

1996

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Recommended Citation

Jennifer L. Schilling *Cosigners Protected Against Primary Liability*, 8 Loy. Consumer L. Rev. 280 (1996).

Available at: <http://lawcommons.luc.edu/lclr/vol8/iss4/5>

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punishment under the Eighth Amendment and subjected him to slavery in violation of the Thirteenth Amendment. The court disposed of these claims as "patently meritless" for two reasons. First, the court found that Sibley received adequate protection in this case. Second, the

Thirteenth Amendment generally protects against labor compelled by the "use or threatened use of physical or legal coercion." The court also dismissed Sibley's Thirteenth Amendment claim after finding that the salary offset did not coerce Sibley to work for the

government.

In sum, the court held that no compelling basis existed for setting aside the Department's decision to offset Sibley's salary. Therefore, the court entered summary judgment was entered for the defendant.

Cosigners protected against primary liability

by Jennifer L. Schilling

In *Lee v. Nationwide Cassel, L.P.*, 660 N.E.2d 94 (Ill. App. Ct. 1995), cosigners to loans sought damages from Nationwide Cassel, a credit finance company, for violation of the Illinois Consumer Fraud Act and the Illinois Sales Finance Agency Act. The trial court dismissed the complaint because the cosigners failed to set out facts necessary to state a claim under the Consumer Fraud and Deceptive Practices Act. The appellate court reviewed each of the trial court's findings and subsequently held that the trial court erred in dismissing the cosigners' claim.

The plaintiffs, Rodney Lee and Edelmira Rivera, ("the cosigners") in separate and unrelated circumstances acted as "cosigners" to loans financed through the defendant, Nationwide Cassel ("Cassel"). Both Lee and Rivera, signed as cosigners to a loan for a motor vehicle financed through Cassel in order to help a friend obtain credit approval. The cosigners brought action against Cassel for damages because Cassel requested that the cosigners sign as "buyers" and subsequently attempted to make them primarily responsible for the loan. The cosigners claimed that Cassel violated § 18 of the Motor Vehicle Retail Installment Sales Act ("Motor Vehicle Act"), which serves to protect cosigners from being held primarily responsible for defaulted loans. Under the statute, cosigners are only held primarily responsible if they "actually receive the vehicle" or if they are the spouse or parent of the cosigned individual. 815 ILL. COMP. STAT. 375/18 (West 1992). The cosigners asserted that Cassel's violation of § 18 amounted to "unfair and deceptive" practice under the Consumer Fraud and Deceptive Practices Act ("CFDPA").

The trial court identified three reasons for dismissal: (1) dismissal was the only course of action consistent with the holding of *Magna Bank of McLean County v. Comer*, 600 N.E.2d 855 (Ill. App. Ct. 1992); (2) the cosigners' signatures on the loan documents indicating that they were "buyers" established that they had "actually received" the vehicles; and (3) the cosigners' complaint failed to allege fraud with sufficient particularity to state a claim under the CFDPA. The appellate court reviewed each finding and ultimately reversed the trial court's dismissal of the claims.

Fraud and misrepresentation are not requisite elements

The trial court rejected the cosigners' claims for relief based on the holding in *Magna Bank of McLean County v. Comer*, 600 N.E.2d 855 (Ill. App. Ct. 1992), which provides that § 18 of the Motor Vehicle Act is an applicable defense from primary liability only when the seller engages in fraud or misrepresentation. The appellate court rejected the analysis in *Comer* and held that § 18 clearly requires "actual receipt" to establish primary liability. Liability does not depend on whether fraud or deceptive practices are involved. 815 ILL. COMP. STAT. 375/18 (West 1992). The appellate court held that, under § 18, a signatory who (1) takes "actual receipt"; or (2) is the parent or spouse of the individual who takes possession of the vehicle may be primarily liable. Any other individual who signs the sales agreement is only secondarily liable. An obligation only arises for parties who are secondarily liable after the seller, using reasonable and diligent efforts, has exhausted all

ordinary legal means to collect from the primary obligor.

