

In the
Supreme Court of Ohio

REYNOLD WILLIAMS, JR., : Case No. 2008-1337
: :
Plaintiff-Appellee, : :
: :
v. : :
: :
SPITZER AUTOWORLD CANTON, LLC, : :
: :
Defendant-Appellant. : :
: :
: :
: :

**MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO
IN SUPPORT OF PLAINTIFF-APPELLEE REYNOLD WILLIAMS, JR.**

ANTHONY B. GIARDINI (0006922)
Giardini, Cook & Nicol, LLC
520 Broadway, Second Floor
Lorain, Ohio 44052
440-246-2665
440-246-2670 fax
abglaw@yahoo.com

Counsel for Defendant-Appellant
Spitzer Autoworld Canton, LLC

G. IAN CRAWFORD (0019243)
Crawford, Lowry & Associates
116 Cleveland Avenue NW, Suite 800
Canton, Ohio 44702-1732
330-452-6773
330-452-2014 fax
icrawford@crawford-lowry.com

Counsel for Plaintiff-Appellee
Reynold Williams, Jr.

RICHARD CORDRAY (0038034)
Attorney General of Ohio

BENJAMIN C. MIZER* (0083089)
Solicitor General
**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

MELISSA G. WRIGHT (0077843)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980

614-466-5087 fax
benjamin.mizer@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
State of Ohio

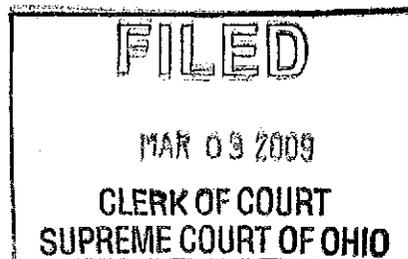


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INTRODUCTION

This case asks what evidence a consumer may introduce to show that a supplier violated the Ohio Consumer Sales Practices Act (“CSPA”). Specifically, the Court must decide whether evidence of a supplier’s oral representations to a consumer is admissible to prove a CSPA violation, even if that evidence contradicts the clear and unambiguous terms of a written contract between the parties. In an ordinary contract action, this evidence would be excluded under the parol evidence rule. However, because CSPA actions are not contract actions, the parol evidence rule is irrelevant. Consequently, evidence of oral representations is admissible.

The CSPA prohibits suppliers from committing unfair, deceptive, or unconscionable acts or practices in connection with consumer transactions. R.C. 1345.02(A); R.C. 1345.03(A). By targeting such conduct “whether it occurs before, during, or after the transaction,” the CSPA contemplates the admissibility of evidence concerning a supplier’s conduct at all stages of a consumer transaction, not just evidence of the supplier’s conduct as reflected in a final, integrated contract. *Id.* This interpretation of the CSPA is consistent with its purpose, by giving consumers recourse in addition to that otherwise available at common law, as well as the regulations promulgated by the Ohio Attorney General to implement the statute. And because CSPA actions are not contract actions, the parol evidence rule does not bar the admissibility of a supplier’s oral representations, even if those representations contradict the clear and unambiguous terms of a written contract.

STATEMENT OF AMICUS INTEREST

Ohio Attorney General Richard Cordray acts as Ohio’s chief law officer. R.C. 109.02. Accordingly, he has a strong interest in ensuring rigorous and consistent enforcement of Ohio’s consumer protection laws, including those pertaining to motor vehicle sales. Furthermore, the General Assembly specifically vested the Ohio Attorney General with authority to adopt

regulations implementing the CSPA. R.C. 1345.05(B)(2). Consistent with that authority, the Ohio Attorney General has promulgated rules consistent with the CSPA's goals of encouraging the development of fair consumer sales practices and providing additional protection to consumers from suppliers who commit deceptive or unconscionable acts or practices. In fact, the Ohio Attorney General has promulgated a rule that contemplates the admissibility of oral representations in CSPA actions, O.A.C. 109:4-3-16(B)(22), and therefore speaks directly to the issue now before the Court. If Ohio's consumer protection laws are not enforced as written by the General Assembly and in accord with the regulations promulgated by the Ohio Attorney General, the State of Ohio and its citizens will lose access to a crucial weapon in their arsenal against unscrupulous suppliers.

