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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

RUDY COMADURAN
Plaintiff

DENISE BENDZIK, ET AL
Defendant

Case No: CV-17-882000

Judge: JOHN P O'DONNELL

JOURNAL ENTRY

83 DISP.COURT TRIAL - FINAL

JUDGMENT ENTRY AFTER A BENCH TRIAL. O.S.J.

COURT COST ASSESSED TO THE DEFENDANT(S).
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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

RUDY COMADURAN,	)	**CASE NO. CV 17 882000**
	)	
	)	**JUDGE JOHN P. O'DONNELL**
Plaintiff,	)	
	)	**JUDGMENT ENTRY AFTER**
	)	**A BENCH TRIAL**
vs.	)	
	)	
DENISE BENDZIK, *et al.*	)	
	)	
Defendants.	)	

***John P. O'Donnell, J.*:**

This is a lawsuit to recover damages incurred by the plaintiff's acquisition of a classic muscle car that turned out to be a 98-pound weakling.

Rudy Comaduran filed a complaint on June 20, 2017, alleging that the defendants breached the Ohio Consumer Sales Practices Act at sections 1345.01 *et seq* of the Ohio Revised Code and committed fraud in connection with his December 2015 purchase of a 1970 Chevrolet Chevelle. The named defendants are Denise Bendzik, Ponch Camargo[1], Mike Noto and CBS Locust, LLC. Comaduran obtained a default judgment against Bendzik and Camargo. The remaining parties waived a jury trial and the complaint was tried to the court on May 30, 2018. This judgment follows.

The evidence

Trial testimony was given by plaintiff Rudy Comaduran, Leonard J. Sedlacek, Mike Kiehn and defendant Mike Noto. The plaintiff admitted seven exhibits into evidence. The

[1] Ponch Camargo's real name appears to be Nemesio Camargo, III. See *Sedlacek v. Camargo*, Cuyahoga County Court of Common Pleas, General Division, case number CV 15 852239.

summary of the evidence given here comes from the credible testimony given by the witnesses and the exhibits.

Rudy Comaduran lives in Corona, California. He has friends who own classic muscle cars from the 1960s and 1970s and wanted to buy one of his own. He was not looking for a show quality car. He simply wanted something in good, safe condition that he could drive around on weekends. Comaduran found the 1970 Chevelle advertised for sale on a web site run by SE Broker World at http://sebrokerworld.com/.

SE Broker World is a trade name for defendant CBS Locust, LLC, a limited liability company whose sole member is defendant Mike Noto. He testified that he started the web site to match sellers of cars like the Chevelle – vintage muscle cars – with buyers by collecting and posting in one place advertisements that he found all over the internet. Often he would "cut and paste" ads posted elsewhere by a seller. In other cases, he would seek out a seller and ask for more information and pictures of the car and create his own posted advertisement. No matter which method he used, once he found a prospective buyer for a seller he would claim a finder's fee if the sale went through.

Noto testified that he saw the 1970 Chevelle advertised for sale on craigslist.com. He "probably" contacted the seller, co-defendant Ponch Camargo, for additional pictures and information and then posted the car for sale on SE Broker World's web site.

Plaintiff's trial exhibit 2 is a printed excerpt from the web site. The first four pages are apparently the 18 results for a search of SE Broker World's web site for Chevrolets. Each result has a thumbnail photo of a car, its model, model year, asking price and basic information about the car's V.I.N., mileage and transmission. The search results give no indication that the cars are not directly sold by SE Broker World. The final two pages of exhibit 2 contain the details of the

1970 Chevelle. Once again, there is no indication that the vehicle is being sold by somebody other than SE Broker World: for "contact information" the page lists SE Broker World in Atlanta and a Georgia phone number, the narrative about the car says it was built in Atlanta in 1969, and neither Camargo's ownership or the fact that the car is in Cleveland are mentioned.

