SECOND DIVISION
November 10, 2014

No. 1-13-1446

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANET JANIS,	)	
	)	
Plaintiff-Appellant and Cross-Appellee,	)	Appeal from the
	)	Circuit Court of
v.	)	Cook County.
	)	
BARRINGTON MOTOR SALES AND SERVICE,	)	
INC.,	)	Nos. 08 L 9423,
	)	12 L 9993
Defendant-Appellee and Cross-Appellant,	)	
	)	
(Workhorse Custom Chassis, LLC., and Winnebago	)	Honorable
Industries, Inc.,	)	John C. Griffin,
	)	Judge Presiding.
Defendants.)	)	

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *HELD*: Circuit court's order denying sanctions pursuant to Rule 137 affirmed where court did not abuse its discretion in finding that there was a good faith argument for the

modification of existing law and that the subject claim was not brought for the purpose of harassment or delaying proceedings.

¶ 2 Plaintiff, Janet Janis, appealed an order of the circuit court of Cook County granting summary judgment to defendant, Barrington Motor Sales and Service, Inc. (Barrington Motor). Barrington Motor then cross-appealed, arguing that the court erred in denying its motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). The circuit court subsequently dismissed plaintiff's appeal pursuant to Illinois Supreme Court Rule 309 (eff. Feb. 1, 1981). We now consider Barrington Motor's cross-appeal and, for the following reasons, affirm.

¶ 3 BACKGROUND

¶ 4 The underlying dispute in this case concerned an allegedly defective recreational vehicle (RV) purchased by plaintiff in 2004. About three years after plaintiff purchased the RV from Barrington Motor, a part failed, causing gasoline to leak into the passenger compartment of the vehicle. The gasoline eventually saturated the vehicle's carpeting and left an odor that could not be eliminated with shampoo. Plaintiff attempted to return the vehicle to Barrington Motor, claiming that it was defective. Barrington Motor, however, refused to accept the return.

¶ 5 On August 26, 2008, plaintiff filed suit against Barrington Motor, Workhorse Custom Chassis, LLC. (Workhorse), and Winnebago Industries, Inc. (Winnebago). Her first amended complaint alleged, with respect to Barrington Motor: (1) breach of implied warranty of merchantability; (2) revocation of acceptance; (3) conversion; and (4) an action to recover price.

¶ 6 On February 5, 2009, Barrington Motor moved to dismiss plaintiff's first amended complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)). On September 30, 2009, the circuit court dismissed, *inter alia*, plaintiff's breach

of implied warranty claim with prejudice, but allowed plaintiff's revocation of acceptance claim to stand.

¶ 7 Prior to the circuit court's ruling on Barrington Motor's motion to dismiss, this court issued its modified decision in *Tague v. Autobarn Motors, Ltd.*, 394 Ill. App. 3d 268, 284 (2009) (filed Sept. 1, 2009), holding that a revocation of acceptance claim cannot stand where the plaintiff fails to establish that the defendant breached an implied warranty of merchantability. Although *Tague* ostensibly required the dismissal of plaintiff's revocation of acceptance claim, counsel for plaintiff, who was also counsel for the plaintiff in *Tague*, never advised the circuit court of the decision, even after the court denied plaintiff's motion to reconsider the dismissal of her breach of implied warranty claim.

¶ 8 On October 2, 2009, plaintiff filed her second amended complaint and, as to Barrington Motor, continued to allege: (1) breach of implied warranty of merchantability (for purposes of appeal only), (2) revocation of acceptance, and (3) an action to recover price. The record shows that the count for action to recover price was dismissed.[1]

¶ 9 On December 9, 2011, Barrington Motor moved for summary judgment on the revocation of acceptance claim. Plaintiff responded to Barrington Motor's summary judgment motion, but did not alert the court to the *Tague* decision. Barrington Motor subsequently raised the *Tague* decision for the first time in reply and, parenthetically, "question[ed] how plaintiff's counsel could have remained silent about the *Tague* opinion in light of his obligations under Rules 3.1 – 3.3 of the Rules of Professional Conduct." In a sur-reply, plaintiff provided an extensive argument as to why *Tague* was wrongly decided, citing numerous cases as well as the language of the revocation of acceptance provision of the Uniform Commercial Code (UCC) (810 ILCS

[1] This is reflected in Barrington Motor's answer to the second amended complaint.