STATEMENT OF THE CASE AND FACTS

Plaintiff-Appellee Reynold Williams, Jr., agreed to purchase a 2004 GMC Yukon SLT ("Yukon") from Defendant-Appellant Spitzer Autoworld Canton, LLC ("Spitzer"). *Williams v. Spitzer Auto World Canton LLC* (5th Dist.), 2008 Ohio App. Lexis 2140, 2008-Ohio-2535, ¶ 2-3. As part of the transaction, Williams traded in his 2003 Ford Explorer ("Explorer"). *Id.* at ¶ 2. According to Williams, Spitzer orally represented that Williams would receive a \$16,500 trade allowance for the Explorer, to be credited toward his purchase of the Yukon. *Id.* at ¶ 4. The written purchase agreement executed by the parties, however, indicated that Williams would receive a trade allowance in the amount of \$15,500. *Id.*

Williams filed a lawsuit seeking relief under the CSPA. He alleged, among other claims, that Spitzer's agents committed an unfair and deceptive act or practice by orally promising Williams a trade allowance \$1000 greater than the amount he actually received. *Id.* At trial, a jury determined that Spitzer had violated the CSPA and returned a \$2500 verdict for Williams. *Id.* at ¶ 5. The trial court trebled the verdict, consistent with R.C. 1345.09(B). *Id.*

Spitzer appealed, arguing, among other things, that the trial court erred by allowing Williams to offer parol evidence of Spitzer's alleged unfair and deceptive acts. *Id.* at ¶ 10. Williams filed a cross-appeal contesting the amount of attorney fees awarded. *Id.* at ¶ 14. The Fifth District awarded Williams additional attorney fees, *id.* at ¶ 31-32, but otherwise affirmed the trial court's judgment, *id.* at ¶¶ 22, 26. In response to Spitzer's parol evidence claim, the Fifth District held that the trial court did not err by allowing Williams to offer evidence of Spitzer's oral representations because the parol evidence rule does not apply to CSPA actions. *Id.* at ¶ 20.

Spitzer now appeals the Fifth District's decision, raising just one issue: whether the parol evidence rule applies to CSPA actions.

ARGUMENT

Amicus Curiae The State of Ohio's Proposition of Law:

Evidence of oral representations is admissible to prove CSPA violations, even if such evidence conflicts with the clear and unambiguous terms of a written agreement between the parties to a consumer transaction.

The CSPA's text, purpose, and implementing regulations all contemplate the admissibility of a supplier's oral representations in CSPA actions. Although the parol evidence rule operates in contract actions to bar evidence of oral representations that contradict the clear and unambiguous terms of a final written agreement, CSPA actions are not based on contract law. If this Court were to accept Spitzer's and its amici's arguments for extending the reach of the parol evidence rule to CSPA actions, the Court effectively would reverse the General Assembly's policy decision to provide consumers a new avenue of relief from suppliers' unscrupulous conduct—one that *supplements* the avenues available at common law. For these reasons, the Court should affirm the judgment below, holding that oral representations are admissible in CSPA actions.

A. The CSPA's text, purpose, and implementing regulations confirm that evidence of a supplier's oral representations is admissible in CSPA actions.

1. The CSPA's language contemplates the admissibility in CSPA actions of oral representations made in the course of consumer transactions.

The CSPA is premised on the understanding that consumer transactions implicate interactions between consumers and suppliers that extend beyond the confines of a final, written agreement. The statute accordingly protects consumers when suppliers engage in certain prohibited conduct before or after a consumer transaction is consummated. Specifically, R.C. 1345.02 prohibits suppliers from “commit[ting] an unfair or deceptive act or practice in connection with a consumer transaction,” noting that the prohibition applies regardless of whether the act or practice “occurs *before, during, or after* the transaction.” R.C. 1345.02(A) (emphasis added); see also R.C. 1345.03(A) (“No supplier shall commit an unconscionable act or practice in connection with a consumer transaction,” regardless of whether the act or practice “occurs *before, during, or after* the transaction.” (emphasis added)).

