

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

D & G, INC., d/b/a FRED DRAKE)	
AUTOMOTIVE, a Delaware)	
Corporation,)	
)	
Defendant-Below,)	
)	
v.)	C.A. 00A-10-007-FSS
)	
DON HORTON,)	
)	
Plaintiff-Below.)	

Submitted: April 23, 2001
Decided: July 17, 2001

Upon Appeal From the Court of Common Pleas -- *AFFIRMED*

ORDER

Horton sued Defendant D&G, Inc. in the Court of Common Pleas seeking “to recover the balance due on a verbal ‘handshake’” sales contract. The Court of Common Pleas concluded that a valid agreement existed and ordered D&G to pay the balance. D&G appeals that ruling.

D & G is an automobile recycler. According to the record, under an oral contract, later reduced to writing, D&G bought 137 unclaimed cars from Horton for \$125.00 each. All the cars, except one, lacked valid titles or salvage

certificates. As the parties intended, D&G hauled away the cars and scrapped them. D&G made six payments under its contract with Horton. Then, D&G refused to pay more, claiming that Horton failed to provide D&G with titles or salvage certificates for 136 cars.¹ Both parties dispute who bears responsibility for furnishing titles or salvage certificates. Meanwhile, everyone agrees that Horton supplied the cars, D & G chose to dispose of them and D & G refused to pay as agreed.

As far as the title issue, the Court understands that both parties have been indifferent to Delaware's motor vehicle laws. Neither party gets to throw the law in the other's face. On the one hand, the courts will not ignore the statute. It promotes an important public purpose. Thanks to the way the parties behaved, the State has no assurance that the cars were not stolen. On the other hand, the statute does not give an auto recycler the opportunity to accept undocumented vehicles, recycle them and keep the money. There is no public policy reason to justify refusing to enforce the established agreement under the facts here.

In its holding, the Court of Common Pleas stated:

¹ *See 21 Del. C. § 2505 and 2512.*

. . . . there was, in fact, a valid agreement here. It was first verbal, and then it at least was reduced in rudimentary form into writing . . . and once the agreement was entered into, it was acted upon. There were actions taken on the agreement, there were payments made repeatedly. The issue of titles, does not appear to have been a factor in the original agreement, nor does it appear to be a factor in the written memorialization of that agreement. [T]he actions taken by the [D]efendant after the agreement was signed do, in fact, show that there was an agreement that was recognized. And it does not appear to me that this issue of titles was that important, or even a factor . . . I, therefore, conclude that it was not a factor as far as the agreement was concerned.

The Court of Common Pleas is correct.

The court can identify no error of law or unsupported fact finding in the trial court proceedings. Accordingly, the Court of Common Pleas' decision is AFFIRMED.

IT IS SO ORDERED.

Judge

**oc: Prothonotary (Civil Division)
pc: Ferry & Joseph, P.A.
Clark C. Kingery, Esquire**