

DEC - 7 1984

REGISTRY

No. C 122/83
Prince George Registry

IN THE COUNTY COURT OF CARIBOO

HER MAJESTY THE QUEEN)

RESPONDENT)

AGAINST)

GEORGE DIMOR MOTORS LTD.)

APPELLANT)

SUPPLEMENTARY

REASONS FOR JUDGMENT

OF

THE HONOURABLE JUDGE HARDINGE

A. Bate, Esq.

Counsel for Respondent

D. Byl, Esq.

Counsel for Appellant

Place and date of hearing:

Prince George, B. C.
6 December, 1984

On 11 October, 1984 I filed Reasons for Judgment in this matter. In those reasons I indicated that I was disposed to allow the appeal. However, because the basis on which I had reached that tentative conclusion had not, I believed, been argued in the course of the hearing, I granted counsel leave to make further submissions.

I have now had the benefit of hearing further submissions and have also been referred to two unreported decisions of which I was not earlier aware. In the result I am now satisfied that my tentative decision to allow the appeal was wrong and that the learned trial judge was correct in the decision which he reached.

My tentative decision was based on my interpretation of the definitions of the words "consumer", "supplier", and "consumer transaction" as contained in the Trade Practice Act, R.S.B.C. 1979, chap. 406. My error consisted, in the main, in overlooking the words "personal services" in the definition of "consumer transaction" and the definition of "personal

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4 property". Having had my attention drawn to my previous oversight, I
5 am now convinced, particularly in light of the definition of "personal
6 property", which is defined as including "services", that the relationship
7 between the appellant company and the consignor was that of supplier
8 and consumer. The unreported decisions of McEachern, C.J.S.C. in Hanson
9 and Lowe v. Candex Design Inc. (4 February, 1981, Vic. Reg. No. 0642/78
10 and Ostler, P.C.J. in Reg. v. Les Carr's Sales & Leasing Ltd. (24 November,
11 1981, Vic. Info. No. 20896-C) are, on this issue, on all fours with the
12 present case. The decision of His Honour Judge Ostler, who without formal
13 legal training, became a highly respected member of the Provincial Court
14 of this Province has been particularly helpful in that he specifically
15 referred to the provision of a service by a consignee to the consignor
of a motor vehicle.

17 On behalf of the appellant it was submitted that the appeal
18 should be allowed in any event because, it was argued, there was no
19 evidence before the trial judge that would permit him to find that the
20 appellant supplied services, "for purposes that [were] primarily personal,
21 family or household" as is required to constitute a "consumer transaction".
22 While the evidence on this point was not specific it was such as to justify
23 the trial judge drawing the necessary inference. The consignor was a
24 Mr. Lakusta, the motor home that was the subject of the transaction was
25 owned by him. It was encumbered by a conditional sale agreement for
26 which he was personally indebted to a bank. In the absence of any
27 evidence to suggest the motor home was used by Lakusta for a business
28 purpose, the trial judge was entitled to reach the decision he obviously
29 did on the point.
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On the basis of my decision on the issues raised in the supplementary submissions of counsel, the appeal is now dismissed.

Prince George, B. C.
7 December, 1984



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