

IN THE SUPREME COURT OF OHIO

REYNOLDS WILLIAMS, JR.,

Appellee,

v.

SPITZER AUTOWORLD
CANTON, LLC.

Appellant.

Case No. 08-1337

On Appeal from the
Stark County Court of
Appeals, Fifth District
Case No. 21836

AMICUS BRIEF IN SUPPORT OF APPELLANT
BY AMICI CURIAE THE
OHIO AUTOMOBILE DEALERS ASSOCIATION

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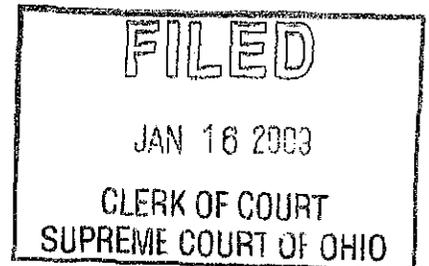


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STATEMENT OF INTEREST OF *AMICI CURIAE*

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. Ohio dealers annually pay \$130 million in personal property taxes and collect approximately \$900 million in state sales tax revenue.

Ohio dealerships employ nearly 50,000 people in Ohio and pay over \$1.5 billion in payroll to their employees, of which the State of Ohio collects nearly \$50 million in Ohio income taxes.

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, a myriad of consumer groups and plaintiffs' counsels keep a vigilant eye on the industry. This triad of business, government, and consumers interest has helped protect customers while allowing Ohio automobile dealers to deliver products and services to millions of Ohioans.

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

OADA is a strong supporter of the goals and ideals of Ohio's Consumer Sales

Practices Act ("CSPA"). 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 CSPA to be a fully integrated document inclusive of all material terms, meaningless. The form purchase agreement used by Appellant in this case has many of the features which the OADA has recommended to its members in order for them to comply with Ohio and Federal laws.

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 challenges and modification on the simple word of that consumer. Until the Fifth District decision in this case such attempts would have been thwarted by the "parol evidence rule" unless a recognized exception to the parol evidence rule existed.

The parol evidence rule cannot be completely abolished in relationship to consumer contracts by use of the CSPA. 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 Ohio Rev. Code §1302.05, to determine its applicability in such cases.

The Trial Court erred in permitting the parol evidence to be introduced at trial and erred in denying Appellant a judgment notwithstanding the verdict. The Fifth District Court of Appeals likewise erred in ruling that parol evidence may be introduced if a consumer asserts any claim under the CSPA, even if the claim is with regard to an agreed upon term that is clear and unambiguous and included in the written contract. This ruling reflects an unprecedented and

unnecessary extension of the protections intended to be afforded to consumers under Ohio's CSPA and is a dangerous disregard for the integrity and sanctity of a written contract.

The OADA joins with the Appellant and respectfully urges the Court to reverse the Court of Appeals' decision and hold that the parol evidence rule applies to CSPA claims.

STATEMENT OF THE CASE AND FACTS

Amici Curiae, the Ohio Automobile Dealers Association hereby adopts the Statement of the Case and Facts as set forth in Appellant's Merit Brief.

LAW AND ARGUMENT

Appellant's Proposition of Law No. 1: 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.

Appellee has done his best to blur the issue presented for consideration in this appeal. This is not a review of a “long-established axiom of consumer protection law.” (Appellee’s Memorandum, p. 1). Nor does the Proposition of Law put forth by the Appellant hinge on “case-specific questions of fact that are of limited interest to anyone except the two parties.” (Appellee’s Memorandum, p. 2). In its Decision and Judgment Entry on May 27, 2008, the Court of Appeals held that the parol evidence rule did not apply where the gravamen of the case is based on Ohio Rev. Code §1345.02(A). *Williams v. Spitzer Auto World Canton, LLC* (5th Dist. Ct. App. May 27, 2008), 2008 Ohio 2535, 2008 Ohio App. LEXIS 2140. The Appellee was permitted to introduce parol evidence that directly contradicted an express written term of the Purchase Agreement. This ruling, if allowed to stand, unnecessarily excludes application of the parol evidence rule to any claim brought under the CSPA, threatens both the integrity and sanctity of contracts entered into between Ohio suppliers and consumers, and eradicates the long standing position of this Court that a party to a contract is obligated to read the contract before signing it.

A. The Fifth District Court Of Appeals’ Ruling Unnecessarily Excludes Application Of The Parol Evidence Rule To Any Claim Brought Under The Consumer Sales Practices Act.

