

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-021503

09/07/2005

JUDGE PRO TEM GLENN M. DAVIS

CLERK OF THE COURT
A. Beery
Deputy

FILED: 09/09/2005

JAMES E BRESSOR

YOUNGKI RHEE

v.

BELL ROAD AUTOMALL INC

DWANE M CATES

CURTIS S EKMARK

MINUTE ENTRY

The Court has reviewed and considered the Defendant's Motion for Summary Judgment, the Response of the Plaintiff and the Reply thereto. The Court has further reviewed the file, the pleadings and the materials filed by the parties in support of their position on these motions.

The motion, response and reply were thorough and clear, and the Court determined that oral argument of the motion was not necessary and, pursuant to Rule 7.1(c), the motion is ruled upon without oral argument in order to expedite this matter. Based upon its consideration of the foregoing and the matters presented by counsel in oral argument, the Court makes the following findings and enters the following orders in this case.

Negligence Claim:

The Defendant's motion argues that because American Family Insurance has subrogation rights arising from the same act upon which Plaintiff claims negligence damages, the Plaintiff has given up all rights to sue for claims arising from those acts.

However, the nature of the subrogation was that the Plaintiff subrogated the right to pursue the claims for which American Family provided coverage, not all claims. There are claims made for damages that are alleged to have been caused by the negligence of Defendant, such as diminution in value and incidental damages that are properly allowed under the law.

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Those damages were not covered and subrogated to American Family Insurance Company. There is obviously a factual dispute about those damages. Therefore,

IT IS ORDERED denying the Motion for Summary Judgment as to the negligence claim for damages not covered by the subrogation to American Family Insurance.

Claim under A.R.S. §12-349:

The Defendant also argues that summary judgment as to the claim under A.R.S. §12-349 should be granted, as there are no facts alleged that would support relief under that statute. That statute provides for relief only in situations in which a party unreasonably defends a claim without substantial justification or defends a claim primarily for delay or harassment.

The Plaintiff has made no allegations supported by any affidavit or any other evidence that would warrant imposition of the sanctions under A.R.S. §12-349. There are factual disputes as to the extent of damages and the reasonable value of damages caused by Defendant, as stated above.

It is not a violation of the above statute merely to file an answer and defend a claim when there is such a dispute. The Plaintiff alleges no conduct that amounts to more than the Defendant disputing issues that are proper and commonly raised in this type of lawsuit. Therefore,

IT IS ORDERED granting Defendant's Motion for Summary Judgment against Plaintiff as to claims made under A.R.S. §12-349.