

STATE OF MAINE
CUMBERLAND

BUSINESS AND CONSUMER DOCKET
BCD-AP-08-01
BCD-AP-08-02
BCD-AP-10-05

FORD MOTOR COMPANY,

Petitioner,

v.

**ORDER ON PETITIONER'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

DARLING'S, et al.,

Respondents.

Introduction

On January 21, 2014 the Law Court remanded this matter to the Superior Court for a determination of damages. *Ford Motor Company v. Darling's et al.*, 2014 ME 7, 86 A.3d 35. In its decision, the Law Court found that under the so-called "Dealer's Act," 10 M.R.S. §§1171 to 1190-A (2013), the Maine Motor Vehicle Franchise Board (Board) lacked "jurisdiction over actions seeking damages pursuant to the Dealer's Act." *Id.* ¶ 41. The Law Court vacated the aspect of the Judgment of the Business and Consumer Docket (BCD), which awarded monetary damages, while affirming all other aspects of that Judgment. And in the third paragraph of the opinion, the Law Court stated that it would "remand the case to the Business and Consumer Docket for a determination of damages by a jury." *Id.* ¶ 3.

The Court conferenced the matter on March 10, 2014 and granted Ford Motor Company's request to file the Motion for Partial Summary Judgment that is now before the Court. Ford Motor Company (Ford) is represented by Attorney Daniel L. Rosenthal. Darling's is represented by Attorney Judy A.S. Metcalf and Attorney Noreen A. Patient. Intervenor Maine Automobile Dealers Association (MADA) is represented by Attorney Michael Kaplan. The Secretary of State is represented by Assistant Attorney General Linda J. Conti.

The Court has reviewed the filings of the parties, the last of which was received on April 25, 2014,¹ the relevant statutes, the prior Orders issued by Justice Nivison, the controlling decision from the Law Court referenced above, and enters the following Order denying Ford's Motion for Partial Summary Judgment.

DISCUSSION

Ford makes a number of arguments. Primarily, it argues that Darling's did not, perhaps for tactical reasons, pursue damages in accordance with the statute in question. Ford claims that now that the Law Court has clarified that section 1173 governs the right to recover damages under the Dealer's Act, Darling's has forfeited its right to obtain any damages as it never filed a 1173 claim in the Superior Court. Ford also argues that the Law Court's use of the word "jury" in the first paragraph was inadvertent or perhaps some kind of clerical error, and that any determination of damages—if one can be made at all—should be made by the Court without a jury.

At the outset, the Court would agree with the statement from MADA's counsel that this matter presents itself here "through a procedurally byzantine and years-long process." (MADA's Opposition, pg. 2). The Court would further note that in order to arrive at its decision, the Law Court had to reconcile "the unique administrative process fashioned by the Dealers Act" with "an assemblage of legal and factual determinations by the Board, the jury's decision to uphold the Board's factual findings, and legal conclusions," the Superior Court's original and appellate jurisdiction in these cases, as well as the Maine Constitution's guarantee in Article 1, Section 20 of a party's "right to have a determination made by the jury on material questions of fact." *Ford Motor Co.*, 2014 ME 7, ¶¶ 13, 19-21, 32-40, 86 A.3d 35.

The issues that remain for resolution before this Court are simple by comparison. The Court must follow the mandate of the Law Court, as well as the law of the case as established in the Law Court's opinion. The Court concludes after review of the Law Court's decision and the parties' arguments that it is compelled to convene a jury trial² to determine the factual issue of damages.

¹ The Secretary of State did not file a memorandum in opposition to the motion. The Secretary instead, through counsel, notified the Court by letter dated April 10, 2014 that he would be taking no position on Ford's motion.

² The Court is informed by the Clerk of the BCD that Darling's paid a jury fee on March 17, 2014.

