

2003

Wesley L. Larsen, Plaintiff and Appellant, vs.
Exclusive Cars, Inc. and a Utah Corporation; Floyd
Maestas, an individual, Defendant and Appellee :
Brief of Appellant

Utah Court of Appeals

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Nick J. Colessides; Attorney for Appellee.

Loren M. Lambert; Arrow Legals Solutions; Attorney for Appellant .

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IN THE UTAH COURT OF APPEALS

WESLEY L. LARSEN,

BRIEF OF THE APPELLANT

Plaintiff and Appellant,

vs..

Case No. 20030086 ~~SC~~ **CA**

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

Priority No. 15

Defendant and Appellee.

BRIEF OF APPELLANT

AN APPEAL FROM A JUDGMENT OF SUMMARY JUDGMENT

NICK J. COLESSIDES
Attorney for Defendant/Appellee
466 South 400 East, Suite 100
Salt Lake City, Utah 84111
Telephone: 521-4441

LOREN M. LAMBERT No. 5101
ARROW LEGAL SOLUTIONS, LLC
Attorney for Appellant
266 East 7200 South
Midvale, Utah 84047
Telephone 801-568-0041

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LOREN M. LAMBERT No. 5101
ARROW LEGAL SOLUTIONS, LLC
Attorney for Appellant
266 East 7200 South
Midvale, Utah 84047
Telephone 801-568-0041

PARTIES TO THE PROCEEDINGS BELOW

The caption of the case on appeal contains the names of all parties to the proceedings in the district court.

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None..... 1

STATEMENT OF JURISDICTION

Plaintiff/Appellant appeals a summary judgment dismissal. This Court has jurisdiction under Utah Code Ann. § 78-2-2(4) (1996).

STATEMENT OF THE ISSUES & STANDARD OF REVIEW

The following issues are presented to the Court for review, together with the respective standards of review:

ISSUE ON APPEAL

Issue. Did the trial court abuse its discretion by granting Defendants' Motion for Summary Judgment when there was a contested material issue of fact regarding whether or not plaintiff's reliance upon defendants' fraudulent representations was unreasonable? Preserved for Appeal at 136-149.

Standard of Review. The Court of Appeals should review this case *de novo*. Winegar v. Froerer, 813 P.2d 104 (Utah 1991).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Other than case law, there is no dispositive statutory authority.

STATEMENT OF THE CASE

SUMMARY OF PROCEEDINGS BELOW

On September 7, 1999, plaintiff filed a complaint alleging that defendants had sold him a truck which they fraudulently and negligently represented, prior to plaintiff signing the contract, to have a new engine (TR 1-4). After a year and several months of litigation a pretrial conference was held on January 10, 2001 (TR 98). Trial had been set for April

16, 2001. At the pretrial conference, despite the passing of the dispositive motions cut-off date of October 9, 2000 (TR 94-95), defendants requested that they be permitted to file a Motion for Summary Judgment. The trial court set aside the dispositive motion cut-off date and allowed defendants to file their Motion for Summary Judgment. Defendants filed their Motion for Summary Judgment on January 12, 2001 and requested a hearing on the motion. The motion was fully briefed by both parties on January 29, 2001. Without granting oral argument, the trial court issued its ruling on February 22, 2001. The first final judgment was signed on April 2, 2001. However, the court did not rule on the issue of attorney's fees and refused to do so. Plaintiff then appealed the matter. The Court of Appeals dismissed the appeal as premature. The second final judgment was signed on January 6, 2003 which eliminated the issue on attorney's fees. The second notice of appeal was then filed on approximately January 23, 2003. Plaintiff then filed this current appeal.

Defendants raised three issues in their Motion for Summary Judgment. The first is whether or not the merger doctrine and the parol evidence rule defeated plaintiff's cause of action for negligent misrepresentation. Pursuant to Robinson v. Tripco Inc., 2000 Ut App 200, 398 Utah Adv. Rep. 26 (Ct. App. 2000), a case that was not cited by defendants in their motion, these doctrines apply to claims for negligent misrepresentation. In view thereof, plaintiff conceded that his claim for negligent misrepresentation was not well taken and does not appeal the dismissal of this cause of action.

