

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation: VFC Inc. v Baillie, 2008 NSSM 75**

**Date:** 20081204

**Claim:** SCCH 301688

**Registry:** Halifax

**Between:**

VFC Inc

Claimant

v.

Ross A. Baillie a.k.a. Ross Baillie

Defendant

**Adjudicator:** W. Augustus Richardson, QC

**Heard:** December 1, 2008 in Halifax, Nova Scotia.

**Appearances:** Bruce Mosher for the Claimant  
Ross Baillie, Defendant, for himself

**By the Court:**

[1] This claim arises out of a transaction that was presented as being the best of deals but which turned out to be the worst of deals.

[2] In late August 2007 the defendant Ross Baillie went to O'Regan's Used Car Centre ("O'Regan's") in Halifax, Nova Scotia. He was interested in purchasing a used car. He spoke to Mr Joe MacNeil, who was an O'Regan's salesperson, and Mr Chris LeBlanc, who was O'Regan's business manager.

[3] Mr Baillie settled on a 2004 Chevrolet Tracker. The purchase price was \$13,990.00. He did not have the funds to purchase the car outright. He was told he could obtain financing from VFC Inc ("VFC"), the claimant in this action. He was also urged to take several types of insurance. The first was an extended warranty, underwritten by Sovereign General Insurance Company, for a premium of \$2,394.00 (including HST).

[4] The second type of insurance Mr Baillie was urged to take was called “WalkAway Protection for Automotive Financing,” underwritten by ING Insurance. For a total premium of \$399.00 plus HST Mr Baillie was told that under the “WalkAway” coverage he would be “relieved of your balance due [on the financing contract]” in the event that:

- a. he “experienced” one of the following events: “Critical Illness, Disability, Driving-Restrictive Injury, Unemployment, International Job Transfer, or Self-Employed Personal Bankruptcy;” and
- b. he returned the car to “the selling dealer [that is, O’Regan’s]:” WalkAway Policy wording, Part I, Exhibit D2.

[5] Mr Baillie says that Mr LeBlanc explained the WalkAway Policy to him as follows: “if I lost my job, or got sick ... I could bring the car back, give them the keys and walkaway.”

[6] In reliance upon these representations made to him by O’Regan’s employees Mr Baillie decided to proceed with the purchase of the car. The cost of the extended warranty and the WalkAway coverage were added to the price of the car and became part of the total purchase price. The total purchase price, which also included an administration fee payable to O’Regan’s of \$395.00, life insurance (for \$1,570.26), registration and other fees, came to \$21,331.16. That total purchase price was then financed by the claimant VFC Inc (“VFC”).

[7] The purchase and WalkAway policy agreements were entered into evidence by Mr Baillie: see Exhibits D6 and D2. The O’Regan’s purchase agreement with Mr Baillie includes the notation that the source of Mr Baillie’s purchase financing was VFC. The WalkAway policy stated that the “selling dealership” was O’Regan’s and that the “financial institution” whose loan was being covered under the policy was “VFC Inc.”

[8] There were at this point three separate contracts:

- a. one between Mr Baillie and ING, as underwriter of the WalkAway Policy;
- b. one between Mr Baillie and O’Regan’s, for the purchase of the car and the WalkAway Policy (which contract was eventually assigned to VFC by way of a conditional sale contract); and

- c. one between Mr Baillie and VFC, for the financing necessary to give effect to the first two contracts.

[9] However, notwithstanding that there were three separate contracts I am satisfied that all three were interlocked as one. They were presented as one package. Each made reference to and depended upon the other. All were entered into in reliance upon the other, and upon the representations made by Mr MacNeil and Mr LeBlanc of O'Regan's. On the evidence it is clear that at all material times:

- a. O'Regan's was acting as the selling agent not only for itself but also for the claimant VFC and the various insurers who were to collect premiums from Mr Baillie;
- b. that VFC and the insurance companies knew and expected O'Regan's to act in that capacity;
- c. that the various contracts (and in particular, the purchase agreement, the WalkAway policy and the financing agreement with VFC) were urged upon Mr Baillie as a package-deal;
- d. VFC knew or ought to have known that O'Regan's was making representations on its behalf as well as that of O'Regan's, and that WalkAway coverage was being offered as part of the total package that it was to finance;
- e. VFC knew or ought to have know that the WalkAway coverage being offered to Mr Baillie would have been an important factor in his decision to purchase the car and obtain the financing that made the purchase possible.

