# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Jones v. Bob Blumenthal Auto Wholesalers Inc., 2014 NSSM 33

Claim No: SCCH 424836

**BETWEEN:**

Name Cheyenne Jones **Claimant**

Name Bob Blumenthal Auto Wholesalers Inc. **Defendant**

Editorial Notice: Addresses and phone numbers have been removed from this electronic version of the judgment.

Cheyenne Jones – Self Represented

Bob Blumenthal, President, appeared for Bob Blumenthal Auto Wholesalers Inc.

## AMENDED DECISION

This matter concerns the interpretation of a contract between the Claimant, Cheyenne Jones, and Defendant the Defendant, Bob Blumenthal Auto Wholesalers Inc. ("Blumenthal's") for the lease/purchase of a 2006 Mazda 5 VIN # JMICR29386010559 ("the vehicle"). Despite the opposing views of the parties to the contract, most of the salient facts are not seriously in dispute. I shall summarize those briefly.

**Facts**

On March 5, 2012, the parties signed an agreement described as a "Vehicle Rental Agreement". The terms of which are described in the opening paragraph of the document, the underlined portions are penned in by hand, by Dale Grace, an employee of Blumenthal's at the time:

"Agreement to supply 2006 Mazda 5 vin # JMICR29386010559
Upon the following terms:
36 MONTHLY payments of $ 285
(Taxes and Service Fees Included)

Upon completion, the dealer agrees to Transfer his interest in this unit to the undersigned for $1.00.

Payments commence on 20th March and are due 20th each Month until the outstanding amount owed (payments and any service charged incurred over the duration of the contract is satisfied.

Default on payment, as agreed, will result in the immediate payout in full or immediate return of above vehicle, in satisfactory condition.
All costs incurred in the recovery of payments and/or vehicle will be the responsibility of the below signed customer...."

The contract also makes other stipulations which are not at issue in this proceeding and have not been considered.

The Nova Scotia Certificate of Registration of a Vehicle is in the name of the Defendant. It is not disputed that Ms. Jones took delivery of the vehicle.

Following the execution of the document, the Claimant made a series of payments to the Defendant. On March 6, 2012, she paid $500 and on March 8, 2012, a further payment of $3500. This was followed by a series of payments of $285 per month. By the Claimant's own admission, a total of five month's payments were not made, September 2012, July 2013 as well as November 2013-January 2014. Further, six of these payments were made late. In total she has paid $9415 towards the price of the car. This has been corroborated by both parties' records.

Ms. Jones was contacted by Mr. Blumenthal on February 3, 2014 as a result of the overdue payments. This was followed by a series of e-mails demanding payment, and also the parties sought to determine the precise amount owing. Mr. Blumenthal claimed the arrears were $1400 (a figure he correctly amended to $1425 based on five payments of $285). Mr. Blumenthal demanded the account be made current based on that figure. Ms. Jones' e-mails suggested she believed there to be a discrepancy in the amount calculated. Initially, her e-mails did not make reference to a specific sum. She refused to pay anything further until it was reconciled. This escalated to the point where account statements were exchanged and a payment demand was made by Mr. Blumenthal in the amount of $1425 or return of the vehicle. Ms. Jones demanded payment statements for comparison and then filed her claim with this Court on February 28, 2014. The Defendant filed a Defence and Counterclaim on March 21, 2014.

**The Pleadings**

Ms. Jones claims that she is required to pay only $10,260 in total under the contract. She seeks an Order from this Court directing the Defendant to transfer title to the vehicle upon payment of $845.00.

The Defendant claims that the $4000 payment was to cover fees and expenses associated with the agreement. It claims to be owed $1425 in arrears and also seeks the return of the vehicle.

**The Evidence**

Both parties testified to the creation of the contract. While much of the facts have been summarized above, there remain findings to be determined based upon the credibility of the witnesses.

Cheyenne Jones testified that she was in the market for a used car with payments of approximately $300 or less per month. She saw the vehicle at Blumenthal's. She met with Dale Grace at Blumenthal's location and signed the agreement marked as Exhibit 1 and referenced at the outset of this decision. She testified that she did not receive a copy of the agreement until February 2014. Further, she testified that she had not been told by Mr. Grace at anytime that the $4000 was to be used toward something other than the full purchase price of the car. She did not receive a receipt for $4000.

Robert Edward ("Bob") Blumenthal testified for the Defendant. He was joined by Tim Revelle, but Mr. Revelle did not give evidence.

