

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

WILLIAM L. RIDENOUR

Plaintiff

v.

CHILLICOTHE CORR. INST.

Defendant

Case No. 2007-09178-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On June 26, 2007, plaintiff, William L. Ridenour, an inmate incarcerated at defendant, Chillicothe Correctional Institution (“CCI”), purchased an “Access” radio/cd player from the CCI commissary for \$48.88. Plaintiff supplied a copy of a receipt for the radio/cd player purchase. Plaintiff related “[a]fter only two months of light use the cd player failed to operate properly.” Plaintiff recalled he tried to resolve the problem he experienced with his cd player by first making a written request to CCI commissary manager, Brian Long, that either a replacement cd player be provided or the defective cd player be repaired at defendant’s expense. On October 1, 2007, plaintiff filed an “Informal Complaint Resolution” again requesting his defective cd player be replaced or repaired. Defendant responded to plaintiff’s complaint by advising that the CCI commissary “only replaces defective products within the first 30 days” after purchase. Additionally, defendant suggested plaintiff filed a claim with the “vendor/manufacturer” concerning any warranty provision. Subsequently on October 5, 2007, plaintiff filed a “Notification of Grievance” asserting the CCI commissary sold him an electronic device

“without adequate or meaningful warranty protection.” Plaintiff again requested defendant supply him with a replacement cd/player. Defendant did not supply plaintiff with a replacement cd/player. On October 23, 2007, plaintiff filed a grievance appeal expressing his dissatisfaction over the matter involving the purchase of his cd/player and contending the CCI commissary violated the prohibition against deceptive sales practices promulgated in the Consumer Sales Practices Act (“CSPA”), specifically R.C. 1345.02.¹ Apparently, plaintiff’s grievance appeal, dated October 23, 2007, was not resolved to his satisfaction.

{¶ 2} Subsequently, plaintiff filed this action contending the CCI commissary violated R.C. 1302.27 (UCC 2-314)² by failing to honor implied warranties of merchantability and fitness regarding the Access cd/player at the time of sale. Essentially, plaintiff contended the CCI commissary sold him a defective cd/player and consequently, defendant is bound by statutory warranties of fitness outside of any warranty made by the manufacturer of the cd/player. Plaintiff asserted that he relied on defendant to sell him a workable cd/player and defendant did not disclaim or modify any warranty of fitness when the purchase of the cd/player occurred. See R.C. 1302.29

¹ R.C. 1345.02(A) states:

“(A) No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

Plaintiff claimed defendant as a supplier of goods in the CCI commissary violated R.C. 1345.02(B)(10) when he purchased the Access cd/player. R.C. 1345.02(B)(10) provides:

“(B) Without limiting the scope of division (A) of this section, the act or practice of a supplier in representing any of the following is deceptive:

“(10) That a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.”

² R.C. 1302.27 (UCC2-314) states in its entirety:

“(A) Unless excluded or modified as provided in section 1302.29 of the Revised Code, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

“(B) Goods to be merchantable must be at least such as:

“(1) pass without objection in the trade under the contract description; and

“(2) in the case of fungible goods are of fair average quality within the description; and

“(3) are fit for the ordinary purposes for which such goods are used; and

“(4) run, within the variations permitted by the agreement, of even kind, quality and quantity, within each unit and among all units involved; and

“(5) are adequately contained, packaged, and labeled as the agreement may require; and

“(6) conform to the promises or affirmations of fact made on the container or label if any.

“(C) Unless excluded or modified as provided in section 1302.29 of the Revised Code, other implied warranties may arise from course of dealing or usage of trade.”

(UCC2-316).³ Plaintiff contended implied warranties of fitness applied to the CCI commissary as a seller of goods, despite any disclaimed or limited warranty made by the manufacturer of the Access cd/player. Based on the problems he experienced with his cd/player, plaintiff stated "my causes of action herein are (1) Breach of implied warranties under Ohio law (R.C. 13025. et. seq.); (2) unfair, deceptive, and unconscionable selling practices in violation of Ohio Consumer Sales Practices Act (CSPA); and (3) dereliction of duty (by the CCI commissary manager)." Plaintiff has stated damages in the amount of \$48.88, the purchase price of the Access radio/cd player, \$35.55 for typing supplies, \$14.40 for copying fees, and \$6.00 for postage. Plaintiff advised that under the provision of CSPA section R.C. 1345.09(B)⁴ he is entitled to receive treble damages based on his actual financial loss or a minimum of \$200.00, whichever is greater. Plaintiff has requested total damages in this claim in the

³ R.C. 1302.29 (UCC2-316), which deals with the exclusion of warranties, provides in pertinent part:

"(A) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; ***

"(B) Subject to division (C) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warrant of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states for example, that 'There are no warranties which extend beyond the description on the face hereof.'