Defendants' other arguments were that plaintiff could not show, as a matter of law, any evidence of: (1) reasonable reliance, or (2) intent to defraud. As to these issues the trial court entered its order granting summary judgment against the plaintiff. The trial court's decision was appealed to the Utah Supreme Court. The Utah Supreme Court transferred the current proceeding to the Utah Court of Appeals for further action.

SUMMARY OF FACTS

1. Defendant Floyd Maestas ("Maestas") is a used car salesman for defendant Exclusive Cars, Inc. (TR 103).
2. On December 4, 1998, the plaintiff purchased a 1991 Toyota truck ("truck") from defendants (TR 103).
3. In conjunction with the sale, plaintiff executed several documents (TR 104).
4. The documents indicate that the sale was "AS IS" and NO warranty was provided (TR 104)
5. Shortly before the purchase of the truck, plaintiff alleged that Maestas represented that the truck had a new engine. Plaintiff alleged that Maestas further told plaintiff that Dahle Toyota in Logan, Utah, installed the new engine (TR 104).
6. Plaintiff alleged that the truck did not have a new engine (TR 104).
7. Plaintiff alleged that the truck experienced mechanical failure (TR 104).

8. Plaintiff filed this action asserting two causes of action claims for fraudulent misrepresentation and negligent misrepresentation (TR 104).

9. When they filed their Motion For Summary Judgment, defendants provided no factual or legal basis supporting an award of attorney's fees or any argument to the trial court asserting its alleged right to attorney's fees. The trial court did not award any attorney's fees in its memorandum decision and order granting defendants' Motion for Summary Judgment (TR 103-114, 150-168, 172-173).

10. Defendants prepared a proposed judgment including an award of attorney's fees. Plaintiff objected to defendants' proposed judgment granting defendants' attorney's fees (TR 176-179, 186-189).

11. When he purchased the truck, plaintiff was a 19-year-old high school graduate with no experience with automobile mechanics (TR 36, 44, 138–Larsen Depo. p 5 lns 4-21, p 65 lns 3-5).

12. In November 1998, plaintiff went to the defendants' car lot and spoke with defendants' salesperson Nikki on approximately two occasions to discuss the truck and test drive it. Plaintiff test drove it once. Nikki never indicated that it had a new engine. On the test drive, plaintiff neither heard nor saw anything that would have indicated that the engine had any problems (TR 39-40, 138–Larsen Depo. pp 39-43).

13. On December 4, 1998, defendant Floyd Maestas, a used car salesperson with six and one half years of experience, represented before the contract was signed that the truck had a new engine (TR 35, 37, 138--Larsen Depo. p 4; p 31 ln 3-14).

14. On December 4, 1998, defendant Floyd Maestas represented that the truck's new engine had been installed by Dahle Toyota of Logan. In fact, Maestas wrote the information as part of the contract paperwork on a post-it note and gave it to the plaintiff (TR 38, 42, 58, 138--Larsen Depo. pp 34-35, 57-58).

15. The main reason that plaintiff agreed to purchase the truck at the price stated was because it was represented to have a new engine (TR 45, 138--Larsen Depo. p 77 ln 16-25; p 78 ln 1-11).

16. After plaintiff took possession of the truck, it broke down on December 17, 1998. There was no indication on the test drive nor when plaintiff took possession that the engine was not new as represented by Mr. Maestas (TR 39-40, 139 Larsen Depo. pp 39, 43, 45).

17. It was determined that the truck's engine was not new and that it would cost between \$2,500 and \$8,600 to fix (TR 43,139--Larsen Depo. pp 62-63).

18. In a conversation Mr. Maestas had with plaintiff in approximately April of 1999, Mr. Maestas admitted that he had told plaintiff before he purchased the truck that the truck had a new engine (TR 139, 147-149--Maestas Depo. p 46, lns 16-18; p 47 ln 11-18; p 50 ln 6-13).

19. Mr. Maestas admitted that he would not tell a customer that a truck had a new engine unless he had the documents to back it up (TR 139, 146--Maestas Depo. p 12 lns 22-25).

SUMMARY OF ARGUMENTS

The trial court erred when it found, as a matter of law, that Mr. Larsen was unreasonable to rely upon the fraudulent representations of the defendants. This is a question of fact that cannot be ruled upon by weighing the evidence as the trial court did in summary judgment. A jury should be allowed to hear the evidence and make its determination based thereon.

