

IN THE SUPREME COURT OF OHIO

08-1337

REYNOLD WILLIAMS, JR.,)
)
)
Appellee,)
)
)
-vs-)
)
SPITZER AUTO WORLD CANTON)
LLC)
Appellant.)

On appeal from the Stark
County Court of Appeals,
Fifth Appellate District

Court of Appeals
Case No. 07CA00187

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT, SPITZER AUTOWORLD CANTON, LLC.

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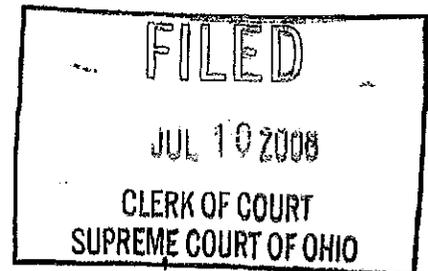


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Proposition of Law No. 1

PAROL EVIDENCE CANNOT BE OFFERED BY A PARTY IN A
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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC
OR GREAT GENERAL INTEREST AND INVOLVES A
SUBSTANTIAL CONSTITUTIONAL ISSUE**

The decisions of the trial court and the court of appeals in this matter represent a full frontal assault on the validity of every consumer contract in Ohio both past and future.

Essentially, both lower courts have abolished and eliminated the application of the parol evidence rule in all consumer contract disputes regardless of the nature of the claim and no matter how clear and unambiguous the terms of the contract.

Under the lower courts' decisions, any written consumer contract made within the last two years (statute of limitations for an action brought under the Ohio Consumer Sales Practices Act hereinafter, "CSPA") is subject to change by a judge or a jury, even if the contract is complete in all material respects and its terms are clear and unambiguous.

Each year, the licensed retail auto dealers in the State of Ohio, alone, sell more than one hundred thousand vehicles. Boat dealers and retailers of other "big ticket", consumer items sell millions more of their products. All of those contracts can now be attacked on literally every written term including even the stated price on the contract.

If the lower courts' rulings are not reversed, any consumer may bring an action under the CSPA and challenge any term of their contract by offering parol evidence in the form of their own unsupported testimony and claim that the stated term(s) of the contract they signed is not what was agreed to during the sales process. The finality of the written word upon which retailers have relied for years will be gone.

Worse yet, if a judge or a jury (as in the present case) decides to believe the consumer, no matter how far fetched the claim, the retailer is liable for damages including non-economic damages plus legal fees, which can total into the tens of thousands of dollars.

In the present case, the price agreed to by the Plaintiff for the Plaintiff's trade in and which was clearly stated in the contract, was challenged by the Plaintiff two years after the transaction and the difference of \$1,000 claimed, became a judgment for over \$15,000, against the Defendant dealer.¹

At a time when Ohio's economy, which is largely dependent on the ability of retailers to conduct business with some level of certainty and a measure of efficiency, the lower courts in this case have created an avenue for consumers to litigate the terms of contracts which they knowingly entered into and agreed to, by simply claiming that some stated term of the contract is different from what was agreed to in the sales process. It defeats the entire purpose of having a written contract and as in this case subjects legitimate dealers to ridiculous costs. The CSPA was never intended to create uncertainty in the consumer economy nor to create this sort of additional cost for doing business.

The parol evidence rule was established precisely for the purpose of preventing these sort of arbitrary and otherwise unsupported attacks on the stated terms of a contract. The rule is both logical and fair to both parties to a contract.

Certainly, the parol evidence rule does not bar the introduction of evidence to clarify an ambiguous term of a consumer contract nor to provide meaning to an incomplete contract. However, the CSPA was designed to prevent unfair or deceptive conduct, not to allow consumers to change the deal after they agreed to them in a written contract.

Prior to the decision in this case, a signed contract with clear and unambiguous terms was the way a retailer and consumer memorialized their bargain, however, now that is no longer the case. By its ruling, the court of appeals undermines the sanctity of signed contracts and subjects

¹ The jury awarded \$1,000 for the difference in the trade-in allowance plus \$1,500 in non-economic damages. This \$2,500 was trebled to \$7,500 and then legal fees of \$8,000 were added. Grand total was \$15, 500.

good businessmen to more frequent suits and the expense of defending them, resulting in damage to Ohio's economy. It creates the potential for an onslaught of litigation further burdening a court system that is already overburdened with civil and criminal cases. Worse yet, retailers may move out of Ohio and are certainly at a competitive disadvantage to retailers in surrounding states.