The Ohio CSPA was unquestionably enacted by the legislature to protect consumers from suppliers committing unconscionable and unfair and deceptive acts and practices.¹ Contrary to

¹ Ohio Rev. Code §1345.02(A) prohibits suppliers from committing an unfair or deceptive act or practice in connection with a consumer transaction. Ohio Rev. Code §1345.03(A) prohibits suppliers from committing an unconscionable act or practice in connection with a consumer

Appellee's assertion, the CSPA is also about contracts.² The Ohio Attorney General has statutory authority to promulgate regulations to enforce the CSPA and has exercised that authority to promulgate Ohio Admn. Code §109:4-3-16, which governs the advertisement and sale of motor vehicles. In this Section of the Administrative Code, the Attorney General has defined numerous practices specific to motor vehicle dealers which are deemed deceptive acts or practices, many of which are related directly to what a dealer must disclose in the contract with the consumer.³

While the CSPA is silent as to the ability of a party to introduce evidence that would otherwise be excluded as parol evidence under contract law, the fundamental purpose of the parol evidence rule is equally applicable whether a claim is asserted under contract law or the CSPA when it is based upon the terms of a written contract. Moreover, consumers making claims under the CSPA will rarely be prevented from introducing evidence under one of the exceptions to the parol evidence rule.

transaction. See, also, *Thomas v. Sun Furniture & Appliance Co.* (1978), 61 Ohio App.2d 78, 81, 399 N.E.2d 567, 569.

² See Appellee's Memorandum, p. 3 and 5.

³ See, e.g., Ohio Admn. Code §109:4-3-16(B)(13) which mandates that the dealer disclose the vehicle's model, year and whether it is used; Ohio Admn. Code §109:4-3-16(B)(14) which requires the dealer to disclose any defect and/or the extent of any previous damage to the vehicle if the damage exceeds six percent of the manufacturer's suggested retail price; Ohio Admn. Code §109:4-3-16(B)(15) which states that the dealer must disclose if the vehicle was previously used as a demonstrator, factory official vehicle or rental vehicle before requiring signature by the consumer on any document for the purchase or lease of the vehicle; Ohio Admn. Code §109:4-3-16(B)(19) which mandates that the dealer disclose the fact that a trade-in re-evaluation may occur, if such is the case, before requiring signature by the consumer on any document for the purchase of a vehicle; and Ohio Admn. Code §109:4-3-16(B)(22) which requires that all material statements, representations or promises, oral or written, to be integrated into the written sales contract.

The principal purpose of the parol evidence rule is “to preserve integrity of written agreements by refusing to permit contracting parties to attempt to alter import of their contract through use of contemporaneous oral declarations.” Black’s Law Dictionary (6th Ed. 1990) at 1117 (citations omitted); See, also, *Ed Schory & Sons, Inc. v. Soc. Nat’l. Bank* (1996), 75 Ohio St.3d 433, 440, 1996-Ohio-194, 662 N.E.2d 1074, 1080. When parties to a contract embody their agreement in writing and intend the writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by evidence of any prior written or oral agreement in the absence of fraud, duress, or mutual mistake. Black’s Law Dictionary (6th Ed. 1990) at 1117 (citations omitted).

The purpose of the parol evidence rule is not to exclude all extrinsic evidence in contract cases, but rather to exclude extrinsic evidence which varies, alters or modifies the terms of the written agreement. See *Ed Schory & Sons, Inc, supra*, 75 Ohio St.3d at 440. There are a number of other well-recognized exceptions to the parol evidence rule. The parol evidence rule does not preclude evidence of a promise extrinsic to the agreement intended to induce the party to enter into it. Also, the written agreement may be explained or supplemented by evidence of consistent additional terms. Black’s Law Dictionary (6th Ed. 1990) at 1117 (citations omitted). If a document is unclear or ambiguous, parol evidence is also admissible for purposes of determining the intent of the parties and clarifying unclear or ambiguous provisions. *Graham v. Drydock Coal Co.* (1996), 76 Ohio St.3d 311, 313, 1996-Ohio-393, 667 N.E.2d 949. All of these exceptions would be applicable to and would adequately protect consumers who assert claims under the CSPA.

