

1993

# Mark Erickson v. Ronald K. Platts, dba E-Z Street Auto : Brief of Appellant

Utah Court of Appeals

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James C. Haskins; Attorney for Appellee.

John D. Russell; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

MARK ERICKSON,	)	
Plaintiff and Appellee,	)	
	)	
vs.	)	Case No. 930252-CA
	)	
RONALD K. PLATTS, d/b/a	)	Priority No. 15
E-Z STREET AUTO,	)	
	)	
Defendant and Appellant.	)	
<hr/>	)	

BRIEF OF APPELLANT

---

On Appeal from the  
Third Circuit Court of the State of Utah  
Salt Lake County, Murray Department  
Honorable L. H. Griffiths, Circuit Court Judge

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UTAH COURT OF APPEALS  
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IN THE UTAH COURT OF APPEALS

MARK ERICKSON,	)	
Plaintiff and Appellee,	)	
	)	
vs.	)	Case No. 930252-CA
	)	
RONALD K. PLATTS, d/b/a	)	Priority No. 165
E-Z STREET AUTO,	)	
	)	
Defendant and Appellant.	)	
_____	)	

BRIEF OF APPELLANT

---

On Appeal from the  
Third Circuit Court of the State of Utah  
Salt Lake County, Murray Department  
Honorable L. H. Griffiths, Circuit Court Judge

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IN THE UTAH COURT OF APPEALS

MARK ERICKSON,	)	
Plaintiff and Appellee,	)	
	)	
vs.	)	Case No. 930252-CA
	)	
RONALD K. PLATTS, d/b/a	)	
E-Z STREET AUTO,	)	Priority No. 165
	)	
Defendant and Appellant.	)	

---

BRIEF OF APPELLANT

---

JURISDICTION AND NATURE OF PROCEEDINGS

The defendant appeals from a final Judgment and Order entered on April 1, 1993. This Court has jurisdiction pursuant to Rule 3(a), U.R.A.P. The plaintiff alleged fraud in connection with the mileage disclosure on a used car transaction. The defendant counterclaimed for the unpaid balance due under the contract.

STATEMENT OF ISSUES ON APPEAL AND STANDARDS OF REVIEW

1. Did the Trial Court correctly construe the provisions of 15 U.S.C. 1988 (federal odometer statute) in finding fraud where dealer disclosure form provided notice to buyer that the actual mileage was unknown rather than disclosing odometer reading in excess of mechanical limits?

The Trial Court's interpretation of the statute poses a question of law reviewable for correctness State v. Warner, 788 P. 2d 1041 (Utah Ct. App. 1990).

2. Did the Lower Court erroneously fail to require proof of fraud and misrepresentation by clear and convincing evidence?

The essential elements of Fraudulent Misrepresentation must be established by clear and convincing evidence. Shuhman v. Green River Motel, 192 Utah Adv. Rep. 29 \_\_\_\_P 2d\_\_\_\_ (Utah Ct. App. 1992); Pace v. Parrish, 122 Utah 141, 247 P 2d 273 (1952).

The Trial Court erroneously awarded rescission where the plaintiff had failed to make an election to rescind or sue for damages. See Election: Rescission or Damages, 40 A.L.R. 4th, 627.

#### CONSTITUTIONAL STATUTES, PROVISIONS, AND RULES

Any relevant text or Constitutional, Statutory, or rule provisions pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

#### STATEMENT OF THE CASE

The plaintiff filed this action January 10, 1990, alleging fraud in connection with the purchase of a 1980 Volkswagen Camper Van from defendant, a licensed used car dealer (R.1-7). On January 18, 1990, defendant filed a Verified Answer denying the allegation of fraud, and seeking damages for breach of the contract of sale and for the balance due the defendant because the plaintiff had stopped payment on the credit cards he used to purchase the vehicle. (R. 8-18).