STATEMENT OF THE CASE AND FACTS

This lawsuit was filed by Plaintiff, Reynold Williams on October 3, 2006, exactly two years after he purchased a 2004 GMC Yukon SUV from the Defendant, Spitzer Autoworld Canton, LLC. Plaintiff set forth six separate claims, among them was a claim that the trade-in allowance stated in the written contract he signed was \$1,000 less than the amount he was promised during negotiations.

Plaintiff signed a fully integrated purchase agreement that, among other terms clearly indicated that he was being given a credit of \$15,500 for the 2003 Ford truck that he traded-in to purchase the new Yukon. The dollar amount of the trade-in allowance (\$15,500) was clearly set forth in a large white box outlined in green with a long green arrow pointing to it. It is the most prominent term on the written contract.

As part of the contract, the Plaintiff also estimated the pay off of his trade-in to be \$29,000 but, in fact, the actual payoff of the trade-in was \$31,000 or \$2,000 more than his estimate. The Plaintiff physically brought into the dealership the additional \$2,000 to cover the difference on the estimated pay off. He did this by bringing in a check for \$1,000 in November of 2004 and another check for \$1,000 in December of 2004, and on neither occasion did he

complain about or even raise the issue of the \$1,000 shortage “promised” for his trade-in, even though he admits being aware of this alleged discrepancy at the time he brought in the money.²

Then, two years later, without ever having complained to the Defendant dealer about the \$15,500 trade-in allowance actually stated in the written contract versus the \$16,500 he claims was promised to him during negotiations, the Plaintiff filed this lawsuit.

All of the other five claims made by Plaintiff in his lawsuit were either dismissed by him prior to trial; dismissed by the trial court on a directed verdict; or, rejected by the jury which heard the case.

The jury found in Plaintiff’s favor on his CSPA claim regarding the trade-in allowance. The jury then awarded Plaintiff the \$1,000 difference between the \$15,500 stated in the contract and the \$16,500 Plaintiff claimed was promised to him. The jury also awarded Plaintiff \$1,500 in non-economic damages despite no evidence of non-economic damages.

The trial court entered a judgment on the jury’s verdict on May 10, 2007 and later ordered Spitzer to pay \$8,000 in legal fees to Plaintiff. An appeal was taken to the Court of Appeals for the Fifth Appellate District (Stark County).

On appeal, Defendant Spitzer raised, among other issues, the question of whether the Plaintiff should have been allowed to offer parol evidence to alter the amount of the trade-in allowance. Plaintiff’s evidence consisted solely of his own, unsupported testimony that the trade-in allowance, which was clearly set forth in the written contract he signed, was \$1,000 less than the amount that was promised during negotiations. Had parol evidence not been allowed in to contradict this clear and unambiguous term of the contract, Plaintiff would have failed on this claim.

² Plaintiff did not dispute that the figure of \$15,500 was on the contract at the time he signed it, but claimed he could not recall focusing on it. He did admit that a few weeks later he did see it, but did nothing about it and still brought in the \$2,000.

The claim that Plaintiff dismissed himself was a claim for breach of contract. That claim was withdrawn by Plaintiff precisely to avoid Defendant's affirmative defense that the parol evidence rule would preclude testimony to contradict this clear term of the contract. Thus, evidence that would have been precluded in the breach of contract claim was allowed in under the CSPA claim.

The trial court and court of appeals ruled that in a CSPA claim parol evidence is allowed in to contradict even a clear and unambiguous term of a consumer contract despite the fact that the same evidence would have been disallowed under the breach of contract claim.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW:

PAROL EVIDENCE CANNOT BE OFFERED BY A PARTY IN A CLAIM BROUGHT UNDER THE CONSUMER SALES PRACTICES ACT, TO ALTER A TERM OF A WRITTEN CONTRACT WHERE THAT TERM IS CLEAR AND UNAMBIGUOUS.

The purpose of R.C. Chapter 1345, the Ohio Consumer Sales Practices Act, is to protect consumers from suppliers who commit deceptive or unconscionable sales practices. *Thomas v. Sun Furniture & Appliance Co.* (1978), 61 Ohio App. 2d 78, 81, 399 N.E.2d 567, 569. It is a remedial act that courts liberally construe in favor of the consumer. *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St. 3d 27, 29, 548 N.E.2d 933, 935. Section 1345.02(A) prohibits a supplier from committing an unfair or deceptive act or practice in connection with a consumer transaction either before, during, or after the transaction. It is how the consumer views the act or statement which determines whether it is unfair or deceptive. *Frey v. Vin Denere, Inc.* (1992) 80 Ohio App.3d 1. However, the CSPA is silent as to whether parol evidence may be allowed to contradict a material term of a written, integrated contract. The case law has until now allowed

parol evidence only to challenge a contract where a material term of the negotiations is actually missing from the contract as written.