Mr. Blumenthal testified that Ms. Jones opted for his dealership's financing arrangements as she indicated she did not qualify for conventional financing through a bank. His company requires a down payment plus an additional amount to be financed. He submitted that a total payment of $10,260 over three years inclusive of tax is far too low for a vehicle of this type.

Dale Grace was not subpoenaed by either party and did not appear in court to give evidence.

**The Issues**

- What are the terms of the contract?

- Specifically, what was the aggregate amount of money to be paid by the Claimant under the contract?

- Is either party in breach of the contract, and if so, what is the appropriate remedy?

**The Law**

The principle issue in this case is the interpretation of the document, tendered as Exhibit C-1 and signed by both parties on March 5, 2012, the "Vehicle Rental Agreement". It is the sole document used in this transaction.

It is necessary to review the law regarding the interpretation of contracts. Reference is made to the following passage from the Supreme Court of Canada in *Eli Lily v. Novapharm*, [1998] 2 S.C.R. 129, where Justice Iacobucci stated the following for the majority of the Court:

"The contractual intent of the parties is to be determined by reference to the words they used in drafting the document, possibly read in light of the surrounding circumstances which were prevalent at the time. Evidence of one party's subjective intention has no independent place in this determination....
...Indeed, it is unnecessary to consider any extrinsic evidence at all when the document is clear and unambiguous on its face....
...When there is no ambiguity in the wording of the document, the notion in *Consolidated-Bathurst* that the interpretation which produces a "fair result" or a "sensible commercial result" should be adopted is not determinative. Admittedly, it would be absurd to adopt an interpretation which is clearly inconsistent with the commercial interests of the parties, if the goal is to ascertain their true contractual intent. However, to interpret a plainly worded document in accordance with the true contractual intent of the parties is not difficult, if it is presumed that the parties intended the legal consequences of their words."

The decision of Justice Iacobucci stands for the principle that the first step in the interpretation of any contract is to look at the plain meaning of the words, and only if necessary, to consider the context in which they are written.

**Findings**

In looking at the document, it is at times unclear. It does not use conventional leasing language. Its provisions are more akin to a conditional sales contract than a lease. The agreement stated simply that Ms. Jones was to pay 36 payments of $285 each commencing on March 20, 2012. There is no reference whatsoever to any down payment, a total purchase price or anything else that would indicate that this agreement is part of a larger commercial arrangement. It states simply that she is to make payments of $285 per month, all fees and taxes included, and upon payment of $1.00, the vehicle registration would be transferred to Ms. Jones. The language stated in the document is clear and unambiguous. The Claimant's obligation is limited to 36 monthly payments of $285 on the 20th day of each month, for a total of $10,260. If he had intended otherwise, Mr. Blumenthal could have simply had the document worded differently.

While I am not required to do so, I have considered the evidence of the surrounding circumstances. There is nothing in evidence which is inconsistent with this interpretation, other than Mr. Blumenthal's submissions. It is not clear why Ms. Jones made a down payment of such a significant size at the outset of the agreement. There are many reasons why one would do this.

I found both Ms. Jones and Mr. Blumenthal to be believable witnesses. Ms. Jones was present when the discussions took place. The only other person who was present at the time the agreement was signed aside from Ms. Jones was Mr. Grace. However, he did not give evidence. Consequently, I am left to consider the evidence which was advanced in court. I accept Ms. Jones' evidence that the agreement represented the entire contract between the parties.

I am not satisfied on the evidence that Ms. Jones financial obligations to the Defendant were anything more than the aggregate amount of 36 payments of $285 or $10,260. I find she has paid $9415 to date leaving a total of $845.00 remaining under the contract. The contract requires payments on the 20th day of each month. Thus, she is in arrears.

Before discussing an order for relief, I must add that had the issue been raised and it been necessary to consider, I would have found the "Vehicle Rental Agreement" to be a conditional sale rather than a lease in the same manner as the Supreme Court of Nova Scotia did in the case of *Grace v. Myers Leasing Services Ltd.* (1995), 145 N.S.R. (2d) 213, affirming 1994 CanLii 4216. If I had done so, the document would have been considered to provide credit in a consumer sale and subject to the *Consumer Protection Act*, R.S.N.S. 1989, c. 92, as amended. The document was lacking several of the strict requirements to extend consumer credit required by that Act. The credit provisions, such as they are, may well have been found to be unenforceable or voidable in any event.

