

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

EDWARD JUNIOR GREEN,)	
)	
Debtor.)	Case No. 00-40678-13
_____)	
)	
EDWARD JUNIOR GREEN,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 00-7129
)	
KANSAS CITY POWER & LIGHT)	
CO., and KANSAS CITY POWER &)	
LIGHT CO., d/b/a WORRY FREE))	
SERVICE, INC.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Supplemental Motion for Summary Judgment (Doc. 53). The parties have both filed briefs on this motion. After reviewing the parties' briefs, the Court is now ready to rule. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334.

I. FACTUAL BACKGROUND

In 1998, Green entered into an agreement with Kansas City Power and Light Company ("KCPL") to provide Green a home heating and cooling system and a separate agreement to provide service and maintenance to the heating and cooling system. Green initiated this adversary proceeding in 2000,

alleging KCPL violated the Kansas Consumer Protection Act by excluding, modifying or otherwise attempting to limit implied warranties of merchantability and fitness for the heating and cooling system.

The parties filed cross-motions for summary judgment. The Court issued an Order on September 13, 2001, granting Green's motion for summary judgment and denying the motion filed by KCPL. The Court also imposed a \$5,000 civil penalty upon KCPL. KCPL appealed the grant of summary judgment to Green, and the award of the civil penalty, to the United States District Court for the District of Kansas. The District Court reversed the Court's Order in favor of Green, finding there was a material question of fact as to whether Green was an "aggrieved consumer" under the Kansas Consumer Protection Act. The case was remanded back to this Court for further proceedings.

Green filed this motion following the remand of the case. Green contends that his supplemental affidavit submitted in support of the current motion entitles him to summary judgment on the issue of whether he is an aggrieved consumer, and he has asked the Court to reinstate the judgment and civil penalty. KCPL contends that factual issues still remain in this case and that summary judgment is not appropriate.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate if the moving party demonstrates that there is "no genuine issue as to any material fact" and that it is "entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The rule provides that "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The substantive law identifies which facts are material. *Id.* at 248. A dispute over a material fact is genuine when the

evidence is such that a reasonable jury could find for the nonmovant. *Id.* “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.*

The movant has the initial burden of showing the absence of a genuine issue of material fact. *Shapolia v. Los Alamos Nat'l Lab.*, 992 F.2d 1033, 1036 (10th Cir.1993). The movant may discharge its burden “by ‘showing’ – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The movant need not negate the nonmovant's claim. *Id.* at 323. Once the movant makes a properly supported motion, the nonmovant must do more than merely show there is some metaphysical doubt as to the material facts. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The nonmovant must go beyond the pleadings and, by affidavits or depositions, answers to interrogatories, and admissions on file, designate specific facts showing there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. Rule 56(c) requires the Court to enter summary judgment against a nonmovant who fails to make a showing sufficient to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof. *Id.* at 322.

III. ANALYSIS

The only remaining issue in this case is whether Green is an aggrieved consumer within the meaning of the Kansas Consumer Protection Act. Green has submitted an affidavit wherein he claims, *inter alia*, he was never told the new furnace and air-conditioning unit carried a warranty from the equipment manufacturer or from A-1 Heating and Cooling, which is the company that sold and installed the unit. Green contends the only reason he purchased the service agreement from KCPL is because he was

unaware of the manufacturer's warranty on the unit and was unaware of the warranty provided by A-1 Heating and Cooling.

In response to Green's Supplemental Motion for Summary Judgment, KCPL has provided an affidavit from Jason Holthaus, which contradicts nearly every statement made by Green in his affidavit. Holthaus claims he explained the manufacturer's warranty to Green along with A-1's warranty. Holthaus claims he provided Green with copies of the warranties and that Green indicated he understood them.

Based on the competing affidavits submitted by the parties, the Court finds that summary judgment is not proper. There clearly exist controverted facts concerning Green's decision to purchase the warranty plan from KCPL and the information that was provided to Green by A-1 Heating and Cooling, and these facts appears to be material to the issue of whether Green is an aggrieved consumer. Green has thus failed to meet his burden of proving that there are no remaining uncontroverted material facts in this case. Therefore, Green's Supplemental Motion for Summary Judgment will be denied.

IV. CONCLUSION

The Court finds that there are genuine issues of material fact remaining in this case and that summary judgment is not appropriate as to the issue of whether Green is an aggrieved consumer within the meaning of the Kansas Consumer Protection Act.

IT IS, THEREFORE, BY THIS COURT ORDERED that Plaintiff's Supplemental Motion for Summary Judgment (Doc. 53) is denied, and this matter be set for a final pretrial conference.

IT IS SO ORDERED this 19th day of June, 2003.

JANICE MILLER KARLIN, Bankruptcy Judge
United States Bankruptcy Court
District of Kansas

CERTIFICATE OF MAILING

The undersigned certifies that copies of the Memorandum and Order was deposited in the United States mail, prepaid on this 19th day of June, 2003, to the following:

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