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1458

IN THE MONTGOMERY COUNTY COURT

DISTRICT 2

DONNY MILTON

\*

CASE NO. 91-CVF-2

Plaintiff,

\*

v.

\*

RIVERSIDE AUTO EXCHANGE

\*

DECISION & ENTRY

Defendant.

\*

AUG 27 1 56 PM '91  
SECOND DISTRICT COURT  
MONTGOMERY COUNTY, OHIO

FILED

This cause came on to be heard on the 21st day of May, 1991 upon the pleadings and the evidence. Upon consideration thereof the Court finds the following.

I. FACTS

On or about August 31, 1990, the Plaintiff purchased a certain 1978 Oldsmobile automobile from the Defendant (Plaintiff's Exhibit 2). Defendant runs a "Buy Here - Pay Here" dealership wherein the purchaser makes installment payments to the dealership rather than obtaining third party financing. The purchase price of the vehicle was \$1,395.00, plus an additional \$278.00 which was collected, according to the manager, in lieu of a fee for carrying charges. Tax and title filing charges were \$110.67, for a total of \$1,783.67. On Plaintiff's Exhibit 2 there is a clerical error in carrying the total of the left column to the top of the right column resulting in a \$20.00 reduction in favor of the Plaintiff. Plaintiff was given \$150.00 trade-in on his car and paid \$450.00 cash as a down payment, leaving a balance of \$1,163.67 to be paid in fourteen (14) payments of \$80.00 bi-monthly plus the final payment of

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MONTGOMERY COUNTY, OHIO

\$43.87. Plaintiff made five (5) \$80.00 payments from September through November 27, 1990. Plaintiff indicated that his discussion with the salesman revealed that the car had a rebuilt engine and transmission in it. There was no window sticker in the automobile as required by the Magnuson-Moss Act or the Federal Trade Commission Regulations at any time relative to the sale of the car. The car had no headliner, no door or trunk locks, and the heater fan ran continuously. Plaintiff was told that these would be repaired. The salesman agreed that the door locks and trunk locks would be replaced and that the heater would be fixed, and, if the headliner were not fixed, \$100.00 would be deducted from the purchase price. Plaintiff's Exhibit 2 indicates a commitment on the part of the Defendant to replace the heater switch and to warrant the transmission for thirty days and nothing else. Plaintiff returned with the car several times within the warranty period regarding the transmissions performance and a knocking noise in the engine. Plaintiff was assured by Defendant's staff that everything was working okay. Defendant did put gaskets on and charged the Defendant an additional \$20.00. Later in November, and outside of the thirty day warranty period, the transmission gave out and the Plaintiff was required have a new transmission installed at a cost of \$479.25. The deposition of the transmission repairman (Plaintiff's Exhibit 1) indicates that the wrong transmission was mated with the wrong engine which resulted in the shift control being inoperative. This inoperative control led to a slow burn up of the transmission. In the month of December 1990, the cause of the engine knocking noise developed to the point that the engine blew up.

Plaintiff further submitted evidence (Plaintiff's Exhibit 6), by way of a bill submitted by Plaintiff's attorney, Carol J. Holm, in the amount of \$1,525.00 as attorney fees paid towards the prosecution of his claims.

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MONTGOMERY COUNTY, OHIO

II. OPINION

Plaintiff raises numerous statutory and common law claims against the Defendant automobile sales company. Of Plaintiff's claims, his one under the Ohio Consumer Sales Practices Act provides a remedy for Plaintiff which remedy is so comprehensive as to permit dismissal of the remaining claims without prejudice to Plaintiff's recovery.

"The Consumer Sales Practices Act is Ohio's major piece of consumer protection legislation" and is codified at Ohio Revised Code §1345.01 et seq. Liggins v. May Co. and Professional Services Unlimited, 7 Ohio Op. 3d 164, 166 (Cuyahoga Co. C. P. 1977). The Consumer Sales Practices Act, hereinafter the Act, focuses on "the practices used by the supplier, and not completed sales", that is, "it is the activity of the supplier that is pivotal in making the determination of unconscionability, and not the character or nature of a completed transaction with a consumer, nor the actual mental state of the consumer." Brown v. Market Development, Inc. 68 Ohio Op. 2d 276, 278 - 70 (Hamilton Co. C. P. 1974). The Act "is remedial legislation and, as such, should be accorded a liberal construction." Liggins at 166, citing Brown at 280: "Remedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice." Brown at 280 quoting Ohio Rev. Code §1.11.