5/2-608 (West 2010)). Plaintiff declared that *Tague* was an "aberration" and claimed that it "does not represent a correct statement of the First District, Illinois, or general UCC law."

¶ 10 On March 6, 2012, the circuit court, citing *Tague*, granted summary judgment to Barrington Motor on plaintiff's revocation of acceptance claim.[2] Plaintiff then filed a motion to reconsider, which the court denied on February 22, 2013. The court noted that "the Plaintiff's contention that *Tague* was incorrectly decided does not permit this Court to ignore binding appellate court precedent." It further remarked "that the Plaintiff never raised or discussed *Tague* until Barrington [Motor] revealed its authority in its reply brief, although the *Tague* opinion would have had an adverse effect on count IV [the revocation of acceptance claim] and Plaintiff's counsel of record was under an ethical duty*** to reveal such precedent."

¶ 11 On April 26, 2012, Barrington Motor filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Barrington Motor claimed that sanctions were warranted in this case because counsel for plaintiff "knowingly concealed the *Tague* opinion" and "embarked on a course of vexatious and fraudulent litigation against [it], designed to extort payment *** with absolutely no legal or factual foundation to do so."

¶ 12 On December 20, 2012, the circuit court denied Barrington Motor's motion for sanctions. The court noted that plaintiff, in her sur-reply, "included an expansive argument contending that the holding in *Tague* was incorrect and effectuated an effort to persuade this Court to follow law as applied in other jurisdictions." The court did not find that "Plaintiff asserted claims against Barrington [Motor] to harass without any factual or legal support or that the Plaintiff's actions arose to the level whereby the Court should sanction the Plaintiff or her counsel."

[2] The court also denied plaintiff and Barrington Motor's joint request for Rule 304(a) language

¶ 13 On April 12, 2013, after a jury trial, the court entered judgment on a verdict in favor of Workhorse and against plaintiff on the sole remaining count, the claim to recover price.[3] Plaintiff subsequently appealed; Barrington Motor cross-appealed[4]; then, on August 21, 2013, the circuit court dismissed plaintiff's appeal pursuant to Rule 309.

¶ 14 On May 20, 2014, this court entered a Rule 23 order dismissing Barrington Motor's cross-appeal for lack of jurisdiction. *Janis v. Barrington Motor Sales & Service, Inc.*, 2014 IL App (1st) 131446-U. The record presented to us failed to show that a posttrial motion filed by plaintiff was ruled upon or withdrawn. We therefore concluded that Barrington Motor's notice of cross-appeal had never taken effect.

¶ 15 On June 10, 2014, Barrington Motor filed a petition for rehearing, asserting that plaintiff's posttrial motion had been withdrawn and that it had not been "privy to the Order and, for unknown reason(s), the Order did not make its way into the Record on Appeal."[5] Barrington Motor attached as an appendix: (1) a copy of a May 29, 2013, agreed order withdrawing plaintiff's posttrial motion; and (2) a copy of a May 28, 2014, agreed order supplementing the record on appeal to include the prior order. We allowed Barrington Motor's petition, given that our jurisdiction was now established.

¶ 16 ANALYSIS

¶ 17 On appeal, Barrington Motor contends that the circuit court erred in denying its motion for sanctions. Specifically, it argues that counsel for plaintiff's failure to disclose controlling

---

[3] This constituted a final judgment in the matter, as the sole count against Winnebago was dismissed with prejudice on March 31, 2010.

[4] Barrington Motor subsequently filed an amended notice of cross-appeal on May 8, 2013.

[5] In its petition for rehearing, Barrington Motor seems to imply that it was not at fault for the insufficient record filed in this court. It was clearly aware at the time it filed its opening brief, however, that plaintiff had filed a posttrial motion in the circuit court and that there was no ruling or withdrawal of that motion indicated in the record. Despite this knowledge, Barrington Motor took no action to supplement the record until this court dismissed its appeal for lack of jurisdiction. A party should make efforts to take necessary actions to correct a defect in the record in a timely manner so as to avoid causing this court to issue multiple dispositions of the same appeal.

authority, *i.e.*, *Tague*, was an "undeniable violation of Illinois Rule of Professional Conduct 3.3 and Illinois Supreme Court Rule 137."