Noting the uncertainty with regard to the Parol Evidence Rule, the Court of Appeals for the Second District in *Wall v. Planet Ford, Inc.*, 159 Ohio App.3d 840, 825 N.E.2d 686, 2005-Ohio-1207, ruled that a number of common law defenses, including the Parol Evidence Rule, do not apply to a claim under the CSPA “because the claim is based not on the contract, but on oral or other misrepresentations.” The facts in *Wall*, however, are different from those in the case at bar in a very significant way. In *Wall*, the consumer alleged that a promise was made during negotiations to pay off her home equity loan, which had been used to finance her trade-in. The contract *Wall* signed did not make any mention of a home equity loan payoff. Thus, the parol evidence was allowed to establish the inducement the dealer made to the consumer to get her to enter into the contract.

In the present case, the “promise” to give Plaintiff \$16,500 for his trade-in is directly in conflict with the actual contract which states the trade-in allowance is \$15,500. The “promise” is actually a term of the contract that Plaintiff now wants to change.

This Court has recognized the importance of the parol evidence rule in daily contract negotiations. Specifically, in *Galmish v. Cicchini* (2000), 90 Ohio St.3d 22, 734 N.E.2d 782, this court noted, “The parol evidence rule states that ‘absent fraud, mistake or other invalidating cause, the parties’ final written integration of their agreement may not be varied, contradicted or supplemented by evidence of prior or contemporaneous oral agreements, or prior written agreements.’” *Id.* at 27, 734 N.E.2d 782, quoting Williston on contracts (4th Ed. 1999) 569-570, Section 33:4. Furthermore, “the rule comes into operation when there is a single and final

memorial of the understanding of the parties. When that takes place, prior and contemporaneous negotiations, oral or written, are excluded; or, as it is sometimes said, the written memorial supersedes these prior or contemporaneous negotiations.” Id., quoting *In re Gaines’ Estate* (1940), 15 Cal.2d 255, 264-65, 100 P.2d 1055.

Further, under the Parol Evidence Rule, “a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence of earlier or contemporaneous agreements that might add to, vary, or contradict the writing.” Black’s Law Dictionary (8th Ed. 2004), parol-evidence rule. See, also, *AmeriTrust Co. v. Murray* (1984), 20 Ohio App.3d 333, 335, 20 Ohio B. 436, 486 N.E.2d 180; *Ed Schory & Sons, Inc. v. Soc. Natl. Bank* (1996), 75 Ohio St. 3d 433, 440, 1996 Ohio 194, 662 N.E.2d 1074.

In the present case, in making its decision, the court of appeals placed a great deal of weight on *Wall, supra*, where the court recognized that a number of common law defenses do not apply to a claim under the CSPA “because the claim is based not on the contract, but on oral or other misrepresentations.” However, the court of appeals interpretation of *Wall* completely misinterpreted *Wall* and more importantly failed to recognize the important factual difference with the case at bar.

Specifically, in *Wall*, the dispute was not about a material term of the contract, such as the warranty, interest rate, or trade-in value, but instead was based on a claim that the auto dealer promised to pay off an equity line of credit owed by the consumer. Id. at 847. Further, in *Wall*, the case turned on the fact that the purchase agreement was silent on the question of the equity line issue. Id at 848. Finally, in *Wall*, parol evidence was allowed because “ [the consumer was] not attempting to enforce the oral representations made by [the auto dealer] as part of [the] contract, but [was claiming that dealer’s] representations and promise to pay off her equity line

of credit was a promise which enticed her to enter into the contract itself. Thus, the consumer in *Wall* was not attempting to vary or modify a specific term of the contract, but rather was attempting to hold the dealer accountable for a promise made outside the contract and which led the consumer to enter into the contract.