The case was tried to the Court commencing September 29, 1992. Judge Griffiths rendered a Memorandum Decision November 24, 1992 (R. 85-88). Findings of Facts and Conclusions of Law and an Order were signed on February 1, 1993 (R.92-98) (R. 99-100). Plaintiff was awarded a judgment for \$1,212.80 plus interest, Court costs of \$104.00 and attorney fees of \$1500.00.

Defendant filed a Motion to Alter and Amend the Judgment, or for a New Trial. The Motion was argued to the Court, and denied in an Order dated April 1, 1993. It is from the adverse Judgment and Order that the defendant filed this appeal on April 16, 1993. Defendant seeks a reversal of the Order of the lower Court, or, in the alternative, for a new trial.

#### STATEMENT OF FACTS

In this action, the Court was called upon to construe the mileage disclosure requirements as they apply to an odometer which has "turned over" after registering 100,000 miles. The testimony presented at the trial was convoluted and each party challenged the other's accuracy as to what occurred. Upon consideration of all the evidence, the Court found for the plaintiff. A copy of the Court's Memorandum Decision is included in the addendum.

In September, 1989, E-Z Street Auto Sales offered a 1980 Volkswagen Camper Van for sale. The record is not clear when defendant acquired this vehicle for sale, but the facts establish that defendant had it inspected on January 25, 1989. The inspection certificate indicates that the owner is E-Z Auto Sales and the mileage was 46,811 miles. An affidavit filed with the Motor Vehicle Department of the State of Utah by the previous owners, Steven P. and Robyn Duncan, conveying the vehicle to defendant, indicates that the actual mileage was 146,811 miles.

On September 26, 1989, the plaintiff, Mark Erickson, purchased the Camper Van from the defendant. Approximately one week prior to the sale date, plaintiff had test-driven the vehicle. Paul Lives,

a salesman for defendant, accompanied plaintiff on the test-drive. Plaintiff stopped at his father-in-law's home which is only a short distance from defendant's lot. Plaintiff's wife and father-in-law inspected the vehicle. At this time, the odometer showed the mileage to be around 48,800 miles. Even though the vehicle was relatively old, with the low mileage shown on the odometer and the condition of the body, the three felt that it was in good mechanical condition.

Plaintiff and Mr. Lives discussed the mileage as shown on the odometer. Plaintiff remembers that Mr. Lives said the miles shown were the actual miles. Mr. Lives remembers the conversation differently. He testified that he told plaintiff to have the vehicle checked by a mechanic since there was no way to determine the actual mileage on a car that old. During the week plaintiff talked on the phone with Ronald Memmott, the manager of defendant. The two mostly talked about the sale price of the vehicle.

On the date of the sale Mr. Memmott handled the negotiations for defendant. Both Federal and State law require that the seller state the mileage of the vehicle upon transfer of ownership. The Odometer Disclosure Statement is the document that conveys this information. Mr. Memmott prepared all of the necessary documents of sale. On the Purchase Agreement, on the line asking for the odometer reading, Mr. Memmott wrote 48,831. The Odometer Disclosure Statement, as completed by Mr. Memmott, states that "the odometer now reads 48,831 (no tenths) miles and to the best of my

knowledge that it reflects the actual mileage of the vehicle...unless one of the following statements is checked:

(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

(2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING--ODOMETER DISCREPANCY.

Mr. Memmott checked statement (2). Mr. Memmott denies that he misrepresented the mileage of the vehicle to plaintiff, even though he knew that the actual mileage was not 48,831 miles. When statement (2) was checked, people were put on notice that there was an odometer discrepancy. Both plaintiff and his wife testified that Mr. Memmott told them that the 48,831 miles, as shown on the odometer, was the actual miles of the vehicle.

Plaintiff alleged that he had expended money for repairs on his vehicle, and rental of a truck to tow the vehicle back from Nevada after it had broken down a week after the purchase. The Trial Court accepted these items in arriving at damages, in addition to allowing a rescission of the contract. (R. 86).