¶ 18 Plaintiff responds that the court did not abuse its discretion in denying sanctions given that she had an objectively reasonable basis in law for her claim, did not pursue her claim for an improper purpose, and had a good faith basis for arguing that *Tague* did not apply. She additionally maintains that "there are no reported cases in Illinois of a court sanctioning counsel for a violation of [Illinois Rule of Professional Conduct] 3.3(a)(2)."

¶ 19 We initially reject Barrington Motor's argument that the circuit court should have granted sanctions based on counsel's alleged violation of Illinois Rule of Professional Conduct 3.3(a)(2). Rule 3.3(a)(2), indeed, states that "[a] lawyer shall not knowingly *** fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." However, it is well settled that the supreme court, "and the agency to whom it has delegated *** authority, the Attorney Registration and Disciplinary Commission, ha[ve] the exclusive authority to discipline or sanction the unprofessional conduct of attorneys admitted to practice before it." *Beale v. Edgemark Financial Corp.*, 297 Ill. App. 3d 999, 1010 (1998). "A party cannot seek redress in the trial court for the mere misconduct of an attorney." *Id.* Thus, "[w]here what is sought is only to penalize the attorney for such misconduct, the only forum for exacting such punishment is the Illinois Supreme Court and its disciplinary arm, the Attorney Registration and Disciplinary Commission." *Id.*

¶ 20 We turn our primary focus in this case to Barrington Motor's request for sanctions under Rule 137. That rule provides:

> "The signature of an attorney *** constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction ***. Ill. S. Ct. R. 137.

Rule 137 is penal in nature and, therefore, will be strictly construed. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). Ultimately, "[t]he party requesting the imposition of Rule 137 sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings." *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1032 (2006).

¶ 21 We review the circuit court's decision to grant or deny sanctions for an abuse of discretion. *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 963 (2001). An abuse of discretion will be found only when the court made a finding that is against the manifest weight of the evidence, or when no reasonable person would take its view. *Id.*

¶ 22 In this case, Barrington Motor claims that plaintiff filed a "multitude of pleadings *** which were directly contrary to the authority established in *Tague* and which resulted in

improper and needless delay in the litigation as to Barrington and an increase of litigation costs." Primarily, it argues that if plaintiff had "properly raised the *Tague* decision in September 2009, [it] would have been dismissed from the case."

¶ 23 We are not persuaded that the circuit court abused its discretion in denying sanctions. The court's conclusion that counsel for plaintiff had a good-faith argument for the modification of existing law, *i.e.*, the *Tague* decision, is borne out by the extensive argument presented in plaintiff's sur-reply to the motion for summary judgment. Although Barrington Motor maintains that plaintiff should have set forth its good faith argument for the modification of existing law prior to the sur-reply, or alternatively sought a "ruling on whether there was a good-faith basis for not following *Tague*," we note that neither of these actions are specifically required under Rule 137. We further find no indication that plaintiff's revocation of acceptance claim was brought for the purpose of harassing Barrington Motor or causing unnecessary delay. Indeed, the record shows that plaintiff experienced an issue with her RV and, in certain circumstances, revocation of acceptance is available under the UCC (see 810 ILCS 5/2-608 (West 2010)).

¶ 24 We find Barrington Motor's reliance on *Singer v. Brookman*, 217 Ill. App. 3d 870 (1991), to be misplaced. In that case, we affirmed an award of sanctions where the plaintiffs raised issues that were clearly barred by *res judicata*. *Id.* at 879-80. Here, there has been no suggestion that plaintiff's revocation of acceptance claim was barred by *res judicata*. Further, the circuit court denied sanctions in this case, and we are required to give that decision deference.

¶ 25 CONCLUSION

¶ 26 Ultimately, we have no basis for finding an abuse of discretion in this case. While we certainly do not condone an attorney's failure to promptly disclose controlling case law, we

believe that such matters are to be addressed by the Attorney Registration and Disciplinary Commission, not by the circuit court on a Rule 137 motion.

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.