The court of appeals, in this case, held that, under its interpretation of *Wall*, the parol evidence can be offered in any CSPA claim, despite the fact that the claim is based solely on a specific, agreed to term of an integrated contract. This holding goes far beyond the intent of R.C. 1345.02 and improperly broadens the holding in *Wall*. The court of appeals erroneously interpreted both the CSPA and *Wall* by extending the limitation on the application of the parol evidence rule, not just to oral misrepresentations, but to the specific terms included in an integrated contract.

This is a dangerous and unprecedented disregard for the sanctity and certainty of a written contract. If allowed to stand, virtually every term of every consumer contract is subject to litigation merely on the word of the consumer.

The damage to legitimate retailers trying to do business in Ohio is apparent from the outcome of this case. The Plaintiff did not complain or raise an issue regarding the \$1,000 “discrepancy” of the trade-in allowance, until two years after the contract was executed. Worse yet, the Plaintiff, knowing of this discrepancy, nevertheless walked into the dealership on two separate occasions and *paid to the dealership* an additional \$2,000 for the under estimate of the balance he owed on this same trade-in. Why would Plaintiff pay \$2,000 to Defendant while at the same time he believed he had been shorted \$1,000 on the trade-in allowance? Despite this illogical, contradictory conduct by Plaintiff, a jury awarded him the \$1,000 plus \$1,500 more for non-economic damages and the trial court granted him another \$8,000 in legal fees. The

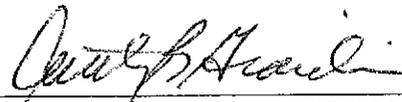
Defendant never ever had the opportunity to cure this alleged \$1,000 issue even if it had wanted to because it did not even know there was an issue until the lawsuit was filed.

CONCLUSION

This Court must take jurisdiction of this appeal not only to right the wrong committed against this Defendant, but more importantly to re-establish a reasonable and workable application of the parol evidence rule so that consumers and retailers alike will have some comfort in knowing that the contract they sign is not subject to change at some later point in time. As such, this matter is of great public interest.

Respectfully submitted,

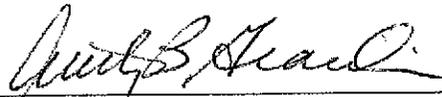
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Certificate of Service

I certify that a copy of this Memorandum in Support of Jurisdiction of Appellant Spitzer Autoworld Canton, LLC was sent by ordinary U.S. mail to counsel for appellee, G. Ian Crawford, Crawford, Lowry & Assoc., 116 Cleveland Avenue NW, Suite 800, Canton, Ohio 44702 on July 10, 2008.



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APPENDIX

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NANCY S. REINHOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

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REYNOLD WILLIAMS, JR.

Plaintiff-Appellee

-vs-

SPITZER AUTOWORLD CANTON LLC

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2007 CA 00187

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 2006 CV 03856

JUDGMENT:

Affirmed in Part; Reversed in Part, and
Attorney Fees Awarded

(L)

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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For Defendant-Appellant

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NANCY S. REINHOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO
Date: 5-27-08



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Wise, J.

{¶1} Appellant Spitzer Auto World Canton LLC appeals the decision of the Stark County Court of Common Pleas, which granted a monetary judgment and attorney fees in favor of Appellee Reynold Williams, Jr. in a consumer sales practices lawsuit. The relevant facts leading to this appeal are as follows.

{¶2} Appellant is a Pontiac-GMC automobile dealership in located in Canton, Ohio. In early October 2004, Appellee Williams made a couple of visits to appellant's showroom, expressing an interest in purchasing a new sport-utility vehicle. He first looked at a 2004 GMC Yukon Denali, but decided it was out of his price range. He then turned his attention to a 2004 GMC Yukon SLT, a "demonstrator" vehicle with 4,900 miles on the odometer, being sold as a new vehicle. Appellee ultimately purchased the Yukon SLT and traded in his 2003 Ford Explorer.

{¶3} The purchase agreement, signed on October 7, 2004, contained a provision that if the true payoff balance of the loan appellee carried on his trade-in vehicle (the Ford Explorer) was more than the estimated payoff balance of \$29,000, appellee would pay the difference to appellant. It turned out that the true payoff balance on the Explorer was \$31,000; hence, appellee returned to the dealership on October 28, 2004 and December 3, 2004, conveying a \$1,000 check each time to cover the \$2,000 discrepancy.

