UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANTHONY GILBERT SANTOS,

Plaintiff,

v.

CARMAX BUSINESS SERVICES, LLC, et al.,

Defendants.

Case No. 17-cv-02447-RS

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This action arises from CarMax's[1] sale of automobiles that were subject to open safety recalls at the time of sale. Plaintiff Anthony Gilbert Santos specifically alleges CarMax led customers to believe their cars were free of any recalls even though the company had not investigated this question. He advances five claims for relief: (a) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200; (b) violation of California's False Advertising Law ("FAL"), *id.* § 17500; (c) violation of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750; (d) breach of contract; and (e) negligent misrepresentation. CarMax now moves for summary judgment on all claims. For the reasons set forth below, this motion is granted. In light of this disposition, Santos' pending motion for class certification is denied as moot. While CarMax identifies several reasons why certification of the proposed class

[1] For the purposes of this order, "CarMax" refers to defendants CarMax, Inc.; CarMax Auto Superstores California, LLC; CarMax Business Services, LLC; and CarMax Auto Superstores West Coast, Inc.

would be highly problematic, there is no need to address those arguments here.

II. BACKGROUND

In 2006, Santos accompanied his cousin to a CarMax store. Although he had not intended to shop for a car, he ended up purchasing two used vehicles that day. One of these vehicles, a Ford F-150 truck, was subject to an open safety recall at the time because of a problem with the model's speed control deactivation switch ("SCDS"). During the sales process, the CarMax sales associate emphasized that all of the company's vehicles undergo a 125-point Certified Quality Inspection ("CQI"). Santos also received a brochure about CarMax's 30-day warranty which stated: "Our certified quality inspection assures your used vehicle will be in top condition when you buy it." Noyes Decl. Ex. 5; *id.* Ex. 2, 100:17-101:19. After purchasing the truck, Santos apparently did not register his ownership of the vehicle with Ford.[2] As a result, until 2014, Ford's recall notifications were sent to the prior owner rather than to Santos. More than seven years after Santos purchased the truck, it caught fire while parked in his driveway. The vehicle was not on at the time. Shortly thereafter, Santos received a notice of recall indicating that the F-150 could catch fire due to SCDS-related issues.

Santos had previously filed for bankruptcy in 2010 and ultimately received discharge of $135,000 of unsecured debt on October 20, 2015. This discharge occurred approximately a year and a half after Santos received notice that his truck was subject to an open recall. Santos did not, however, amend his schedules during that time to reflect his claim against CarMax. Santos contends this failure was inadvertent, claiming he did not realize he had any obligation to report a potential lawsuit. Once CarMax brought the issue of equitable estoppel to his attention, Santos reopened his bankruptcy proceeding and amended his schedules, valuing his claims against CarMax at $10,000. *In re Santos*, No. 10-bk-71676, slip op. at 7 (Bankr. N.D. Cal. Mar. 18, 2019). During discovery, however, he disclosed damages in excess of $300,000 resulting from the car

[2] Santos contends there is a dispute of fact regarding whether Santos registered his ownership of the vehicle with Ford. The testimony he cites does not, however, create a dispute of fact. Rather, it suggests the reason Ford learned of the change in ownership was based on its own investigation into California DMV records rather than any action taken by Santos.

fire. Santos was also offered a $30,000 settlement from CarMax, which he did not pursue.

III. LEGAL STANDARD

The purpose of summary judgment "is to isolate and dispose of factually unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Summary judgment is proper if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The Court must ultimately decide "whether the 'specific facts' set forth by the nonmoving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence." *T.W. Elec. Serv. Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987). When making this evaluation, courts draw all reasonable inferences in favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520-21 (1991).

IV. DISCUSSION

Judicial estoppel is an equitable doctrine designed to protect the integrity of the judicial process by "prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001) (quotation omitted). The appropriateness of judicial estoppel in a particular circumstance is subject to judicial discretion and is "not reducible to any general formulation of principle." *Id.* at 750 (quotation omitted). As the Ninth Circuit has explained, however, preventing a party who failed to disclose a claim during bankruptcy from asserting that claim after receiving discharge is necessary to protect the integrity of the bankruptcy system. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 785 (9th Cir. 2001). This is because "*the bankruptcy system depends on full and honest disclosure by debtors of all of their assets*." *Id.* (quoting *In re Coastal Plains, Inc.*, 179 F.3d 197, 208 (5th Cir. 1999)) (emphasis in original). Therefore, once a debtor becomes aware of a potential claim, he or she must disclose that claim. *Id.* at 784 ("Judicial estoppel will be imposed when the debtor has knowledge of enough facts to know that a potential cause of action exists during the pendency of the bankruptcy, but fails to amend his schedules . . . .").