This Court discussed the parol evidence rule in depth in *Galmish v. Cicchini* (2000), 90 Ohio St.3d 22, 2000-Ohio-7, 734 N.E.2d 782. With respect to the applicability of the parol evidence rule for purposes of proving fraudulent inducement, this Court opined that:

“[]the parol evidence rule may not be avoided ‘by a fraudulent inducement claim which alleges that the inducement to sign the writing was a promise, the terms of which are directly contradicted by the signed writing. Accordingly, an oral agreement cannot be enforced in preference to a signed writing which pertains to exactly the same subject matter, yet has different terms.’ In other words, ‘the Parol Evidence Rule will not exclude evidence of fraud which induced the written contract. ***But, a fraudulent inducement case is not made out simply by alleging that a statement or agreement made prior to the contract is different from that which now appears on the written contract. Quite to the contrary, attempts to prove such contradictory assertions is exactly what the Parol Evidence Rule was designed to prohibit.***” (emphasis added)

90 Ohio St.3d at 29 (citations omitted). This Court then held that the same principals of law apply to allegations of promissory fraud. *Id.* at 29-30.

Just as the parol evidence rule may not be avoided by any and all fraudulent inducement claims, the parol evidence rule should not be avoided simply by asserting a CSPA claim. The same generally recognized exceptions to the rule should and would apply. If a supplier makes false or misleading representations to induce a consumer to enter into a contract, fails to include a material term or promise into the written document, or includes contradictory or ambiguous terms, the consumer would be permitted to offer parol evidence under an exception to the rule. However, the same concept—that the proffered evidence must show more than a mere variation between the terms of the written and parol agreement—should apply to allegations raised under the CSPA. A CSPA claim should not be made out simply by alleging that a statement or agreement made prior to the contract is different from that which now appears in the written contract as it was in this case.

B. Case Law In Ohio And Other Jurisdictions Interpreting The Application Of The Parol Evidence Rule To Claims Of Unfair And Deceptive Acts And Practices Illustrate That One Of The Exceptions to the Rule Will Generally Apply.

There is nothing in the CSPA or the legislative history leading up to its enactment to suggest that the parol evidence rule does not apply simply because a claim related to a written agreement between the parties is made under the CSPA. In support of its position that the parol evidence rule does not apply to any claim made under the CSPA, the Court (and Appellee) relied primarily on an opinion from the Second District that is easily distinguished from the case at bar. See *Wall v. Planet Ford, Inc.* (2005), 159 Ohio App.3d 840, 2005-Ohio-1207, 825 N.E.2d 686.⁴ The *Wall* also supports the argument that the exceptions to the parol evidence rule would protect consumers asserting CSPA claims.

The Retail Lease Order at issue in *Wall* included a trade-in allowance in the amount of \$5,000. *Wall, supra*, 159 Ohio App.3d at 843. The parties did not dispute the actual amount of the trade-in allowance set forth in the Retail Lease Order. Rather, Wall alleged that the dealership promised to pay off the home equity loan that she had taken out to purchase the trade-in vehicle before she entered into the Lease Agreement. This alleged promise was not reduced to writing in the written contract between the parties and the dealership failed to make any payment on the home equity loan. *Id.* at 844. Therefore, even though the Retail Lease Order included an integration clause, because the dealership's alleged representations were made prior to the execution of the contract and were never integrated into the written agreement and she was

⁴ In *Wall*, 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 P 25, quoting *Doody v. Worthington* (1994), Franklin Cty. M.C. NO. M 9011 CVI-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. The *Wall* Court likewise stated that "[f]or the same reason, the statute of frauds, the parol evidence rule, contractual limitations on liability, and contractual limitations on remedies no not apply." *Id.*

claiming that these representations by the dealership amounted to an unfair, deceptive, and unconscionable act in violation of the CSPA, the Second District Court of Appeals agreed that “[t]he parol evidence rule is irrelevant in this sense.” *Id.* at 848. The Court ruled that Wall had the right under the CSPA to offer evidence of a promise or misrepresentation which then led her to enter into the written contract. *Id.* The same evidence would have been admissible if the Court had applied the parol evidence rule. The alleged promise was not mentioned in or contradicted by the terms of the written agreement and was allegedly made for the purpose of inducing her to sign it. It was not necessary to preclude application of the parol evidence rule to Wall’s CSPA claim.