When interpreting a statute, this Court's most important duty is “to give effect to the words used” by the General Assembly. *Rice v. Certainteed Corp.*, 84 Ohio St.3d 417, 419, 1999-Ohio-361 (internal quotation omitted) (interpreting another provision of the CSPA). Accordingly, “all words [in a statute] should have effect and no part should be disregarded.” *D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, ¶ 19; see also *Celebrezze v. Hughes* (1985), 18 Ohio St. 3d 71, 74 (“[T]he General Assembly is not presumed to do a vain or useless thing, and . . . when language is inserted in a statute, it is inserted to accomplish some definite purpose.” (internal quotation omitted)).

The CSPA's prohibition of conduct occurring “before, during, or after the transaction” expressly contemplates the admissibility of all evidence pertaining to a consumer transaction, including evidence of oral representations that would be inadmissible in an ordinary contract

action because they are extrinsic to a fully integrated contract. By specifically regulating conduct “before . . . the transaction,” the CSPA envisions the possibility that suppliers may make collateral oral misrepresentations to induce a consumer to enter a contract. *Id.* Because such conduct can form the basis of a CSPA action, evidence of the parties’ conduct before executing a contract must be admissible. To hold otherwise would render the clause “before, during, or after” meaningless: A consumer would never be able to prevail in a CSPA action involving alleged misconduct that is not encapsulated in a final written agreement.

2. Admitting evidence of oral representations made before a consumer transaction is consummated is consistent with the CSPA’s purpose.

Just as the CSPA’s text contemplates the admissibility of pre-transaction evidence, the statute’s purpose also supports the admissibility of oral representations: “The paramount consideration in determining the meaning of a statute is legislative intent.” *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, ¶ 34. The General Assembly enacted the CSPA “to protect consumers from unscrupulous suppliers in a manner not afforded under the common law.” *Elder v. Fischer* (1st Dist. 1998), 129 Ohio App. 3d 209, 214 (internal quotation omitted). Consistent with the goal of providing additional protection to consumers, the General Assembly intended to allow a party bringing a CSPA action to introduce evidence of oral representations pertaining to a consumer transaction even when such evidence might be barred in a common law contract action arising out of the same transaction.

By authorizing private causes of action under the CSPA, the General Assembly intended “to provide strong and effective remedies . . . to assure that consumers will recover any damages caused by such acts and practices, and to eliminate any monetary incentives for suppliers to engage in such acts and practices.” *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St. 3d 27, 30 (internal quotation omitted) (discussing 1978 amendment to the CSPA). The General Assembly

sought “to make private enforcement of the CSPA attractive to consumers who otherwise might not be able to afford or justify the cost of prosecuting an alleged CSPA violation.” *Whitaker v. M.T. Auto., Inc.*, 111 Ohio St. 3d 177, 2006-Ohio-5481, ¶ 11 (internal quotation omitted) (explaining that the threat of damage liability and attorney fees arising from private enforcement actions also serve to discourage suppliers from violating the CSPA). Accordingly, courts analyze CSPA actions from the consumer’s perspective, reaching a factual determination about whether a supplier committed an unfair or deceptive act or practice after considering all relevant facts and circumstances in a case. *Wall v. Planet Ford, Inc.* (2d Dist.), 159 Ohio App. 3d 840, 2005-Ohio-1207, ¶ 21, *appeal denied*, 106 Ohio St. 3d 1464, 2005-Ohio-3490.

Because the CSPA “is a remedial law . . . designed to compensate for traditional consumer remedies,” it “must be liberally construed.” *Einhorn*, 48 Ohio St. 3d at 29. Accordingly, this Court previously has rejected statutory interpretations that make it more difficult for consumers to prove the elements of a CSPA action. For example, in *Einhorn*, this Court rejected an interpretation of the statute’s attorney fees provision that would impose a “difficult, if not impossible” burden of proof on consumers and “take[] the teeth out of the Consumer Sales Practices Act.” *Id.* at 30. Similarly, barring extrinsic evidence that demonstrates a supplier’s unfair or deceptive conduct simply because the parties entered into a written agreement would unnecessarily burden the consumer, leaving room for suppliers to engage in conduct the CSPA intends to prohibit.

