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MONTGOMERY COUNTY
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COMMON PLEAS

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

DANNY D. HAMILTON,

Plaintiff

vs.

DAVIS BUICK COMPANY, et al.,

Defendants.

CASE NO. 79-1875

(Judge William H. Wolff, Jr.)

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DECISION AND FINAL JUDGMENT

June 24, 1980

:::::

This is an action for damages and injunctive relief brought by Danny D. Hamilton against Davis Buick Company, Ernest Carlson, and Thomas Young.

This matter was tried to the Court without a jury, and the evidence discloses the following:

1. On July 23, 1979, Hamilton purchased a 1978 Buick for $5,600.00 cash and a 1977 pickup truck.

2. On July 23, 1979, the automobile purchased by Hamilton was advertised for sale in the Dayton Journal Herald and the Dayton Daily News for $6,895.00. Hamilton was unaware of this advertisemen at the time of the closing; Davis Buick Company, Carlson, and Young were aware of this advertisement (see 1345.01(E)).

3. The deal was completed as a "cash" deal for a total price (including taxes of $352.79) of $8,369.00, which made the truc appear to be worth $2,768.50. See Plaintiff's Exhibit 3.

4. The deal originated as a "financed" deal on July 21, 1979, with Davis Buick Company and its salesmen, Carlson and Young,

allowing Hamilton $2,768.50 on his '77 pickup truck. (Davis contende at trial that it only allowed $2,768.50 as a trade-in allowance to make the deal attractive to a prospective lender, and that it actuall appraised the truck at $1,600.00, which appraisal was intentionally never revealed to Hamilton.)

5. Hamilton assumed that the trade-in allowance represented the true value of his pickup truck.

6. Due to the cost of financing the '78 Buick, Hamilton decided to pay off the pickup truck and to pay for the new car with cash and the pickup truck.

7. If it had been sold for cash as advertised, the 1978 Buick would have sold, when approximately $310.00 taxes were included for $7,205.00. After deduction of the $5,600.00 cash payment, the truck would then be taken in lieu of the $1,605.00 cash balance due.

8. The evidence establishes that the 1977 pickup truck was worth $2,768.50.

CONCLUSIONS

Hamilton claims that his truck was worth $2,768.50 and that he thought the price of the vehicle including taxes, etc., was $8,369.00 Hamilton claims that had he known the car could be purchased for $7,205.00 (advertised price of $6,895.00 plus $310.00 taxes) he would have paid cash in that amount and kept his truck, which was worth more than $1,605.00.

Numerous violations of 1345.02 and 1345.03 are asserted,

together with asserted violations of Substantive Rules 109:4-3-07 and 109:4-3-10, adopted pursuant to 1345.05(B)(2). The asserted violatic of the Substantive Rules will be considered first.

Hamilton claims that the defendants have violated Rules 109: 4-3-07(A)(2)(a, b, c), which provides: "It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept the deposit unless the following conditions are met: ...All deposits accepted by a supplier must be evidenced by dated receipts stating the following information: (a) Description of goods (including model, model year, when appropriate, make, and color); (b) The cash selling price; (c) Allowance on the goods to be traded, if any ...."

Assuming Hamilton's Exhibits 3 and 5 are sufficient "receipts" under the rule, plaintiff asserts a failure to comply with Rule 109: 4-3-07(A)(2)(a, b, c). The evidence does not establish a violation of Rule 109:4-3-07(A)(2)(a, b, c).

Hamilton stated that he and the Davis Buick salesmen agreed on an $8,000.00 selling price and a $3,000.00 trade-in reduced by $231.5 to $2,768.50 for minor body work that was necessary.

This cash selling price of $8,000.00 and trade-in allowance of $2,768.50 is reflected on each of Hamilton's Exhibits 3 and 5. Admit tedly, the trade-in allowance of $2,768.50 can only be seen in Exhibit 5 (prepared July 21, 1979) by noting that $5,600.00 replaced the original difference of $5,368.50 between $8,368.50 (representing the $8,000.00 purchase price, taxes, and title) and the $3,000.00

trade-in allowance. The purchase price on Exhibit 3 appears to be a combination of $7,839.71 plus $173.00 for "the works" coming to $8,012.71, which the Court concludes is an inconsequential increase over $8,000.00. In both exhibits the Buick is described.

Both exhibits accurately reflect the deal made by Hamilton and Davis Buick, and Hamilton testified that he got what he bargained fo: Nor does the Court find a violation of Substantive Rule 109:4-3-10.

That rule states, "It shall be a deceptive act or practice in connection with the consumer transaction involving a motor vehicle fo a supplier of motor vehicles not to integrate into a written contract all material statements, representations, or promises, oral or writte made prior to the written contract by his agent, representatives, or salesmen to a consumer."

Exhibits 3 and 5 appear to be the written agreements of the parties, and they contain the material statements made to Hamilton by the Davis Buick salesmen.

Hamilton asserted violations of the following provisions of 1345.02 and 1345.03:

1345.02(B)(8) which states: "Without limiting the scope of division (A) of this section, the act or practice of the supplier in representing any of the following is deceptive: ... that a specific price advantage exists, if it does not ...";

1345.03(B)(2) which states: "In determining whether an act or practice is unconscionable the following circumstances shall be taken into consideration: "Whether the supplier knew at the time

the consumer transaction was entered into that the price was substantially in excess of the price which similar property or services were readily obtainable in similar consumer transactions by like consumers";

1345.03(B)(3) which states: "Whether the supplier knew at the time the consumer transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction.";

1345.03(B)(5) which states: "Whether the supplier required the consumer to enter into a consumer transaction on terms the suppli knew were substantially one-sided in favor of the supplier";

1345.03(B)(6) which states: "Whether the supplier knowingl made a misleading statement of opinion on which the consumer was likely to rely to his detriment."