"(C) Notwithstanding division (B) of this section:

"(1) unless the circumstances indicate otherwise all implied warranties are excluded by expressions like 'as is,' 'with all faults,' or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

"(2) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

"(3) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade. *** "

⁴ R.C. 1345.09(B) of the CSPA provides:

For a violation of Chapter 1345. of the Revised Code, a consumer has a cause of action and is entitled to relief as follows:

"(B) Where the violation was an act or practice declared to be deceptive or unconscionable by rule adopted under division (B)(2) of section 1345.05 of the Revised Code before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate section 1345.02, 1345.03, or 1345.031 of the Revised Code and committed after the decision containing the determination has been made available for public inspection under division (A)(3) of section 1345.05 of the Revised Code, the consumer may rescind the transaction or recover, but not in a class action, three times the amount of the

consumer's actual economic damages or two hundred dollars, whichever is greater, plus an amount not exceeding five thousand dollars in noneconomic damages or recover damages or other appropriate relief in a class action under Civil Rule 23, as amended."

amount of \$2,500.00, with the difference between his actual damage claim representing a claim for punitive damages. Plaintiff also requested reimbursement of the \$25.00 filing fee cost at a rate of three times the cost. Plaintiff was not required to submit any filing fee amount to prosecute this action and in fact did not submit any filing fee amount.

{¶ 3} On December 4, 2007, this court issued an order striking plaintiff's claim for punitive damages since such damages cannot be awarded by the Court of Claims. *Drain v. Koysdar* (1978), 54 Ohio St. 2d 49, 8 O.O. 3d 65, 374 N.E. 2d 1253. Furthermore, postage costs are not a recognizable element of damages in a claim of this type. *Mitchell v. Lebanon Corr. Inst.*, Ct. of Cl. No. 2007-01428-AD, 2007-Ohio-7088. Additionally, the cost of typing supplies and copying costs are not considered compensable damages. *Carnail v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2007-06322-AD, 2008-Ohio-1207; *Tyler v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2007-07299, 2008-Ohio-3418. Plaintiff may not recover costs such as filing fees he did not pay.

{¶ 4} In regard to any claim plaintiff may state under the CSPA, it has been previously held that this court does not have jurisdiction over such actions. See *Howard v. Richland Correctional Inst.* (2008), 2007-09577-AD. R.C. 1345.04 of the CSPA states: "The courts of common pleas, and municipal or county courts within their respective monetary jurisdiction, have jurisdiction over any supplier with respect to any act or practice in this state covered by sections 1345.01 to 1345.13 of the Revised Code, or with respect to any claim arising from a consumer transaction subject to such sections." Consequently, this court lacks jurisdiction to determine an action under the CSPA. R.C. 2743.02(A)(1) provides in part: "The state hereby waives its immunity from liability . . . and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties ***. To the extent that the state has previously consented to be sued, this chapter has no applicability." Therefore, if by some other prior statutory provision the state has consented to be sued, the Court of Claims is without jurisdiction.

{¶ 5} Before the Court of Claims statute was enacted the legislature enacted R.C. 1345, the CSPA, which includes" government, governmental subdivision or agency" (R.C. 1345.01(B)) and rests jurisdiction for actions under the CSPA in "[t]he courts of common pleas, municipal or county court" (R.C. 1345.04). Therefore, based on the language of R.C. 2743.02(A)(1), this court lacks jurisdiction to determine claims

under the CSPA. Since damage claims under the CSPA cannot be heard in this court, plaintiff's particular damage claim is limited to the purchase price of the Access radio/cd player, \$48.88.

{¶ 6} Defendant denied any liability for the purchase price of the Access radio/cd player. Defendant contended plaintiff failed to offer any evidence other than his own assertion to establish the cd player failed to function properly two months after purchase. Defendant explained plaintiff "has not submitted the CD player for inspection nor offered any evidence of the nature of the damage to the item." Defendant asserted plaintiff has not proven any damage to his cd player "occurred in a manner covered by any warranty either expressed or implied." Defendant suggested the damage to the cd player, if any, could have resulted "from misuse, damage (whether accidental or intentional), use inconsistent (with the) intended purpose, or damage (from) a failure to properly maintain the item." Defendant argued that all the damage causes suggested would not be covered under any warranty. Defendant specifically denied the CCI commissary offered any implied warranty for the cd player beyond the 30 days manufacturer's express warranty. Defendant related the only warranty available to plaintiff was the 30 days manufacturer's warranty. Therefore, defendant maintained plaintiff's action should be dismissed since the CCI commissary was not bound by any warranty extending beyond 30 days from purchase and plaintiff first complained about a problem with his cd player over 90 days after purchase.

