

STATE OF VERMONT
WASHINGTON SUPERIOR COURT

FILED
JA
2003 JAN 13 A 10:09
SUPERIOR COURT
WASHINGTON COUNTY

DOCKET #448-7-02 Wncv

B & M SALES & SERVICE v. KATHERINE FREUND

OPINION and ORDER

This case came before the Court on January 10, 2003 for consideration. It is an appeal from a decision of the Small Claims Court, dated June 20, 2002, in Docket #158-3-02 Wnsc. The Court has reviewed the Appellant's Statement of Legal Questions and listened to the tape of the hearing below. Neither party requested oral argument.

It is not the function of the Superior Court to substitute its own judgment for that of the trial court judge in the Small Claims Court. Rather, the role of the Superior Court is to determine whether the judge correctly applied the law, and whether or not the findings on factual matters are supported by the evidence at the hearing.

Appellant challenges the court's judgment awarding Katherine Freund \$2,795.00 in damages plus interest and costs for a total judgment of \$3,129.50. The court concluded that Jerry Blow, d/b/a B & M Sales & Service, was liable to Ms. Freund based on fraud in having represented to Ms. Freund that the car she bought from Lenny's Fantastic Cars in August of 2001 was in a suitable condition to pass inspection when it was not, and based on fraud for having given it an inspection certificate when he knew he had no right to do so. As a result of his fraud, Ms. Freund spent \$2,795.00 on a car that did not have that value and that would not pass inspection and soon became unusable, and she lost the value of the Subaru she traded in as part of the price. The evidence given at the hearing was sufficient to support the findings of fact of the court, and the findings of fact were sufficient to support the conclusions and judgment.

Appellant raises several issues in this appeal as follows:

1. *Because Appellant inspected a vehicle that was not up to standards, must he purchase the vehicle?* The judgment of the court did not require Appellant to "purchase" the vehicle, but rather to pay to Ms. Freund the value that she suffered as a result of his conduct. The court did not err in applying the law in assessing damages in the amount paid by Ms. Freund.

2. *Does the law allow the Appellee to sue and collect the value of the purchase price from both the seller (Lenny's) AND the inspector of the vehicle (Appellant)?* The trial court correctly applied the law, which permits a plaintiff to pursue both persons who are jointly

responsible for causing her harm. Judgment may be entered against both wrongdoers for the full amount of the harm. The court committed no error.

3. *Does the law require a buyer to keep a vehicle if he/she has not returned it to the seller within a specific number of days?* This is not relevant to the case, since the basis of the court's decision was fraud, and the evidence supported the court's conclusion on liability and damages based on fraud.

4. *If Appellant is required to pay the full cost of a vehicle that he did not sell, is he entitled to ownership of the vehicle in return?* Since the judgment was based on damages for fraud, the court did not make an error when it did not order Ms. Freund to return the car to Appellant.

5. *What is the law regarding the liability of the seller of this vehicle?* Whether or not the seller of the vehicle (Lenny's) is also responsible to Ms. Freund has no bearing on whether or not Appellant is responsible. The court's decision was based on sufficient facts and conclusions as to Appellant. The fact that another person may also have such responsibility does not excuse Appellant of any portion of his responsibility. Ms. Freund is entitled to pursue both of two joint wrongdoers under the law. The court did not commit any errors of law in its ruling.

For these reasons, the decision and Order of June 20, 2002 is *affirmed*.

May Mills Deachant
SUPERIOR COURT JUDGE

January 10, 2003
DATE

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