FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-446 / 88-1596

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KAREN J. LETO,

Appellee,

vs.

STEW HANSEN'S DODGE CITY, INC., CHRYSLER CREDIT CORPORATION, and **CHRYSLER MOTORS CORPORATION,**

Appellants.

Appeal from the Iowa District Court for Polk County, Gene Needles, Judge.

The defendant appeals the trial court's granting of a motion of judgment notwithstanding the verdict for the plaintiff. **REVERSED AND JURY VERDICT REINSTATED.**

Mark J. Wiedenfeld of Grefe & Sidney, Des Moines, for appellant.

Rex Darrah of Rex Darrah Law Office, Des Moines, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

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PER CURIAM

The defendant, Chrysler Credit Corporation, appeals the trial court's granting of a judgment notwithstanding the verdict for the plaintiff, Karen Leto. Chrysler Credit Corporation raises the following issues on appeal: (1) the judgment n.o.v. must be reversed because it is based on a ground not raised in the motion for directed verdict; (2) plaintiff is not entitled to notice after rescinding the lease; (3) defendant proved at trial that the appropriate notices were given; (4) plaintiff possessed actual knowledge which constituted notice; and (5) notice is not required where it would be an exercise in futility. We reverse and reinstate the jury verdict.

On May 29, 1986, Karen Leto entered into an agreement with Stew Hansen's Dodge City, Inc. to lease a 1986 Dodge Daytona Turbo Z, manufactured by Chrysler Motors Corporation. Stew Hansen assigned its interests in the lease to Chrysler Credit Corporation. On October 15, 1986, Leto called Stew Hansen's and told them the car stalled and would not start. Stew Hansen's towed the car back to the dealership where a mechanic inspected the car. He determined a piston connecting rod had broken because of large quantities of mud and water throughout the engine. A Chrysler Motors representative told Stew Hansen's the repairs would not be covered under the manufacturer's warranty. The coverage was denied because the system was

completely full of water and mud, which indicated the engine had been under water.

When Leto was told repairs would not be covered, she denied the car had ever been in high water or a flood, but it had stalled after going through a car wash. Although Stew Hansen's suggested she make a claim with her insurance carrier, after talking to her agent she decided against that course of action. Leto informed Chrysler Credit she was rescinding the lease agreement She filed suit two months later against Stew Hansen's, Chrysler Credit and Chrysler Motors. She sought recovery of all consideration paid under the lease agreement, additional damages for inconvenience and expense, and the cost of the extended service warranty. Chrysler Credit counterclaimed for breach of contract.

At the close of the plaintiff's case, the defendants moved for a directed verdict. The court granted the motion for two of plaintiff's claims and denied the motion for another. At the close of defendants' case, and again at the close of all the evidence, Leto moved for a directed verdict based on a failure to give proper notice of the sale of the car. The court denied both motions. The jury returned a verdict for the defendants on Leto's remaining claim. Chrysler Credit was awarded damages of $9,240.22. Leto moved for a judgment notwithstanding the verdict based on Chrysler Credit's failure to plead and prove proper

notice of sale and proper notice of a right to cure. Chrysler Credit resisted and moved to amend its counterclaim. The trial court granted Leto's motion for judgment n.o.v. and denied Chrysler Credit's motion to amend as well as its other subsequent motions. Chrysler Credit now appeals.

A motion for a judgment notwithstanding the verdict under Iowa Rule of Civil Procedure 243 must stand on grounds raised in a timely directed verdict motion. Peterson v. First Nat'l Bank of Iowa, 392 N.W.2d 158, 163 (Iowa App. 1986); Watson v. Lewis, 272 N.W.2d 459, 461 (Iowa 1978). On appeal, our review is limited to those grounds raised in the directed verdict motion. Watson v. Lewis, 272 N.W.2d at 461, citing to Meeker v. City of Clinton, 259 N.W.2d 822, 828 (Iowa 1977). In reviewing a motion for directed verdict, the appellate court must consider the evidence in the light most favorable to the nonmoving party, in this case, Chrysler Credit Corporation. Iowa R. App. P. 14(f)(2); Peterson v. First Nat'l Bank of Iowa, 392 N.W.2d at 163; Watson v. Lewis, 272 N.W.2d at 461.

Our review, then, is limited to those issues raised in Leto's directed verdict motions. At the close of defendants' case, Leto moved for dismissal of Chrysler Credit's counterclaim because of a "failure to comply with the statutory requirements pertaining to a sale of a

vehicle after so-called repossession" and because of a lack of proof of damages arising out of the lease of the vehicle to Karen Leto. At the close of all the evidence, Leto renewed this motion.

Plaintiff's grounds for a judgment notwithstanding the verdict were defendants' failure to plead and prove Leto was given notice of her right to cure the default and notice of the sale of collateral as required by Iowa Law. In its ruling, the trial court concluded defendants had introduced sufficient evidence at trial to allow them to amend their pleadings to demonstrate they pled and proved that notice of sale was sent to the plaintiff. Therefore, the remaining issue is notice of the right to cure. Because the issue of notice of the right to cure is raised for the first time in the motion for judgment notwithstanding the verdict, neither the trial court nor this court may consider it as grounds for granting the judgment n.o.v. It is not necessary for us to address the other issues raised on appeal.

The parties shall pay their own attorney fees on appeal. Costs of appeal are taxed to appellee.

REVERSED AND JURY VERDICT REINSTATED.