

IN THE SUPREME COURT OF OHIO

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

08-1337

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

Court of Appeals
Case No. 2007 CA 00187

AMICUS BRIEF BY OHIO AUTOMOBILE DEALERS ASSOCIATION
IN SUPPORT OF JURISDICTION

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TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL ISSUE.....1

STATEMENT OF THE CASE AND FACTS.....3

ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1

THE OHIO CONSUMER SALES PRACTICES ACT DOES NOT ALLOW
A CONSUMER TO ALTER, MODIFY OR CHANGE THE TERM OF A
WRITTEN CONTRACT, THROUGH PAROL EVIDENCE, WHERE THE
TERM OF THE CONTRACT IS CLEAR AND UNAMBIGUOUS.....4

CONCLUSION.....8

PROOF OF SERVICE.....8

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL ISSUE

The Ohio Automobile Dealers Association (hereinafter "OADA"), joins with the Defendant-Appellant, Spitzer Autoworld Canton, LLC, in support of Spitzer's request for this Court to take jurisdiction in this matter on appeal.

The Ohio Automobile Dealers Association (OADA) represents over 1,000 new automobile, truck and motorcycle dealers throughout the state. OADA has served the franchised dealer industry since 1932, promoting the common interests of the retail automotive industry. Most dealerships are family-owned, many have been in business for two and three generations.

These dealerships contribute enormously to Ohio's economy. In 2006, franchised new automobile dealers generated \$21.8 billion in sales revenue for Ohio, representing 19.9% of the total retail sales in the state. In 2002, Ohio dealers paid \$96 million in personal property taxes and collected \$927 million in state sales tax revenue.

The purchase of an automobile is one of the most significant purchases a consumer will ever make. As a result, the retail automobile industry is subject to great scrutiny by federal and state regulators and draws attention from seemingly countless state and federal agencies. Public policy rightly dictates that the customer-supplier relationship receive such attention. In addition to regulatory oversight, myriad consumer groups and plaintiffs' counsels keep a vigilante eye on the industry. This triad of business, government, and consumer interest has helped protect customers while allowing Ohio automobile dealers to deliver products and services to millions of Ohioans.

The Association conducts seminars throughout the year and offers suggestions on how its members should operate and conduct themselves to comply under Ohio and Federal laws.

The Association is a strong supporter of the goals and ideals of Ohio's Consumer Sales Practices Act. That Act has been interpreted over the years in a liberal manner and the OADA has not objected so long as the interpretation of the Act was consistent with the goals of eliminating unfair or deceptive acts.

The case at bar, however, goes too far. The ruling by the Fifth District Court of Appeals has, for all intents and purposes made the written purchase agreement which is required by the Ohio Consumer Sales Practices Act to be a fully integrated document inclusive of all material terms, meaningless. The form purchase agreement used by Spitzer in this case has many of the features which the OADA has recommended to its members in order for them to comply with Ohio law.

If the Fifth District Court of Appeals decision is allowed to stand, those contracts, which our members rely upon to memorialize the final negotiations on the purchase of motor vehicles by consumers, are subject to modification on the simple word of that consumer.

It will not take the Plaintiffs' bar long to educate consumers who are simply unhappy with a deal they made a month or year earlier to challenge the very terms of the contract which they signed notwithstanding that the term challenged was clear and unambiguous.

Until the Fifth District decision in the case, such attempts would have been thwarted by the "parol evidence rule" unless a recognized exception to the parol evidence rule existed. It is one thing to allow in parol evidence to establish a promise made in negotiations which did not end up in the contract or to clarify an ambiguous term in a contract or to demonstrate fraud in the activity leading up to the contract, but to allow in parole evidence to actually change a specific term in the contract such as the purchase price or the make and model of the vehicle or the color of the vehicle or as in the case at bar, the dollar amount of the trade-in allowance, makes a

mockery of the contract.

The ruling of the Fifth District allows a consumer, long after the fact, to raise such challenges to a contract.

The potential for claims by consumers suffering from “buyer’s remorse” or looking to make a better deal than the one they actually made is astronomical.

This matter must be dealt with by this Court.

The “parol evidence rule” cannot be completely abolished in relationship to consumer contracts by use of the Consumer Sales Practices Act. As the CSPA requires a fully integrated contract and yet is silent on the parol evidence rule, we contend that Ohio courts must look at applicable statutes, here §1302.05, to determine its applicability in such cases. This Court must take jurisdiction of this case to establish once and for all reasonable parameters for the use of the parol evidence rule in consumer cases.

STATEMENT OF THE CASE AND FACTS

This lawsuit was filed by Plaintiff, Reynold Williams (hereinafter "Williams"), on October 3, 2006, exactly two years after he purchased a 2004 GMC Yukon SUV from the Defendant, Spitzer Autoworld Canton, LLC. One claim made by Williams was 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 clearly indicated 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 was clearly set forth in a large white box outlined in green with a long green arrow pointing to it. This item is very prominent and right on the front of the contract.