Comaduran saw the ad on SE Broker World and on December 13, 2015, he emailed Noto asking about the blue '70 Chevelle. During the ensuing email conversation Noto assured him that the car is driveable. He also claimed the Chevelle has positraction differential on the rear wheels, a new engine, a transmission that is "virtually new" with less than 500 miles on the drive train, a new interior and new paint. Over the next few days Comaduran and Noto agreed on a price and the plaintiff wired the payment from his bank account. It was not until a deal had been made that Noto identified Camargo as the actual seller.

The Chevelle arrived in California in January and it was immediately apparent to Comaduran that it was not what was advertised. The driver's door would not open. The car wouldn't start without jumping the battery, and once it did start it was "running rough" and emitted a strong smell of gasoline. Fluids were leaking. The interior and exterior lights, windshield wipers, heater and air conditioner were not working. The emergency brake was out of order. "Bubbles" were present on the painted exterior. And these were only the things the plaintiff could observe himself.

Mike Kiehn is a mechanic who inspected the car at Comaduran's request. He testified to a long list of defects that either made the car unusable or otherwise did not conform to the seller's representations: it was not an SS (Super Sport) Chevelle as advertised; the aftermarket air conditioning was improperly installed and not working; the headlight harness was put in wrong and not working; a new battery and cables, plus a fastener to hold the battery, were needed; the

turn signal harness required replacement; oil was leaking from the transmission output seal; the engine, when it did operate, was running too rich; two valve covers were leaking; the emergency brake and its backing plates had to be replaced; the fuel tank bolts were loose; the bumper was improperly installed; rust was coming through the paint; and much of the body had been filled in with "bondo" because large portions of it were rusted out.

According to Kiehn, the total cost of all necessary repairs is greater than the $19,500 purchase price.

Leonard Sedlacek is a previous owner of the Chevelle. He bought it from Camargo around March of 2015 for $1,000 knowing that it was in need of a significant amount of work, then paid Camargo another $8,000 to get it into driveable condition. Ultimately, Camargo did not repair the car to the point where it could be used – there were still at least 20 things wrong with the car by the end of the year, including a damaged frame – but Sedlacek could not in good conscience sell it to another person, so he arranged to sell it to Denise Bendzik for $8,500 in December 2015. Bendzik was an associate of Camargo's and the deal was arranged through Camargo's lawyer. When Sedlacek unloaded the car it was not driveable because of "so many different things" that were wrong with it.

There is no evidence that any work was done on the car between Sedlacek's transfer to Camargo and the subsequent sale to Comaduran, and the short time between those two transfers implies that no repairs were performed.

Comaduran's claims: fraud and Ohio's CSPA

The plaintiff's complaint asserts two causes of action: common law fraud and violations of Ohio's CSPA. I will address the fraud claim first.

The elements of fraud are: (a) a misrepresentation or concealment of fact; (b) that is material to the transaction at hand; (c) made falsely, with knowledge of its falsity or with utter disregard and recklessness as to whether it is false; (d) with the intent of misleading another into relying upon it; (e) justifiable reliance upon the misrepresentation or concealment; and (f) resulting injury proximately caused by the reliance. *Graham v. City of Lakewood*, Cuyahoga App. No. 106094, 2018-Ohio-1850, ¶73. Each of these elements must be proved for Comaduran to prevail on this claim.

The alleged misrepresentations can be summarized as Noto's assurances that the car was driveable and in good condition. These assertions were untrue, and Noto made them to induce the plaintiff into buying the car. But while Comaduran may have relied on the misrepresentations, that reliance was not justifiable. He testified that he trusted Noto because his vast web site with a deep inventory of muscle cars made him seem reputable and that he has acquaintances who have bought cars over the internet, sight unseen, without any problems.