ARGUMENT

I. THE PAROL EVIDENCE RULE & THE MERGER DOCTRINE DO NOT APPLY TO PLAINTIFF'S ASSERTIONS OF FRAUD AND THEREFORE THE EXPRESS TERMS OF THE CONTRACT ARE IRRELEVANT THERETO

Summary judgment is only appropriate when "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. 56(c); see also Heglar Ranch, Inc. v. Stillman, 619 P.2d 1390, 1391 (Utah 1980); Bill Brown Realty, Inc. v. Abbott, 562 P.2d 238, 239 (Utah 1977). In this case, it will be shown that the trial court was incorrect to hold that there were no disputed issues of material fact and that it misapplied Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060, 1063 (Utah 1996).

In Robinson v. Tripco Inv., 2000 Ut App 200, 398 Utah Adv. Rep. 26 (Ct. App. 2000), W.W. & W.B. Gardner, Inc. v. Mann, 680 P.2d 23 (Utah 1984), and Berkeley Bank v. Meibos, 607 P.2d 798 (Utah 1980), and as cited by defendant in Lamb v. Bangart, 525 P.2d 602, 607 (Utah 1974), the Utah Courts have conclusively stated that:

All preliminary negotiations, conversations, and verbal agreements are merged in and superseded by the subsequent written contract, and **unless fraud, . . . be averred**, the writing constitutes the agreement between the parties and its terms cannot be altered by parol evidence.

In this case fraud has been averred, therefore the merger doctrine and parol evidence rule do not apply. To prove fraud, plaintiff must demonstrate by clear and convincing evidence that: (1) defendant Maestas made a representation about the truck he sold to plaintiff, (2) the representation concerned a presently existing material fact, (3) the representation was false, (4) the defendants knew the representation was false, or were recklessly indifferent as to the truth or falsity of the representation, (5) the defendants' intent was to induce plaintiff to buy the truck, (6) the plaintiff reasonably relied upon the representation in ignorance of its falsity, (7) the plaintiff relied upon the representation, (8) the plaintiff was induced to act by the defendants' misrepresentation, and (9) the plaintiff has been damaged. Conder v. A.L. Williams & Assocs., 739 P.2d 634, 638 (Ct. App. Utah 1987).

In their Motion for Summary Judgment, defendants asserted that, as to these nine elements, plaintiff could not produce evidence of "reasonable reliance" or "intent to defraud." The trial court granted the Motion for Summary Judgment solely on the finding

that the plaintiff had not “reasonably relied upon” the defendants’ fraudulent representation.

A. THERE IS SUFFICIENT EVIDENCE OF REASONABLE RELIANCE ON DEFENDANTS’ MISREPRESENTATIONS.

In Conder v. A.L. Williams & Assocs., 739 P.2d 634, 639 (Ct. App. Utah 1987), the Court, in setting aside a trial court’s dismissal of a fraud action, explained the concept of reasonable reliance:

Reasonable reliance must be considered with reference to the facts of each case, and is usually a question for the jury to determine. Although it is impossible to draw precise legal boundaries of when reliance is reasonable, the courts have given some directions. **Generally, a Plaintiff may justifiably rely on positive assertions of fact without independent investigation. It is only where, under the circumstance, the facts should make it apparent to one of his knowledge and intelligence, or he has discovered something which should serve a warning that he is being deceived, that a Plaintiff is required to make his own investigations. . . . Reliance also has been found reasonable even where a Plaintiff executes a written agreement in reliance upon verbal promises that the contrary written provision is not operative, or where a Plaintiff is induced to refrain from reading the contract.**” (Emphasis added).

In this case, plaintiff has asserted that defendants, through defendant Maestas, a used cars salesperson with six and one half years of experience, made a positive assertion about the truck that Mr. Maestas wanted the plaintiff to purchase, stating that it had a new engine. Summary of Facts [SOF] above, ¶¶ 5, 13-14. Not only did defendant Maestas represent that the truck had a new engine but that the truck’s new engine had been installed by Dahle Toyota of Logan. SOF ¶ 14. When viewed in the light most favorable to plaintiff, this comment added credence to defendant Maestas’ statement and caused

plaintiff to believe Mr. Maestas. Plaintiff did not observe or discover anything when inspecting the truck or test driving it that would have alerted him that the truck's engine was not new and that he should conduct an independent investigation. SOF ¶¶ 5, 12, 13, 16. At the time, plaintiff was a nineteen-year-old highschool graduate with no experience with automobile mechanics. SOF ¶ 11. At no time during the negotiations or in the written contractual paperwork did defendant Maestas ever indicate that his representation was false nor did he retract his representation.