Where a party's failure of disclosure is based on inadvertence or mistake, however, a court

may decline to apply judicial estoppel. *Ah Quin v. Cty. of Kauai Dept. of Transp.*, 733 F.3d 267, 272 (9th Cir. 2013) (citing *New Hampshire*, 532 U.S. at 753). For example, in *Ah Quin*, the Ninth Circuit reversed a district court's judicial estoppel decision and remanded the case for further discovery regarding the plaintiff's good faith. "A key factor [in that decision was] that [the plaintiff] reopened her bankruptcy proceedings and filed amended bankruptcy schedules that properly listed this claim as an asset." *Ah Quin*, 733 F.3d at 272. In fact, the plaintiff requested the bankruptcy court set aside the discharge of her debts based on her prior omission. *Id.* at 270.

In October 2015, Santos received discharge of $135,000 of unsecured debt. Although this discharge occurred a year and a half after Santos' vehicle caught fire and he received notice that his truck was subject to an open recall, he did not amend his schedules to reflect his claims against CarMax. Santos contends this failure was inadvertent, claiming he did not realize he had any obligation to report a potential lawsuit. Furthermore, Santos argues, judicial estoppel is inappropriate here because, like the plaintiffs in *Ah Quin*, he subsequently reopened his bankruptcy proceeding and amended his schedules to disclose his claims.

The facts surrounding Santos' bankruptcy disclosures, however, differ significantly from the fact in *Ah Quin*. First, Santos' amended schedules value his claims against CarMax at $10,000 even though he disclosed damages in excess of $300,000 during discovery and declined a settlement offer of $30,000.[3] At oral argument, Santos' counsel declined to comment on why Santos has listed such a low valuation. The apparent undervaluing of Santos' claims is difficult to interpret as anything other than an attempt to shield a portion of his expected recovery from his

[3] At one point during oral argument Santos represented that he never intended to seek the full $300,000 in damages and stated that he intended to limit his request for damages to the difference between the purchase price and the value of the truck at the time of sale. His representations with respect to damages are, however, a moving target that changes depending upon which argument he is attempting rebut. Indeed, in his opposition briefing he argues the economic loss rule does not bar his negligent misrepresentation claim because "the subject truck's open recall caused a fire and caused damage to his home" and he seeks "all available applicable compensatory, incidental, exemplary and punitive damages." Opp. 23-24. He reiterated this statement at oral argument, despite having previously stated that he intended to limit his damages to the differential between the purchase price and the value of the truck.

creditors. This does not represent the sort of good faith conduct described in *Ah Quin*. Furthermore, unlike the plaintiff in that case, Santos has not requested discharge be set aside in light of the omissions in his bankruptcy schedules. Finally, Santos amended his schedules only when faced with the prospect of judicial estoppel barring his claims. By contrast, the plaintiff in *Ah Quin* discovered the omission on her own and proactively disclosed it to the defendant—further indicating good faith. *Ah Quin*, 733 F.3d at 278.

In sum, the facts of this case do not evince the requisite good faith to justify allowing Santos to proceed with his claims despite his failure to disclose these assets during bankruptcy. As the Ninth Circuit has recognized, "the strong need for full disclosure in bankruptcy proceedings and the fact that the plaintiff-debtor received an unfair advantage in the bankruptcy court" justifies "a presumption of deliberate manipulation." *Ah Quin*, 733 F.3d at 273. Given the foregoing discussion, there is no basis to depart from this presumption here. Accordingly, Santos is judicially estopped from pursing his previously undisclosed claims against CarMax.

V. CONCLUSION

For the reasons explained above, CarMax's motion for summary judgment is granted. Santos' motion for class certification is denied as moot.

IT IS SO ORDERED.

Dated: April 29, 2019

RICHARD SEEBORG
United States District Judge

United States District Court
Northern District of California