The CSPA gives consumers a new and meaningful avenue for relief from suppliers’ unfair or deceptive conduct. The statute established a new cause of action, which expressly protects consumers from suppliers’ misconduct that occurs before or after a transaction is consummated

in a written agreement. Accordingly, the CSPA contemplates the admissibility of evidence about a supplier's conduct that occurs before or after the parties execute a written contract.

3. Consistent with the CSPA's language and purpose, the Ohio Attorney General promulgated implementing regulations, which also contemplate the admissibility of oral representations in CSPA actions.

The Ohio Attorney General has enacted rules defining specific conduct prohibited by the CSPA. Like the CSPA itself, these rules contemplate the admissibility of "all material statements, representations or promises, oral or written, made prior to obtaining the consumer's signature on the written contract with the dealer." O.A.C. 109:4-3-16(B)(22). The Attorney General's interpretation of the CSPA accords with the statute's language and intent, and it also provides guidance to courts interpreting the CSPA.

The General Assembly authorized the Attorney General to "[a]dopt, amend, and repeal substantive rules defining with reasonable specificity acts or practices that violate [the CSPA]." R.C. 1345.05(B)(2); see *Renner v. Procter & Gamble Co.* (4th Dist. 1988), 54 Ohio App. 3d 79, 87 (describing the Attorney General's process of considering state and federal law when adopting rules pursuant to R.C. 1345.05). The Attorney General exercised this authority to promulgate a rule addressing the advertising and sale of motor vehicles, which states:

(B) It shall be a deceptive and unfair act or practice for a dealer, manufacturer, advertising association, or advertising group, in connection with the advertisement or sale of a motor vehicle, to:

(22) Fail to integrate into any written sales contract, all material statements, representations or promises, oral or written, made prior to obtaining the consumer's signature on the written contract with the dealer.

O.A.C. 109:4-3-16(B)(22).

The Attorney General's rule plainly contemplates the admissibility of oral representations to determine the existence of a CSPA violation. See Ohio Consumer Law § 2:65 (Thomson/West 2008 ed.) ("This provision makes the seller liable for statements that would

otherwise be inadmissible in court due to the parol evidence rule, R.C. 1302.05.”) This rule, and other substantive rules promulgated pursuant to R.C. 1345.05(B)(2), should be “liberally construed and applied to promote their purposes and policies.” *Renner*, 54 Ohio App. 3d at 86 (describing the general purposes and policies of these rules). Paragraph (B)(22)’s purpose is to ensure that any and all material statements or representations regarding the advertisement and sale of the motor vehicle are included in a final written contract. It follows that courts enforcing the rule therefore must consider evidence of the parties’ conduct beyond the four corners of a written agreement.

When interpreting consumer-related statutes, this Court elsewhere has deferred to rules promulgated by the Attorney General. “[C]ourts, when interpreting statutes, must give due deference to an administrative interpretation formulated by an agency which has accumulated substantial expertise, and to which the legislature has delegated the responsibility of implementing the legislative command.” *Maitland v. Ford Motor Co.*, 103 Ohio St. 3d 463, 2004-Ohio-5717, ¶ 26 (internal quotation omitted) (deferring to the Attorney General’s rule implementing Ohio’s Lemon Law). “An administrative rule . . . issued pursuant to statutory authority, has the force and effect of law unless it is unreasonable or is in clear conflict with statutory enactment governing the same subject matter.” *Youngstown Sheet & Tube Co. v. Lindley* (1988), 38 Ohio St. 3d 232, 234 (internal quotation omitted).

The Attorney General promulgated its administrative rule governing automobile sales pursuant to an express grant of statutory authority from the General Assembly. Moreover, as the state’s chief law enforcement officer, the Attorney General has a significant interest in honoring the CSPA’s legislative intent and did so when promulgating this rule. The rule gives effect to the CSPA’s text and purpose, it is not unreasonable, and it does not conflict with any statutory

enactment governing the same subject matter. Rather, the rule effectuates the General Assembly's intent by providing consumers with relief not afforded under the common law.

