

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-3925
Summary Calendar

CLASSIC IMPORTS, INC.,

Plaintiff-Appellant,

VERSUS

MASERATI AUTOMOBILES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-2690-K)

(February 18, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Classic Imports was an automobile dealer that sold cars manufactured by the Defendant-Appellee. After a default judgment was entered against Classic in a state court redhibition action, it sought indemnity from Maserati pursuant to La. Rev. Stat. Ann. § 32:1257(C) (West 1989). Maserati removed the action to the federal district court. Thereafter Maserati moved for summary judgment and Classic moved to remand the case, arguing that the \$50,000 jurisdictional limit was not met. The district court

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

refused remand and granted summary judgment in favor of Maserati. We find no error and affirm.

BACKGROUND AND PROCEDURAL HISTORY

Classic Imports was the defendant in a Louisiana state court proceeding, brought by a purchaser alleging redhibitory defects in a Maserati automobile. Although served with process in the state court action, Classic did not respond to the complaint nor did it appear to defend the suit. A default judgment was entered against Classic, and this default was later confirmed by the state court.

After the entry of default judgment against it, Classic sued Maserati seeking indemnity for the default judgment based upon a Louisiana statute:

Notwithstanding the terms of any franchise agreement, each manufacturer shall indemnify and hold harmless its franchise dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty or rescission of sale to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly or design of motor vehicles, parts or accessories or other functions by the manufacturer, which are beyond the control of the dealer.

La. Rev. Stat. Ann. § 32:1257(C).

Maserati removed the action to federal court, and Classic challenged the court's jurisdiction. Specifically, Classic contended that the amount in controversy requirement (\$50,000) was not met. The agreed value of this claim plus interest was \$47,247.57. Although short of the amount in controversy for

jurisdictional purposes, the court held that once reasonable attorney's fees were added to the calculation, the \$50,000 limit would easily be met.

Both parties agree that attorney's fees can be considered when ascertaining the amount in controversy when such fees are provided by statute. See Foret v. Southern Farm Bureau Life Ins. Co., 918 F.2d 534, 537 (5th Cir. 1990). La. Rev. Stat. Ann. § 32:1257(C) does in fact provide for attorney's fees.

Summary judgment was entered in favor of Maserati, as the district court held that the Plaintiff could not recover under § 32:1257(C) because there was no indication that the defaulted claim involved a defect in manufacture. On appeal, Classic challenges the jurisdiction of the district court, as well as alleging error in interpretation of the Louisiana statute.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, we apply the same standard of review applied by the district court. See Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir. 1989). Summary judgment is appropriate only if, when viewed in the light most favorable to the nonmoving party, the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

ANALYSIS

A. Exercise of Jurisdiction.

Classic argues the district court erred in concluding that reasonable attorney's fees would push the jurisdictional amount over the \$50,000 mark. In order to show that the claim does in fact meet the jurisdictional limit once the attorney's fees are added to the mix, it must be shown with "legal certainty" that the \$50,000 mark will be met. See Foret, 918 F.2d at 537; Milgrim Thomajan & Lee P. C. v. Nycal Corp., 775 F.Supp. 117, 121 (S.D.N.Y. 1991). The trial court is not tied to any "blueprint" in determining jurisdictional amount, and it is within the sound discretion of the district court to determine if this amount is met. Foret, 918 F.2d at 537.

In the instant case, the claim had an agreed value of \$47,247.57. The trial court concluded that once reasonable attorney's fees, as provided for in La. Rev. Stat. Ann. § 32:1257(C), were added in, the jurisdictional amount would be met. We cannot say it was an abuse of the district court's discretion to conclude that attorney's fees would exceed the difference between the claim and the jurisdictional amount, or \$2,752.43. See Hall v. Travelers Ins. Co., 691 F.Supp. 1406, 1410 (N.D. Ga. 1988) (Although figure "not subject to exact computation," court can reasonably infer that attorney's fees, when combined with balance of claim, will satisfy 28 U.S.C. § 1332(a).).

B. Statutory Indemnification.

The plain language of the statute undermines Classic's claim for indemnification. An automobile dealer can claim indemnification for adverse judgments only "to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly or design of motor vehicles, parts or accessories or other functions by the manufacturer, which are beyond the control of the dealer." La. Rev. Stat. Ann. § 32:1257(C). Maserati was not a party to default proceedings, which were brought against the Appellant only after it failed to respond in any way to the redhibition action. Classic points out that the redhibition plaintiff proved her prima facie case in order to have a default judgment confirmed against them. However, there was never a finding as to any manufacturing defect. The default judgment only established Classic's liability for the redhibitory defects. See R. at 40.

CONCLUSION

For the foregoing reasons, the judgment of the district court is

AFFIRMED.