[10] Mr Baillie then took possession of the car and commenced making his finance payments to VFC Inc.

[11] Approximately two months later Mr Baillie became unemployed. As a result he could no longer keep up his payments to VFC. He sought the benefit of the coverage under the WalkAway policy that he had been promised by O'Regan's on the occurrence of precisely such an event.

[12] It was at that point that what had been presented to Mr Baillie as a "walkaway" deal turned into a "runaround" deal on the part of O'Regan's, VFC and the WalkAway insurere. As

Mr Baillie explained it, when he lost his job at the end of October 2007 “I contacted O’Regan’s to see how to get out of the bind I was in ... I wanted to bring the car back to them ... they said contact VFC ... I contacted VFC and they said contact O’Regan’s ... I called O’Regan’s back and they said there’s nothing we can do about it ... I called the insurer and they said call O’Regan’s.”

[13] With nowhere to turn Mr Baillie told VFC to come and “take back” the car. He signed a voluntary surrender for the car to VFC on December 27, 2007. VFC took the car and sold it. It deducted the sale proceeds from the total balance of the loan due on its financing contract with Mr Baillie, leaving a total balance owing on the financing loan of \$13,116.85. It then launched this claim against Mr Baillie for the \$13,116.85 plus recovery costs for a total of \$13,689.20.

[14] In my opinion the claim must fail. VFC has failed to take into account the fact that its contract with Mr Baillie was an insured contract. The insurance was designed to cover precisely what happened here: Mr Baillie became unable to continue payments because of unemployment. VFC had indeed financed the premium for that very insurance. Mr Baillie in effect gave back the car, satisfying his obligation under the WalkAway coverage. His debt to VFC should then have been taken over or paid or covered under the WalkAway plan. VFC’s complaint and claim, if any, should be with the insurer under the WalkAway plan or with O’Regan’s or both.

[15] In the circumstances of this case VFC cannot hide behind the fact that it has a separate contract with Mr Baillie. Nor can it be heard to say that Mr Baillie’s complaint is with the insurer who appears to have made no effort to respond to Mr Baillie’s claim, or with O’Regan’s who apparently made no effort to help Mr Baillie in his efforts to find coverage under what had been sold to him as a “walkaway” plan. As I have already noted Mr Baillie was originally presented with a seamless deal by O’Regan’s salesman. He purchased the car in reliance upon O’Regan’s representations, representations that were made on behalf of everyone (including VFC) who were going to be entering into contracts with Mr Baillie. If the car broke down Mr Baillie was told that he could rely upon the extended warranty. And if he broke down—if he became too sick to earning a living or became unemployed—he was told that he could rely upon the insurer to take over his payments.

[16] Mr Baillie relied upon those representations when making the decision to purchase the car and to borrow the money from VFC to make that purchase possible. Indeed, he borrowed not only the entire purchase price but also the full premium for the “walkaway” insurance. From Mr Baillie’s point of view and indeed from *any* objective point of view all three companies were acting together. It was a collective deal. All three—O’Regan’s, the insurance company and VFC—were acting together to encourage him to enter into a transaction that was clearly beyond

his immediate resources. But once the deal was done and the papers signed the three no longer stood together. They had played together when encouraging him to enter into the deal but then tried to change the rules once he had—now they played by the rules of “pass-the-buck.”

[17] That cannot be right in law or on the facts. I accordingly dismiss the claim.

Dated at Halifax, this 4th day of December, 2008

Original: Court File )  
Copy: Claimant )  
Copy: Defendants )

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W. Augustus Richardson, QC  
ADJUDICATOR