Defendant's evidence was that no fraud had occurred and that no misrepresentation of material fact was made to plaintiffs concerning the mileage. Defendant's exhibits included the Vehicle Buyer's Order and Purchase Agreement (R. 57), the Motor Vehicle sold As Is without any warranty form, signed by plaintiff, (R. 59), Odometer Statement from Robyn Duncan, showing mileage unknown (R. 60), the Odometer Statement signed by plaintiff, indicating mileage

unknown, (R. 62), documents evidencing the stop payment by plaintiff on his credit card (R. 64), and documents prepared in connection with the repossession for the vehicle, several months after the transaction(R. 52-55).

The evidence was conflicting as to whether the defendant's salesmen had told the plaintiff that the mileage was 100,000 less than actual. The vehicle had an odometer that only recorded mileage to 99,999 miles. The usual practice in Utah is to fill in the blank for odometer reading exactly as shown by the odometer itself. Further, the practice is to execute the federal disclosure form to conform with the information acquired from the prior owner, which, in this case was, mileage unknown. Thus, the disclosure form will indicate either actual miles, or actual miles in excess of mechanical capacity of the odometer (odometer rollover), or the fact of an odometer discrepancy (mileage unknown--odometer discrepancy). In this case the plaintiff was provided the federal odometer disclosure form, with box 2 marked mileage unknown, and he signed the Odometer Disclosure form indicating that he had received a copy of the form and that the disclosures were made thereon.

Defendant's evidence contained documents signed by plaintiff wherein it was specifically set forth that the plaintiff had purchased the vehicle "as is," and that there were no warranties express or implied. The usual practice is that when an automobile is purchased, that the new owner thereafter becomes responsible for its maintenance and repair. Prior to the purchase the plaintiff had the vehicle inspected by his father-in-law, who was an

experienced volkswagen mechanic. The plaintiff had every opportunity to check out the mechanical condition of the vehicle prior to the purchase. Even after the vehicle had broken down in Nevada, plaintiff had taken the vehicle to his father-in-law, who was in the process of overhauling the motor. The motor was in a state of disassembly at the time when it was repossessed by defendant, after the parties were unable to agree on a settlement.

The defendant and his salesmen denied any false or misleading statements regarding mileage, and presented documents which conform to the requirements of the odometer disclosure statute. The defense evidence was that no representation was made by anyone to the plaintiff, orally or in writing, that would lead him to believe that the vehicle had 48,000 actual miles. They affirmatively indicated that the odometer disclosure form specifically put plaintiff on notice that the miles were not actual. Further, the vehicle was nearly 10 years old, and defendant's position was that no reasonable person, not even this plaintiff, would have reasonably relied on the mileage on the odometer as being actual.

#### SUMMARY OF ARGUMENT

##### **Argument I**

**THE TRIAL COURT ERRONEOUSLY CONSTRUED THE PROVISIONS OF 15 U.S.C. SEC. 1981-1991 (FEDERAL ODOMETER STATUTE) IN FINDING FOR PLAINTIFF WHERE DEFENDANT HAD COMPLIED WITH THE STATUTORY DISCLOSURE REQUIREMENTS AND THE PLAINTIFF WAS ADVISED THAT THE MILEAGE WAS UNKNOWN.**

The Trial Court erroneously construed the provisions of 15 U.S.C. Sec. 1981-1991 (Federal Odometer Statute). The Trial judge erred in applying the federal odometer statute to this case. The

Court's conclusion that defendant salesman should have checked box 1 and not box 2 is an incorrect interpretation of the statute. The defendant complied fully with the federal odometer statute, and was required to show mileage unknown. The error of the lower court requires reversal of the case.

#### **Argument II**

THAT THE COURT ERRED IN GRANTING A JUDGMENT TO PLAINTIFF IN THE ABSENCE OF PROOF OF FRAUD AND MISREPRESENTATION BY CLEAR AND CONVINCING EVIDENCE.

The Court erred in failing to require proof by clear and convincing evidence of plaintiff's common law claims under state law. The plaintiff had never filed any pleadings claiming relief pursuant to the federal odometer statute. The judgment for rescission and damages are not supported by competent admissible evidence. The Court erred in not requiring clear and convincing evidence standard, which requires reversal of the case.

