CHICAGOLAWBULLETIN.COM THURSDAY, AUGUST 24, 2017

Chicago Daily Law Bulletin

7th Circuit recharges suit over Volvo hybrid SUVs

BY PATRICIA MANSON
Law Bulletin staff writer

A company that fears a disgruntled consumer will sue it cannot fend off the litigation simply by offering to settle the dispute, a federal appeals court ruled.

The 7th U.S. Circuit Court of Appeals this week held the would-be plaintiff does not lose standing to pursue a claim unless he or she accepts a settlement offer.

Without acceptance of the settlement offer, the court wrote, all the elements needed to form a binding agreement are not present.

Todd L. McLawhorn

"Any first-year law student knows that contract formation requires offer, acceptance and consideration," Chief Judge Diane P. Wood wrote Tuesday in the court's majority opinion.

She wrote all three elements must be fulfilled before a contract is formed.

Citing *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016), she wrote, "*Campbell-Ewald*'s core lesson is that unaccepted contract offers are nullities; settlement proposals are contract offers; and therefore unaccepted settlement proposals are nullities."

Wood wrote a settlement offer cannot be forced on an unwilling recipient.

No settlement was reached in a dispute between Khadija Laurens and Volvo, Wood wrote, because Laurens did not accept the automaker's offer to give her a full refund for her luxury sports utility vehicle.

"Black-letter contract law states that offers do not bind recipients until they are accepted," she wrote.

The 7th Circuit revived the class-action lawsuit Laurens joined as a named plaintiff after she received a letter from Volvo containing the settlement offer.

Judge Ilana Diamond Rovner joined the majority opinion.

In a concurring opinion, Judge Michael S. Kanne agreed Laurens has standing to pursue her claim that misleading advertising led her to pay more for her SUV than it was worth.

But Kanne emphasized the trial judge presiding over the suit "is free to draw, or not to draw, the conclusion" that Laurens does not have standing to seek injunctive relief in addition to monetary damages.

OFFER, *Page 5*

Car buyer's attorney says Volvo's settlement offer a pick-off attemp

OFFER, *FROM PAGE 1*

Todd L. McLawhorn of Siprut P.C. argued the case before the 7th Circuit on behalf of Laurens.

McLawhorn said he is pleased the 7th Circuit recognized Volvo's settlement offer was a "pick-off attempt," a procedural mechanism to keep a court from considering the merits of legal dispute by resolving the named plaintiff's individual claims.

"Volvo promised one thing and delivered another; it would be perverse that having been called out on its misrepresentations, Volvo would then get to decide the appropriate remedy by deciding the terms of its offer," McLawhorn said in a statement today.

He said a judge and jury, not Volvo, "will decide the remedy for Volvo's misrepresentations."

Jennifer L. Ilkka of Reed Smith LLP argued the case before the 7th Circuit on behalf of Volvo Cars of North America LLC and Volvo Car USA LLC.

She could not be reached for comment.

Laurens and her husband Xavier bought a model XC90 T8 Volvo SUV for $83,475 and a charging station for an additional $2,700.

In April 2016, Xavier filed a class-action suit against Volvo in federal court in Chicago.

The suit alleged Volvo falsely advertised that the T8's battery range is 25 miles even though it is only eight to 10 miles.

In June 2016, Volvo sent a letter to Khadija offering to buy back the T8 for the full purchase price.

In a separate move, Volvo asked U.S. District Judge Harry D. Leinenweber to dismiss Xavier's suit on the ground that he had no standing because only Khadija was listed on the T8's purchase agreement and title.

The Laurenses then amended the suit to add Khadija as a named plaintiff.

Volvo countered with a motion to dismiss Khadija's claims on the ground that she had no standing.

Volvo contended Khadija had suffered no damages because she had received an offer for complete relief before she joined the suit.

Leinenweber dismissed the suit, holding Xavier had never suffered an injury and Khadija's injury was redressed by the settlement offer.

The 7th Circuit reversed Leinenweber's decision to throw out the suit for lack of standing.

The court did agree with Leinenweber that Xavier had not provided evidence that he has standing to sue Volvo over the purchase of the T8.

But the court wrote Xavier may be able to pursue a claim related to his purchase of the charging station.

The court conceded the $2,700 Xavier spent is well below the $75,000 amount-in-controversy usually required.

However, the court wrote, supplemental jurisdiction likely will extend to Xavier's claim if Leinenweber determines jurisdiction for the suit is proper under the Class Action Fairness Act.

The case is *Xavier Laurens, et al. v. Volvo Cars of North America LLC, et al.*, No. 16-3829.

pmanson@lawbulletinmedia.com