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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)

REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE HARDINGE

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Counsel for Respondent

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Counsel for Appellant

Place and date of hearing:

Prince George, B. C.
6 September, 1984

George Dimor Motors Ltd. appeals its conviction on a charge of unlawfully participating in a deceptive act in respect of a consumer transaction contrary to section 25(2) of the Trade Practice Act, R.S.B.C. 1979 Chap. 406. The charge was laid as a result of a complaint by a man who had consigned a motor home to the company for sale.

When the consignment agreement was entered into it was understood between the consignor and the company that the company would attempt to sell the motor home at a price that would enable the consignor to pay off the balance of the money which he owed a bank on a conditional sale agreement under the terms of which he was purchasing it plus a sum of approximately \$4,000. to be paid to him. The evidence heard by the learned trial judge suggests that to meet these two objectives and to allow the company a reasonable profit for its efforts to bring about a sale, the motor home would have to have been sold for approximately \$22,000.

The consignment agreement was entered into on 17 February

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3 1982. At that time the market for motor homes was abnormally soft. No
4 offer to purchase the consignor's vehicle was received for almost three
5 months. In the meantime the consignor, who had not been making the payments
6 required under the conditional sale agreement, was under some pressure from
7 the bank to get the vehicle sold so that the bank could get paid out.

8 Finally near the middle of May, 1982 an offer to purchase
9 the motor home was received. The offer was in the amount of \$24,995.
10 However, of that amount the sum of \$12,995. only was to be paid in cash
11 by the purchaser. The balance was to be made up by an allowance of
12 \$12,000. that would be granted the purchaser by the company as a trade
13 in allowance on two vehicles the purchaser wished to sell.

14 By the time the offer to purchase the consignor's motor
15 home was received, the consignor owed the bank \$16,685.54 including
16 interest on overdue payments. A representative of the company informed
17 the bank that an offer had been received. What the bank's representative
18 was told was that the offer would, if accepted, enable the consignor to
19 pay out the bank but that there would be no surplus. The bank's representative
20 was requested to, and did, transmit the offer as it had been explained by
21 the company's representative, to the consignor.

22 The consignor reluctantly agreed to accept the offer as it
23 had been explained to him. He did so because he had been made to believe
24 that it was unlikely that a sale of the motor home on terms more favourable
25 to him would be forthcoming. He did however stipulate that he was to be
26 given an opportunity to inspect any documents relating to the sale. On
27 being advised of the consignor's acceptance of the offer, the company
28 completed the sale in accordance with the terms of the offer it had received.
29 On completion a cheque for the full amount owed by the consignor to the bank
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3 was forwarded to the bank.

4 The consignor did not immediately follow up on his request
5 to inspect the documents that had been prepared by the company relating
6 to the sale. However, several days after the sale was completed the
7 purchaser met with the consignor. During the course of this meeting the
8 consignor became aware for the first time of the actual terms of the
9 agreement pursuant to which the purchaser had acquired the consignor's
10 motor home from the company, that is that he had agreed to pay by way
11 of cash and trade in allowances the sum of \$24,995. On the face of
12 it that sum was substantially in excess of what the consignor had been
13 made to believe the vehicle could be sold for.

14 Evidence was given at the trial that the so called "true"
15 selling price of the motor home was not \$24,995. The explanation for
16 the discrepancy between the price shown on the bill of sale to the purchaser
17 and the price which the consignor had believed was the price for which his
18 motor home was to be sold, was, in the main part, that the value of the
19 purchaser's trade-in vehicles had been artificially inflated. Witnesses
20 for the company testified that the effect of over valuing the traded-in
21 vehicles was off set by an approximately equivilant inflation in the nominal
22 selling price of the consignor's motor home. There was further evidence that
23 the practice of over valuing trade-ins is wide spread and well known in the
24 automotive sales industry. The practice of allowing high trade-in allowances
25 to prospective customers was said to encourage sales. As it is the difference
26 between what is allowed on a trade-in and the selling price of a vehicle
27 that is being sold that is important to both the buyer and the seller no
28 harm would, as a rule, result from the practice.

29 The evidence was that the actual value to the company of the
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3 vehicles it accepted in part payment for the consignor's motor home was
4 \$5,500. and not \$12,000. and that, accordingly, the true selling price
5 of the motor home was \$18,495. Given that \$16,685.54 had to be paid to
6 the bank to release its charge, it was argued that the company only realized
7 a commission of approximately \$1,800. on the transaction. That argument
8 overlooks the fact that the traded-in vehicles were later resold by the
9 company for approximately \$15,000.

10 Section 25(2) of the Act provides, in part:

11 Every supplier who ... participates in a deceptive
12 or unconscionable act or practice in respect of a
consumer transaction ... commits an offence ...

13 The Crown took the position that by leading the consignor to believe
14 that his motor home could be sold for no more than the amount he owed
15 the bank when a prospective purchaser had agreed to pay \$24,995., the
16 company "participated in a deceptive act in respect of a consumer
17 transaction with the consignor. The position taken on behalf of the
18 company was that there was no "consumer transaction" between the company
19 and the consignor and, even if there was there was no "deceptive act"
20 in which the company participated.