#### **ARGUMENT I**

THE TRIAL COURT ERRONEOUSLY CONSTRUED THE PROVISIONS OF 15 U.S.C. SEC. 1981-1991 (FEDERAL ODOMETER STATUTE) IN FINDING FOR PLAINTIFF WHERE DEFENDANT HAD COMPLIED WITH THE STATUTORY DISCLOSURE REQUIREMENTS AND THE PLAINTIFF WAS ADVISED THAT THE MILEAGE WAS UNKNOWN.

Defendant fully complied with the requirements of the odometer statute by delivering to the plaintiff a completed Odometer Mileage Statement accurately stating that the actual mileage was unknown as of the date of the transaction. The plaintiff signed the form, indicating that he had received the disclosure, and that there was an odometer discrepancy.

In Francesconi v. Kardon Chevrolet, Inc., 888 F.2d 18 (3rd Cir. 1989) the Court of Appeals held that a car salesman's inaccurate oral representations as to number of miles traveled were not actionable under the odometer act where the written disclosure form accurately reports the correct number of miles, and where the disclosure form is presented to the transferee at the time of the mileage, if known. (at p. 20)

In the instant case, the Court erred in concluding that the defendant's salesman had misled the plaintiff by indicating in writing that the odometer was not to be relied upon, and that he should have informed the plaintiff that the mileage was in excess of 100,000 miles. Here, the vehicle had been taken in from the prior owner with the statement "mileage unknown". The salesman therefore, honestly could not state that the mileage was actual, subject to having exceeded the mechanical limits of the odometer instrument, and accordingly disclosed the mileage as "unknown."

The principal objective of the federal odometer statute is the detect "rollbacks" of odometers. The statute provides for statutory "actual damages" for an odometer roll-back violation as the difference between the amount paid for the car and its fair and its fair market value at the time of sale. In Beachy v. Eagle Motors, Inc., 637 F. Supp. 1093 (N.D. Ind. 1986) the Court held that the buyers are not entitled to recover as actual damages repairs which were not shown to have been occasioned by alleged misrepresentations inherent in a rollback. Thus, the Lower Court

was in error in using this statute to rule that the plaintiff was entitled to rescission and damages, plus attorney fees.

Plaintiff presented no evidence to establish that the actual fair market price for the vehicle would have been any different than the actual purchase price. The amount he spent to rent a large truck was not a direct consequence of an odometer disclosure violation. The repairs he made were relatively minor, and were of the type to be included within the usual meaning of an "as-is" purchase. The ultimate failure of the motor in the desert of Nevada was more likely due to the neglect and abuse of the vehicle by the plaintiff, than from any odometer disclosure violation.

The prevailing federal case is that if a transferor of a vehicle has actual or constructive knowledge that the odometer reading is incorrect, he has a duty to disclose that the actual mileage is unknown. Nieto v. Pence, 578 F.2d 640 (5th Cir. 1978). That Court construed the concept of a "knowing" violation, and concluded that the dealer has an affirmative duty to mark the "true mileage unknown" where he would have reason to know the mileage was more than recorded by the odometer or based upon the statement of the prior owner.

That rule was followed in Utah in Charnetsky v. Gus Paulos Chevrolet, Inc., 754 F. Supp. 188 (D. Utah, 1991), with the Court quoting with approval from the Nieto, supra, case. See also Jones v. Fenton Ford, Inc., 427 F. Supp. 1328 (1977); Duval v. Midwest Auto City, Inc., 578 F. 2d 721 (1978). These cases establish that the ultimate disclosure is the mileage unknown disclosure, and that

by making this disclosure according to the statute, the buyer thereby put on notice that the odometer is not to be relied upon. See Auto Sport Motors, v. Bruno Auto Dealers, 721 F. Supp. 63 (S.D.N.Y., 1989)

The defendant provided the plaintiff in this case full legal notice pursuant to the federal odometer statute. The defendants did not claim that the miles were actual. The evidence was disputed as to whether the plaintiff was informed that the odometer had rolled over. However, this is irrelevant in light of the more inclusive disclosure that the miles were unknown. Judge Griffiths erroneously concluded that the law required this defendant to check box 1, mileage in excess of mechanical limits.