As for his friends' experiences, there is no evidence that any of them dealt with Noto so Comaduran was not justified in relying on those anecdotes to trust Noto here. As to the notion that Noto seemed reputable, I can accept that as true after having seen the excerpts of his web site and met Noto at trial. Yet Comaduran was transacting business with a member of an occupation whose very label has become a synonym for untrustworthy: used car salesman. Moreover, Noto did advertise the car for sale "AS IS," thereby essentially telling Comaduran to either verify his representations through an independent inspection or bear the risk that he might receive a sow's ear instead of the silk purse described on the web site. Finally, there were six other Chevelles advertised on SE Broker World at the same time. The asking prices for those cars ranged from $58,000 to $29,000, with an average price of over $41,000. While those cars

were not all the same style and were for different model years and it is true that the plaintiff was not looking for a show car, the sole fact that Comaduran was buying a Chevelle for less than half the average price of the others put him on notice that some of its appealing qualities may have been exaggerated or even made up.

The evidence does not support a conclusion that Comaduran's decision to rely on Noto's representations and forgo an independent inspection or other unbiased evaluation of the vehicle was justifiable. Accordingly, I find in favor of Noto and CBS Locust, LLC on the fraud claim.

The purpose of the CSPA is to protect consumers from the harm of deceptive or unconscionable sales practices. *Charvat v. Farmers Ins. Columbus, Inc.*, 178 Ohio App. 3d 118, 133 (10th Dist. 2008). The statute is intended to give protection to consumers from unscrupulous suppliers of goods or services in a more efficient, expedient and affordable manner than would be available in a common law tort or contract action. *Id.* The CSPA has a remedial purpose and must accordingly be liberally construed in favor of consumers. *Id.*

The act applies to consumer transactions, defined to include the sale of an item to an individual for purposes that are primarily personal. R.C. 1345.01(A). Vehicle sales are not excepted. A person who is "engaged in the business of effecting or soliciting consumer transactions" is a supplier who may be held liable for violating the statute. R.C. 1345.01(C). On the evidence in this case, Comaduran bought the car for personal use and Noto is a supplier, thus the sale of the Chevelle to Comaduran falls within the CSPA. The CSPA prohibits a supplier from committing an unfair or deceptive act or practice or an unconscionable act or practice in connection with a consumer transaction. R.C. 1345.02; R.C. 1345.03.

Comaduran claims that Noto's representations about the Chevelle constitute both deceptive acts under R.C. 1345.02 and unconscionable acts under R.C. 1345.03.

R.C. 1345.02(B)(1), (2) and (5) outlaw as deceptive a supplier's representation that the subject of a consumer transaction: a) has performance characteristics, accessories, uses or benefits that it does not have; b) is of a particular standard, quality or model if it is not; and c) has been supplied in accordance with a previous representation if it has not. Through his web site and his emails, Noto represented that the Chevelle he sold to the plaintiff was driveable. It was not. He represented that it was a model SS. It was not. Those representations are deceptive acts in violation of 1345.02(B)(1), (2) and (5).

R.C. 1345.03(A) prohibits unconscionable acts or practices in connection with a consumer transaction. In deciding whether a particular act or practice is unconscionable, R.C. 1345.03(B)(3) and (6) require a fact finder to take into consideration whether the supplier knew at the time the transaction was entered into of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction and whether the supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to his detriment. Comaduran testified that the substance of Noto's representations about the Chevelle was that the car was in good shape and ready to drive. As Noto put it in one of his emails, "I think it's a steal for the price."

Here it was clear that Comaduran would not receive a substantial benefit by paying almost $20,000 for a car he couldn't drive without paying that amount or more to fix. But Noto argues that he never "knowingly" misrepresented the condition of the car by simply parroting Camargo's representations. In essence, Noto claims he can't be held accountable for the things he said about the car because he really didn't know anything about the car. But such an "I didn't say that, he did" defense would immunize brokers from liability under the CSPA even while the statute itself prohibits suppliers who effect or solicit consumer transactions from engaging in

deceptive or unconscionable acts "whether or not the [supplier] deals directly with the consumer," thus defeating the purpose of the statute, part of which is to create consequences for the things suppliers say about the subject of a consumer transaction to incentivize them to stick to the truth. Noto adopted Camargo's representations about the car to get a benefit, namely his commission. In so doing he imputed Camargo's knowledge to himself and is therefore liable under R.C. 1345.03(A) for the unconscionable act of effecting the Chevelle's sale to Comaduran knowing that the plaintiff would not get a substantial benefit for his money.