A similar conclusion is reached when reviewing the decision by the Court of Appeals of the Fourth District in *Burton v. Elsea, Inc., et al.*, (4th Dist. Ct. App., December 27, 1999), 4th Dist. No. 97CA2556, 1999 Ohio App. LEXIS 6401. Burton claimed that a sales representative and a repair person made several representations regarding the condition of a used motor home he purchased, including that it was in “A-One” condition and “ready to go” and also made promises to perform certain repairs. *Id.* at 2-3. The original copy of the contract had a large red stamp that stated the home was sold “AS-IS,” but the agreement contained inconsistent representations concerning the water lines and furnace and another disclaimer on the reverse side. *Id.* at 3. The Purchase Agreement also contained an integration clause, but made no reference to a written Limited Mobile Home Warranty that the consumer signed and it was not attached. On appeal, Burton contended that the parol evidence rule only excludes evidence offered to alter the terms of a contract and that the trial court should have permitted him to present extrinsic evidence in support of his claims under the consumer protection laws. *Id.* at 12-13.

The Court of Appeals for the Fourth District agreed because the acts complained of could constitute deceptive sales practices as defined under Ohio Admin. Code §§109:4-3-16(B)(3) and (22) and violations of the CSPA and “*because the parol evidence rule only excludes evidence offered to vary the terms of a contract.*” *Burton*, 1999 Ohio App. Lexis 6401 at 20 (emphasis added). The Court specifically noted that the testimony given by Burton established that the dealer’s “representatives used statements to give Burton a false impression regarding the features of the mobile home and failed to integrate material representations and promises into the written sales contract.” *Id.*

Courts in other jurisdictions have also recognized that the parol evidence rule would not preclude a consumer from introducing extrinsic evidence to prove claims of unconscionable or deceptive acts or practices. In a lawsuit involving a claim under the Texas Deceptive Trade Practices-Consumer Protection Act wherein the consumer alleged that the seller misrepresented the condition of the plumbing system, one of the issues raised on appeal was whether the pre-contract conversations between the parties regarding the plumbing system was inadmissible under the parol evidence rule. *Oakes v. Guerra, et ux.*, (Texas 1980), 603 S.W.2d 371, 1980 Tex. App. LEXIS 3829. The Court found that the parol evidence rule was not applicable because the suit was not based on the written contract between the parties or an alleged breach of the contract, but rather was based on a representation made prior to the execution of the contract that the consumer contended was a deceptive trade practice. The Court stated “We have no parol evidence problem here because evidence extrinsic to the written agreement is admissible to show false, misleading or deceptive practices as it is to show fraud.” *Id.* at 374 (citations omitted).

In North Carolina, its Court of Appeals addressed the parol evidence rule as it applies to North Carolina’s unfair and deceptive practices act in *Torrance v. AS & L Motors, LTD.* (North

Carolina, 1995), 119 N.C. App. 552, N.C. 1995 App. LEXIS 549. The case was based on the sale of a used vehicle. The consumer alleged that during the pre-sale negotiations, she asked the sales manager if the car had ever been involved in an accident. He responded that it had not been “wrecked” and that it was in “good condition.” The dealership contended that the trial court should not have allowed parol evidence concerning the oral statements because the sales contract that the consumer signed stated that the vehicle was sold “AS-IS –NO WARRANTY.” *Id.* at 554. The Court of Appeals affirmed the trial court’s decision to allow in parol evidence as to the representation regarding the vehicle’s history. In doing so, the Court recognized that “parol evidence cannot be admitted to vary, add to, or contradict the express terms of a written contract.” *Id.* at 554 (citations omitted). It went on to explain that although the defendant’s oral statements concerning the condition of the automobile were parol evidence and inadmissible to contradict the terms of a written contract, the parol evidence rule does not bar the evidence where it is not offered to contradict the contract, but rather to prove an unfair or deceptive practice. *Id.*

As each of the foregoing cases demonstrates, applying the parol evidence rule to CSPA claims would not thwart the remedial purposes of the CSPA. Had the Courts in *Wall*, *Burton*, *Oakes*, or *Torrance* been decided under Ohio’s CSPA and applied the parol evidence rule, the parol evidence would have been permitted because the representations made to the consumers in these cases was extrinsic to the written agreement and was admissible to show that false, misleading or deceptive representations were made that induced the consumers to enter into the agreements.