Because of his youth, education, and non-mechanical background, a jury could find that plaintiff's reliance was reasonable. In fact, it could even be concluded that once he had learned that the truck had a new engine, his actions in purchasing the truck "as is" and declining to purchase a service contract support his reasonably relying on defendants' misrepresentations. A purchaser of a truck is likely to believe that a truck with a new engine or one with low milage is a more safe buy as an "as is" purchase. Plaintiff believed Mr. Maestas was telling the truth and there was nothing to tip him off that he should have distrusted Mr. Maestas.

In applying "Gold Standard" the trial court stated:

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 Mikkelson 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."

The facts of Gold Standard are very different from those in this case and were misapplied by the trial court. In Gold Standard, the parties, "GSI and Getty," were two sophisticated business entities, that, "consistently dealt with each other at arm's length." In Gold, GSI, was told explicitly in subsequent writings that the oral representations made

in earlier discussions by Getty were no longer valid. As stated above, in this case defendant Maestas never retracted his representations that the truck had a new engine. Plaintiff, an unsophisticated teen, with no mechanical experience believed him. Moreover, unlike Gold Standard, the paperwork plaintiff signed did not ever indicate that the truck did not have a new engine, it merely indicated that the purchase was “AS IS” with no warranties.

If Gold Standard were applicable to plaintiff’s case, the defendants would have had to have put in the paperwork that the affirmative assertion that Mr. Maestas’s earlier representation that the car had a new engine was false and should not have been relied on by the plaintiff. Since there was no information that plaintiff had been given indicating that Mr. Maestas was defrauding him, there was no duty to make further inquiries or to follow through and obtain the paperwork as suggested by plaintiff’s brother-in-law.

Admittedly, probably the fact most favorable to defendants’ position is that one of the documents that plaintiff signed stated, "ORAL PROMISES ARE NOT BINDING ON THE DEALER!" Nonetheless, if this statement would mean as a matter of law that plaintiff’s reliance was not reasonable, it would only apply to the dealer and not Mr. Maestas. Plaintiff would submit that because of the “averred fraud” that this written statement would still not indicate that there is no disputed material fact.

The facts of this case are more similar to Cardiomed, Inc. In Cardiomed, Inc. vs. Tripco Investment, Inc., 398 Utah Adv. Rep. 26 (Ct. App. 2000), a case decided after Gold Standard. In Cardiomed, the court stated that:

[T]o determine whether the reliance was reasonable, the reliance ‘must be considered with reference to the facts of each case.’ Conder, 739 P.2d at 638. **In general, a Plaintiff may justifiably rely on positive assertions of fact without independent investigation. It is only where, under the circumstances, the facts should make it apparent to one of his knowledge and intelligence, or he has discovered something which should serve as a warning that he is being deceived, that a Plaintiff is required to make his own investigation. Id. . . .** Applying the foregoing legal principles to the facts of this case, we cannot say as a matter of law that Cardiomed was unreasonable in its reliance on Tripp's statements regarding the structural integrity of the building. Viewing the facts in the light most favorable to Cardiomed, they demonstrate that Robinson walked through the building with Tripp before Cardiomed purchased it. Robinson questioned Tripp regarding some problems he observed and Tripp responded that he had been involved in the construction and engineering of the building, and that the building had no structural defects. To support that claim, Tripp then provided Robinson with an inspection report that failed to note any structural problems with the building. Simply stated, because **Tripp held himself out as someone with superior knowledge of the building and then lent support to his representations by providing an inspection report, a genuine issue of material fact exists as to whether Cardiomed's reliance was reasonable.** Accordingly, because there were genuine issues of material fact regarding the three elements of fraud relied upon, summary judgment on that cause of action was improperly granted.