As for Noto's assertion that "I think it's a steal for the price," the state of the evidence in this case supports an argument that the comment is actually a statement of fact since it encapsulates the ultimate transaction, but of course it was not intended in that fashion. Instead, he was pushing to close a sale within reasonable bounds and it was unlikely that Comaduran would rely on the statement to justify buying the car.

The plaintiff's last claim is that Noto's conduct toward Comaduran in connection with the Chevelle's sale gives rise to treble damages under R.C. 1345.09(B). That section provides:

> Where the violation was an act or practice declared to be deceptive or unconscionable by [administrative] rule . . . before the consumer transaction on which the action is based, or an act or practice determined by a court of this state to violate [the CSPA] and committed after the decision containing the determination has been made available for public inspection [by the attorney general], the consumer may. . . recover. . . three times the amount of the consumer's actual economic damages or two hundred dollars, whichever is greater, plus an amount not exceeding five thousand dollars in noneconomic damages[.]

Comaduran contends that Noto violated the "motor vehicle sales rule" at section 109:4-3-16(B)(3) of the Ohio Administrative Code, which defines as a deceptive act statements by a car dealer which could "create in the mind of a reasonable consumer a false impression as to any material aspect of said advertised or offered vehicle." The rule was adopted before the sale in this case, and covers Noto as a car dealer based on his having offered for sale more than five cars during the time he offered the Chevelle for sale. Noto's statements were meant to make Comaduran believe the car was ready to drive, and driveability is undoubtedly a material aspect of a car. Accordingly, Noto violated the motor vehicle sales rule.

Damages

The plaintiff's CSPA claim is brought pursuant to R.C. 1345.09, which provides that a consumer has a cause of action for a violation of the act. Remedies available for a violation of R.C. 1345.02 and 1345.03 where the conduct also violated the motor vehicle sales rule include rescission or three times the amount of the consumer's actual economic damages, or two hundred dollars, whichever is greater, plus up to $5,000 in noneconomic damages. R.C. 1345.09(B). Comaduran testified that his goal in this litigation was to get his money back, i.e. rescind the deal. But his lawyer argued in favor of economic damages. Since the statute requires an election of remedies, and since Noto was a broker, not the actual owner of the Chevelle who received the majority of the sale price, I will consider only the remedy of damages, both economic and noneconomic.

Comaduran paid $19,500 for a car that was not worth that amount. He does not have the money but he still has the car. The measure of his damages is therefore the benefit of his bargain, i.e. the difference between the amount he paid and the value he received. The value he received is identical to the fair market value of the car. The plaintiff has asked for an award of

$19,500 for economic damages, thus implying that the car has a fair market value of zero dollars. But despite everything wrong with the car it is a tangible item with some working mechanical parts and still usable body components (such as the roof), so reason and experience suggest that it must have some value, and Comaduran failed to prove such value or to prove that, for one reason or another, its fair market value actually is zero dollars. He also admitted no evidence about incidental and consequential damages such as the cost to ship the car to him in California.[2] This leaves me able to only speculate about the precise amount of his economic damages. As such, and notwithstanding the obvious fact that the plaintiff did incur some economic damages, Comaduran has not satisfied his burden to prove a particular amount of economic damages.

Under R.C. 1345.09(B), Comaduran may recover his economic damages or $200, "whichever is greater." Since I cannot affix a number to his economic damages they are effectively zero, and $200 is greater than zero, thus I award him $200 as the initial component of his damages. As the second component of damages, I award him $5,000 in noneconomic damages for the frustration he testified to having throughout this transaction stemming from the fact that he was not only lied to about what he was getting but then endured "the runaround" Noto gave him before he finally had to pursue legal action.