Admittedly, application of the parol evidence rule to the Appellee’s CSPA claim in this case would have resulted in a different ruling, and appropriately so. The only evidence offered

by the Appellee directly contradicted an express written term of the contract. The amount that Appellant agreed to pay to Appellee for his trade-in vehicle was written clearly and unambiguously in the Purchase Agreement. There is no dispute that \$15,500 was written as the trade-in allowance in the Agreement when Appellee signed it. It appears in a large box with a green arrow pointing to it. (TR At 114-116). Even though the amount of the trade-in allowance was clearly and unambiguously set forth in the written contract between the parties, the Trial Court allowed Appellee to offer evidence that his trade-in credit should have been higher than the amount listed on the Purchase Agreement. Appellee offered no proof that the dealership had agreed to give him \$16,500 for his trade-in other than his own verbal statement. Ohio Courts should not allow the introduction of evidence of an alleged oral agreement, as asserted by Appellee, in preference to the signed writing, the Purchase Agreement, which pertains to exactly the same subject matter, yet has different terms simply because a consumer asserts a claim under the CSPA rather than contract law. This ruling reflects an unprecedented and unnecessary extension of the protections intended to be afforded to consumers under Ohio's Consumer Sales Practices Act.

C. The Fifth District Court Of Appeals Ruling Threatens Both The Integrity And Sanctity Of Contracts Entered Into Between Ohio Suppliers And Consumers.

There are approximately 1,000 franchised new automobile, truck and motorcycle dealers throughout the state and another 6,000 independent dealers that rely upon their ability to enforce these contracts. The average franchised new vehicle dealership in Ohio sells between 500 and 1,000 new cars a year. By permitting contradictory testimony as to agreed-upon terms in a contract for the purchase of a vehicle, the Fifth District Court of Appeals' decision threatens both the integrity and sanctity of contracts.

Negotiations occur between salespersons and prospective purchasers in every one of these transactions. During these negotiations, there are often multiple offers and counter-offers proposed by both the buyer and seller before the final terms of an agreement are reached. When the final terms are reached, it is in the best interests of both parties to ensure that these terms reduced to writing in a fully integrated contract that is signed by the purchaser(s) and an authorized dealership representative.

In addition, the motor vehicle industry is one of the most heavily regulated industries today. There is a plethora of both Federal and state laws that dictate the disclosures that must be made in the written contract between a dealer and consumer. For example, many of the provisions in Ohio Admn. Code §109:3-4-16(B), which was promulgated by the Office of the Ohio Attorney General pursuant to its authority under the CSPA and governs the advertisement and sale of motor vehicles, contains specific disclosures that must be reduced to writing in the contract before it is signed by the consumer.⁵ Many of these Federal and state laws, rules and regulations, including Ohio's CSPA, allow a successful plaintiff to recover attorney fees, multiple damages and non-economic damages. Therefore, the incentive is great for dealers and other suppliers to comply with their disclosure obligations and integrate all of the material agreements between the parties into the final written agreement. The decisions of the Trial and Appellate Courts below nullify the concept of finality of contracts when, no matter how diligent a supplier is in ensuring that all of the final terms of the transaction are included, a consumer can still claim that an oral agreement is also part of their agreement, even if it directly contrary to a material term set forth in the written contract itself.

⁵ See Footnote 3 at p. 6, *supra*

If the parol evidence rule is not enforced in cases such as this, then the stability, predictability, and enforceability of finalized written contracts between suppliers and consumers, the very thing the parol evidence rule is intended to protect, will be lost. *Galmish, supra*, 90 Ohio St.3d at 27. Any contracts entered into by motor vehicle dealers and other suppliers with consumers in the State of Ohio will be subject to challenges and modification based on the word of the consumer. The purpose of the CSPA is to protect consumers, not to afford them the opportunity to change the agreed upon terms of a contractual agreement or to negate an otherwise enforceable contract.

It is one thing to allow in parol evidence to establish a promise made in negotiations that was not integrated into the written contract or to clarify an ambiguous or conflicting term or to demonstrate fraud in the activity leading up to the making of the contract, but allowing parol evidence that changes a specific term in the contract, such as the agreed upon price or the dollar amount of the trade-in allowance, makes a mockery of the contract and needlessly subjects suppliers to potential claims by consumers suffering from “buyer’s remorse” or looking to make a better deal than the one they already signed. The sanctity of contract law is clearly in jeopardy if the Appellate Court’s ruling is allowed to stand.

D. The Consumer Sales Practices Act Was Not Intended To Protect Consumers Who Fail To Read A Contract Before Signing It.

Consumers are, by virtue of the Fifth District Court of Appeals’ overreaching decision, no longer responsible for reading or being bound by the final terms and conditions of the contract that they signed. The CSPA was not intended to protect consumers who fail to read a contract from being bound by the terms to which they agreed.

