

SCCH 224314

Date: 20050511

Julia Gray v. John Keizer and Keizer's Auto Sales

Cite as: Gray v. Keitzer, 2005 NSSM 28

Between

Julia Gray, Claimant

and

John Keizer and Keizer's Auto Sales, Defendants

Small Claims Court of Nova Scotia

Adjudicator

David T.R. Parker

Heard: March 1, 2005

Judgment: May 11, 2005

Counsel:

Barry J. Mason represented the Claimant

William L. Ryan, Q.C. represented the Defendants

Decision: May 11, 2005

1 Parker:-This matter came before the Small Claims Court on March 1, 2005. The action involved the purchase of a previously owned motor vehicle from the defendant automobile dealer.

2 The pleadings of the Claimant state the Defendant made a number of false representations which were relied upon by the Claimant. The pleadings continue to say that the Defendant is liable for damages sustained by the Claimant as a result of these misrepresentations. The Claimant asserts the representations form part of the contract and the Defendant failed to provide the vehicle with the features represented and in the same condition as warranted. The Claimant alleges the breach by the Defendant is a fundamental breach of the contract and therefore rescission is a proper remedy. In the alternative the Claimant sought damages related to the cost of repairing the vehicle.

3 The Defendant denies each allegation contained in the Claimant's notice of claim. The Defendant denies in particular that there were any misrepresentations made either falsely or innocently and further the Defendant denies there is a fundamental breach of contract as asserted by the Claimant. The Defendants claim what occurred to the Claimant's automobile was self inflicted.

4 **Issues:**

- 1) Was there a valid contract between the parties?
- 2) If there is no contract what other remedies are available to the Claimant?

- 3) If there is a contract what are the conditions and warranties contained in the contract and was there a breach of a condition or warranty?
- 4) If there was a contract are there any conditions or warranties as contained in legislation, in particular the Consumer Protection Act or the Sale of Goods Act which provide the Claimant with a remedy?

5 **Facts:**

6 The Defendant is a used car dealer who advertised his motor vehicles for sale in The Auto Trader, a magazine which allowed people to advertise their vehicles for sale.

7 The Auto Trader showed a picture of the vehicle that is subject to the court action in this case and stated under the picture of the vehicle the following:
"1994 Volkswagen Jetta GL 4 dr. turbo diesel, 5 spd. ps, pb, cruise, tilt, a/c, am/fm cass., p. sunroof, alloys, abs. only \$4,995"

8 The Claimant's partner contacted the Defendant by telephone and inquired about the vehicle. The Claimant's partner was told if he was interested in the vehicle he could come out to look at it.

9 The Claimant never looked at the vehicle, everything was done through the partner of the Claimant and the Claimant's father. The Claimant's father told John Walsh, that is, the Claimant's partner, not to buy the vehicle the day that they both looked at the vehicle. The Claimant's father told John Walsh, "I'd feel better if my mechanic could do it a once over." Mr. Walsh was intent on buying the vehicle. Mr. Walsh and the Claimant's father were given every opportunity to inspect the vehicle and were allowed to test drive the vehicle and in fact Mr. Walsh did test drive the vehicle. Mr. Walsh would not take the vehicle to his mechanic or his future father-in-law's mechanic as they felt their own mechanic's shop would be closed and not able to examine the vehicle. The Defendant suggested three other mechanics that could check out the vehicle for them.

10 The Defendant advised the Claimant's partner that it was a 1993 Volkswagen and not a 1994 as advertised. The Defendant also advised them that the repair history of the vehicle was in the glove compartment. He told them that it was an old vehicle and he made no other representations with respect to the vehicle. It turned out that the vehicle was not turbo diesel as advertised however as Mr. Walsh said in his testimony it was immaterial to him whether it was diesel or turbo diesel.

11 Neither Mr. Walsh nor the Claimant's father were familiar with diesel engines and when Mr. Walsh took the vehicle for a test drive he did not allow the vehicle to warm up nor was he use to a standard car which this vehicle was.

12 The Defendant sold an extended warranty on the automobile, noting 226,000 km, however it would appear that the vehicle had considerable more kilometers

than was registered on the odometer as indicated in the work history or service history of the vehicle, which work history documents were found in the glove compartment. The 226,000 km were registered on the odometer when the vehicle was sold.

13 The Defendant made no notation of kilometers on the bill of sale when he sold the vehicle. If he had noted the mileage on the bill of sale it would have been from the odometer reading.

14 In this case there was a contract in the sense that the Claimant's partner was acting as her agent. I say this notwithstanding there was some confusion over whether it was the Claimant who signed documentation or whether the father signed documentation. There certainly was a lack of certainty in the evidence as to the Claimant having signed any documentation for the vehicle. While that is problematic it is overcome in the sense that the Claimant's partner Mr. Walsh acted on behalf of the Claimant. At any rate for purposes of this decision I've concluded there is in fact a contract between the Claimant and the Defendant used car dealer.

15 While it does give me some concern that there were more kilometers on the vehicle than was recorded on the odometer even that fact is not for certain as the people who apparently worked on the vehicle were not present to give evidence. However, even if there were more kilometers on the vehicle the Claimant or her partner had every opportunity to discover same. The Defendant made no representations with respect to the kilometers on the vehicle when it was sold. There were no representations made with respect to the vehicle other than it was a 1993 Volkswagen not a 1994 as advertised. With respect to a mistake as to the

vehicle having a diesel engine instead of a turbo diesel engine this mattered not to the Claimant.

16 There is no information before me that this vehicle was not durable for a reasonable period of time. There is no information before me that the Claimant relied on the Defendant with respect to anything concerning the vehicle. The Plaintiff had every opportunity to inspect the vehicle, however, chose not to do so. There was no reliance requested, there were no warranties given other than the extended warranty purchased by the Claimant and there is no evidence that any of the implied warranties extended to consumers pursuant to the Consumer Protection Act have been breached.

17 For all these reasons the Claimant's claim against the Defendant shall not succeed. There shall be no order as to costs.

Dated at Halifax, this 11 day of May, A.D., 2005.

David T.R. Parker
Adjudicator of the Small Claims Court of Nova Scotia