

[Cite as *Taylor v. Best Buy Co., Inc.*, 2010-Ohio-4896.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94286

JOSEFINA TAYLOR, ETC.

PLAINTIFF-APPELLANT

vs.

BEST BUY CO., INC.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-617320

BEFORE: Gallagher, A.J., McMonagle, J., and Cooney, J.

RELEASED AND JOURNALIZED: October 7, 2010

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SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, Josefina Taylor, appeals the decision of the Cuyahoga County Court of Common Pleas that granted summary judgment in favor of appellee, Best Buy Stores, L.P. (“Best Buy”).¹ For the reasons stated herein, we affirm the judgment of the trial court.

¹ Although the complaint was filed against “Best Buy Co., Inc.,” the parties

{¶ 2} In December 2005, Taylor purchased a gas stove from Best Buy. Best Buy matched the price estimate that Taylor had received at Home Depot. Best Buy also offered her a special installation price of \$49.99. With respect to the installation service, the sales representative told Taylor: “We do this all the time. We take it, we install it and it will be in your house ready to go. You can cook dinner that night.”

{¶ 3} Taylor was unaware at the time of her purchase that Ohio law requires every gas outlet to have an individual shut-off valve, which is to be located in the same room and within six feet of the appliance served. Ohio Mech. Code § 1305.1 (1998). Taylor already had a gas appliance in her home, she had a shut-off valve in her basement, and she assumed she had everything needed for the new stove to be installed. At no time did Taylor discuss with the sales representative the age of her home or the necessity for a gas shut-off valve near the appliance site. Although a Best Buy brochure indicates that the presence of a shut-off valve is required for its delivery and connection services, Taylor indicated that she had not seen this document.

{¶ 4} When the delivery team arrived at Taylor’s home, they informed her that they could not install the stove because she did not have the required

stipulated to the substitution of “Best Buy Stores, L.P.” as the properly named defendant to the action.

shut-off valve present, and that it was Best Buy's policy not to allow installation contrary to state code. Taylor was informed that she needed to contact a licensed plumber to install a shut-off valve. Taylor paid a plumber \$68 for this service.

{¶ 5} After the shut-off valve was in place, the Best Buy delivery team returned to Taylor's house and installed the new stove. She was charged \$49.99. Taylor stated at her deposition that knowledge of the requirement for a shut-off valve would not have affected her decision to buy a new stove because she needed a new stove.

{¶ 6} In response to complaints made by Taylor, Best Buy offered her a courtesy check for \$75. Taylor did not cash the check.

{¶ 7} Taylor filed a class action complaint against Best Buy on March 1, 2007, raising claims for fraud, breach of warranty, unjust enrichment, breach of contract, and violations of Ohio's Consumer Sales Practices Act.²

{¶ 8} Best Buy filed a motion for summary judgment on February 26, 2009. Thereafter, Taylor filed a motion for leave to file an amended complaint to expand the proposed class. Taylor also moved for certification of the proposed amended class and requested the trial court to stay briefing on summary judgment pending a determination of the class certification.

² Taylor represents that she is no longer pursuing the breach of warranty claim.

The trial court denied Taylor's motion to amend the complaint and ordered summary judgment to proceed before class certification briefing.

{¶ 9} On October 27, 2009, the trial court granted Best Buy's motion for summary judgment on all counts. Taylor has appealed this ruling.

{¶ 10} Taylor's sole assignment of error claims that the trial court erred in granting summary judgment. Appellate review of summary judgment is de novo, governed by the standard set forth in Civ.R. 56. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8. Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. *Hollins v. Shaffer*, 182 Ohio App.3d 282, 2009-Ohio-2136, 912 N.E.2d 637, ¶ 12. Under Civ.R. 56(C), summary judgment is proper when the moving party establishes that "(1) no genuine issue of any material fact remains, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and construing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *State ex rel. Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 2005-Ohio-2163, 826 N.E.2d 832, ¶ 9, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

{¶ 11} Contract interpretation is a matter of law that is subject to de novo review on appeal. *St. Marys v. Auglaize Cty. Bd. of Commrs.*, 115 Ohio St.3d 387, 2007-Ohio-5026, 875 N.E.2d 561, ¶ 38. The facts of this case establish that Best Buy was to deliver and install a gas stove in Taylor's home for \$49.99. There is nothing in the record to support the conclusion that the parties contemplated having Best Buy install a shut-off valve as part of its installation service. Taylor stated that she was not aware of whether her house had a shut-off valve as required by applicable code provisions and that this matter was not discussed between the parties. Further, the record reflects that Best Buy does not perform this service and that Taylor needed to hire a licensed plumber to install the shut-off valve.

{¶ 12} Best Buy had no responsibility to ensure that Taylor's home was code-compliant before delivering and installing Taylor's new stove. Under Ohio law, Taylor is required to have a gas shut-off valve present near the stove. This duty exists independent of any agreement between the parties. As Best Buy argues, it would be absurd to expect Best Buy to have responsibility for Taylor's entire gas line and it is simply not Best Buy's contractual responsibility to install a shut-off valve. To this end, we are not persuaded by Taylor's argument that Best Buy should have conditioned its performance on the presence of a code-compliant shut-off valve. While conditions precedent are not favored under Ohio law, the cases cited by

Taylor are distinguishable from the circumstances of this case. In this instance, Taylor's failure to have the required shut-off valve was a violation of state code and a safety concern. Pursuant to Best Buy's policy, once Taylor's home was made code-compliant, Best Buy performed the installation for the contracted price and fulfilled its contractual obligations. Further, this is not a matter involving an "unforeseen difficulty" under the contract as Best Buy had no contractual obligation to install a code-compliant shut-off valve in Taylor's home.

{¶ 13} Taylor further argues that Best Buy falsely represented that it would install the gas stove for a stated price. We agree with Best Buy's position that it had no duty to inform Taylor of applicable codes and that it performed the represented service for the stated price once Taylor complied with code requirements. Thus, Taylor's purported damages for having to install a shut-off valve were incurred because of her duty to keep her home code-compliant. She incurred no additional cost for Best Buy's service.

{¶ 14} Although not required, Best Buy does inform its customers in a brochure that a shut-off valve must be present for its delivery and connection service. Insofar as the evidence suggests that Best Buy is aware that the absence of a code-compliant shut-off valve is commonplace, the more prudent course of dealing would be to advise its customers of this code requirement. Regardless of what was required for the installation to take place, Taylor

cannot show that she reasonably relied upon any representations by Best Buy. The presence of a shut-off valve as required by state code is a matter of law of which Taylor is presumed to know. See *Mehlman v. Burns* (May 25, 2000), Cuyahoga App. No. 76281, citing *State v. Pinkney* (1988), 36 Ohio St.3d 190, 198, 522 N.E.2d 555.

{¶ 15} We find the evidence in this case does not support Taylor's claims for breach of contract, fraud, unjust enrichment, and violations of Ohio's Consumer Sales Practices Act. We conclude that Best Buy is entitled to summary judgment on all claims. Taylor's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

CHRISTINE T. MCMONAGLE, J., and
COLLEEN CONWAY COONEY, J., CONCUR