B. The parol evidence rule is a common law doctrine that does not apply to statutory causes of action under the CSPA.

Actions brought under the CSPA are not based on contract law. Therefore, courts should not apply the common law of contracts—which includes the parol evidence rule—to determine the admissibility of evidence introduced in a CSPA action. As explained above, the CSPA contemplates using evidence of a supplier's oral representations to establish a statutory violation, even where the consumer transaction at the basis of the action involves what might be characterized as a final, integrated contract.

The parol evidence rule “protect[s] the integrity of written contracts” by defining the limits of a contract. *Galmish v. Cicchini*, 90 Ohio St. 3d 22, 27, 2000-Ohio-7. When two parties have executed a final, integrated written contract to memorialize their understanding of an agreement, this rule prohibits courts from considering any extrinsic evidence that would vary, alter, or supplement the agreement: “[A]bsent 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* (internal quotation omitted). Accordingly, when the rule applies, courts exclude evidence of all prior and contemporaneous contract negotiations, whether oral or written.¹

As the Fifth District properly held below, the parol evidence rule does not apply to CSPA actions. Claims under the CSPA are “based not on [a] contract, but on oral or other misrepresentations.” *Wall*, 2005-Ohio-1207 at ¶ 25 (internal quotation omitted). The parol

¹ Courts do recognize certain exceptions to the parol evidence rule, however. For example, a party may “introduc[e] evidence for the purpose of proving fraudulent inducement.” *Galmish*, 90 Ohio St. 3d at 28.

evidence rule is neither a rule of evidence, nor a rule of interpretation or construction. *Charles A. Burton, Inc. v. Durkee* (1952), 158 Ohio St. 313, 324. Rather, it is “a rule of substantive law which, *when applicable*, defines the limits of a *contract*.” *Id.* (internal quotation omitted and emphasis added). Consequently, the parol evidence rule does not apply to CSPA claims. See *Burton v. Elsea, Inc.* (4th Dist.), 1999 Ohio App. Lexis 6401, *20 (concluding that a jury may consider alleged oral representations that would violate the CSPA “because the parol evidence rule only excludes evidence offered to vary the terms of a contract”). This reasoning is consistent with Ohio precedent and, contrary to Spitzer’s assertions, is in no way “contrary to the prior holdings of this Court.” See Appellant’s Merits Br. at 4.

In *Wall*, the Second District had occasion to determine the applicability of the parol evidence rule to a consumer’s lawsuit alleging both CSPA and contractual claims arising from a single underlying transaction. The trial court had granted summary judgment in favor of an automobile supplier on the consumer’s claims of (1) CSPA violations; and (2) fraud. *Id.* at ¶¶ 11, 30. On review, the Second District affirmed summary judgment with respect to the fraud claims, “conclud[ing] that the parol evidence rule does apply to [the consumer’s] fraud claims” and that the trial court properly excluded evidence of an alleged oral agreement. *Id.* at ¶ 37. The appeals court reversed summary judgment on the CSPA claims, however, reasoning “the parol evidence rule is irrelevant” to the CSPA claims and the trial court therefore should have admitted evidence of the alleged oral agreement for purposes of these claims. *Id.* at ¶ 26.

As the Second District correctly observed, actions brought under the CSPA are not contract-based. A consumer offering evidence of oral representations to show a CSPA violation “is not attempting to enforce the oral representations made by [the seller] as part of her contract, but is claiming that [the seller’s] representations amounted to an unfair, deceptive, and

unconscionable act in connection with a consumer transaction.” *Id.* Because a CSPA “claim is based not on [a] contract, but on oral or other misrepresentations,” it is unaffected by myriad aspects of contract law—including not only the parol evidence rule, but also waiver, ratification, common law contract defenses, the statute of frauds, and contractual limitations on liability and remedies. *Id.* at ¶ 25 (internal quotation omitted). Accordingly, in these actions, “[t]he parol evidence rule should not bar evidence that the supplier made a promise which it did not keep, or a representation that was untrue, under circumstances that would be unfair or deceptive to the consumer.” Anderson’s Ohio Consumer Law Manual § 3.13 (Matthew Bender & Co., Inc., 2009 ed.).