During opening statements, Appellee's own attorney admitted that Appellee agreed to the amount of the trade-in allowance when he stated "The problem is when the document was written up, the trade-in allowance was a thousand dollars less than he had specified, and he didn't realize it at the time he was signing all of these documents, but it says fifteen five instead of sixteen five." (TR At 42).

Not only did Appellee sign the Purchase Agreement stating that he agreed he would receive \$15,500 for his trade-in, he never even raised a question or concern about the trade-in allowance prior to filing his lawsuit two years after the date of the transaction. He had the opportunity to do so on at least two later occasions when Appellee came to the dealership to re-sign loan documents and pay the \$2,000 difference between the estimated pay off amount for the trade-in and the actual payoff to the dealership. (TR At 96-99 and 101-102).

This Court has followed "the well-settled principle that a person who is competent to contract and who signs a written document without reading it is bound by its terms and cannot avoid its consequences." *Hook v. Hook* (1982), 69 Ohio St.2d 234, 238, 431 N.E.2d 667. In *Dice v. Akron, Canton & Youngstown RR.C.* (1951), 155 Ohio St. 185, 191, reversed on other grounds (1952), 342 U.S. 359, this Court further explained that:

"A person of ordinary mind cannot say that he was misled into signing a paper which was different from what he intended to sign when he could have known the truth by merely looking when he signed. * * *If this were permitted, contracts would not be worth the paper on which they were written. If a person can read and is not prevented from reading what he signs, he alone is responsible for his omission to read what he signs."

The "legal and common-sensical axiom that one must read what one signs survives" to this day.

ABM Farms, Inc. v. Woods (1998), 81 Ohio St.3d 498, 503, 1998-Ohio-612, 692 N.E.2d 574.

See, also, *McAdams v. McAdams* (1909), 80 Ohio St. 232, 240-241, 88 N.E. 542, 554 ("A person

of ordinary mind cannot be heard to say that he was misled into signing a paper which was different from what he intended, when you could have known the truth by merely looking when he signed”).

Under the Appellant’s proposition of law, suppliers would continue to have an obligation to disclose and integrate into the paperwork signed by the consumer all material statements and understandings between the parties. The parol evidence rule would also continue to be recognized in CSPA cases to the extent that the parties have signed a written contract that contains complete, clear and unambiguous terms. Much to the chagrin of Appellee, however, consumers would continue to have an obligation to read the paperwork and to be bound by the terms to which they agree in a written agreement.

CONCLUSION

The parol evidence rule was established precisely for the purpose of ensuring the stability, predictability, and enforceability of finalized written contracts. In this case, the decisions of the Trial Court and the Court of Appeals have abolished the application of the parol evidence rule in all disputes brought under the CSPA, regardless of the nature of the claim and how clear and unambiguous the terms of the contract. Their rulings have also eradicated the obligation for a party signing a contract to read it first in CSPA actions. If allowed to stand, any consumer contract written and consummated in the preceding two years is subject to change, even if all of the material terms and conditions have been reduced to writing, are fully integrated, and are clear and unambiguous. Motor vehicle dealers and other suppliers who conduct business in this state will no longer have any faith in relying upon the sanctity of the contracts between them and their customers. The CSPA was never intended nor is it necessary to create this type

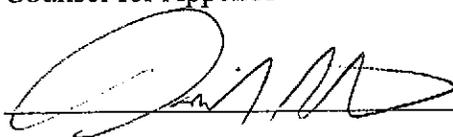
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via regular U.S.

Mail on this the 16 day of January, 2009 upon:

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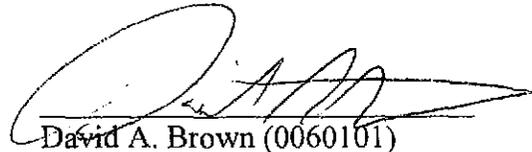


of uncertainty; nor is it necessary because the application of the parol evidence rule will not prevent consumers from effectively pursuing their claims under the CSPA.

For all the foregoing reasons, it is submitted that the Fifth District Court of Appeals erred in holding that the parol evidence rule does not apply to CSPA claims.

For this reason, the Ohio Automobile Dealers Association respectfully requests that the Court reverse the decision of the Court of Appeals.

Respectfully submitted,



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