The evidence does not disclose a violation of 1345.02(B)(8), 1345.03(B)(3), (5), or (6).

The evidence clearly discloses the violation of 1345.03(B)(2). While Davis Buick and its salesmen can arguably contend that the salemen were unaware of the advertised price of $6,895.00 on July 21, 1979, when they wrote up the "financed" deal, they certainly cannot claim ignorance of authorized advertisements of the car at $6,895.00, which appeared in the Journal Herald and Dayton Daily News on July 23 1979, when they closed the transaction as a cash deal.

Once the transaction became a cash deal, there was no residual justification for maintaining the artificially inflated sales price

and trade-in allowance which Davis Buick contended was necessary to make the "financed" deal attractive to a lender. It was unconscionable under 1345.03(B)(2) for Davis Buick and its salesmen to maintain a $8,000.00 sales price on a car they knew was advertised for $6,895.00.

However, this in itself is not enough to entitle Hamilton to relief. He must demonstrate actual damage.

Whether Hamilton was damaged depends on the value of the '77 pickup truck he traded. If, as asserted by Davis Buick Company, the truck was worth no more than $1,700.00, for which they wholesaled it to Gitman Auto Sales, then Hamilton has hardly been damaged. A $6,895.00 car, taxed at 4.5% sells for $7,205.00. Five Thousand Six Hundred Dollars cash plus a $1,700.00 truck comes to a $7,300.00 value, which would make Hamilton's actual damage $95.00.

However, the Court is satisfied that fair market value means more than what a wholesaler would pay for a truck from a retailer of passenger automobiles which does not handle trucks. Market value is defined as "the price which property will bring when it is offered for sale by one who desires, but who is not obliged to sell it, and is bought by one who is under no necessity of buying it." (See 16 O. Jur. 2d Rev., Damages, Section 73).

Hamilton, the owner, testified that he thought the value of the truck was at least $3,000.00 subject to reduction in value of $231.50 for slight body damage. Davis Buick and he arrived at this trade-in allowance, Davis intentionally not telling him of its own appraisal

of $1,600.00. As a prospective new car buyer, Hamilton was under le compulsion to part with his truck than was Davis, a dealer in passen ger cars, to unload a truck which it had taken in trade-in. Hamilto testified that he had looked up the truck's retail value in arriving at his opinion of its worth, and he also testified to the truck's good mechanical condition and accessories.

Having concluded that the truck was worth $2,768.50, it is obvious that Hamilton paid $8,368.50 for an automobile advertised as $6,895.00, which after taxes could be purchased for $7,205.00. His damages are accordingly $1,163.50, which he is awarded pursuant to 1345.09(A). Having found no violation of the Substantive Rules, or acts judicially determined to be violations of 1345.02 or 1345.03 committed after such determination is made available for public inspection (see 1345.09(B)), the Court will not award treble damages.

1345.09(F)(2) provides that attorney fees may be awarded if "the supplier has knowingly committed an act or practice that violates this chapter". The Court interprets this language to require, as a basis for attorney fees, proof that Davis knew that it was violating Section 1345.02. The violation itself is knowingly selling a car at a price substantially in excess of the price at which it is otherwise obtainable; therefore, the word "knowingly" in 1345.09(F)(2) must relate to knowledge that the act violates the law. Otherwise, the word "knowingly" is surplusage, because it is knowledge of the fact that the sales price is excessive that makes selling it at that price a violation of 1345.03(B)(2). There is no evidence that Davis Buick

or its salesmen knew the act was a violation of Chapter 1345. Therefore, attorney's fees are not awarded.

It is ORDERED, ADJUDGED, AND DECREED as follows:

1. The defendants and their successors in interest are enjoined from knowingly entering into transactions for the sale of property at prices substantially in excess of the prices at which the have advertised such or similar property for sale.

2. The plaintiff is hereby granted judgment against the defendants for $1,163.50 and his costs.

Copies of this Decision and Final Judgment were sent to parties listed below by ordinary mail this date of filing.

APPROVED:

WILLIAM H. WOLFF, JR., JUDGE

MICHAEL T. HALL, Attorney for Plaintiff, 1026 First National Plaza, Dayton, Ohio 45402

ALAN B. SCHAEFFER, Attorney for Defendants, 2700 Winters Bank Tower, Dayton, Ohio 45423

Attorney General
Betty D. Montgomery

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

CERTIFICATE OF AVAILABILITY FOR PUBLIC INSPECTION

I, Carol Brown, Public Inspection Officer, as official custodian of the public records of the Consumer Protection Section of the Ohio Attorney General's Office, do hereby certify that the attached hereto is a true and accurate copy of

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and that the same appears in and has been made a part of the public inspection file of the Office since October 16, 1980. The attached judgment is final in that appellate remedies either have been exhausted or lost by the expiration of the time for appeal.

I hereby place my signature and affix the seal of the Attorney General of Ohio this 17 day of MARCH, 1998.

Carol Brown
Public Inspection Officer
Consumer Protection Section