In light of the above analysis, Spitzer’s contention that the Fifth District’s holding was “contrary to the prior holdings of this Court” is wrong. Appellant’s Merits Br. at 4. Spitzer characterizes Ohio courts as having allowed parol evidence in CSPA actions in three limited circumstances: (1) to prove a missing material contract term; (2) to clarify an ambiguous contract term; and (3) to demonstrate fraud in the inducement. *Id.* But Spitzer offers no support for its claim that oral representations are *only* admissible under the same three circumstances.

Spitzer’s attempts to distinguish this case from *Wall* fall short. Spitzer characterizes *Wall* as a case involving extrinsic evidence of a *missing* contract term, as opposed to this case, which involves extrinsic evidence that contradicts an *existing* contract term. According to Spitzer, “an oral agreement cannot be enforced in preference to a signed writing which pertains to exactly the same subject matter, yet has different terms.” See *Galmish*, 90 Ohio St. 3d at 29 (analyzing the admissibility of evidence in a plaintiff’s action for breach of contract, breach of the contractual duty of good faith and fair dealing, and fraud). Spitzer is entirely correct—but only with respect to contract claims; this rule does not apply to CSPA claims. *Galmish* did not address the

admissibility of oral representations in the context of a CSPA claim. Therefore, regardless of any factual differences between *Wall* and this case, Spitzer's legal analysis is inapposite. For the reasons explained above, different evidence is admissible in a CSPA action than a contract action, even if both are premised on the same underlying consumer transaction.

Other states have recognized, like Ohio that oral representations pertaining to consumer transactions are admissible in actions brought under state consumer protection laws, even when those representations directly contradict the terms of a final integrated contract. See *Richards v. Luxury Imports of Palm Beach, Inc.* (Fla. Ct. App. 2004), 877 So. 2d 944, 945 (per curiam) (noting that it may violate Florida's deceptive trade practices act for a supplier to "[o]btain[] the signature of a customer on a contract which does not accurately reflect the agreement between the parties"); *Downs v. Seaton* (Tex. Ct. App. 1993), 864 S.W.2d 553, 555 ("Oral representations are not only admissible, but can serve as the basis of a [Deceptive Trade Practice Act] claim."); *Torrance v. AS & L Motors, Ltd.* (N.C. Ct. App. 1995), 459 S.E. 2d 67, 69 (holding that oral statements are not barred by the parol evidence rule when offered to prove an unfair or deceptive practice); *Honeywell, Inc. v. Imperial Condo. Ass'n, Inc.* (Tex. Ct. App. 1986), 716 S.W.2d 75, 78 (noting that although contractual liability turns solely on the agreement of the parties, "the parol evidence rule does not prevent a consumer from introducing statements made before the formation of a contract to show . . . a deceptive trade practice" (citation omitted)). Spitzer attempts to distinguish these cases and describe how they would be resolved under Ohio law, but it cites no case for the proposition that the parol evidence rule applies to actions involving a statutory consumer protection claim, as opposed to a contractual claim. But even if Spitzer could identify a jurisdiction that does apply the parol evidence rule to consumer protection claims, the

CSPA, for the reasons explained above, requires this Court to follow the pack and decline to apply the parol evidence rule to consumer protection claims.

Just as the consumer in *Wall* sought to introduce a supplier's oral representations during contract negotiations as proof of a CSPA claim, Williams sought to introduce Spitzer's oral representations during contract negotiations as proof of his CSPA claim. Williams is not trying to enforce Spitzer's oral representations through a contract action, but instead wants to introduce these representations to establish an unfair and deceptive act or practice in violation of the CSPA and O.A.C. 109:4-3-16(B)(22). As such, the Fifth District correctly held that evidence of Spitzer's oral representations was properly admissible.

C. Spitzer's arguments amount to nothing more than discontent with the General Assembly's decision to make suppliers more accountable in consumer transactions.