{¶4} On October 10, 2006, appellee filed a lawsuit seeking relief under the Consumer Sales Practices Act ("CSPA"). Appellant therein alleged that appellant's agents had misrepresented the Yukon SLT as a new vehicle, had allowed \$15,500 in trade-in as opposed to a purportedly promised figure of \$16,500, had required appellee

to sign a second financing agreement with an 11% interest rate instead of 8.5%, had unlawfully assessed a \$97.50 "dealer overhead charge," and had failed to allow for or document "employee discount" pricing as requested by appellee.

{¶15} The matter proceeded to a jury trial on May 8 and 9, 2007. A directed verdict was granted on two of appellee's four claims. The jury returned a verdict in favor of appellee for \$2,500, which the court later trebled to \$7,500 under R.C. 1345.09(B). In essence, the jury found in favor of appellant on the "demonstrator vehicle" issue, but determined that appellant had committed an unfair and/or deceptive trade act by giving appellee \$1,000 less for his trade-in vehicle than had allegedly been agreed to.

{¶16} On June 29, 2007, the trial court issued judgment entries addressing all post-verdict issues, including, inter alia, awarding appellee's counsel a total of \$7,000 in attorney fees.

{¶17} Appellant filed a notice of appeal on July 3, 2007. Appellee filed a notice of cross-appeal, regarding the issue of attorney fees, on July 6, 2007.

{¶18} Appellant herein raises the following four Assignments of Error in its appeal:

{¶19} "I. THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION FOR DIRECTED VERDICT AT THE CLOSE OF DEFENDANT'S CASE.

{¶10} "II. THE TRIAL COURT ERRED BY ALLOWING THE PLAINTIFF TO OFFER PAROL EVIDENCE WHERE THE TERMS OF THE CONTRACT WERE CLEAR, COMPLETE AND UNAMBIGUOUS WITH REGARD TO THE ISSUE FOR WHICH THE PAROL EVIDENCE WAS OFFERED.

{¶11} "III. THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT ON THE ISSUE OF LIABILITY UNDER THE CONSUMER SALES AND PRACTICES ACT AND ON THE ISSUE OF NON-ECONOMIC DAMAGES.

{¶12} "IV. THE TRIAL COURT ERRED BY ALLOWING THE JURY TO CONSIDER NON-ECONOMIC DAMAGES WHERE THE PLAINTIFF-APPELLEE FAILED TO OFFER ANY EVIDENCE OF NON-ECONOMIC DAMAGES WHATSOEVER."

{¶13} Appellee herein raises the following sole Assignment of Error on cross-appeal:

{¶14} "I. THE TRIAL COURT ERRRED (SIC) IN REDUCING THE AMOUNT OF THE 'LODESTAR' FIGURE FOR ATTORNEY'S FEES AWARDED TO APPELLEE/CROSS-APPELLANT, WHO HAD PREVAILED ON HIS CLAIMS UNDER OHIO'S CONSUMER SALES PRACTICES ACT, R.C. 1345.01 ET SEQ."

I., II., III.

{¶15} In its First Assignment of Error, appellant contends the trial court erred in denying its motion for a directed verdict. In its Second Assignment of Error, appellant argues the trial court erred in permitting the introduction of parol evidence regarding the sales transaction. In its Third Assignment of Error, appellant maintains the trial court erred in denying its motion for judgment notwithstanding the verdict. We disagree on all three counts.

{¶16} The standard of review for the grant or denial of a motion for a directed verdict is whether there is probative evidence which, if believed, would permit

reasonable minds to come to different conclusions as to the essential elements of the case, construing the evidence most strongly in favor of the non-movant. *Brown v. Guarantee Title & Trust/Arta* (Aug. 28, 1996), Fairfield App.No. 94-41, citing *Sanek v. Duracote Corp.* (1989), 43 Ohio St .3d 169, 172, 539 N.E.2d 1114. A motion for a directed verdict therefore presents a question of law, and an appellate court conducts a de novo review of the lower court's judgment. *Howell v. Dayton Power & Light Co.* (1995), 102 Ohio App.3d 6, 13, 656 N.E.2d 957, 961. Ohio appellate courts have applied a standard of review to Civ.R. 50(B), addressing the grant of a judgment notwithstanding the verdict, in essentially the same fashion as a Civ.R. 50(A) motion for a directed verdict.

{¶17} The crux of appellant's overall argument is that appellee's case was built on parol evidence, which, if excluded, would not permit reasonable minds to come to different conclusions concerning the parties' sales transaction. Specifically, appellant sets forth that the sales agreement recites "TRADE ALLOWANCE" with a bold arrow pointing to box on the document, with "\$15,500" printed inside. Plaintiff's Exhibit 23.