**Relief**

Counterclaim

In ordering relief in this matter, I find the Claimant, Cheyenne Jones, is in arrears in the amount of $845.00. In considering the language of the agreement, it provides the following:

"Default on payment, as agreed, will result in the immediate payout in full **or** immediate return of above vehicle, in satisfactory condition." (emphasis mine)

The agreement stipulates that default of payment results in either the payout of the contract in full or the return of the vehicle. There is no provision for both. That said, I do not believe the Court is bound by that stipulation. I need not consider that choice as I do not feel it would yield a just result to order return of the vehicle given that over 90% of the contract has been paid. I am ordering Ms. Jones to pay the balance of the contract, $845.00 together with the additional $1.00 required for the transfer of the vehicle. If she fails to do so within 30 days of this Order, the Defendant will be authorized to proceed to garnishment and execution.

Thus, the counterclaim is allowed in part.

Claim

With respect to Ms. Jones' claim, she is seeking an order of this court directing the transfer of the motor vehicle registration. The jurisdiction of the *Small Claims Court Act*, R.S.N.S. 1989, c.430, as amended, provides for the delivery of personal property. However, the relief she seeks is akin to specific performance by a government agency who is not a party to the proceedings. Motor vehicle registration is not the type of personal property contemplated by the *Small Claims Court Act*. It is an act of registration and not proof of ownership. The authority for the transfer of registration lies with the Department of Transportation and Communications pursuant to s. 23 of the *Motor Vehicle Act*, R.S.N.S. 1989, c.293 as amended.

In addition, at the time of the hearing, Blumenthal's was not in breach of the contract. If Ms. Jones had been entitled to any relief, it would have only been available to her had she completed her end of the bargain, namely payment of $845 + $1 for a total of $846.

In pursuing her Claim, Ms. Jones has actually established a partial defence to the counterclaim. Blumenthal's action for the recovery of the vehicle and seeking the sum of $1425, while incorrect, does not provide grounds for a cause of action. Furthermore, as noted above, what the Claimant seeks is not within the jurisdiction of the Small Claims Court in any event. Therefore, the Claim itself must be dismissed.

In making this finding, I trust the transfer and issuance of a receipt will not be withheld if payment is received from the Claimant by the Defendant. If further clarification of this decision

is required by the Department of Transportation or Service Nova Scotia, Ms. Jones may notify me through the Small Claims Court Clerk for an amendment to the decision. Of course she must advise the Defendant who will be informed of any such proceedings.

**Costs**

I turn now to the issue of costs. The general rule is that costs follow the event. I find that neither party has been completely successful. For the reasons stated below, I will order each party to bear their own costs.

The Vehicle Rental Agreement states the following:

"All costs incurred in the recovery of payments and/or vehicle will be the responsibility of the below signed customer..."

However, section 29(1)(b) of the *Small Claims Court Act* provides the Adjudicator with the discretion to award costs to the successful party. Further, section 14(1)(a) and (2) of that *Act* state the following:

14 (1) Except as otherwise provided in an enactment, any provision or acknowledgement in an agreement is void if it: (a) in any way purports to exclude, limit or vary the jurisdiction of the Court;

(2) Where a provision or acknowledgement contrary to this Act is a term of an agreement, it shall be severable therefrom.

I find the provision in the contract quoted above purports to limit the jurisdiction of the Court to award costs. Therefore it is void. Consequently, I am exercising the authority provided by s.14(2) and ordering the provision severed from the remainder of the Vehicle Rental Agreement.

Given that success is about equally divided, I consider this an appropriate case for each party to bear their own costs. I also decline to order prejudgment interest.

**Summary**

The claim of Ms. Jones is dismissed. The counterclaim is allowed in part.

- The Claimant, Cheyenne Jones, shall pay to the Defendant, Bob Blumenthal Auto Wholesalers Inc., the sum of $845.00 plus $1.00 to transfer the vehicle or $846.00.

- The Defendant's claim for return of the vehicle is dismissed.

- The Claimant shall have 30 days from the date hereof to make payment, otherwise, the Defendant may proceed to execution in accordance with the provisions of the *Small Claims Court Act*.

- The Claim of Cheyenne Jones for the transfer of registration is dismissed. Upon payment of $846, Ms. Jones shall have fulfilled her obligations under the agreement for the purchase of the vehicle, a 2006 Mazda 5 VIN # JMICR29386010559.

- There shall be no award of costs or prejudgment interest.

Order accordingly.

Dated at Halifax, NS,
on July 21, 2014.

**Gregg W. Knudsen, Adjudicator**

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)