{¶ 7} Plaintiff filed a response insisting his cd player "failed to operate after only two months of light use" and the CCI commissary under 1302.27 and R.C. 1302.29 was bound by an implied warranty of merchantability extending beyond the 30 day express warranty offered by the manufacturer. Plaintiff explained that at sometime after the cd player began to malfunction he sent a "kite" correspondence to CCI commissary manager, Brian Long, suggesting the cd player be inspected for defects and replaced or repaired. Plaintiff asserted defendant by not (either verbally or in writing) disclaiming any warranty in regard to the cd player, extended a warranty of fitness and merchantability beyond the 30 days warranty offered by the manufacturer. Plaintiff related defendant, through Brian Long, "breached the implied warranty of quality, merchantability, fitness and condition when he sold the CD player." No evidence has been presented to show the cd player malfunctioned immediately after sale.

{¶ 8} Plaintiff filed a second response pointing out that his cd player remains in

his possession and is available at any time for defendant to “inspect the nature and extent of the malfunction.” Plaintiff referenced an October 17, 2007 “Disposition of Grievance” (filed with the complaint) wherein defendant’s Chief Inspector noted “Mr. Long sold you a radio that stopped working after two months.” In this “Disposition of Grievance” the Chief Inspector also noted the CCI commissary “has a 30 day warranty on defective products anything past that you must follow the manufacturer’s warranty.” Plaintiff observed the purchase receipt he received for his cd player from the CCI commissary did not contain any warranty notifications. Plaintiff contended that since he did not receive a written warranty from the CCI commissary he is entitled to recover damages for breach of implied warranties of merchantability and fitness. Plaintiff has seemingly argued that since he did not receive a written warrant from the CCI commissary at the time he purchased his cd player then he received no warranty, despite the fact he was subsequently informed the CCI commissary has a 30 day warranty policy for products sold there.

{¶ 9} Plaintiff refiled an affidavit regarding his recollections of the purchase of his cd player and subsequent problems with the device. Plaintiff recalled he purchased a cd player on June 26, 2007 and the device “failed to operate properly after only two months of light use.” Plaintiff related the cd player was defective when he purchased it, but acknowledged he did not discover any operational problem with the device until late August 2007. Plaintiff specifically denied he misused, damaged, failed to properly maintain the cd player, or used the device for any alternate unintended purpose. Plaintiff denied receiving any warranties when he purchased the cd player. Plaintiff recorded he first notified defendant of a problem with his cd player on August 26, 2007. Plaintiff stated, “I wrote the CCI Commissary Manager, Mr. Long, a ‘kite’ on or about August 26, 2007, to notify him that my cd player stopped operating properly and requesting replacement or repairs.” Plaintiff again asserted the CCI commissary seller breached the implied warranty of merchantability under R.C. 1302.27 (UCC2-314) and the implied warrant of fitness for a particular purpose as stated in 1302.28 (UCC2-315).⁵ Plaintiff explained that at no time did the commissary disclaim any warrant.

⁵ R.C. 1302.28 (UCC2-315) states:

“Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is unless excluded or modified under section 1302.29 of the Revised Code an implied warranty that the goods shall be fit for such purpose.”

{¶ 10} Plaintiff has contended the warrant provisions of R.C. 1302 et seq. apply to defendant since the CCI commissary manager is a “seller” of goods as defined by R.C. 1302.01(A)(4) and a “merchant” as “a person who deals in goods of the kind or otherwise by the person’s occupation holds the person out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by the person’s employment of an agent or broker or other intermediary who by the agent’s, broker’s, or other intermediary’s occupation holds the person out as having such knowledge or skill.”

{¶ 11} Under the facts of the instant claim, plaintiff has failed to offer sufficient evidence to prove the CCI commissary is a statutorily defined “seller” of the cd player in question and/or a “merchant” dealing in the sale of the particular cd player. Evidence tends to support the conclusion Access Catalog Company, not CCI, was the seller of the cd player. Any cause of action plaintiff may have regarding a refund of the purchase price or replacement of this product lies against the seller, Access Catalog Company. This court, under R.C. 2743 et al. does not have jurisdiction to decide claims against non state entities.

{¶ 12} The Ohio Administrative Code 5120-9-33(E) and (F) governing inmate property restrictions state:

{¶ 13} “(E) Inmates may possess only personal property items received through an institutional commissary, and/or vendors identified by the director or designee.

{¶ 14} “(2) Inmates may order and receive sundry packages (non-food personal property) only from vendors approved by the director or designee.

{¶ 15} “(F) Information on approved vendors, product availability and making purchases will be appropriately provided to inmates, family members and other interested parties.”

{¶ 16} Plaintiff purchased his cd player from an approved vendor, Access Catalog Company. No action he may claim against the vendor under R.C. 1302 cannot be pursued in this court. See *Perkins v. Lebanon Corr. Inst.*, Ct. of Cl. No. 2005-11051-AD, 2006-Ohio-7183.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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