{¶18} Appellant's argument presupposes that the parol evidence rule is inherently recognized in CSPA cases. However, in *Wall v. Planet Ford, Inc.*, 159 Ohio App.3d 840, 825 N.E.2d 686, 2005-Ohio-1207, the Court recognized that a number of common law defenses do not apply to a claim under the CSPA "because the claim is based not on the contract, but on oral or other misrepresentations." *Id.* at ¶ 25, quoting *Doody v. Worthington*, Franklin Cty. M.C. No. M 9011CVI-37581, 1991 WL 757571, citing National Consumer Law Center, *Unfair and Deceptive Acts and Practices* (2d Ed.1988), Sections 4.2.15 and 5.2.4. "For the same reason, the statute of frauds, the

parol evidence rule, contractual limitations on liability, and contractual limitations on remedies do not apply." *Id.*

{¶19} R.C. 1345.02(A) states as follows: "No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section *whether it occurs before, during, or after the transaction.*" (Emphasis added). We reiterate that the CSPA "is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed pursuant to R.C. 1.11." *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St.3d 27, 29, 548 N.E.2d 933. Likewise, the purpose of the CSPA is to protect consumers in a manner not afforded under the common law. *Elder v. Fischer* (1998), 129 Ohio App.3d 209, 214 (citations omitted).

{¶20} Because the gravamen of appellee's case is based on the aforesaid section of the CSPA, we hold the parol evidence rule does not apply under these circumstances, and that a directed verdict and judgment notwithstanding the verdict were properly denied.

{¶21} Appellant adds an argument under these assigned errors that appellee's claims should have been barred by the doctrines of laches and estoppel by waiver, because appellee did not earlier assert his "trade allowance" claim, even when he returned to the dealership two months later to pay on the shortfall pertaining to the payoff balance on his prior vehicle (see our recitation of facts, *supra*). Although the format of appellant's argument does not comply with App.R. 16(A), upon review we find no error in the trial court's rejection of any defenses of laches and estoppel by waiver in this matter.

{¶22} Accordingly, appellant's First, Second, and Third Assignments of Error are overruled.

IV.

{¶23} In its Fourth Assignment of Error, appellant contends the trial court erred in allowing the jury to consider evidence of non-economic damages. We disagree.

{¶24} Pursuant to R.C. 1345.09(B), if a supplier is found to be in certain violations of R.C. 1345.02, treble damages are awardable. See *Bird v. E-Z TV & Appliance* (March 13, 1990), Washington App.No. 89 CA 11.

{¶25} In *Whitaker v. M.T. Automotive, Inc.* (2006), 111 Ohio St.3d 177, 181, 855 N.E. 2d 825, the Ohio Supreme Court held: " *** [I]n an action brought under the CSPA, all forms of compensatory relief, including noneconomic damages, are included within the unrestricted term 'damages' under R.C. 1345.09(A)." Moreover, an appellate court will generally not consider any error which a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court. See, e.g., *Pastor v. Pastor*, Fairfield App.No. 04 CA 67, 2005-Ohio-6946, ¶ 17, citing *State v. 1981 Dodge Ram Van* (1988), 36 Ohio St.3d 168, 170, 522 N.E.2d 524. The record in this matter indicates that appellant did not submit jury interrogatories, pursuant to Civ.R. 49(B), to specifically address the issue of damages. As a result, we have no evidence before us as to how the jury calculated damages in this matter, and we must therefore presume the correctness of the jury's verdict. See *Jury v. Ridenour* (June 15, 1999), Richland App.No. 98CA100, citing *Powers v. Jayne* (March 18, 1996), Licking App. No. 95-CA-54.

{¶26} Accordingly, appellant's Fourth Assignment of Error is overruled.

Cross-Appeal

I.

{¶27} In his sole Assignment of Error on Cross-Appeal, appellee challenges the amount of attorney fees awarded to him by the trial court.

{¶28} Pursuant to R.C. 1345.09(F)(2), "[t]he court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if * * * [t]he supplier has knowingly committed an act or practice that violates this chapter."

