

**NOT DESIGNATED FOR PUBLICATION**

**LYNETTE R. SIMON** \* **NO. 2002-CA-0886**  
**VERSUS** \* **COURT OF APPEAL**  
**TULANE AUTO SALES, INC.,** \* **FOURTH CIRCUIT**  
**AND/OR JAMES A. MARCH** \* **STATE OF LOUISIANA**  
**AND/OR XYZ INSURANCE** \*  
**COMPANY** \*  
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**APPEAL FROM**  
**CIVIL DISTRICT COURT, ORLEANS PARISH**  
**NO. 96-7762, DIVISION "M"**  
**Honorable Terri F. Love, Judge**  
\* \* \* \* \*  
**Judge Patricia Rivet Murray**  
\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes, III, Judge Patricia Rivet Murray, Judge James F. McKay, III)

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## **AFFIRMED**

The plaintiff, Lynette Simon, appeals the trial court's dismissal of her action against Tulane Auto Sales, Inc. [hereinafter "Tulane"], after a full trial on the merits. For the reasons that follow, we affirm.

Ms. Simon filed suit against Tulane and James March, whom she named as the sole owner and/or alter ego of Tulane, seeking damages arising out of her March 8, 1996 purchase of a used automobile from Tulane. Ms. Simon purchased a 1987 Dodge Lancer for \$4,345, for which she made a down payment of \$1800 plus a \$200 trade-in allowance. Ms. Simon contends that the remainder of the price, plus tax and license fees, was to be paid in installments. The vehicle was purchased "as is," without a warranty. Several weeks after she purchased the car, it broke down, and Ms. Simon had it towed to Tulane. In her petition, Ms. Simon contends Tulane refused to repair the vehicle until she paid the balance owed, which she was unable to do. She additionally contends that Tulane wrongfully seized the vehicle and refused to return it to her, and seeks the return of her property plus damages for wrongful conversion.

Tulane disputes several key facts alleged in Ms. Simon's petition. It denies that the sale of the vehicle included an installment contract; rather, it asserts that Ms. Simon took possession of the vehicle on March 8, 1996, subject to her signing of a promissory note agreeing to pay Tulane the entire balance owed (\$2,886) by April 15, 1996, at which time the sale would be completed and the title transferred. However, the vehicle malfunctioned twice prior to April 15<sup>th</sup>. The first time, when the power steering mechanism malfunctioned, Ms. Simon brought the car to Tulane, and Tulane repaired it for no charge, although it had no legal obligation to do so. Then, on or about April 9<sup>th</sup>, the car stopped running, and Ms. Simon had it towed to Tulane, at which time Tulane determined that the entire engine would have to be replaced, estimating that a used engine could be installed for a minimum of \$600 to \$700. According to the defendants, Ms. Simon said that she could not afford to pay the balance for the car or to have it repaired, and asked Tulane to keep the car and the amount she had already paid in exchange for releasing her from the contract. Tulane agreed, and subsequently sold the car for its salvage value, \$400. The defendants deny that anyone connected with Tulane ever prevented Ms. Simon from

retrieving the car from its lot. In their answer to the suit, the defendants claimed Tulane would be entitled to a setoff should the trial court rule in favor of Ms. Simon.

The matter was tried August 17 and 21, 2000. The plaintiff testified on her own behalf. The only witnesses for the defendants were James March, who admitted he was the owner/ operator of Tulane at the pertinent time, and Frank Bonfatti, the salesman who had made the sale to Ms. Simon. Documentary evidence included a bill of sale and promissory note, a warranty disclaimer form, an odometer disclosure statement showing 176,448 miles on the vehicle, and a partially completed credit application, all purportedly signed by the plaintiff. At trial, Ms. Simon admitted that her signature was on the credit application but denied having signed any of the other documents. To impeach her testimony, the defendants produced a handwriting expert, Nicholas Molligan, who opined that the signatures on all the documents were written by the same person.

On February 6, 2002, the trial court rendered judgment dismissing the plaintiff's case with prejudice and issued written reasons finding that the plaintiff had failed to fulfill her legal obligation to pay the balance due on

the vehicle; that the plaintiff had abandoned the vehicle at the defendant's place of business; that

Tulane had no obligation to repair the vehicle; and finally, that Tulane had not prevented plaintiff from retrieving the vehicle.

From this judgment, the plaintiff appeals. Essentially, the plaintiff argues that the trial court erred in its factual determinations. In addition, the plaintiff argues that the trial court abused its discretion by declining to admit certain evidence and further, committed legal error by refusing to "pierce the corporate veil" existing between Tulane and James March.

We reject plaintiff's arguments because we find no manifest error in the trial court's determinations based on the evidence presented at trial. The record reveals that the version of the facts testified to by Ms. Simon differed materially from the version given by Mr. March and Mr. Bonfatti. The plaintiff testified that she had a verbal agreement with Tulane that amounted to an installment contract. The defense witnesses, however, testified that the transaction was a cash sale with the balance due on April 15, which they stated was selected as the due date because Ms. Simon represented that she would be able to pay the remainder on the car from her income tax refund

check. This version of the facts was supported by the documentary evidence, but the plaintiff denied that it was her signature on the bill of sale and promissory note, the warranty disclaimer notice reflecting an “as is” sale, and the odometer disclosure form. The trial court therefore had to make a choice as to which version of the facts it found more credible, and the court chose to believe Tulane’s witnesses.

Credibility determinations are purely within the province of the trial court, not only because of that court’s better capacity to evaluate live witnesses, but also due to the proper allocation of trial and appellate functions between the respective courts. *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La. 1973). Thus, when two permissible views of the evidence exist, the factfinder’s choice between them cannot be manifestly erroneous or clearly wrong. *Id.* Reasonable inferences of fact and reasonable evaluations of credibility are not to be disturbed upon review. However, if documents or objective evidence so contradict a witness’s story, or the story itself is so internally inconsistent or implausible on its face that a reasonable factfinder would not have credited it, the appellate court may find manifest error in the trial court’s determination. *Rosell v. ESCO*, 549 So.2d 840,

844-45 (La. 1989).

In the instant case, the documentary evidence supports the testimony of the defense witnesses, and their story seems the most plausible version of the disputed facts. We therefore decline to disturb the trial court's determination, which we find to be a reasonable interpretation of the evidence.

The plaintiff also argues that the trial court erred by refusing to admit certain evidence, which was proffered. We find none of the proffered evidence to be relevant to the determination of plaintiff's claims, and therefore the trial court did not abuse its discretion in declining to admit it. Finally, in light of our conclusion that the trial court's finding of no liability is not manifestly erroneous, we need not address plaintiff's assignments of error with regard to piercing the corporate veil allegedly existing between defendants, Tulane and James March.

Accordingly, the judgment of the trial court is affirmed.

**AFFIRMED**