21 The learned trial judge commenced his reasons for judgment
22 with this statement"

23 In connection with this matter I find that [the consignor]
24 is a consumer, that [the company] is a supplier, and that
the transaction involved here is a consumer transaction.

25 The three findings expressed in that single sentence are essential to
26 a decision that an offence under section 25(2) of the Act has been
27 committed. However, the trial judge gave no explanation as to how he
28 came to reach these initial findings.

29 Having regard to the generally accepted meanings as well as
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3 the specific definitions ascribed to the words "consumer", "supplier",
4 and "consumer transaction" by the Act, it is necessary to decide if the
5 preliminary findings of the trial judge were correct. With respect I have
6 concluded he was mistaken as to all three findings.

7 In the process of determining whether in relation to any given
8 transaction a person is a "consumer" or a "supplier" and whether it is a
9 "consumer transaction", it is helpful to think first of the relationship
10 of the parties to each other and the nature of the transaction in non
11 legalistic terms.

12 The word "consumer" generally refers to a person who receives
13 goods or services. Likewise the word "supplier", at least when used in
14 a commercial context connotes a person who furnishes goods or services to
15 another. Taken in the sense suggested I have difficulty in categorizing
16 the consignor for sale of personal property as a consumer. I am also of
17 the opinion that the consignee of personal property would not, as a rule,
18 be thought of as a supplier. At common law the consignor would be regarded
19 as the principal in a transaction involving the sale of his property and
20 the consignee as his agent.

21 Assuming the foregoing to be a correct analysis of the relationship
22 to each other of the consignor and the company at common law, the next
23 question to be addressed is; was that relationship altered by relevant
24 legislation? The Trade Practice Act is one of a large number of federal
25 and provincial statutes enacted during the last quarter century to
26 ameliorate the harshness of the common law in those aspects of the law
27 of contracts most affecting the buying public. The old rule of caveat
28 emptor has, as a result of this body of social legislation, been largely
29 abrogated. The fact that the Act is administered by the Ministry of
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3 Consumer and Corporate Affairs coupled with the emphasis placed throughout
4 the Act on the protection of the buying public from unscrupulous vendors
5 is in harmony with the notion that, by its provisions, the legislature
6 was seeking to protect buyers and not to reverse traditional concepts
7 of the meanings of words such as "consumer" and "supplier".

8 Even the general intent of a statute is, however, subject
9 to specific definitions of particular words and phrases. In section 1
10 of the Act the words "consumer" and "supplier", and "consumer transaction"
11 are, so far as is presently relevant defined as follows:

12 "Consumer" means an individual, other than a supplier,
13 who participates in a consumer transaction, ...

14 "Supplier" means a person, other than a consumer, who
15 in the course of his business solicits, offers, advertises
16 or promotes the disposition or supply of the subject of
17 a consumer transaction or who engages in, ... or otherwise
18 participates in a consumer transaction, whether or not
19 privity of contract exists between that person and the
20 consumer ...

21 "Consumer transaction" means

- 22 (a) a sale, lease, rental, assignment, ...
23 or other disposition or supply of any kind
24 of personal property to an individual for
25 purposes that are primarily personal, family
26 or household ...

27 It is significant that the definition of "consumer" specifically excludes
28 a "supplier" and that the definition of "supplier" excludes a "consumer".
29 The result is that while the statutorily defined words and phrase may
30 bear a wider meaning than would be encompassed by older commercial
expressions of a like nature, their meanings have not been reversed.

Applying my interpretation of the defined meanings of
"consumer" and "supplier" to the relationship between the consignor
and the company (which is the relationship that is the subject matter

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3 of the charge), I conclude that the consignor was not a "consumer". If
4 anything his role fitted more closely that of "supplier". Likewise
5 the company was not, so far as its dealings with the consignor are
6 concerned a "supplier". There was no "disposition or supply of any
7 kind of personal property", from the company to the consignor. There
8 could therefor, as between them, have been no "consumer transaction"
9 within the statutorily defined meaning of those words.

10 It may be (I do not say it was) that the company was in
11 breach of its duty as an agent to make full disclosure to its principal,
12 the consignor. Conveying to the consignor the impression that his motor
13 home could be sold for no more than he owed the bank would be considered
14 by many to be "deceptive". But, in the circumstances, it does not seem that
15 the company committed the offence with which it was charged.

16 Ordinarily I would, having reached the conclusion I have expressed,
17 proceed to allow the appeal and direct that a finding of "not guilty" be
18 substituted for that found by the trial judge. I am, however, conscious
19 that the decision I have reached is based, in the main, on an interpretation
20 of definitions in the Act that were not argued during the hearing of the
21 appeal and, probably, not before the trial judge. It is, therefor, appropriate
22 to afford counsel an opportunity to make further submissions before a
23 formal order in respect of the appeal is entered. Accordingly, I direct that
24 no formal order shall be entered for a period of two weeks from the date
25 these reasons are filed. Liberty to apply during that period to make
26 such further submissions as counsel may be advised, is granted. If no
27 such application is made within the time limited therefor, an order may
28 be entered in accordance with these reasons.

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30 Prince George, B. C.
October 11, 1984

