

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

---

FRANKLIN FREDERICK, III

\*

v.

\*

\*

Civil No. JFM-08-2380

\*

FORD MOTOR COMPANY

\*

\*\*\*\*\*

MEMORANDUM

Franklin Frederick, d/b/a M and F Towing, has brought this action under the Magnuson-Moss Warranty Act (“MMWA”).<sup>1</sup> Defendant has filed a motion for summary judgment. Plaintiff has opposed the motion and filed a motion to amend his complaint to state a claim under the Maryland Uniform Commercial Code. Defendant’s motion for summary judgment will be granted, and plaintiff’s motion to amend his complaint will be denied.

---

<sup>1</sup>Plaintiff also asserted in his original complaint a claim under the Maryland Consumer Protection Act but in its memorandum opposing defendant’s summary judgment motion, plaintiff concedes that he has no cause of action under that Act.

An element of plaintiff's claim under the MMWA is that the product is "normally used for personal, family, or household purposes," 15 U.S.C. §2301(1). On the summary judgment record plaintiff has failed to produce sufficient evidence that this element is met. All that plaintiff relies upon is an excerpt from a website apparently maintained by defendant listing the F-450 in a drop down box on the "Consumer Vehicle" page. However, the same website describes the F-450 as a "commercial truck," and plaintiff has presented no evidence to contradict the assertion made by Christopher M. Keady, a Modified Vehicle Specialist employed by defendant, that the "F-450 is a super-duty truck, and is commonly purchased and used for business and commercial use . . . [and] is marketed through Ford's Commercial Truck Division." Moreover, although the "class-wide" use of a product - the actual use of the product by the individual purchaser - is what determines whether the product falls within the purview of the MMWA, *see, e.g., Kwiatkowski v. Volvo Trucks & Am., Inc.*, 500 F. Supp. 2d 875, 876 (E.D. Ill., 2007), the fact that the record establishes beyond doubt that plaintiff here used the F-450 for commercial purposes confirms that the truck is commercial in nature.

Apparently recognizing that his claim under the MMWA may be fatally defective, plaintiff has moved to amend his complaint to include a claim under the Maryland Uniform Commercial Code. The deadline for filing amended pleadings set in the scheduling order entered by this court was February 5, 2009. Compliance with dates set in scheduling orders is essential to the efficient and economical conduct of litigation, and parties are not afraid to simply disregard those deadlines. *See Rassoull v. Maximus, Inc.*, 209 F.R.D. 372, 373-74 (D.Md. 2002). Moreover, plaintiff has not shown "good

cause” under Rule 16(b) for modifying the amendment of pleading deadline set in the scheduling order. Accordingly, plaintiff’s motion to amend the complaint is denied. If limitation has not run, plaintiff is free to file a new action asserting a claim under the Maryland Commercial Code either in state court or, if there is a basis for federal jurisdiction, in this court.

A separate order effecting the rulings made in this memorandum is being entered herewith.

Date: May 22, 2009

/s/ \_\_\_\_\_  
J. Frederick Motz  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

---

FRANKLIN FREDERICK, III

v.

FORD MOTOR COMPANY

\*  
\*  
\*  
\*  
\*\*\*\*\*

\* Civil No. JFM-08-2380

ORDER

For the reasons stated in the accompanying memorandum, it is, this 22nd day of  
May 2009

ORDERED

1. Defendant's motion for summary judgment is granted;
2. Plaintiff's motion to amend his complaint is denied; and
3. Judgment is entered in favor of defendant against plaintiff.

/s/ \_\_\_\_\_  
J. Frederick Motz  
United States District Judge