Similarly, Mr. Maestas, held himself out as someone with superior knowledge of the truck's condition and categorically stated that the truck had a new engine, thus justifying the requested purchase price. Mr. Maestas went so far as to represent Dahle's as the place where the new engine had been installed. When viewing the facts in the light most favorable to the Plaintiff, based upon the **“[Plaintiffs'] knowledge and**

intelligence,” and the fact that, as Plaintiff testified that he never “discovered something which should serve as a warning that he [was] being deceived,” it was reasonable for him to rely on Mr. Maestas’ misrepresentation.

The facts of this case are also more similar to Semenov v. Hill, 982 P.2d 578, (Utah 1999) another case decided after Gold Standard. In Semenov, the court stated that:

Hill contends that, as a matter of law, Semenov's allegations cannot support a claim of misrepresentation. **He asserts that the documentation available at the closing showed the business to be losing money and that Semenov could not have relied reasonably upon any oral representations to the contrary.** Hill relies on our decision in **Gold Standard** as disposing of Semenov's claim that language difficulties can create a triable issue of fact that would be material to a fraud claim. Hill relies on the statement in Gold Standard that "under the law of this state, a party cannot reasonably rely upon oral statements by the opposing party in light of contrary written information" to support his claim that a dispute over Semenov's English proficiency is not a dispute over a "material" fact. 915 P.2d at 1068.

Gold Standard is inapposite. **That case did not involve a party asserting a language deficiency; rather, it involved two sophisticated parties proficient in English. Here, the question of Semenov's language capability is material to his fraud claim.** It is true that the general rule pertaining to acceptance of an offer by signing is that "where a person signs a document, he is not permitted to show that he did not know its terms, and **in the absence of fraud or mistake** he will be bound by all its provisions, even though he has not read the agreement and does not know its contents." 17 C.J.S. Contracts § 41(f) (1963) (emphasis added); see also id. § 139; Restatement (Second) of Contracts § 157 cmt. b (1981). **However, it is also true that "the illiteracy of a party has an important bearing on the question of the existence of fraud in procuring [a] signature."** 17 C.J.S. Contracts § 139 (1963). **Semenov's English proficiency or the lack thereof is a material fact that "should be considered in determining whether or not he has been defrauded."** Id.

Because Semenov and Hill disagree on the state of Semenov's English proficiency at the time of the closing, a factual dispute exists which must be resolved by a jury or a judge after an evidentiary hearing. Our decision to remand

this case is consistent with Heuter v. Coastal Airlines Inc., where a New Jersey court overturned a summary judgment in favor of the defendant and held that a jury should decide whether an uneducated and illiterate non-English-speaking Plaintiff should be bound to a release form he signed with an airline when the contents of the writing were unknown to him. 12 N.J. Super. 490, 79 A.2d 880, 883 (N.J. Super. Ct. App. Div. 1951).

Again, similarly, defendants' claim that, **"the documentation available at the closing [of the sale of the car] showed the [car was sold as is with no warranties] and that [Plaintiff] could not have relied reasonably upon any oral representations to the contrary."** Nevertheless, like Semenov's illiteracy, Plaintiff was an unsophisticated nineteen-year-old. Moreover, unlike this case, in Semenov, the court noted that the Gold Standard case **"involved two sophisticated parties proficient in English. Here, the question of [Plaintiff's inexperience] is material to his fraud claim."**

B. THERE IS EVIDENCE OF AN INTENT TO DEFRAUD OR DECEIVE.

To maintain a cause of action for fraud, plaintiff must prove that Maestas either knew his representation was false or made the representation recklessly knowing that there was insufficient knowledge upon which to base the representation.

In Galloway v. AFCO Dev. Corp., 777 P.2d 506, 508 (Ct. App. Utah 1989) the court stated that:

Intentional fraud generally requires a showing of intent to deceive, that is, the misrepresenter's intent to induce the victim's reliance on the false representation. **The intent to deceive, required for common law fraud, may be inferred where a misrepresentation is voluntarily communicated to the victim with knowledge that it is false, or without knowing whether it is true or false but knowing that the victim is likely to rely on it.** Thus . . . it is sometimes said that a "reckless" misrepresentation, made "knowing that the [the misrepresenter] had

insufficient knowledge upon which to base such a misrepresentation” is tantamount to the intent to deceive.