Spitzer and its amici ignore the CSPA's language and purpose and instead urge this Court to overrule the General Assembly's policy judgment. They maintain that the parol evidence rule's purpose—preserving the finality of contracts—applies equally to the CSPA. They argue that consumers would not be harmed by applying the parol evidence rule in CSPA actions because consumers could still admit evidence of oral representations under recognized exceptions to the parol evidence rule in every situation the CSPA intends to cover. And, according to the amici, failing to apply the parol evidence rule to CSPA claims would eviscerate a party's obligation to read a contract before signing it, thereby allowing consumers to avoid the harsher evidentiary standards applicable to contract actions. Regardless of this Court's opinion about the merits of these policy arguments, however, the fact remains that the General Assembly reached the opposite policy judgment and decided “to protect consumers from unscrupulous suppliers in a manner not afforded under the common law.” *Elder*, 129 Ohio App. 3d at 214 (internal quotation omitted).

“The Ohio General Assembly, and not this court, is the proper body to resolve public policy issues.” *Johnson v. Microsoft Corp.*, 106 Ohio St. 3d 278, 2005-Ohio-4985, ¶ 14. Consistent with this principle of separation of powers, “the General Assembly should be the final arbiter of public policy.” *Id.* (internal quotation omitted). The General Assembly’s main purpose in enacting the CSPA was “to give the consumer protection from a supplier’s deceptions which he lacked under the common law requirements for proof of an intent to deceive in order to establish fraud.” *Thomas v. Sun Furniture & Appliance Co.* (1st Dist. 1978), 61 Ohio App. 2d 78, 81. As the Ohio Legislative Service Commission explained:

Deception is the classic consumer problem. From an early time the law has provided remedies for the buyer who has been deceived. As marketing and consumer services have become more complex, the private remedies of the common law, and traditional criminal actions, have become relatively ineffective as a means by which the consumer may protect himself, and government has intervened.

Legislative Service Commission, Report No. 102, Fraud, Deception, and Other Abuses In Consumer Sales and Services iii (1971) (quoted in *Thomas*, 61 Ohio App. 2d at 81). If the Court adopts Spitzer’s and its amici’s propositions, it will take away a significant means of recourse that the General Assembly gave to victimized consumers by enacting the CSPA.

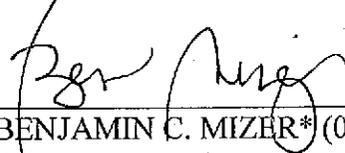
The CSPA’s enactment reflects the General Assembly’s decision to afford consumers broader protection from deceptive practices than otherwise is afforded at common law. To effectuate this policy decision, the CSPA contemplates the admissibility of oral representations, as do the Attorney General’s implementing regulations. Regardless of any policy arguments Spitzer and its amici may assert, the parol evidence rule does not apply to the CSPA: Oral representations are admissible to prove CSPA violations even when such evidence conflicts with the terms of a final written agreement.

CONCLUSION

For the above reasons, the Court should affirm the judgment below.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Attorney General of Ohio



BENJAMIN C. MIZER* (0083089)
Solicitor General

**Counsel of Record*

ELISABETH A. LONG (0084128)
Deputy Solicitor

MELISSA G. WRIGHT (0077843)
Assistant Attorney General

30 East Broad Street, 17th Floor
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

benjamin.mizer@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
State of Ohio

CERTIFICATE OF SERVICE

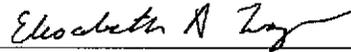
I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* State of Ohio in Support of Plaintiff-Appellee Reynold Williams, Jr. was served by U.S. mail this 3rd day of March, 2009, upon the following counsel:

G. Ian Crawford
Crawford, Lowry & Associates
116 Cleveland Avenue NW, Suite 800
Canton, Ohio 44702-1732

Counsel for Plaintiff-Appellee
Reynold Williams, Jr.

Anthony B. Giardini
Giardini, Cook & Nicol, LLC
520 Broadway, Second Floor
Lorain, Ohio 44052

Counsel for Defendant-Appellant
Spitzer Autoworld Canton, LLC



Elisabeth A. Long
Deputy Solicitor