Implied Warranty Disclaimers: When They Work and When They Don't

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As a compliance attorney, I often advise clients about the need to limit their advertising claims and contractual promises. In a world where such limitations must be clear and conspicuous, it can be tricky to draft effective disclaimers. However, when it comes to disclaiming implied warranties, state law (in most states) simplifies things by providing that a dealer can disclaim the implied warranties of merchantability and fitness for a particular purpose by using the words "as is," "with all faults," or other language that, in common understanding, calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty. Even when a dealer uses these words, however, there are times when an implied warranty disclaimer may not be effective.

First, a number of states prohibit dealers from disclaiming implied warranties. In these states, there are no words a dealer can use to overcome this prohibition.

Second, for states that permit "as is" sales, federal law prohibits dealers from disclaiming implied warranties if the dealer offers a service contract within 90 days of the sale or provides a written warranty in connection with the sale. In these transactions, while the dealer may limit the duration of implied warranties to the duration of any written warranty, the dealer cannot disclaim implied warranties.

Finally, another (less typical) situation where an implied warranty disclaimer will not be effective is where the dealer's fraudulent conduct precludes the dealer from effectively disclaiming implied warranties. That is what happened in a recent case in Minnesota.

Esmeralda Sorchaga bought a truck from Ride Auto, L.L.C. At the time of sale, the truck had a salvage title, and the check-engine light was on. During the test drive, the truck smoked. Ride Auto's salesperson explained that the truck smoked because it was a diesel and that the check-engine light was due to a faulty oxygen sensor that would be easy to fix. Ride Auto sold the truck "as is" and provided Sorchaga with a third-party vehicle protection plan at no cost. Within days of purchase, the truck lacked power and continued to smoke. Ride Auto refused to diagnose or repair the truck. Sorchaga sued Ride Auto, alleging claims of fraud and breach of the implied warranty of merchantability and seeking attorneys' fees under the Magnuson-Moss Warranty Act. The trial court granted judgment for Sorchaga. Ride Auto appealed.

On appeal, Ride Auto argued that the evidence was insufficient to establish the elements of fraud. The Court of Appeals of Minnesota disagreed, finding that Ride Auto's failure to disclose known engine problems, as well as its representations that the truck was in working condition and the check-engine light was merely an oxygen sensor problem, misled Sorchaga. The appellate court agreed with the trial

court's finding that Ride Auto's fraudulent misrepresentations rendered the warranty disclaimer ineffective because Sorchaga would not have bought the truck or agreed to the warranty disclaimer if she knew the truck had severe engine problems.

Not only did the appellate court agree with the trial court's finding on Sorchaga's breach of implied warranty claim, but it also upheld the trial court's award of attorneys' fees.

The lesson here is that a disclaimer of implied warranties can be a strong defense, but only when it is not rendered ineffective by the dealer's conduct. Unfortunately, Ride Auto had to learn this lesson the hard way.

Sorchaga v. Ride Auto, LLC, 2017 Minn. App. LEXIS 39 (Minn. App. March 20, 2017).

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