The CSPA provides that a court may award attorney's fees to a prevailing plaintiff if the supplier has knowingly committed an act or practice that violates the statute. For an award of attorney fees, a plaintiff need prove only that the defendant acted in a manner that violated the CSPA and need not prove that the defendant knew that the conduct violated the law. *Shank v. Charger, Inc.*, 186 Ohio App. 3d 605, 617 (2d Dist. 2010). As discussed above, I cannot conclude by a preponderance of the evidence that Noto knew the representations he was making

[2] Kiehn did testify that Comaduran paid him $200 for his inspection and diagnosis. I consider this a litigation expense and not a component of economic damages. But even if it is part of damages it happens to be exactly equal to the statutory minimum award of damages.

about the Chevelle were false. But to permit his willful ignorance to defeat a recovery under the statute would eviscerate the law. The CSPA's purpose is to hold suppliers accountable for what they say. This gives suppliers an incentive to ensure what they say is the truth. If suppliers can disclaim liability under the statute because they only repeated what someone else said – without doing anything to verify it – then the statute is unenforceable. Instead, where a supplier, such as Noto in this case, adopts the representations of another he is just as responsible for the accuracy of those representations as if they were original to him. I therefore find that Noto knowingly violated the CSPA and Comaduran is entitled to recover a reasonable attorney's fee. The amount of that fee will be established at an evidentiary hearing to be scheduled by a separate judgment entry.

Respondeat superior

As his final line of defense, Noto argued that since CBS Locust, LLC operated the business, then, in the event a violation of the CSPA is established by the plaintiff, a judgment can be entered against only CBS Locust, LLC and not Noto personally. He bases the argument on his claim that the plaintiff did not produce evidence sufficient to pierce the corporate veil and impose individual liability.

But Noto is conflating the distinct legal concepts of agency and an owner's non-liability for the acts of a corporation. Noto testified that SE Broker World was "me, myself and I." In other words, the company acted only through him as its sole agent. Additionally, the evidence amply demonstrates that he made the misrepresentations at issue in the case. Under the CSPA, if an individual employee engages in unfair consumer acts and deals directly with the consumer, that person can be held personally liable, notwithstanding that the individual acted as an agent of his employer. *Inserra v. J.E.M. Bldg. Corp.*, Ninth Dist. App. No. 2973, 2000 Ohio App. LEXIS

5447, *15. When a cause of action is based upon an employee's actions, the employee is primarily liable to the injured party and the employer is secondarily liable to the injured party. *Id.* Therefore, an owner who does not directly engage in a CSPA violation could not be held personally liable for resulting injuries unless the injured party could appropriately pierce the corporate veil. *Id.* However, if the individual owner personally commits acts in violation of the CSPA on behalf of the corporation, he can be held personally liable for damages caused by his own acts; there is no need to pierce the corporate veil. *Id.*

That is exactly the situation here. The evidence shows that Noto committed the violations as an agent of CBS Locust, LLC, so he is directly personally liable to Comaduran and his principal, CBS Locust, LLC is derivatively liable to the plaintiff.

Accordingly, I hereby enter the following judgment: in favor of the defendants Mike Noto and CBS Locust, LLC on the cause of action for fraud; in favor of plaintiff Rudy Comaduran in the amount of $5,200 plus a reasonable attorney's fee on the CSPA cause of action against the defendants Mike Noto and CBS Locust, LLC, and court costs.

A hearing on the appropriate amount of the plaintiff's attorney's fees will be scheduled by a subsequent judgment entry.

IT IS SO ORDERED:

John P. O'Donnell, Judge

6/4/2008

SERVICE

A copy of this judgment entry was sent by email on June 4, 2018, to:

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John P. O'Donnell, Judge