Also, in Dugan v. Jones, 615 P.2d 1239 (Utah 1980), the court favorably cited an Idaho case for the holding that under the doctrine of constructive fraud the vendor of goods or land has a special duty to know the truth of his representations and is presumed to know the facts to which his representations relate. Consequently, a misrepresentation made by such a vendor is fraudulent even if not made knowingly, willfully or with actual intent to deceive.

Here, plaintiff has alleged that he made several trips to the defendants’ car lot. In his first trips he dealt with salesperson Nikki who never mentioned that the truck had a new engine. Then, after several negotiations in which plaintiff insisted that the price was too high, Mr. Maestas then indicated that the truck had a new engine. In his deposition, Mr. Maestas acknowledged that he would not make such a representation unless he had documents to back himself up. Hence, he himself establishes fact that if plaintiff’s assertions are found to be true by the Jury, his actions were at the very least reckless.

It is well understood in our mobile society that an engine is an integral part of an automobile. Mr. Maestas, a used car salesperson for many years, knew that this misrepresentation would clinch the deal and induce Mr. Larsen to agree to purchase the automobile at the higher purchase price. **Hence, “the intent to deceive, required for common law fraud, may be inferred where a misrepresentation is voluntarily**

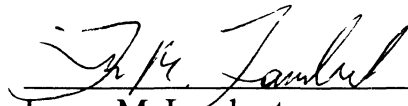
communicated to the victim . . . without knowing whether it is true or false but knowing that the victim is likely to rely on it.”

CONCLUSION

The plaintiff/appellant respectfully requests that this case be remanded to the trial court and that he be allowed to proceed with his cause of action for fraud.

DATED this 10 day of March, 2003.

ARROW LEGAL SOLUTIONS, LLC.



Loren M. Lambert

Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I certify that I mailed a true and correct copy of the foregoing document on March 14, 2003, postage prepaid to:

Nick J. Colessides
Attorney for Defendants/Appellees
466 South 400 East, Suite 100
Salt Lake City, Utah 84111

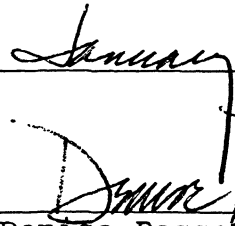


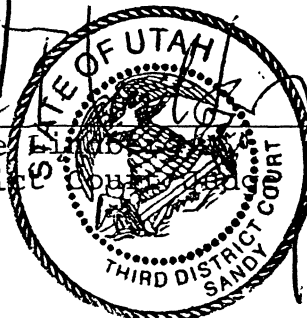
ADDENDUM

defendant's Motion for Summary Judgment, which decision, order, and findings, are incorporated herein and made a part hereof by this reference, and the Court having found: that plaintiff Wesley L. Larsen did not act reasonably in relying upon the oral representations of co-defendant Floyd Maestas, despite having been provided with many flags and ignoring the same, and plaintiff was neglectful in failing to follow up in an inquiry to determine the veracity of the information orally presented by co-defendant Floyd Maestas, and having received from co-defendant Exclusive Cars, Inc., the automobile dealer, four separate and distinct documents disclaiming oral representations, and the Court having entered its order granting defendants' motion for summary judgment, and good cause otherwise appearing therefor, now upon motion of Nick J. Colessides, attorney for defendants

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that plaintiff's complaint be and the same is hereby dismissed with prejudice, no cause of action.

Dated this 16th day of January, 2002³.


Denise Posselt
Third District



[illegible]

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

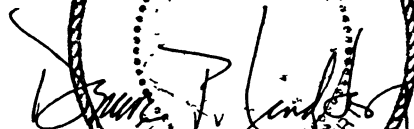
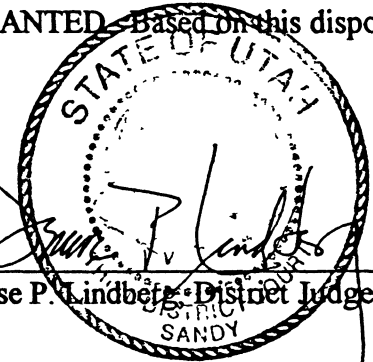
thereby induced to act, (9) to that party's injury and damage. Gold Standard Inc., v. Getty Oil, 915 P.2d 1060, 1067 (Utah 1996). This Court is mindful that "[w]hile the question of reasonable reliance is usually a matter within the province of the jury . . . there are instances where courts may conclude 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, 2001

