLD** OR SERVICES PERFORMED BY DREXEL HERITAGE

DELAWARE DREXEL HERITAGE DELAWARE WILL, IN NO EVENT, BE LIABLE TO CUSTOMER ... FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

This disclaimer is printed on the reverse side of the form in all capital letters The Court finds that this language, clearly and and bold font. conspicuously, 28 disclaims the implied warranties of merchantability and fitness for a particular purpose.

Further, the Court asked Plaintiffs' counsel during oral argument for case law (or other authority) in which similar facts resulted in a finding of liability against a manufacturer of consumer goods. Plaintiffs' counsel directed the Court's attention to the Delaware Supreme Court's opinion in Mercedes-Benz of North America Inc. v. Norman Gershman's Things to Wear, Inc.²⁹ In Mercedes, both the retail automobile dealership and the manufacturer were found liable for breach of their warranty to "repair and replace." The automobile that was the subject of the lawsuit was delivered

²⁸ See 6 Del. C. § 1-201(b)(10) ("Conspicuous[,]' with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is 'conspicuous' or not is a decision for the court. Conspicuous terms include the following: (A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and (B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.").

²⁹ 596 A.2d 1358 (Del. 1991).

³⁰ *Id.* at 1361.

to the customer with a defective engine.³¹ On multiple occasions, the customer returned to the dealer, complaining that the engine had overheated and was inoperable.³² Although the dealer serviced the car each time, ultimately replacing the entire engine assembly, both the dealer and manufacturer were found to have breached their warranty to "repair and replace."

In this case, for purposes of this motion, it is undisputed that the furniture delivered to plaintiffs was not consistent with the specifications given to the retail store. The customer had ordered a sectional configured as a "right arm sofa" and a "left arm chaise." The sectional delivered was the opposite – a "left arm sofa" and a "right arm chaise." Plaintiffs do not allege that the furniture was defective in any other manner.

Additionally, it is not disputed that the configuration mistake was the fault of the retail store and its employee. The furniture was constructed by HDM, according to the instructions provided to HDM by DHF. HDM had no notice, and no way of knowing, that the instructions were contrary to the explicit directions of Plaintiffs.

 $[\]frac{1}{31}$ *Id.* at 1360-61.

³² *Id*.

³³ *Id*.

The Court finds that Plaintiffs have failed to provide any relevant authority supporting liability in this case. A car with a defective motor clearly cannot be used for its intended purpose – transportation. An incorrectly configured sectional sofa is still fit for use as furniture. This case is more analogous to a situation in which a customer orders a car with gray leather upholstery, and a dealership erroneously instructs the manufacturer to build the car with black cloth upholstery. The car clearly would not be what the customer ordered and the customer properly could reject the car. Nevertheless, the car would still be merchantable and function as transportation – the particular purpose for which it was intended.

While the dealership might be liable to the customer for its mistakes, the manufacturer could not reasonably be found liable for breach of the implied warranties of merchantability or fitness for a particular purpose. A defective car engine is not in any way similar to a reversed sectional sofa for purposes of determining liability for breach of these warranties.

Plaintiffs' contention that Defendants are liable for DHF's alleged breach of express warranties³⁴ is equally unavailing. In the absence of an agency relationship, there is no basis in law to hold a manufacturer liable for

³⁴ Plaintiffs allege that DHF expressly warranted that the sectional sofa would conform to the configuration drawing provided by Mrs. Baccellieri to Terrell; and that the sofa would be free of various defects for specified time period.

a retailer's breach when the manufacturer has committed no active wrong. Further, Plaintiffs have identified no express warranty, issued by HDM, which HDM has breached.

Therefore, Counts I, II, and III must be dismissed.

Magnuson-Moss Warranty Claims

Plaintiffs also allege a violation of the Magnuson-Moss Warranty According to Plaintiffs, Defendants breached DHF's express and implied warranties by failing to cure the nonconformity within a reasonable time.

"The Magnuson-Moss Act established a statutory cause of action for consumers for alleged warranty and consumer protection claims that may be filed in either state or federal court."36 In order to bring a claim under the Magnuson-Moss Act, Plaintiffs must demonstrate that they were damaged by the failure of DHF to comply with written or implied warranties.³⁷ Because the Court already has determined that Plaintiffs have failed to establish a prima facie case that either HDM or GE could be held liable for

³⁵ 15 U.S.C. § 2301 et seq.

³⁶ Mayew v. Chrysler, LLC, 2008 WL 4447707, at *7 (Del. Super.) (citing Dalton v. Ford Motor Co., 2002 WL 338081, at *4 (Del. Super.)).

³⁷ McLaren v. Mercedes Benz USA, LLC, 2006 WL 1515834, at *4 (Del. Super.).

breach of any warranties, Plaintiff's Magnuson-Moss Warranty claim fails.

Therefore, Count IV must be dismissed.

Negligence/Recklessness

Plaintiffs allege that DHF and HDM owed Plaintiffs a duty to exercise reasonable care in ordering the sectional sofa. DHF and HDM breached that duty by negligently ordering and delivering the incorrect configuration of the sectional sofa, without reference to the diagrams provided by Plaintiffs. Plaintiffs claim that HDM and DHF's breach was the proximate cause of the incorrect order.

