

1959

J. Golden Barton Motor Co. v. Calvin D. Jackson : Brief of Respondent

Utah Supreme Court

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MAY 22 1959

Clark, Supreme Court, Utah

In the Supreme Court of the State of Utah

UNIVERSITY UTAH

AUG 6 1959

J. GOLDEN BARTON MOTOR COM-
PANY, INC., A Utah Corporation.
Plaintiff and Respondent,

vs.

CALVIN D. JACKSON,
Defendant and Appellant.

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Case No.
9011

BRIEF OF RESPONDENT

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In the Supreme Court of the State of Utah

J. GOLDEN BARTON MOTOR COM-
PANY, INC., A Utah Corporation.

Plaintiff and Respondent,

vs.

CALVIN D. JACKSON,

Defendant and Appellant.

Case No.
9011

BRIEF OF RESPONDENT

STATEMENT OF CASE

This action was filed in the District Court of Davis County on December 24, 1957. Plaintiff thereafter in open court amended its prayer for specific performance to a claim for the downpayment check in the amount of \$500.00 as agreed and reasonable damages. Defendant's defense of misrepresentation was abandoned when it became apparent from his own testimony that the only real claim he made was that during the initial discussion with the salesman he was quoted a monthly payment figure somewhat lower than that finally written into the Invoice and Order.

On December 15, 1958, after submission of briefs by both counsel and oral argument, Judge Parley Norseth granted Plaintiff's Motion for Summary Judgment.

STATEMENT OF FACTS

The Trial Court resolved this case upon the following evidence:

1. Invoice and Order, dated December 10, 1957, and signed by both parties to this action;
2. Two checks of the same date from Defendant to Plaintiff in the amounts of \$500.00 and \$3680.00 respectively;
3. Application for title to the automobile;
4. Deposition of the Defendant.

The Deposition of Defendant is short (26 pages) and Respondent feels no justification for quoting extracts therefrom in its brief to this Honorable Court. Certain facts appear quite clear:

1. Defendant signed the Invoice and Order;
2. Defendant knew he had purchased a certain automobile;
3. Defendant knew he had the alternative of paying cash and financing through his own bank, or of financing the purchase through Plaintiff's credit agency, at a price increase of \$100.00;

4. All terms of the Invoice and Order were discussed and entered on the instruments in the immediate presence of defendant with his expressed or tacit approval;

5. Plaintiff tendered delivery of the automobile and defendant refused delivery;

6. Defendant stopped payment on both purchase checks and thereby breached the contract.

STATEMENT OF POINTS

POINT ONE

THE RECORD ESTABLISHES AN ENFORCEABLE CONTRACT BETWEEN THE PARTIES.

POINT TWO

THE \$500.00 AGREED DAMAGES WAS NOT AN UNREASONABLE AWARD.

ARGUMENT

POINT ONE

THE RECORD ESTABLISHES AN ENFORCEABLE CONTRACT BETWEEN THE PARTIES.

The record establishes that all material terms of the purchase agreement were reduced to writing in the presence of the Defendant with either his tacit or expressed consent and approval. He did not ask for the return of his checks when he left Plaintiff's place of business after completion of the agreement. Whether or not he secretly

intended to breach the contract is not admissable evidence. *Jensen's Used Cars v. James T. Rice*, 7 U 2d 276, 323 P. 2d 259 (No. 8741, March 28, 1948.)

The alternative given the defendant of financing through his own bank or through Commercial Credit at an additional expense of \$100.00 does not of course make the agreement conditional.

See 12 *American Jurisprudence*, Contracts, Sections 19 and 20.

POINT TWO

THE \$500.00 AGREED DAMAGES WAS NOT AN UNREASONABLE AWARD.

The Invoice and Order (Plaintiff's Exhibit 1) contains this provision:

"IT IS UNDERSTOOD AND AGREED:

If full payment for the vehicle is not made within ten days after notification that it is ready for delivery you shall have the right to cancel this order and retain advance deposit, whether consisting of used vehicle or cash, as your liquidated damages for my failure to complete the purchase."

We may concede that this provision might, under different circumstances, effect a forfeiture or an inequitable award to the seller. The case of *Perkins v. Spencer*, 121 Utah 468, 243 P. 2d 446 (1952) cited by Appellant, does not however stand for the proposition that such clauses are to be ignored, but only that the damages retained must bear reasonable relation to actual

damages. Furthermore the rule of *Perkins v. Spencer*, cited by Appellant, was apparently modified by this Court in *Pearce v. Schurtz*, 2 Utah 2d 124, 270 P. 2d 442 (1954) noted at 4 Utah Law Review, 283.

Although no direct evidence was adduced as to actual damages, the Trial Court had ample evidence from which to conclude that the agreed damages were reasonable. The contract was finalized, and the salesman, Roberts, had earned his sales commission. The car was on the display floor and was thereafter serviced and delivery tendered to Defendant. Papers were prepared for registering title. All of these facts appear from the exhibits and Defendant's own testimony. From these, the Trial Court concluded that \$500.00 was reasonable compensation to Plaintiff.

CONCLUSION

Defendant bought a car from Plaintiff and upon return to his home the same evening experienced the common ailment "Buyer's remorse." He stopped payment on his downpayment check. Then, the following week, he purchased another make of automobile. He knew, and so testified, that he had bought a car from the Plaintiff. The breach was a deliberate one. The agreed damages were found to be reasonable.

THEREFORE, Respondent prays that the judgment of the Trial Court be sustained.

Respectfully submitted,

ADAM M. DUNCAN
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and Respondent.*