

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THERESA L. DRESSLER, ) C.A. No. 02C-09-026 JTV  
)  
Plaintiff, )  
)  
v. )  
)  
I.G. BURTON & COMPANY, INC., )  
a corporation of the State of Delaware and )  
DAIMLERCHRYSLER CORPORATION, )  
a corporation of the State of Delaware, )  
)  
Defendants. )

*Submitted: May 9, 2003*

*Decided: October 14, 2003*

John C. Andrade, Esq., Parkowski & Guerke, Dover, Delaware. Attorney for Plaintiff.

Gary H. Kaplan, Esq., Goldfein & Hosmer, Wilmington, Delaware. Attorney for Defendant I.G. Burton & Co., Inc.

Jonathan L. Parshall, Esq., Murphy, Spadaro & Landon, Wilmington, Delaware. Attorney for Defendant DaimlerChrysler Corporation.

*Upon Consideration of Defendants'  
Motion to Dismiss The Complaint*

**DENIED**

**VAUGHN, Resident Judge**

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## **ORDER**

Upon consideration of the defendants' motions to dismiss the complaint, the plaintiff's response, and the record of the case, it appears that:

1. The plaintiff claims that she was injured as a result of her 1997 Jeep Grand Cherokee suddenly jumping into reverse gear, causing her to be thrown from and then run over by the vehicle. This occurred on September 18, 1999. She had leased the vehicle from I.G. Burton & Company, Inc., a Milford, Delaware auto dealership. She claims that the day after the accident she asked someone at I.G. Burton how it could have happened, and the person told her, in substance, that he or she didn't know and there was nothing wrong with the vehicle. The vehicle was manufactured by DaimlerChrysler Corporation.

2. A little over two years later, on or about October 31, 2001, the plaintiff became aware that an investigation of some sort was underway concerning a tendency of Jeep Grand Cherokee's to shift suddenly from park to reverse. In March 2002 the plaintiff learned that DaimlerChrysler Corporation announced on February 15, 2002 that 1.6 million Jeep Grand Cherokees produced between 1993 and 1998 were being recalled because of the vehicle's propensity to shift suddenly from park to reverse without warning. Plaintiff filed this suit on September 17, 2002.

3. The plaintiff alleges that the defendants are liable for her injury under theories of negligence, strict liability, and breach of implied warranties of merchantability and fitness for a particular purpose.

4. The defendants have each filed a motion to dismiss the complaint on two

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grounds: first, that strict liability does not apply; and, second, that the statute of limitations on plaintiff's claim has expired.

5. The defendants' contend that strict liability does not apply to cases involving the sale or lease of goods. They rely upon *Cline v. Prowler Industries of Maryland, Inc.*,<sup>1</sup> which held that strict liability does not apply to cases involving the sale of goods. They also contend that the two-year statute of limitations at 10 *Del. C.* § 8119 bars the plaintiff's negligence claim because more than two years elapsed between the date the plaintiff was injured and the date she filed her suit. They also contend that the four-year statute of limitations at 6 *Del. C.* § 2-725 bars any warranty claim based upon the Uniform Commercial Code -- Sales because more than four years elapsed between the date of tender of delivery of the vehicle and the date the plaintiff was injured.<sup>2</sup> Finally, they contend that no claim for breach of a warranty of fitness for a particular purpose can be asserted because the complaint alleges no facts that indicate that the Jeep Grand Cherokee was being used for anything other than normal vehicular use.

6. The plaintiff contends that strict liability does apply to cases involving the lease of goods. As to the statute of limitations, she contends that the "time of discovery" rule applies because the elements of her claim were inherently unknowable until October 31, 2001 when she discovered that an investigation was

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<sup>1</sup> 418 A.2d 968 (Del. 1980).

<sup>2</sup> Initially it was thought that the plaintiff had purchased the vehicle. The complaint was amended after the defendants' motions were filed to reflect that it was leased.

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being conducted concerning the tendency of Jeep Grand Cherokee's to shift suddenly from park to reverse. Finally, she contends that the applicable statutes of limitations were, or may have been, tolled under theories of fraudulent concealment or equitable estoppel because of the above-mentioned conversation between the plaintiff and the person at I.G. Burton. She asks that the Court afford her an opportunity to conduct discovery.

7. I agree that the plaintiff must be afforded an opportunity to conduct discovery concerning the facts and circumstances surrounding her alleged conversation with a person at I.G. Burton on or about the day following her accident. At this point no inferences can be drawn as to the state of mind of the person at I.G. Burton who allegedly told the plaintiff there was nothing wrong with the vehicle, if such a statement was made; or whether there were, or were not, any communications between the dealership and the manufacturer concerning the plaintiff's complaint. The facts and circumstances surrounding that conversation may be relevant to determining whether there was any tolling of the applicable statute of limitations.

8. Therefore, the defendants' motions will be dismissed without prejudice as to any of the issues raised. I see no need to address the defendants' motions further at this time. The issues raised can be addressed upon motion filed after relevant discovery is completed.

9. The defendants should file answers within 20 days. A scheduling order will then be issued.

10. For the foregoing reasons, the defendants' motions to dismiss the

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complaint are *denied*.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.  
Resident Judge

oc: Prothonotary  
cc: Order Distribution  
File