

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Joseph C. Pajardo,	:	C.A. No. 08-06-0014AP
	:	
Appellant/	:	
Plaintiff Below,	:	
v.	:	
	:	
Julius Bumbrey,	:	
	:	
Appellee/	:	
Defendant Below	:	

**Decision after trial.**

Submitted: December 17, 2008

Decided: December 22, 2008

**Judgment for the Plaintiff.**

Joseph C. Pajardo, 319 Charring Cross Drive, Dover, Delaware 19904, *Pro Se* Plaintiff.

Julius Bumbrey, 110 Laurel Court, Felton, Delaware, *Pro Se* Defendant.

Trader, J.

In this civil appeal from the Justice of the Peace Court, I conclude that the defendant, Julius Bumbrey (“Bumbrey”), is indebted to the plaintiff, Joseph Pajardo (“Pajardo”), in the amount of \$1,200.00 because of a breach of a written contract for the purchase of a used car.

The relevant facts are as follows: on or about July 22, 2007, Bumbrey entered into a written contract with Pajardo to purchase a 1992 Nissan Maxima for \$2,400.00. At the time of sale, Pajardo told Bumbrey that the car needed a tune up and an oil change, and that there was a problem with one or both front windows. Bumbrey agreed to purchase the car for \$2,400.00. The terms of the written and signed contractual agreement were that Bumbrey was to make a down payment of \$500.00 and pay \$100.00 per week until the \$2,400.00 balance was paid. Bumbrey made seven payments for \$100.00 and then stopped paying on the car altogether.

Pajardo filed a civil action in the Justice of the Peace Court against the defendant for sum of \$1,200.00 that was due on the contract. Bumbrey filed a counterclaim alleging that the car was a “lemon” that required \$1,010.00 in repairs in order to pass inspection. After a trial in that court, the magistrate entered a judgment in behalf of the defendant for \$2,210.00. Pajardo then filed a notice of appeal and complaint in this Court. Bumbrey filed an answer to the complaint, but he did not file a counterclaim in this Court.

On December 3, 2008, both parties appeared before this Court and agreed to dismiss the various claims with prejudice. The parties agreed that Pajardo would meet Bumbrey later that day at the Department of Motor Vehicles (“DMV”) and transfer title to the car to Bumbrey. Later that day, Bumbrey contacted this Court alleging that

Pajardo refused to transfer the title. A hearing was scheduled for December 17, 2008. I vacated the stipulation of dismissal, and the case proceeded to trial.

At trial, Pajardo testified that he told Bumbrey that the car needed a tune-up, an oil change and that the driver's front window was inoperable. Pajardo said he told Bumbrey that the car was being sold "as is," but he would throw in three speakers and an amplifier. He also testified that he received the car from his cousin three months before selling it to the defendant.

Pajardo and Bumbrey signed a contract and Bumbrey paid a \$500.00 down payment. Bumbrey made seven weeks of payments of approximately \$100.00 each. However, after Bumbrey paid \$1,200.00 towards the purchase price of the car, he stopped making payments. Pajardo testified that he tried to contact Bumbrey regarding these payments, but he found the defendant's cell phone had been disconnected. Finally, about six months after the contract had been executed; Pajardo went to Bumbrey's place of employment to find out why he was not receiving payments on the car.

Bumbrey testified that he stopped making payments because the car had so many problems that the car could not pass inspection. Bumbrey also testified that none of the car window motors worked, the light switches had to be replaced, the engine knocked, and the parking lights did not work. He paid \$1,010.00 for repairs to enable the car to pass inspection.

Pajardo contends that he is entitled to a judgment against the defendant because of a breach of contract. Bumbrey contends that he is entitled to a return of \$1,200.00 because the plaintiff misrepresented the condition of the car to him. I agree with the plaintiff's contention and reject the contention of the defendant.

Pajardo sold the car to Bumbrey “as is.” Terms such as “as is” or “with all faults” are ordinarily understood to mean that the buyer takes the entire risk as to the quality of the goods sold. *Lecates v. Hertrich Pontiac Buick Co.*, 515 A.2d 163, 168 (Del. Super. Ct. 1986). The evidence does not support the defendant’s counterclaim that the plaintiff intentionally misrepresented the condition of the car to Bumbrey when he sold it to him. Furthermore, there is no evidence that Pajardo made any warranties regarding the car and there were no warranties incorporated into the written contract. Therefore, Bumbrey has not proven by a preponderance of the evidence that Pajardo intentionally misrepresented the condition of the car to him. Additionally, his counterclaim is barred because he failed to include it in his answer to the complaint.

Under Article 2 of the Uniform Commercial Code, the buyer has the right to inspect the goods before payment or acceptance. 6 *Del. C.* § 2-513(1). The fact that the buyer paid prior to inspection of the goods does not mean that the buyer has accepted the goods. 6 *Del. C.* § 2-512(2). However, rejection of the goods must be at a reasonable time after their delivery or tender, and the buyer must seasonably notify the seller of the rejection. 6 *Del. C.* § 2-602(1). Acceptance of the goods occurs when the buyer fails to make an effective rejection under 6 *Del. C.* § 2-602. 6 *Del. C.* § 2-606(1)(b). Under 6 *Del. C.* § 2-607(1), the buyer must pay the contract rate for any goods accepted. A buyer may revoke acceptance of the goods where the defect substantially impairs the value of the good to him. 6 *Del. C.* §2-608(1). However, revocation of acceptance must occur within a reasonable time after the buyer discovers the defect, and revocation is not effective until the buyer notifies the seller. 6 *Del. C.* § 2-608(2).

In this case, the buyer, Bumbrey, never contacted Pajardo regarding the defects of the car. Pajardo only found out about the defects when he went to Bumbrey's employment to find out why Bumbrey stopped paying on the contract, six months after the sale of the car. Bumbrey stopped making payments on the contract after seven weeks, and he did not notify the seller of any defects in the car at that time.

In conclusion, since Bumbrey failed to notify Pajardo that the car was unacceptable within a reasonable time, he has accepted the car under the Uniform Commercial Code. Since he failed to pay the balance on the contract, the plaintiff is entitled to a judgment in the amount of \$1, 200.00.

In accordance with these findings of fact and conclusions of law, judgment is entered in behalf of the plaintiff, Joseph Pajardo, and against the defendant, Julius Bumbrey, in the amount of \$1,200.00, plus costs of these proceedings.

**IT IS SO ORDERED.**

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Merrill C. Trader  
Judge