In his complaint and for his fourth claim for relief, Plaintiff alleges, inter alia, that Defendant failed to affix a used car window sticker to the 1978 Oldsmobile which Plaintiff purchased from Defendant. As indicated by the Federal Trade Commission (FTC) Used Car Buyer Guide, "[a]ll cars sold in this country must have the Used Car Buyer Guide or used car window sticker

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MONTGOMERY COUNTY, OHIO

affixed to the vehicle at the time of sale." See 16 CFR §455.1 Used Motor Vehicle Trade Regulation Rule. This window sticker must contain specific information about the used car being sold, including whether there are any warranties being offered with the sale. Id. Failure to affix the sticker to the car window is unfair and deceptive. 16 CFR 455.1. Under the Act, "[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction." Ohio Rev. Code §1345.02. Failure to comply with the Used Motor Vehicle Trade Regulation Rule, 16 CFR §455, is, therefore, a violation of the Ohio Consumer Sales Practices Act." See Cummins v. Dave Fillmore Car Co. (Franklin Co. C. A. 1987).

Because of Defendant's failure to affix the requisite window sticker to the subject 1978 Oldsmobile, Defendant is subject to liability under the Act. Under the Act, a "consumer is granted a cause of action on his own behalf, where there has been a violation of the Act, to rescind the transaction or to recover his actual damages, or to seek a declaratory judgment." Brown at 289 citing Ohio Rev. Code §1345.09.

The subject 1978 Oldsmobile, in its presently inoperable condition is now in possession of Defendant. This Court finds that it should continue this restoration of the status quo ante by rescinding the August 31, 1990 sale of the 1978 Oldsmobile. "A party rescinding a contract who has placed the other party [thereto] in status quo may recover what he has paid on the contract." 18 O Jur 3d Contracts, §312: (Citations omitted).

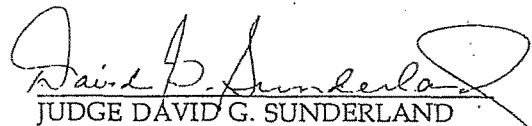
Towards the purchase of the 1978 Oldsmobile the price of which was \$1,783.67, Plaintiff was given \$150.00 trade in on the car he then owned and Plaintiff paid \$450.00 cash, both as a down payment. Plaintiff was to pay the balance of \$1,163.67 in fourteen (14) bi-monthly payments of \$80.00 each plus a final payment of \$43.87. Plaintiff made five (5) payments, totaling \$400.00,

towards the car. Plaintiff further invested \$20.00 in new gaskets and \$479.25 for a new transmission for the car. Plaintiff's full investment in the car is, therefore, \$1,499.25.

As and for further relief under the Act, "[t]he Court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if...the supplier has knowingly committed an act or practice that violates (the Act). Ohio Rev. Code §1345.09 (F)(2). Defendant knowingly failed to affix the requisite window sticker to the car; hence, Defendant knowingly committed an act that violates the Act. Plaintiff submitted into evidence an invoice for \$1,525.00 of this amount, the invoice justifies only \$525.00, the remainder being categorized as "Invoice: \$990.00" without further justification therefor.

This Court finds for Plaintiff in the amount of \$1,499.25 as and for damages and recovery on rescission of the automobile sales contract and \$525.00 in attorney's fees, for a total recovery of \$2,024.25.

SO ORDERED.

  
JUDGE DAVID G. SUNDERLAND

cc: Carol J. Holm  
Attorney for Plaintiff

Larry J. Rab.  
Attorney for Defendant

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SECOND DISTRICT COURT  
MONTGOMERY COUNTY, OHIO

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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

**Milton v. Riverside Auto Exchange**  
**Case No. 91-CVF-2**

and that the same appears in and has been made a part of the public inspection file of the office since February 7, 1995.

I hereby place my signature and affix the seal of the Attorney General of Ohio on this day of October 21, 2003.

  
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Carol Brown  
Public Inspection Officer  
Consumer Protection Section