Williams admitted at trial that he never complained about or even raised the issue of the \$1,000 shortage "promised" for his trade-in, even though he admits that the \$15,500 figure was in the contract he signed.

Two years later, the Plaintiff filed this lawsuit.

The jury found in Williams' favor on his CSPA claim regarding the trade-in allowance and by doing so, the jury essentially changed the number in the contract from \$15,500 to \$16,500. The jury also awarded Williams \$1,500 in 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 Williams. On appeal, the Court of Appeals for the Fifth Appellate District affirmed the trial court, on the basic claim, and then awarded Williams an additional \$4,000 in legal fees.

In its appeal, Spitzer raised, among other issues, the question of whether Williams should have been allowed to offer parol evidence, consisting only of Williams' unsupported testimony, to challenge and thus vary the specific term of the contract, namely the amount of the trade-in allowance. Had parol evidence not been allowed in to contradict this clear and unambiguous term of the contract, Williams would have failed on this last, remaining claim.

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

The trial court and court of appeals ruled that in a CSPA claim parol evidence is allowed in to contradict a clear and unambiguous term of a consumer contract.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW:

THE OHIO CONSUMER SALES PRACTICES ACT DOES NOT ALLOW A CONSUMER TO ALTER, MODIFY OR CHANGE THE TERM OF A WRITTEN CONTRACT, THROUGH PAROL EVIDENCE, WHERE THE TERM OF THE CONTRACT IS CLEAR AND UNAMBIGUOUS.

The Ohio Consumer Sales Practices Act (hereafter "CSPA"), was established by the legislature to protect consumers from unfair or deceptive acts by retailers. To that end, 1345.02(A) and 1345.02(B) set out the type of conduct which is prohibited.

The CSPA was not intended to allow consumers to vary the terms of a contract after the contract was memorialized in a fully integrated document signed by both parties.

In the case of *Wall v. Planet Ford, Inc.*, 159 Ohio App.3d 840, 825 N.E.2d 686, 2005-Ohio-1207, the Court of Appeals for Montgomery County allowed in parol evidence by a

consumer to prove a claim by that consumer that a promise had been made outside the terms of the contract, which promise the consumer alleged was not kept. The Court in *Wall* ruled that a consumer has a right under the CSPA to offer evidence of a promise or misrepresentation made to the consumer which then led the consumer to enter into a written contract.

The reasoning offered by the Court in *Wall* was that a CSPA claim is not a claim on the contract and therefore the parol evidence rule does not apply. The consumer and her brother were thus not precluded from offering testimony about an oral promise made during negotiations, even though the contract signed by the consumer had an integration clause that stated that all promises had been incorporated into the agreement, including any oral promises.

It is the position of the OADA that the *Wall* court went too far in expanding the application of the CSPA and by further limiting the application of the parol evidence rule in CSPA cases. The *Wall* court damaged the use of an integration clause since the consumer argued that the promise made to her never made it into the contract, while the contract states that all oral promises and agreements made were in the contract or were no longer valid. While the *Wall* court expanded the CSPA unnecessarily, it was still arguably consistent with the basic goals of the CSPA which are to prevent unfair or deceptive acts.

In the case at bar, the consumer made no such allegations against Spitzer. In this case, the consumer and Spitzer negotiated the purchase of a new Yukon SUV. Part of the negotiations was the dollar amount Spitzer would give the consumer for his trade-in. As in all negotiations, different dollar amounts were probably discussed for the amount of the trade-in and different amounts were discussed for the price of the Yukon being purchased, but at some point, those discussions were written down in the form of an agreement which was then signed by the parties.

The dollar amount that Spitzer agreed to pay to the consumer as set forth clearly in the signed purchase agreement is \$15,500. There is no dispute that the \$15,500 figure was in the contract when the consumer signed it. Despite this clear and unambiguous term, namely the dollar amount for the trade-in allowance, the trial court allowed the consumer to offer parol evidence in to vary this term of the contract, and the Fifth District Court of Appeals affirmed it.

The Fifth District, relying on the ruling by the Second District, ruled that the parol evidence rule has no application in a CSPA claim, even if that claim means that the term specifically stated (i.e. \$15,500) in the contract will be modified by the parol evidence offered.

This bootstrap argument completely negates the written contract. In *Wall*, at least an argument can be made that since the “promise” to pay off the consumer’s equity line of credit, had not been incorporated into the contract; the parole evidence did not vary an actual term of the contract. In this case, the parol evidence was used to actually change the contract itself, not to offer evidence of some promise that never made it into the contract in the first place.

This is a major and significant difference.

If the ruling by the Fifth District is allowed to stand, the OADA’s members have no way to protect themselves against frivolous claims by consumers looking to make a better deal for themselves at some later date.

There is nothing that can be put in writing to protect the retailer because by definition the writing is subject to change based on the consumers’ offer of parol evidence.

This is an unnecessary and totally irresponsible assault on the retailers of this state.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

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 and Anthony B. Giardini, GIARDINI, COOK & NICOL, LLC, 520 Broadway, Second Floor, Lorain, Ohio 44052 on July 10, 2008.



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