"A manufacturer has a duty to use reasonable care to design its products to be safe for normal use." A manufacturer breaches this duty when it fails to exercise reasonable care in making its product such that the product contains a manufacturing defect when placed into the stream of commerce. The mere fact that a product is defective does not *ipso facto* constitute negligence on the part of the manufacturer. The test is whether

³⁸ McLaughlin v. Dover Downs, Inc., 2008 WL 2943392, at *12 (Del. Super.) (citing Mazda Motor Corp. v. Lindahl, 706 A.2d 526, 530 (Del. 1998)).

³⁹ *Id*.

⁴⁰ *Id*.

the manufacturer used the reasonable skill, care, and diligence of an ordinarily prudent manufacturer in making the product."⁴¹

Plaintiffs do not allege that HDM, the manufacturer, failed to exercise reasonable skill, care or diligence in manufacturing the sectional sofa. Rather, Plaintiffs' negligence claim is premised solely on DHF's negligence in *ordering* the sectional sofa. Because Plaintiffs do not allege a breach on the part of HDM, Plaintiffs have failed to allege any facts whatsoever which would establish a prima facie case of negligence by HDM. Therefore, Count IX must be dismissed.

III. Section 1666i Claim

Plaintiffs assert two claims solely against GE - right of action pursuant to Section 1666i of Title 15 of the United States Code, and violation of Regulation Z, 12 C.F.R. §226.12(c)(2). As to the Section 1666i claim, Plaintiffs contend that GE, as the credit card issuer, is subject to all claims and defenses arising out of the credit card transaction for purchase of the non-conforming sectional sofa. ⁴² In other words, Plaintiffs argue that

⁴¹ *Id*.

⁴² See 15 U.S.C. § 1666i; see also Beaumont v. Citibank (S.D.) N.A., 2002 WL 483431, at *5 (S.D.N.Y.) ("Section 1666i allows a cardholder to assert any non-tort claims or defenses arising out of the underlying credit card transaction against a credit card issuer.").

GE stands in the shoes of DHF and can be sued by Plaintiffs for the same causes of action Plaintiffs have asserted against DHF.

With regard to the alleged Regulation Z violation, Plaintiffs contend that GE erroneously reported Plaintiffs' account delinquent due to Plaintiffs' withholding payment for the disputed transaction. Plaintiffs argue that GE should not have reported the account delinquent until the dispute was settled or judgment rendered.

"Section 1666i allows a cardholder to assert any non-tort claims or defenses arising out of the underlying credit card transaction against a credit card issuer." Section 1666i(a) provides, in pertinent part:

[A] card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain a satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds \$50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address....⁴⁴

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⁴³ Beaumont, 2002 WL 483431, at *5.

⁴⁴ 15 U.S.C. § 1666i(a).

Section 1666i(b) limits the cardholder's damages to the "amount of credit outstanding with respect to such transaction."45 Section 1666i does not create an independent cause of action for the debtor. 46

It is undisputed that GE charged off \$7,058.00 from Plaintiffs' account. This amount represents the entire sum of the sectional sofa charged to Plaintiffs' GE account. Because there is no outstanding credit with respect to the purchase of the sectional sofa, Plaintiffs' Section 1666i claim is moot. Therefore, Count VII must be dismissed.

Likewise, Plaintiffs' Regulation Z claim is moot. Regulation Z, the implementing regulation for Section 1666i, provides that if a "cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered."⁴⁷ Again, because GE has charged off the entire sum of the sectional sofa charged to Plaintiffs' account, Plaintiffs have no present basis to assert a claim under Regulation Z. Therefore, Count VIII must be dismissed.

⁴⁵ 15 U.S.C. § 1666i(b).

⁴⁶ Beaumont, 2002 WL 483431, at *6.

⁴⁷ 12 C.F.R. § 226.12(c)(2) (emphasis added).

CONCLUSION

Plaintiffs properly sought recovery in the first instance from the retail store, DHF. Plaintiffs were offered a replacement sectional sofa, but declined, opting instead to initiate litigation. Unfortunately, in the interim, DHF filed for bankruptcy and appears to be judgment-proof.

GE since has charged off the amount of the sofa charged to Plaintiffs' account – \$7,058.00. Nonetheless, it appears that Plaintiffs have indeed suffered some damage as a result of the errors of DHF. That fact, however, does not mean that Plaintiffs are entitled to recover from HDM, the manufacturer. DHF was not the agent of HDM. Even if there were an agency relationship, the Court finds no record evidence, or reasonable inference, to support Plaintiffs' allegations that Defendants violated Delaware's Consumer Fraud Act or Consumer Contracts Act. Additionally, the Court finds no basis in law to hold HDM liable for breaches of any warranties or for any negligence on the part of DHF.

Further, Plaintiffs' claims against GE under the Truth in Lending Act are moot. Plaintiffs do not dispute that GE charged off the cost of the sectional sofa charged to Plaintiffs' account. Thus, Plaintiffs have no outstanding credit obligation that could form the basis for relief under Section 1666i.

THEREFORE, Defendants' Joint Motions to Dismiss Pursuant to Rule 12(c) are hereby **GRANTED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston