

2001

Wesley L. Larsen v. Exclusive Cars, Inc., a Utah Corporation; Floyd Maestas, an individual : Brief of Appellee

Utah Court of Appeals

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WESLEY L. LARSEN,

V.

Defendants and Appellees.

Utah Court of Appeals
Case No. 200102512-CA

Appeal from Grant of Summary Judgment for Defendants/Appellees
Third Judicial District Court, Salt Lake County, Case No. 990408099(Lindberg)

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Utah Court of Appeals

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Paulette Stagg
Clerk of the Court

WESLEY L. LARSEN,

Plaintiff and Appellant,

v.

EXCLUSIVE CARS, INC., a Utah
Corporation; FLOYD MAESTAS, an
individual,

Defendants and Appellees.

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Utah Court of Appeals
Case No. 20010272-CA

Appeal from Grant of Summary Judgment for Defendants/Appellees
Third Judicial District Court, Salt Lake County, Case No. 990408099(Lindberg)

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LIST OF PARTIES

The parties to this appeal are identified in the caption herein.

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**STATUTES AND RULES DETERMINATIVE OR
OF CENTRAL IMPORTANCE TO THIS APPEAL**

“An appeal may be taken from a district ... court ... from all final orders and judgments.”

UTAH.R. APP. P. 3(a).

“The [summary] judgment sought shall be rendered if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.”

UTAH R.CIV.P. 56(c)

ADDENDUM

Exhibit 1: Trial Court Docket entry

Exhibit 2: Motor Vehicle Contract of Sale

**Exhibit 3: Trial Court DECISION AND ORDER ON DEFENDANTS’ MOTION FOR
SUMARY JUDGMENT**

Exhibit 4: Trial Court JUDGMENT

COURT OF APPEALS LACKS JURISDICTION

Appellant erroneously contends that this court has appellate jurisdiction in this matter as a pour-over case under Utah Code Ann. § 78-2-2(4). However, as set out below and in Appellees' MOTION FOR SUMMARY DISMISSAL FOR LACK OF JURISDICTION filed simultaneously, there is no "final judgment," below and no exception to the final judgment rule applies, so this court lacks appellate jurisdiction.

ISSUES & STANDARDS OF APPELLATE REVIEW

ISSUE I

Does this court lack appellate jurisdiction other than to dismiss this appeal because the trial court has not yet determined the amount of attorney fees to which Appellees are entitled? Standard of Review: *de novo*. Pledger v. Gillespie, 1999 UT 54, ¶ 16, 982 P.2d 572.

ISSUE II

Can this court review a basis for attorney fees which the trial court has not yet announced? Standard of Review: question of law, correctness. See Dejavue, Inc. v. U.S. Energy Corp., 1999 UT App 355, ¶ 8, 993 P.2d 222.

ISSUE III

Did the trial court have a proper basis for concluding that Appellees are entitled to recover attorney fees and costs? Standard of Review: correctness. Dejavue, Inc. v. U.S. Energy Corp., 1999 UT App 355, ¶ 8, 993 P.2d 222.

ISSUE IV

Did the trial court correctly conclude that there is no genuine issue of material fact that Appellant's reliance was unreasonable and Appellees are entitled to judgment as a matter of law? Standard of Review: correctness. CECO Corp. v. Concrete Specialists, Inc., 772 P.2d 967, 969 (Utah 1989).

ISSUE V

Are Appellees entitled to attorney fees and costs on appeal? Standard of Review: correctness. See Dejavue, Inc. v. U.S. Energy Corp., 1999 UT App 355, ¶ 8, 993 P.2d 222.

STATEMENT OF THE CASE

Appellant purchased a Toyota pickup from Appellees.¹ For purposes of ruling on Appellees' motion for summary judgment below, the trial court accepted Appellant's contention that during the course of negotiations for the pickup, Mr. Maestas, one of Appellees, told Appellant that the pickup had a new engine, which it did not. It appears that in the course of a recall, something had been replaced in the engine, but not the whole engine itself.² However, Appellees provided, and Appellant signed, four (4) separate documents showing: (1) that there were no warranties on the pickup, (2) that Appellant bore sole responsibility for any repairs, (3) that the pickup was being sold "as is," and (4) that oral promises were not binding on the dealer, including a handwritten statement that nothing else was promised, either implicitly or explicitly. Moreover, Appellant also was told by his brother-in-law to get in writing the representation that the pickup had a new engine, and Appellant did not insist nor follow up on that suggestion.

The trial court ruled that in the face of these many "red flags" which Appellant chose to disregard, there was no genuine issue of material fact that Appellant's reliance was unreasonable and that Appellees were entitled to judgment as a matter of law.

¹. Since this matter is not properly before the Court of Appeals, there is no RECORD below to which Appellees properly may refer. However, copies of relevant documents are attached in the Addendum to this Brief and to the Addendum submitted by Appellant with its Opening Brief.

². The pickup had been recalled and something indeed had been replaced in the engine, but the whole engine itself had not been replaced. (Appellant's Deposition at p.62).

The trial court entered summary judgment for Appellees and also ruled that Appellees were entitled to attorney fees and costs. Appellees submitted their claim for attorney fees and costs and Appellant objected both to Appellees' entitlement to such fees and costs, and to the amount of the fees and costs requested by Appellees.

Before the trial court ruled on Appellant's objections, however, Appellant filed the first of many Notices of Appeal in the matter. At that point, as indicated in a handwritten note by the court below, the trial court erroneously understood that it had been deprived of jurisdiction to proceed with consideration of Appellant's objections and Appellee's request for attorney fees and costs. Opposition Brief Addendum Exhibit 1 (Trial Court Docket entry).

Without informing the trial court that the Utah Supreme Court in Promax Development Corp. v. Raile, 2000 UT 4, ¶ 15, 998 P.2d 254 had recently overturned prior law under which the trial court was apparently laboring, Appellant pursued this premature appeal.

SUMMARY OF ARGUMENTS

Since there is no final judgment and no exception to the final judgment rule applies, this court has no appellate jurisdiction. Even if this court had jurisdiction, the trial court properly granted summary judgment for Appellees. This court therefore should dismiss this appeal, award attorney fees and costs to Appellees, and remand the case to the trial court for determination of the amount of attorney fees and costs, both at trial, and on this appeal.

ARGUMENT

I. THIS COURT LACKS APPELLATE JURISDICTION BECAUSE THE TRIAL COURT HAS NOT YET DETERMINED THE AMOUNT OF ATTORNEY FEES TO WHICH APPELLEES ARE ENTITLED

An appellate court is the exclusive judge of its own jurisdiction. Nat'l Bank of Hailey, Idaho v. Lewis, 13 Utah 507, 509, 45 P. 890, 891 (1896). Its determination whether it has jurisdiction to hear an appeal is a question of law. Pledger v. Gillespie, 1999 UT 54, ¶ 16, 982 P.2d 572. This court's first duty, therefore, is to determine whether it has jurisdiction, and if it concludes that it does not, then it must dismiss the action. Giles v. Oakridge Country Club, 2001 UT App 381, 2001 WL 1549232, *1 (quoting Barney v. Division of Occupational & Prof'l Licensing, 828 P.2d 542, 543-44 (Utah Ct.App.1992)).

The Utah Supreme Court has repeatedly held that:

"a trial court must determine the amount of attorney fees awardable to a party before the judgment becomes final for the purposes of an appeal under Utah Rule of Appellate Procedure 3."

Loffredo v. Holt, 2001 UT 97, ¶ 12, 37 P.3d 1070 (quoting Promax Development Corp. v. Raile, 2000 UT 4, ¶ 15, 998 P.2d 254).

Appellant concedes that the trial court has not yet ruled on the amount of attorney fees and costs to which Appellees are entitled. (Appellant's Opening Brief, p.7, ¶ 23). None of the three possible exceptions to the final judgment rule apply here, and Appellant does not

contend otherwise.³ Therefore this court has no jurisdiction and it must dismiss Appellant's premature appeal.

Appellant was very well aware that the trial court labored under the misapprehension that because Appellant filed this "appeal," the trial court had lost jurisdiction to determine the amount of attorney fees and costs owed to Appellees. (Appellant's Opening Brief, Exh. 5, Affidavit of Frances M. Wyss, p.2, ¶ 3). Instead of correcting the trial court's error by alerting that court about the Utah Supreme Court's contrary holding in Loffredo v. Holt, 2001 UT 97, 37 P.3d 1070 and Promax Development Corp. v. Raile, 2000 UT 4, 998 P.2d 254, Appellant simply filed this "appeal." Appellant cannot use the trial court's mistake to fabricate appellate jurisdiction.

II. THIS COURT CANNOT REVIEW A BASIS FOR ATTORNEY FEES WHICH THE TRIAL COURT HAS NOT YET ANNOUNCED

Even if this court had appellate jurisdiction, this court cannot review a decision the trial court has not yet announced.

Appellant contends that there was no basis for the trial court's determination that

³. First, none of the three requirements for certification pursuant to Utah Rule of Civil Procedure 54(b) have been met. Pate v. Marathon Steel Co., 692 P.2d 765, 767 (Utah 1984)(multiple claims or multiple parties; judgment appealed from entered on an order appealable but for the fact that other claims or parties remain in the action; trial court determination that 'there is no just reason for delay'). Second, this court's permission has not been obtained for interlocutory review under rule 5 of the Utah Rules of Appellate Procedure. UTAH R. APP. P. 5. Third, no statute otherwise permits this appeal. Loffredo v. Holt, 2001 UT 97, ¶ 15, 37 P.3d 1070 (similarly dismissing appeal where none of the three exceptions were present).

Appellees are entitled to recover attorney fees and costs. (Appellant's Opening Brief, p. 17, Point II). However, Appellant also asserts that the trial court has not yet considered or ruled upon the proper basis for such entitlement. (Appellant's Opening Brief, pp. 17-19, Point III) This court cannot review a determination the trial court has not yet made. Accordingly, even if there were appellate jurisdiction herein, this court cannot review a decision the trial court has not yet made.

III. THE TRIAL COURT HAD A PROPER BASIS FOR CONCLUDING THAT APPELLEES ARE ENTITLED TO RECOVER ATTORNEY FEES AND COSTS

Even if this court had appellate jurisdiction, and even if the trial court had already announced its basis and determined the amount of attorney fees and costs below, this court would have to uphold such award.

The contract between the parties provides:

"In the event it becomes necessary for Seller to enforce any of the terms, conditions or warranties in this agreement, purchaser agrees to pay reasonable attorney's fees, court costs and collection fees."

(Opposition Brief Addendum Exhibit 2, MOTOR VEHICLE CONTRACT OF SALE, p.2, ¶ 6)(Emphasis added).⁴

In Chase v. Scott, 2001 UT App 404, 38 P.3d 1001, this court affirmed an award of attorney fees and costs based on a contractual provision allowing for fees and costs to the

⁴. Since this matter is not properly before the Court of Appeals, there is no RECORD below to which Appellees may refer. Accordingly, reference is made to Exhibits in the ADDENDUM attached hereto.

prevailing party incurred in "litigation ... to enforce" the contract. *Id.* 2001 UT App at 404, ¶ 1. This court upheld the trial court's determination that a defense against rescission was "litigation ... to enforce" the contract that entitled the party defending against the rescission action to attorney fees and costs under the contractual provision. *Id.* 2001 UT App 404, ¶ 13. This court reasoned that the successful defense against rescission preserved the contract, and therefore "enforced" it. *Id.* 2001 UT App 404, ¶ 17. Appellees similarly successfully preserved the contract against fraud and negligent misrepresentation claims, and therefore also "enforced" it.

Other states have similarly held. In Siligo v. Castellucci, 21 Cal.App.4th 873, 26 Cal.Rptr.2d 439 (1994), the parties' contracts provided for recovery of attorney fees by a prevailing party in an action "arising out of" or "to interpret or enforce" the contracts. The seller sued the buyer for breach of contract, and the buyer cross-complained for fraud. The seller prevailed at trial. However, the trial court awarded attorney fees to the seller only on the seller's breach of contract claim against the buyer, but not on the defense against the buyer's fraud claim against the seller.⁵ The Court of Appeals reversed, emphasizing that the critical consideration is whether the defense against the noncontractual claim was necessary to succeed on the contractual claim. *Id.*, 21 Cal.App.4th at 879, 26 Cal.Rptr.2d 443. The buyer argued that its fraud cross-claim did not seek rescission or otherwise attack the

⁵. It was possible for the trial court to so divide the award because the attorneys for seller had submitted separate billings for prosecution of the seller's contract claim and for defense against the buyer's fraud claim.

enforceability of the contracts, but sought only monetary damages independent of the validity of the underlying agreements. In rejecting that argument, the Court of Appeals held:

“[Seller] was required to defend against fraud in order to succeed on his complaint to enforce the agreements. The practical success of [Seller’s] defense was the enforceability of the agreements. The cost of litigating the issue raised by [Buyer] therefore constituted part of the cost of enforcing the contracts. The trial court therefore erred in apportioning its award of attorney's fees between the offensive and defensive aspects of this case.”

Id., 21 Cal.App.4th at 880, 26 Cal.Rptr.2d 443.

Similarly, Gamble v. Northstore Partnership, 28 P.3d 286 (Alaska 2001), involved a defense against a suit to reform an easement. The court held that a defense against a suit for reformation of an easement is similar to a counterclaim seeking a declaration that the agreement is valid, and thus is an action “to enforce” the agreement, as provided in the attorney fees provision involved. More broadly, the court emphasized that a suit “to enforce” an agreement refers to a suit to confirm the validity of the terms of an agreement in the face of a challenge. Under both conceptions, the court held that the successful defense of the agreement entitled the prevailing party to attorney fees and costs. Id. 28 P.3d at 289.

The reasoning of the Siligo and Gamble cases is consistent with this court’s decision in Chase v. Scott and is applicable here. Appellant similarly attempted to circumvent the parties’ agreement through an action for fraud and negligent misrepresentation. Appellees’ successful defense of the agreement is indistinguishable from a Declaratory Judgment action by Appellees seeking a declaration that the agreement was enforceable according to its terms. If Appellees had brought such an action and if Appellant similarly had counterclaimed for

fraud and negligent misrepresentation, Appellees' success against Appellant's counterclaims would have been necessary to succeed on Appellees' declaratory claim. More broadly, Appellees' successful defense against Appellant's fraud and negligence claims here confirmed the validity of the agreement. Such defense, therefore, constituted an action "to enforce" it, entitling Appellees to recover attorney fees and costs below.

Policy support also may be drawn from the Utah Supreme Court's decisions regarding the award of attorney fees and costs on successful appeals to parties who recover attorney fees as prevailing parties at the trial court level. The purpose of a contractual provision for attorney fees is to indemnify the prevailing party against the necessity of paying an attorney's fee and to enable the party to recover the full amount of the contractual obligation. Management Services Corp. v. Development Associates, 617 P.2d 406, 409 (Utah 1980)(party awarded attorney fees and costs in trial court is entitled to such fees and costs on appeal as matter of law). If a party who successfully recovers attorney fees and costs pursuant to a contractual provision for such fees and costs is required to defend its position on appeal at its own expense, its rights under the contract are thereby diminished. For that reason, the court in Management Services Corp. v. Development Associates held as a matter of law that "a provision for payment of attorney fees in a contract includes attorney's fees incurred by the prevailing party on appeal as well as at trial, if the action is brought to enforce the contract..." Id. (overruling prior cases).

Similarly, since it is indisputable that Appellees would recover attorney fees and costs

pursuant to the contractual provision for actions “to enforce” the contract, they should not be required to pay for their own attorney fees and costs to defend against Appellant’s fraud and negligence claims seeking to negate provisions in the contract, because to do so would thereby diminish Appellees’ rights under the contract. As a matter of law, Appellees had a right to recover attorney fees and costs by successfully defending against Appellant’s fraud and negligence claims.

IV. THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT APPELLANT’S RELIANCE WAS UNREASONABLE AND APPELLEES ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW

Even if this court had appellate jurisdiction, and even if the trial court had already announced its basis and determined the amount of attorney fees and costs below, this court still would uphold the trial court’s summary judgment for Appellees.

A grant of summary judgment is appropriate only when (a) there is no genuine issue of material fact and (b) the moving party is entitled to judgment as a matter of law. UTAH R.Civ.P. 56(c). On appeal, the facts are reviewed in the light most favorable to the losing party. Briggs v. Holcomb, 740 P.2d 281, 283 (Utah Ct.App.1987).

The scope of Appellant’s purported appeal is fairly narrow. First, it only concerns one single fraud claim. Initially, Appellant asserted two causes of action in the trial court: fraud and negligent misrepresentation. (Appellant’s Opening Brief, p.4, ¶ 8). Now Appellant concedes that its claim for negligent misrepresentation was not well taken, and has abandoned that claim on appeal. (Appellant’s Opening Brief, p.3)(...“Plaintiff ... conceded

that his claim for negligent misrepresentation was not well taken and does not appeal the dismissal of this cause of action.”).

Second, this purported appeal only involves one single element of Appellant’s fraud claim. In Utah, all of the following elements of fraud must be shown by clear and convincing evidence: (1) a representation; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor either (a) knew to be false, or (b) made recklessly, knowing that he or she had insufficient knowledge on which to base such representation; (5) for the purpose of inducing the other party to act upon it; (6) that the other party, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his or her injury and damage. Dugan v. Jones, 615 P.2d 1239, 1246 (Utah 1980).

In both its Memorandum Decision and in its Judgment, the trial court concluded that there was no genuine issue of material fact with respect to the element of reasonable reliance. See Trial Court DECISION AND ORDER ON DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT (Opposition Brief Addendum Exhibit 3); Trial Court JUDGMENT (Opposition Brief Addendum Exhibit 4).⁶

If there was no genuine issue of material fact with respect to any one of the elements of fraud, then summary judgment against Appellant was appropriate at the trial level and

⁶. Appellant erroneously contends that the trial court held that there was no genuine issue with respect to both “(1) reasonable reliance” and “(2) intent to defraud.” (Appellant’s Opening Brief, p.3).

must be upheld on appeal. See, e.g., Maynard v. Wharton, 912 P.2d 446, 450 (Utah Ct. App. 1996)(since buyers knew seller could not convey certain lot, buyers could not establish that they acted reasonably and in ignorance of the falsity of sellers' earlier representations about the lot, so sellers were entitled to summary judgment as a matter of law). Appellant does not seem to seriously contend otherwise, but instead attacks the trial court's conclusion that there was no genuine issue of material fact with respect to the element of reasonable reliance.

The trial court properly concluded that there was no genuine issue of material fact that Appellant's reliance was unreasonable. The trial court accepted as true Appellant's version of the facts. Trial Court DECISION AND ORDER ON DEFENDANTS' MOTION FOR SUMARY JUDGMENT, p.1 (Opposition Brief Addendum Exhibit 3). The trial court accepted each of the following as true:

1. That Appellant bought a vehicle from Appellees, that Mr. Maestas, one of the Appellees, orally represented to Appellant that the vehicle had a new motor, and that the vehicle did not have a new motor.

Trial Court DECISION AND ORDER ON DEFENDANTS' MOTION FOR SUMARY JUDGMENT, p.2 (Opposition Brief Addendum Exhibit 3).

2. That Appellant received and signed 4 separate documents as follows:

“(a) [the] “Motor Vehicle Contract of Sale,” which clearly stated that there were no express or implied warranties on any used vehicles; (b) a waiver of benefits statement declining the offer to purchase an extended warranty plan, and acknowledging that [Appellant] bore ‘sole responsibility’ for any repairs; (c) a document entitled ‘Buyers’ Guide’ (also referenced in the vehicle Contract of Sale) which was displayed in the vehicle window and which stated

‘AS IS--NO WARRANTY’ and which also indicated that no systems were covered by any warranty; and (d) a ‘DUE BILL’ which in capital letters indicated ‘ORAL PROMISES ARE NOT BINDING ON THE DEALER!’ along with a handwritten statement below that stating ‘Nothing else promised, implied, or expressed.’”

Id.

3. And that,

“[Appellant] had been advised by his brother-in-law (prior to concluding the deal) to secure written documentation of [Appellees’] representation, [that Appellant] made a single request which was not directly responded to ... [and that to] the extent that [Appellant’s] request yielded some information (i.e., the name of the dealer that had worked on the vehicle’s engine), [Appellant] then failed to follow-up on the information he was provided orally.”

Id.

Under these undisputed facts, the trial court concluded:

“[Appellant] here was provided not one, but many, ‘red flags’ which he chose to disregard. Having done so, he must deal with the ‘consequences of his own neglect.’”

Id.

In Gold Standard Inc. v. Getty Oil, 915 P.2d 1060, 1067 (Utah 1996), the court held that “[w]hile the question of reasonable reliance is usually a matter within the province of the jury . . . there are instances where courts may conclude that, as a matter of law, there was no reasonable reliance.” Paraphrasing Gold Standard, the trial court below concluded:

“‘Under the law of [Utah], a party cannot reasonably rely upon oral statements by the opposing party in light of contrary written information. No matter how naive or inexperienced [Plaintiff was], [he] could not close [his] eyes and accept unquestioningly any representations made to [him]. It was [his] duty to make such investigation and inquiry as reasonable care under the circumstance would dictate.’ Gold Standard, 915 P.2d at 1068 (citing Rubey v. Wood, 373 P.2d 386, 387-88 (Utah

1962)). ‘The one who complains of being injured by . . . false representation cannot heedlessly accept as true whatever is told him, but has the duty of exercising such degree of care to protect his own interests as would be exercised by an ordinary, reasonable and prudent person under the circumstances, and if he fails to do so, is precluded from holding someone else to account for the consequences of his own neglect.’ Gold Standard, at 1069 (quoting Mikkelson v. Quail Valley Realty, 641 P.2d 124 (Utah 1982)).”

Id.

Appellant does not disagree that if the trial court properly concluded that there was no genuine issue of material fact that Appellant’s reliance was unreasonable, then Appellees were entitled to summary judgment as a matter of law. Instead, Appellant contends that the trial court “misapplied” the Gold Standard case. (Appellant’s Opening Brief, p.12.)

The trial court carefully and correctly applied the Gold Standard case. In the first place, the trial court correctly interpreted that case as authorizing trial courts to determine on summary judgment that there is no genuine issue of material fact that a plaintiff’s reliance is unreasonable. The trial court here properly did so in light of the undisputed facts. No reasonable trier of fact could conclude, in light of the undisputed facts, that Appellant had demonstrated by clear and convincing evidence that Appellant reasonably relied on an oral representation in the face of the four documents to the contrary. Moreover, Appellant even failed to follow up on a suggestion by his brother-in-law that Appellant confirm in writing that the used vehicle in question did indeed have a new engine. (See Exhibit 3 hereto).

Second, Appellant’s attempt to distinguish Gold Standard as inapplicable to nineteen-year-old high school graduates is ineffectual.(Appellant’s Opening Brief, p.10.) The

fundamental principle of Gold Standard is that every person must act reasonably in the marketplace. Even nineteen-year-olds such as Appellant, whom the law empowers to enter into enforceable contracts,⁷ must act reasonably. It was unreasonable for Appellant to rely on the representation that the used pickup he was buying had a new engine. This is particularly so where in this case, four separate documents received and signed by Appellant told him that oral representations were not binding on the dealer, that the vehicle was sold “as is,” and that there were no warranties express or implied. Even his brother-in-law told him to “get it in writing,” and still, Appellant failed to follow up on that suggestion. Appellant asked the trial court, in essence, to avoid his contract and save him from his own unreasonable behavior. Such a standard as Appellant suggests would lead sellers and other actors in the marketplace to avoid selling to nineteen-year-olds. That would *disadvantage* them in the marketplace, leading sellers to charge them higher prices in light of the additional risk that such nineteen-year-olds might disaffirm such contracts. The legislature wisely has limited such disaffirmance to eighteen-year-olds, and this court should not re-write the statutes.⁸

Third, Appellant’s reliance on Robinson v. Tripco Investment, Inc., 2000 UT App 200, 2 P.3d 219 is similarly misplaced. In Robinson, the defendant seller not only told the

⁷. In Utah, a person eighteen years of age or older has the legal capacity to contract. See Utah Code Ann. §§ 15-2-1, 15-2-2. Appellant herein was nineteen years of age when he bought the vehicle involved.

⁸. Id. (only contracts entered into prior to 18-year-old majority can be disaffirmed).

buyer that the building in question had no structural defects, but the seller backed up that representation with “an inspection report that failed to note any structural problems with the building.” Id. 2000 UT App at ¶ 21. In contrast, Appellant’s oral statement that the vehicle in question had a new engine was not followed up with any writing. On the contrary, all four of the subsequent writings provided to and signed by Appellant provided that the vehicle was being sold “as is” and that the seller disavowed any oral representations regarding the vehicle. Moreover, Appellant subsequently was told by his brother-in-law to get the new-motor assurance in writing, and Appellant failed to follow up on that suggestion. Therefore, in contrast to the Robinson plaintiff, Appellant herein was given no writing confirming an oral misrepresentation, but instead was provided with writings negating such representation, and Appellant also was advised by his own relative to obtain a written assurance and failed to do so.

Fourth, Semenov v. Hill, 982 P.2d 578 (Utah 1999), also cited by Appellant, is unhelpful to Appellant’s cause. The plaintiff in Semenov asserted a language deficiency; Appellant here does not. Semenov does not apply to “unsophisticated nineteen-year-olds.” If it did, then all contracts by nineteen-year-olds would be suspect, since every dissatisfied nineteen-year-old would argue lack of sophistication in order to avoid contractual provisions, or as in this case, to contend that they acted reasonably in the face of 4 separate documents plus the advice of their own brother-in-law to the contrary.

In summary, the trial court properly concluded that there was no genuine issue of

material fact that appellant's reliance was unreasonable and that appellees were entitled to judgment as a matter of law.

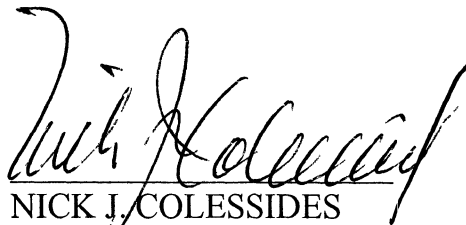
V. APPELLEES ARE ENTITLED TO ATTORNEY FEES AND COSTS ON APPEAL

Since Appellees are the prevailing party entitled to attorney fees and costs in the trial court below, Appellees also are entitled to attorney fees and costs incurred on appeal as a matter of law. Pack v. Case, 2001 UT App 232, ¶ 39, 30 P.3d 436 (quoting Valcarce v. Fitzgerald, 961 P.2d 305, 319 (Utah 1998)); Management Services Corp. v. Development Associates, 617 P.2d 406, 408-09 (Utah 1980)(party awarded attorney fees and costs in trial court is entitled to such fees and costs on appeal as matter of law).

CONCLUSION

This court should remand this case to the trial court with instructions to determine the attorney fees and costs to which Appellees are entitled both for proceedings below and on appeal.

DATED this 8th day of March 2002.


NICK J. COLESSIDES
Attorney for Appellees

CERTIFICATE OF SERVICE

Filed the **original** of the foregoing **and nine copies** with the Clerk of the Court of Appeals:

OFFICE OF THE CLERK OF THE COURT
COURT OF APPEALS OF THE STATE OF UTAH
450 SOUTH STATE STREET, FIFTH FLOOR
SALT LAKE CITY, UTAH
84111-1860

and served **two copies** of the foregoing upon the following:

Attorney for Plaintiff/Appellant Wesley L. Larsen:
LOREN M. LAMBERT (USBA #5101)
ARROW LEGAL SOLUTIONS, LLC
266 East 7200 South
Midvale, Utah 84047

via first class mail, postage pre-paid, this 5th day of March, 2002, addressed as set forth above.

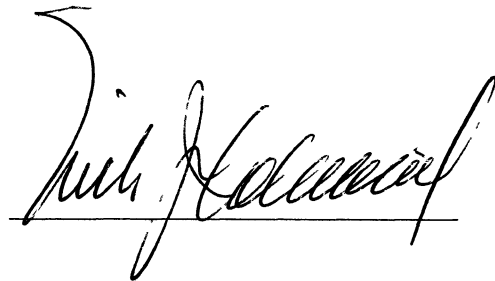
A handwritten signature in black ink, appearing to read "Loren M. Lambert", is written over a horizontal line.

EXHIBIT 1

20010282-CA.
08-01-01 Filed: VERIFIED ^(*) OBJECTION TO AFFIDAVIT OF ATTORNEYS FEES ATPtamra
08-24-01 Note: AT THE REQUEST OF THE UTAH COURT OF APPEALS, FILE WAS
SENT NOT PAGINATED.
09-14-01 Filed: LETTER TO MR. LAMBERT FROM COURT CLERK. steph
09-18-01 Filed: LETTER FROM LOREN M LAMBERT DATED 9-17-01. vicki
09-19-01 Filed: NOTICE TO SUBMIT RE: DEFENDANTS' REQUEST FOR ATTORNEY'S vicki
FEES BY ATP. shirl

10/10
I think Judge
Lugger should
see this -
B. Lubeck

There appears to be some sort
of objection (*) to the proposed judgment
against W. Larsen. That appears to
have been sent north. So, w/out
that and because it involves a
matter currently on appeal, I
think it's not a judgment that
can be signed. Mr. Burton

EXHIBIT 2

MOTOR VEHICLE CONTRACT OF SALE

EXCLUSIVE CARS, INC.
5720 SOUTH STATE
MURRAY, UT 84107
(801) 268-9909

12/04/98
DATE OF SALE
WES L LARSEN
PURCHASER'S NAME
3445 S 3170 E
STREET ADDRESS
SLC, UT 84109
CITY COUNTY STATE ZIP CODE
(801) 497-2062
RES PHONE
(801) 969-8748
BUS PHONE

Purchaser and Co-Purchaser(s), if any, (hereafter referred to as "Purchaser") hereby agree to purchase the following vehicle from Seller/Dealer (hereafter referred to as "Seller"), subject to all terms, conditions, warranties and agreements contained herein, including those printed on the reverse side hereof

NEW	USED	DEMO	YEAR	MAKE	SERIES	BODY TYPE	CYL	COLOR
	XX		1991	TOYOTA	EX 4X4			
VIN			ODOMETER		STOCK NO	DEL DATE	SALESPERSON	
1T4VN13G2H5052079			84262		TR057079	12/04/98	FILL, MAI	
PURCHASE PRICE AND OTHER SUMS DUE					THIS SECTION FOR SELLER'S USE ONLY PERTAINING TO TRADE-IN			
1. CASH PRICE OF VEHICLE					Title (if not, explain)			
2. ACCESSORIES/OPTIONS					REGISTRATION			
3.					BILL OF SALE			
4.					POWER OF ATTORNEY			
5.					ODOMETER STATEMENT			
6. TOTAL CASH PRICE (add lines 1-5)					PROPERTY TAX			
7. MFR. REBATE \$ N/A					AUTHORIZATION FOR PAYOFF			
8. PORTION/REBATE APPLIED TO PURCHASE (N/A)					NOTICE ONLY TO BUYERS OF USED VEHICLES			
9. SUB TOTAL (line 6 minus 8)					The information you see on the window form (Buyer's Guide) for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.			
					I HAVE RECEIVED A COPY OF THE FTC USED CAR BUYERS GUIDE			
TRADE-IN AND/OR OTHER CREDITS					FINANCING DISCLOSURE			
YEAR/MAKE					INSTRUCTION One of the two following disclosures, either "A" or "B", must be acknowledged. If Purchaser agrees to be responsible for financing, or if this is a cash-only or cash-plus-trade-in only transaction, then Purchaser must sign disclosure "A". If Seller agrees to arrange for financing, then both Seller and Purchaser must sign disclosure "B". BY SIGNING, PURCHASER AFFIRMS THAT HE/SHE HAS READ THE DISCLOSURE AND AGREES THERETO. IF SIGNING DISCLOSURE "B", DO NOT SIGN UNTIL ALL BLANKS HAVE BEEN FILLED IN.			
ODOMETER					PURCHASER AGREES TO ARRANGE FINANCING			
SERIES					"A" THE PURCHASER OF THE MOTOR VEHICLE DESCRIBED IN THIS CONTRACT ACKNOWLEDGES THAT THE SELLER OF THE MOTOR VEHICLE HAS MADE NO PROMISES, WARRANTIES, OR REPRESENTATIONS REGARDING SELLER'S ABILITY TO OBTAIN FINANCING FOR THE PURCHASE OF THE MOTOR VEHICLE. FURTHERMORE, PURCHASER UNDERSTANDS THAT IF FINANCING IS NECESSARY IN ORDER FOR THE PURCHASER TO COMPLETE THE PAYMENT TERMS OF THIS CONTRACT ALL THE FINANCING ARRANGEMENTS ARE THE SOLE RESPONSIBILITY OF THE PURCHASER.			
BODY TYPE					SIGNATURE OF PURCHASER			
VIN					SELLER AGREES TO ARRANGE FINANCING			
*BALANCE OWED ON TRADE-IN: 0.00					"B" THE PURCHASER OF THE MOTOR VEHICLE DESCRIBED IN THIS CONTRACT HAS EXECUTED THE CONTRACT IN RELIANCE UPON THE SELLER'S REPRESENTATION THAT SELLER CAN PROVIDE FINANCING ARRANGEMENTS FOR THE PURCHASE OF THE MOTOR VEHICLE. THE PRIMARY TERMS OF THE FINANCING ARE AS FOLLOWS:			
BALANCE OWED TO:					INTEREST RATE BETWEEN 14.2% AND 14.2% PER ANNUM, TERM BETWEEN 60 MONTHS AND 60 MONTHS. MONTHLY PAYMENTS BETWEEN \$25.1 PER MONTH AND \$25.1 PER MONTH BASED ON A DOWN PAYMENT OF \$ 2500.00			
ADDRESS:					IF SELLER IS NOT ABLE TO ARRANGE FINANCING WITHIN THE TERMS DISCLOSED, THEN SELLER MUST, WITHIN SEVEN CALENDAR DAYS OF THE DATE OF SALE, MAIL NOTICE TO THE PURCHASER THAT HE/SHE HAS NOT BEEN ABLE TO ARRANGE FINANCING. PURCHASER THEN HAS 14 DAYS FROM DATE OF SALE TO ELECT, IF HE/SHE CHOOSES, TO RESCIND THE CONTRACT OF SALE, PURSUANT TO SECTION 41-3-401 IN ORDER TO RESCIND THE CONTRACT OF SALE, THE PURCHASER SHALL:			
PAYOFF VERIFIED BY:					(1) RETURN TO SELLER THE MOTOR VEHICLE PURCHASED,			
GOOD UNTIL:					(2) PAY THE SELLER 30 CENTS FOR EACH MILE THE MOTOR VEHICLE HAS BEEN DRIVEN, AND			
DATE OF VERIFICATION:					(3) COMPENSATE SELLER FOR ANY PHYSICAL DAMAGE TO THE MOTOR VEHICLE			
ACC. #:					IN RETURN, SELLER SHALL GIVE BACK TO THE PURCHASER ALL PAYMENTS OR OTHER CONSIDERATION PAID BY THE PURCHASER, INCLUDING ANY DOWN PAYMENT AND ANY MOTOR VEHICLE TRADED IN. IF THE TRADE-IN HAS BEEN SOLD OR OTHERWISE DISPOSED OF BEFORE THE PURCHASER RESCINDS THE TRANSACTION, THEN THE SELLER SHALL RETURN TO THE PURCHASER A SUM EQUIVALENT TO THE ALLOWANCE TOWARD THE PURCHASE PRICE GIVEN BY THE SELLER FOR THE TRADE-IN, AS NOTED IN THE DOCUMENT OF SALE.			
*WARRANTY AS TO BALANCE OWED ON TRADED-IN VEHICLE: Purchaser warrants that he/she has given Seller a true pay-off amount on any vehicle traded in, and that if it is not correct and is greater than the amount shown above, Purchaser will pay the excess to Seller on demand.					SIGNING THIS DISCLOSURE DOES NOT PROHIBIT THE PURCHASER FROM SEEKING HIS OWN FINANCING.			
10. TRADE-IN ALLOWANCE					SIGNATURE OF PURCHASER			
11. BALANCE OWED ON TRADE-IN*					SIGNATURE OF SELLER			
12. NET ALLOWANCE ON TRADE-IN (line 10 minus 11)					OTHER TERMS AGREED TO:			
13. DEPOSIT/CASH DOWN PAYMENT (omit amt. line 8)					NONE <input type="checkbox"/> AS FOLLOWS <input checked="" type="checkbox"/>			
14. TOTAL CREDITS (total lines 12 & 13)					WES TO ARRANGE FINANCING			
15. SUB-TOTAL FROM LINE 9					BY 12-00-98			
16. SERVICE CONTRACT								
17.								
18. SUB TOTAL-TAXABLE ITEMS (total lines 15-17)								
19. TRADE ALLOWANCE (line 10)								
20. NET TAXABLE AMOUNT (line 18 minus line 19) \$								
21. UTAH SALES/USE TAX ON "TAXABLE AMOUNT"								
22. LICENSE & REGISTRATION FEES								
23. PROPERTY TAX DUE ON TRADE-IN								
24. STATE INSPECTION/EMISSIONS TEST								
25. STATE WASTE TIRE RECYCLING FEE								
26. FEDERAL LUXURY TAX								
27. DEALER DOCUMENTARY SERVICE FEE								
28.								
29. TOTAL OF ALL ITEMS ABOVE (lines 18, 21-27)								
30. TOTAL CREDITS (line 14)								
31. BALANCE DUE (total line 29 minus 30)								
DAY 8 MONTH 12 19 98								

Purchaser has arranged insurance on vehicle through _____ insurance company Policy # _____

As is stated on the reverse side of this document, unless Seller has given to Purchaser an Express Warranty in writing, Seller makes no Warranty, express or implied, with respect to the merchantability, fitness for particular purpose, or otherwise concerning the vehicle, parts or accessories described herein. Unless otherwise indicated in writing, any warranty is limited to that provided by the manufacturer, if any, as explained and conditioned by Paragraph 4 on the reverse side hereof.

Purchaser agrees that this contract includes all of the terms, conditions and warranties on both the face and reverse side hereof, that this agreement cancels and supersedes any prior agreement and as of the date hereof comprises the complete and exclusive statement of the terms of the agreement relating to the subject matters covered hereby. PURCHASER BY HIS/HER EXECUTION OF THIS AGREEMENT ACKNOWLEDGES THAT HE/SHE HAS READ ITS TERMS, CONDITIONS AND WARRANTIES BOTH ON THE FACE AND THE REVERSE SIDE HEREOF AND HAS RECEIVED A TRUE COPY OF THIS AGREEMENT, AND FURTHER AGREES TO PAY THE "BALANCE DUE" SET FORTH ABOVE ON OR BEFORE THE DATE SPECIFIED.

SIGNATURE _____

CONDITIONS AND WARRANTIES

IT IS FURTHER UNDERSTOOD AND MUTUALLY AGREED:

The agreement on the reverse side hereof is subject to the following terms, conditions, and warranties made by Purchaser, which have been mutually agreed upon:

1. Purchaser agrees to deliver the original bill of sale and the title to any used vehicle traded herein along with the delivery of such vehicle in the same condition and containing the same equipment as when appraised reasonable wear and tear excepted, and Purchaser warrants such used vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted on the reverse side hereof.
2. If the Purchaser does not pay the "BALANCE DUE" by the date indicated on the reverse side of this agreement, then the Seller may set off against it's damages any cash deposit or down payment received from the Purchaser. In the event a used vehicle has been taken in trade, Purchaser authorizes Seller to sell the used vehicle, and Seller shall be entitled to reimburse itself out of the proceeds of such sale for its expenses and losses incurred or suffered as the result of Purchaser's failure to complete the purchase.
3. Seller shall not be liable for delays or damages caused by the manufacturer, accidents, sureties, fires, or other causes beyond the control of the Seller.
4. **NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE OR WILL BE DEEMED TO HAVE BEEN MADE BY EITHER SELLER OR THE MANUFACTURER OF THE NEW MOTOR VEHICLE OR MOTOR VEHICLE CHASSIS FURNISHED HEREUNDER, EXCEPTING ONLY THE CURRENT PRINTED WARRANTY APPLICABLE TO SUCH VEHICLE OR VEHICLE CHASSIS, WHICH WARRANTY IS INCORPORATED HEREIN AND MADE A PART HEREOF AND A COPY OF WHICH WILL BE DELIVERED TO PURCHASER AT THE TIME OF DELIVERY OF THE NEW MOTOR VEHICLE OR MOTOR VEHICLE CHASSIS, SUCH WARRANTY SHALL BE EXPRESSLY IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE REMEDIES SET FORTH IN SUCH WARRANTY WILL BE THE ONLY REMEDIES AVAILABLE TO ANY PERSON WITH RESPECT TO SUCH NEW MOTOR VEHICLE OR MOTOR VEHICLE CHASSIS.**
NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY SELLER WITH RESPECT TO USED MOTOR VEHICLES OR MOTOR VEHICLE CHASSIS FURNISHED HEREUNDER EXCEPT AS MAY BE EXPRESSED IN WRITING BY SELLER FOR SUCH USED MOTOR VEHICLE OR MOTOR VEHICLE CHASSIS, WHICH WARRANTY, IF SO EXPRESSED IN WRITING, IS INCORPORATED HEREIN AND MADE A PART HEREOF.
5. In case the vehicle sold to Purchaser is a used or demonstrator vehicle, no warranty or representation is made by Seller as to the extent such vehicle has been used, regardless of the mileage shown on the odometer of said used vehicle.
6. In the event it becomes necessary for Seller to enforce any of the terms, conditions or warranties in this agreement, Purchaser agrees to pay reasonable attorney's fees, court costs, and collection fees.
7. Purchaser may not transfer or assign his/her interest in this Agreement, unless Seller consents in writing.
8. **LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS AGREEMENT.**
9. Purchaser REPRESENTS that he/she is 18 years of age or older.
10. Purchaser grants to Seller a purchase money security interest in the purchased vehicle and to any proceeds of the vehicle to secure full payment of the purchase price. This security interest covers all equipment, accessories, and parts that Purchaser adds to the vehicle. Purchaser also grants Seller a security interest in the proceeds of any physical damage insurance policy on the vehicle.
11. If the vehicle bought by Purchaser is a used vehicle, the information you see on the window form [Buyer's Guide] for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in this contract of sale.
12. **IN THE CASE OF ANY VEHICLE TRADED IN AS PART OF THE CONSIDERATION TOWARD A PURCHASE, PURCHASER REPRESENTS AND WARRANTS:**
 - (a) **THAT, UNLESS OTHERWISE DISCLOSED ON THE REVERSE SIDE HEREOF, POLLUTION CONTROL EQUIPMENT, AIR BAGS AND ALL SAFETY RELATED EQUIPMENT INSTALLED BY THE MANUFACTURER HAS NOT BEEN REMOVED OR RENDERED INOPERATIVE;**
 - (b) **THAT THE YEAR OF MANUFACTURE AND THE BALANCE OWED ON THE TRADED-IN VEHICLE ARE AS STATED ON THE REVERSE SIDE HEREOF;**
 - (c) **THAT, UNLESS OTHERWISE DISCLOSED ON THE REVERSE SIDE HEREOF, THE ODOMETER READING ACCURATELY STATES ACTUAL MILES THE TRADED-IN VEHICLE HAS BEEN DRIVEN;**
 - (d) **THAT PURCHASER HAS AND WILL PROVIDE TO SELLER GOOD TITLE TO THE TRADED-IN VEHICLE, AND THAT TRANSFER OF THE TRADED-IN VEHICLE TO SELLER AS A TRADE-IN ON THE PURCHASE OF ANOTHER VEHICLE IS RIGHTFUL; AND**
 - (e) **THAT THE TRADED-IN VEHICLE HAS NEVER HAD ITS TITLE OR REGISTRATION BRANDED AS "SALVAGED", "RESTORED," "REPAIRED," OR SIMILAR TERM, PURSUANT TO UTAH CODE ANN. §§41-1a-1004 AND 41-1a-1005 OR STATUTE(S) OF ANOTHER STATE SUBSTANTIALLY SIMILAR IN CONTENT. IF PURCHASER BREACHES THIS REPRESENTATION AND WARRANTY THEN PURCHASER AGREES TO BE LIABLE FOR AND PAY THE SELLER THE DIFFERENCE BETWEEN THE TRADE-IN ALLOWANCE AS STATED ON THE REVERSE SIDE AND THE REDUCED VALUE ATTRIBUTABLE TO MISREPRESENTATION REGARDING THE TITLE OR REGISTRATION.**
13. Purchaser also grants the Seller a security interest in the vehicle purchased by Purchaser for the purpose of securing Seller against losses proximately caused by Purchaser's breach, if any, of the warranties made in the preceding paragraph.
14. Any written notice required to be given Purchaser if mailed by ordinary mail, postage prepaid, to Purchaser's mailing address as stated on the reverse side hereof shall be deemed reasonable and effective notification.
15. The rate of interest as set forth in the Financing Disclosure section (B) of the reverse side may involve a variable rate, if therein noted. Purchaser will rely on any credit agreement representing financing to provide the credit disclosures required by law, including disclosures regarding variable rates of interest.

EXHIBIT 3

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
SANDY DEPARTMENT

WESLEY L. LARSEN,
Plaintiff,

vs.

EXCLUSIVE CARS, INC., a
Utah corporation, and FLOYD
MAESTAS,
Defendants.

DECISION AND ORDER ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Civ. No. 990408099

Defendants have moved this Court for Summary Judgment and filed a Memorandum of Law in support of their motion. Plaintiff has responded and Defendants have replied to Plaintiff's opposition. Defendants have requested oral argument. However, after reviewing the parties' submissions and applicable case law, it is the Court's view that the dispositive issue governing the granting or denial of the motion has been authoritatively decided. Accordingly, oral argument is not necessary.

Plaintiff's complaint alleged both fraudulent and negligent misrepresentation. In his opposition to Defendant's Motion for Summary Judgment, however, Plaintiff conceded that under the authority of Robinson v. Tripco Inv., 2000 Ut. App. 200, his claim for negligent misrepresentation "must fail." Consequently the only issues for the Court are whether (1) there are material issues of fact that preclude summary judgment on the fraudulent misrepresentation claim, or (2) if no material issues of fact are in dispute, whether Defendants are entitled to judgment as a matter of law. Utah R. Civ. P. 56.

Plaintiff has agreed with Defendants' statement of undisputed facts. In his opposition, however, Plaintiff raises additional factual statements, some of which (paragraphs 1-3) are accepted without dispute by Defendants, others of which (paragraphs 4-8) are disputed in whole or in part by Defendants. The Court hereby incorporates by reference all the undisputed facts noted in Defendants' and Plaintiff's memoranda. Furthermore, for purposes of ruling on this motion the Court accepts as true Plaintiff's version of the disputed facts. Notwithstanding this assumption, the Court concludes that, as a matter of law, Defendants must prevail.

Plaintiff's remaining cause of action (for fraudulent misrepresentation) requires that Plaintiff establish the following elements: (1) that a representation was made, (2) concerning a presently existing material fact, (3) which was false, and (4) which the representor either knew to be false, or made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it, and (6) that the party, acting reasonably and in ignorance of its falsity, (7) did, in fact, rely upon it, (8) and was

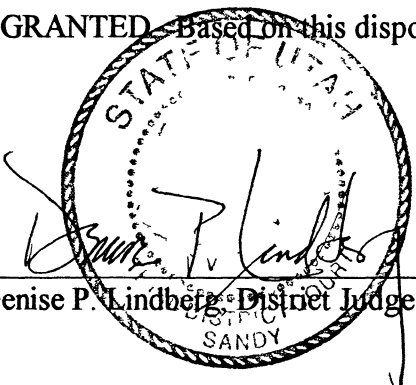
thereby induced to act, (9) to that party's injury and damage. Gold Standard Inc., v. Getty Oil, 915 P.2d 1060, 1067 (Utah 1996). This Court is mindful that "[w]hile the question of reasonable reliance is usually a matter within the province of the jury . . . there are instances where courts may conclude that, as a matter of law, there was no reasonable reliance." Id. The Court holds as a matter of law that, on the facts of this case, it was not reasonable for Plaintiff to act as he did.

Assuming, as the Court has, that Defendant Maestas, in fact, represented that the vehicle Plaintiff was purchasing had a new motor, the question is whether it was reasonable for Plaintiff to rely on that representation without taking independent steps to verify it in light of contrary written documents. Plaintiff claims his reliance on Mr. Maestas statement was reasonable notwithstanding 4 separate documents which he received and signed: (a) a "Motor Vehicle Contract of Sale," which clearly stated that there were no express or implied warranties on any used vehicles; (b) a waiver of benefits statement declining the offer to purchase an extended warranty plan, and acknowledging that he bore "sole responsibility" for any repairs; (c) a document entitled "Buyer's Guide" (also referenced in the vehicle Contract of Sale) which was displayed in the vehicle window and which stated "AS IS-NO WARRANTY" and which also indicated that no systems were covered by any warranty; and (d) a "DUE BILL" which in capital letters indicated "ORAL PROMISES ARE NOT BINDING ON THE DEALER!" along with a handwritten statement below that stating "Nothing else promised, implied, or expressed." Moreover, although Plaintiff had been advised by his brother-in-law (prior to concluding the deal) to secure written documentation of Maestas' representation, Plaintiff made a single request which was not directly responded to. To the extent that Plaintiff's request yielded some information (i.e., the name of the dealer that had worked on the vehicle's engine), Plaintiff then failed to follow-up on the information he was provided orally.

The Utah Supreme Court's decision in Gold Standard, *supra*, conclusively resolves the question of "reasonable reliance" at issue here. "Under the law of [Utah], a party cannot reasonably rely upon oral statements by the opposing party in light of contrary written information. No matter how naive or inexperienced [Plaintiff was], [he] could not close [his] eyes and accept unquestioningly any representations made to [him]. It was [his] duty to make such investigation and inquiry as reasonable care under the circumstances would dictate." Gold Standard, 915 P.2d at 1068 (citing Rubey v. Wood, 373 P.2d 386, 387-88 (Utah 1962)). "The one who complains of being injured by . . . false representation cannot heedlessly accept as true whatever is told him, but has the duty of exercising such degree of care to protect his own interests as would be exercised by an ordinary, reasonable and prudent person under the circumstances, and if he fails to do so, is precluded from holding someone else to account for the consequences of his own neglect." Gold Standard, at 1069 (quoting Mikkelsen v. Quail Valley Realty, 641 P.2d 124 (Utah 1982)). Plaintiff here was provided not one, but many, "red flags" which he chose to disregard. Having done so, he must deal with the "consequences of his own neglect."

Defendants' Motion for Summary Judgment is GRANTED. Based on this disposition, the trial dates are stricken. So ordered.

Dated this 21st day of February, 2001.


Denise P. Lindberg, District Judge


CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 990408099 by the method and on the date specified.

METHOD NAME

Mail NICK J COLESSIDES
ATTORNEY
466 So. 400 East, Suite #100
SALT LAKE CITY, UT
84111-3303
Mail LOREN LAMBERT
ATTORNEY
266 E 7200 S
MIDVALE UT 84047

Dated this 22 day of Feb, 2006


Deputy Court Clerk

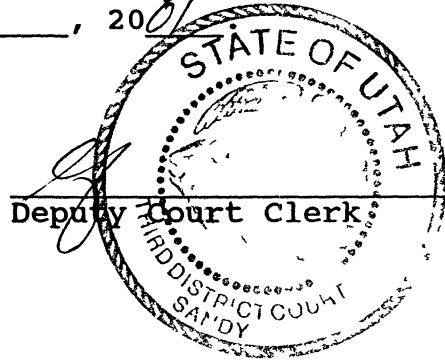


EXHIBIT 4

Dismissal
FILED
THIRD DISTRICT COURT
SANDY DEPT.
4-2-01

NICK J. COLESSIDES (969)
Attorney at Law
466 South 400 East, # 100
Salt Lake City, Utah 84111-3325
Tele: 801.521-4441 *521-4452*

Attorney for Defendants
Exclusive Cars, Inc., and Floyd Maestas

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, SANDY DEPARTMENT
STATE OF UTAH

WESLEY L. LARSEN

Plaintiff,

vs.

EXCLUSIVE CARS, INC., a Utah
corporation, and FLOYD
MAESTAS,

Defendants.

JUDGMENT

Case No.: 99 04 08099

Judge: Denise P. Lindberg

Defendant's Motion for Summary Judgment having come regularly for consideration and decision before the Honorable Denise P. Lindberg, and the Court having received the submissions of the parties, to-wit: Memoranda and attached exhibits thereto in support of each party's respective position, and the Court having considered the submission of the parties, and the Court having made and entered its Decision and Order on Defendants' Motion for Summary Judgment, which decision, order, and findings,

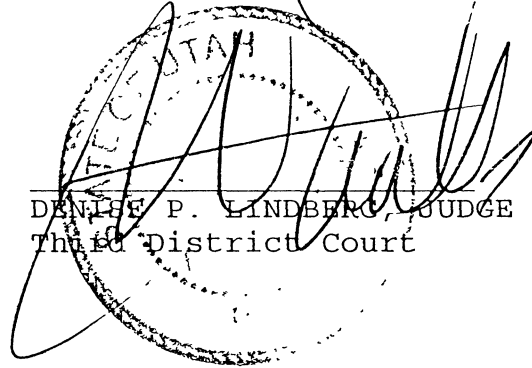
are incorporated herein by this reference, and the Court having found that plaintiff Wesley L. Larsen did not act reasonably in relying upon the oral representations of defendant Floyd Maestas, despite having been provided with many red flags and ignoring the same, and plaintiff failing to follow up in an inquiry to determine the veracity of the information orally presented by defendant Maestas, and plaintiff having received from the defendant dealer four separate and distinct documents disclaiming any oral representations, and the Court having entered its order granting defendants their motion for summary judgment, and good cause otherwise appearing therefor, now therefore, upon the motion of Nick J. Colessides, attorney for defendants Exclusive Cars, Inc., and Floyd Maestas,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that plaintiff's complaint be and the same is hereby dismissed with prejudice, no cause of action, and that defendants are hereby entitled to and shall recover money judgment against plaintiff for defendants' reasonable attorney's fees and costs incurred in connection with the defense of this matter, the same to be presented to the Court by an affidavit of defendants' counsel, and for augmentation of costs and attorney's fees for the collection of the judgment.

SO ORDERED.

Dated this 30th day of March, 2001.

SMITH COUNTY COURT
4-2-01


DENISE P. LINDBERG, JUDGE
Third District Court