{¶29} This Court has recognized that "[a]ctions brought under R.C. Title 13 typically involve relatively small damages, yet the cost of recovering those damages may be enormous, as the offending suppliers may stoutly defend themselves * * *. Confronted with the likelihood of incurring very much more debt in attorney fees than could be recovered in damages, most consumers would never bring or continue to prosecute an action for a private remedy." *Gaskill v. Doss* (Dec. 26, 2000), Fairfield App.No. 00 CA 4, quoting *Sprovach v. Bob Ross Buick, Inc.* (1993), 90 Ohio App.3d 117, 121, 628 N.E.2d 82.

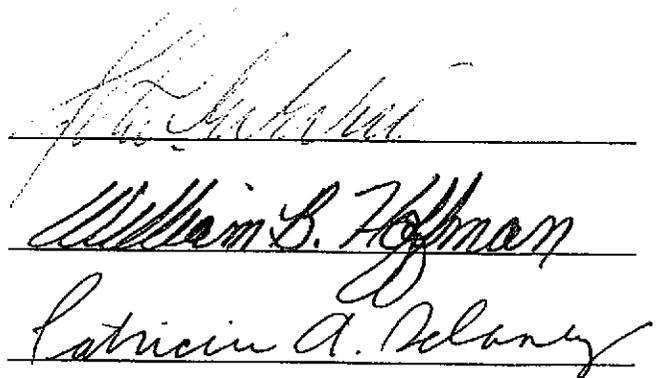
{¶30} The record supports that appellant did not question the number of hours expended on the case by appellee's counsel, nor was the reasonableness of the hourly rate called into question. Tr., June 29, 2007, at 7, 53. Nonetheless, the trial court reduced the propounded figure of \$11, 216.00 by nearly forty percent, justifying its decision by noting that fees in excess of \$7,000 would "simply be too disproportionate." While we are generally reluctant to override a trial court's discretion in addressing attorney fees, we note the Ohio Supreme Court has clearly " *** reject[ed] the

contention that the amount of attorney fees awarded pursuant to R.C. 1345.09(F) must bear a direct relationship to the dollar amount of the settlement, between the consumer and the supplier." *Bitner v. Tri-County Toyota* (1991), 58 Ohio St.3d 143, 144. Here, upon the essential stipulation to the basic hours expended and the reasonableness of the rate, the question remained of the reasonableness of expending legal resources on all of appellee's claims. However, when appellee's expert witness was questioned on this issue, he clearly testified that he found no evidence of work performed on the non-CSPA claims, and that the actual CSPA portion involved claims that were not "easily separated." Tr. at 23-24. Under these facts and circumstances, we are compelled to reject, on the grounds of abuse of discretion, the trial court's disproportionality rationale for reducing appellee's claimed attorney fees.

{¶31} We therefore hold appellee's sole Assignment of Error on cross-appeal is sustained on the issue of attorney fees.

{¶32} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is hereby affirmed in part and reversed in part. Attorney fees in the amount of \$11,216.00 are awarded to appellee.

By: Wise, J.
Hoffman, P. J., and
Delaney, J., concur.



Patricia A. Delaney
William B. Hoffman
[Illegible Signature]

JUDGES

IN THE COURT OF APPEALS FOR STARK COUNTY,
FIFTH APPELLATE DISTRICT

NANCY S. REINHOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

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MAY 27 PM 2:52

REYNOLD WILLIAMS, JR.

Plaintiff-Appellee

-vs-

SPITZER AUTOWORLD CANTON LLD

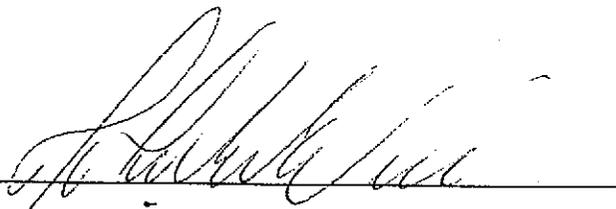
Defendant-Appellant

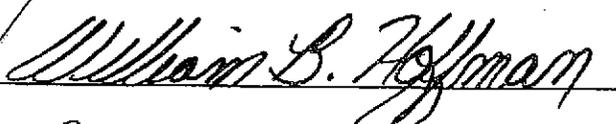
JUDGMENT ENTRY

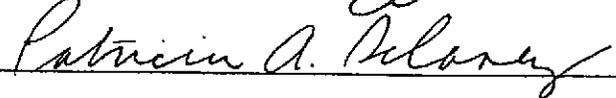
Case No. 2007 CA 00187

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed in part and reversed in part. Attorney fees in the amount of \$11,216.00 are hereby awarded to appellee.

Costs assessed to appellant.







JUDGES