A signature cannot confer primary liability

The trial court also found that the cosigners were not entitled to relief because their signatures on the loan contract designating them as “buyers” sufficiently established that the individual “actually received” the vehicle. Again, the appellate court rejected the trial court’s finding. The appellate court held that § 18 of the Motor Vehicle Act limits primary liability to consumers who take actual possession of the vehicle, regardless of how the parties are designated in the contract. Contractual designations of “buyer” or “co-buyer” do not establish primary liability because § 18 serves to protect cosigners from assuming primary liability for the full debt of a loan when the cosigners have never possessed the vehicle and have merely signed the contract as a guarantor of the debt.

Cause of action is sufficiently pled

Finally, the trial court ruled that the cosigners failed to sufficiently state a claim under the CFDPA. The cosigners’ complaint alleged that Cassel, along with automobile dealerships, instituted a plan of having persons sign as “buyers” when, in fact, the cosigners only intend to serve as guarantors with secondary liability. The cosigners alleged that Cassel required them to sign as buyers and then attempted to hold them primarily liable for the loan even though Cassel knew that the cosigners were neither the actual possessors nor the parent or spouse of the individual for whom they cosigned. The appellate court found the claim sufficient to state a cause of action under the CFDPA and held that the trial court erred in dismissing the claim. The court concluded that the cosigners stated a sufficient claim because (1) fraud or misrepresentation by the seller is not required for § 18 of the Motor Vehicle Act to afford protection to signatories of a contract; (2) the decision in *Comer* erroneously held that a signature designating an individual as a buyer was sufficient to show actual receipt; and (3) the cosigners sufficiently alleged fraud with sufficient particularity to state a claim under the CFDPA.

The appellate court held that the cosigners sufficiently stated a claim for fraud because their complaint

alleged that Cassel and the automobile dealership required the cosigners sign as buyers with the knowledge that such practice violated the protections established in § 18 of the Motor Vehicle Act. The cosigners alleged that Cassel sought to collect payment from individuals who were clearly protected from primary obligation. Further, Cassel attempted to collect the debt from both cosigners without exhausting efforts to collect from the actual possessor of the vehicle. The appellate court held that the alleged facts sufficiently created a claim upon which the cosigners may be entitled to relief. Thus, the cosigners are entitled to a trial on the issues.

Therefore, the appellate court reversed and remanded the trial court’s decision. The appellate court did not address whether § 18 of the Motor Vehicle Act can serve as the basis for a private right of action under the CFDPA or the Finance Agency Act or whether the pleadings set out sufficient facts for a claim under the Finance Agency Act. The appellate court held that § 18 affords protection to cosigners regardless of an absence of fraud on the part of the sellers and regardless of the sales contract’s designation of the cosigners as “buyers.” The court further held that the cosigners’ claims set out sufficient facts to state a cause of action. Therefore, the trial court improperly dismissed the case.

Dissent from Justice Egan

Justice Egan dissented, unconvinced that the complaint alleged facts sufficient to establish a cause of action for fraud. Justice Egan reasoned that Cassel may have interpreted the statutory protection of § 18 in accordance with the decision in *Comer*, 600 N.E.2d at 855. The *Comer* court held that primary liability of a cosigner could only be avoided if the seller engaged in fraud. According to the dissent, Cassel’s attempt to secure payment from the cosigners was clearly an action in accordance with the interpretation supported by the appellate court decision. Justice Egan reasoned that the cosigners willingly signed the contract which designated them as “buyers.” Under *Comer*, Cassel was rightfully justified in attempting to collect payment. Thus, the cosigners satisfied neither a claim for fraud nor damages.

Editor’s Note: On April 3, 1996, the Illinois Supreme Court allowed an appeal on the issue. *Lee v. Nationwide Cassel, L.P.*, 664 N.E.2d 642 (Ill. 1996).