There are no material issues of fact in dispute as to what occurred during this litigation which would prevent this Court from finding that Darling's never forfeited its right to a jury trial by not initiating a claim for damages under section 1173 matter in the Superior Court. Indeed, as Darling's and MADA point out, Darling's pressed its claim for damages throughout the Board process, during the appellate hearing process before the BCD, and before the Law Court. Further, Darling's failure to file a separate complaint in the Superior Court seeking damages under section 1173 is not fatal to its demand for a jury trial now because, as MADA points out, under Rule 80C(i) such an independent claim could be joined with Rule 80C claims. More to the point in this matter, the Law Court found that "once a proceeding before the Board is completed and an appeal is taken on the merits pursuant to section 1189-B(2), a franchisee may then bring its action for damages pursuant to section 1173 *as part of* a hearing before the Superior Court." *Id.* ¶ 44 (emphasis added). Further, in its mandate, the Law Court ordered unambiguously as follows: "Remanded to the Superior Court for a determination of damages." *Ford Motor Co.*, 2014 ME 7, 86 A.3d 35. The Law Court clearly found that Darling's claim for damages is still viable, if those damages can be proven by a preponderance of evidence.

Any determination of damages previously made in this matter, as part of the administrative proceeding under Rule 80C either before the Board or the Superior Court, has been voided by the Law Court. It is not lost on the Court that if it were to agree with Ford's analysis, then Darling's has no forum to request damages. That result would seem to directly violate the mandate, as well as other language in the opinion which clarifies how damages claims can be made under the statutory scheme as clarified by the Law Court. The Court would further note that Law Court's specific remand was to the Superior Court—the forum which the Law Court indicated has jurisdiction under section 1173 to determine damages in an action that is "*separate* from an administrative complaint filed with the Board pursuant to section 1188(1)." *Id.* ¶ 44 (emphasis added).

Even more fundamentally, Ford's suggestion that the use of the word "jury" on page one of the opinion can and should be ignored by this Court overlooks the obvious constitutional underpinnings of the Law Court's reasoning. That is, there is other language in the opinion which directly refers to Darling's constitutional right to have a jury trial on factual issues. In discussing Ford's argument before the Law Court that section 1189-B(2)'s presumption in favor of the Board's factual findings deprived Ford of *its* constitutional right to a trial by jury, the

Court wrote as follows: “Darling’s and MADA do not contend that an historical exception to article 1, section 20 of the Maine Constitution applies in this case. *Accordingly, we presume that the ‘broad constitutional guarantee to the right to a jury trial’ applies to Darling’s claims.*” *Id.* ¶ 34 n.11 (emphasis added) (quoting *State v. One Chevrolet Monte Carlo*, 1999 ME 69 ¶ 6, 728 A.2d 1259). In other words, the remand to the Superior Court—the only court in Maine which can provide a trial by jury—must also be understood as the Law Court’s ensuring that Darling’s right was preserved to prove before a jury, if it can, by a preponderance of evidence, that it suffered damages as a result of Ford’s violation of the Dealer Act.

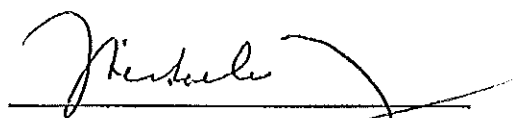
While Ford focuses almost exclusively on the language of the mandate at the end of the Law Court’s decision, this Court must also consider language in the opinion, which establishes the law of the case. That law would include the determinations of the BCD that were upheld by the Law Court, including but not limited to the following: that Ford and Darling’s had a franchise relationship, which included the Blue Oval Certified Program (BOC); that Ford’s termination of the BOC was an attempt to modify a franchise requiring statutorily prescribed notice; that Ford failed to provide notice as required by law; that requiring a heightened burden of proof on the issues presented to the appellate jury did not violate Ford’s constitutional right to trial by jury on the questions submitted to the jury in the BCD proceeding; that the Board’s award of only one civil penalty was lawful; that the Board has no jurisdiction to award damages; and that Darling’s is entitled under the statute and under the Maine constitution to have a jury determine the factual question of damages. None of those settled questions of law are addressed in the mandate, but the Court must nevertheless follow each of them in the next phase of these proceedings.

The entry will be: **Ford's Motion for Partial Summary Judgment is DENIED.**

The Clerk shall note this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure. This case will be set for a telephonic Case Management Conference by the Clerk of the Business and Consumer Docket so the parties and the Court may discuss the course of future proceedings.

4/29/14

DATE



SUPERIOR COURT JUSTICE

Entered on the Docket: 4.29.14
Copies sent via Mail Electronically