#### ARGUMENT II

THAT THE COURT ERRED IN GRANTING A JUDGMENT FOR RESCISSION AND DAMAGES ON PLAINTIFF'S COMMON LAW FRAUD AND MISREPRESENTATION CLAIMS IN THE ABSENCE OF PROOF BY CLEAR AND CONVINCING EVIDENCE.

The plaintiff failed to prove his case by clear and convincing evidence. In Shubman v. Green River Motel 192 Utah Adv. Rep. 29, \_\_\_P. 2d \_\_\_, (Utah Ct.App. 1992), this Court, citing Pace v. Parrish, 122 Utah 144, 247 P 2d 273 (1952) reaffirmed that the elements of fraudulent misrepresentation are:

- (1) that a misrepresentation was made;
- (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 he had insufficient knowledge upon 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 injury and damage, Accord Wright v. Westside Nursery, 787 P 2d 508 (Utah App. 1990).

In Deboy v. Valley Mortgage Co., 192 Utah Adv. Rep. 35, \_\_\_P. 2d\_\_\_ (Utah Ct. App 1992) at p. 39, the Court considered claims of fraud and misrepresentation, and in particular, whether there was a "fraud by concealment." Fraud, "comprises all acts, omissions and concealments involving a breach of legal or equitable duty and resulting damage to another." Schwartz v. Tanner, 576 P 2d 873 (Utah, 1978).

The question of "whether a duty to speak exists is determinable by reference to all the circumstances of the case." Elder v. Clawson, 14 Utah 2d 379, 384 P 2d 802 (1963). A duty to speak will not be found where the parties deal at arm's length, and where the underlying facts are reasonably within the knowledge of both parties. Under such circumstances, the plaintiff is obliged to take reasonable steps to inform himself, and to protect his own interests. Sugarhouse Fin. v. Anderson, 610 P 2d 1369 (Utah 1980) 23 Am Jur 856, Fraud and Deceit, IV Concealment, Sec. 78.

In Atkinson v. IHC Hospitals, Inc., 138 Utah Adv. Rep. 3 \_\_\_P. 2d\_\_\_ (Utah Sup. Ct. 1990) the Supreme Court found no fraud in the settlement of a personal injury case where the plaintiffs had been fully informed of the medical facts. Neither did it find negligent misrepresentation. See Restatement (Second) of Torts, Sec. 552 (1977).

In the instant case, the Trial Court specifically did not find that the defendant had misrepresented the miles as actual, but that

he had a duty to disclose the fact that the mileage was in excess of the mechanical limits. But where the disclosure further advised plaintiff that mileage was unknown, the plaintiff was not misled by the mileage of the vehicle. Therefore, there was no duty to disclose in any event.

The law is clear that to recover in fraud, a plaintiff must establish the element of reliance which is justifiable under the circumstances. In Cender v. A.L. Williams & Associates, 739 P. 2d 634 (Utah Ct. App. 1987) @ p. 638, the Court discusses the public policy considerations, and cites Prosser and Keeton, The Law of Torts, Sec. 108, at 749-50 (5th Ed. 1984):

If plaintiff can claim reliance on the basis of the kind of statement on which no reasonable person would rely for one reason or another, then it is quite likely that plaintiff did not rely and if his testimony that he did is allowed as sufficient evidence on the basis of which a finder of fact can find reliance, then it will be too easy for a party to a contract to escape the consequences of his own bad judgment in making a bargain of some kind.

Further, the plaintiff failed to mitigate his damages.

A plaintiff is not entitled to recover damages for any harm he could have reasonably avoided by the use of reasonable effort after the commission of a tort. See Cender, supra, at p. 634 and cases cited therein. Any delay on the part of the defrauded party may constitute a waiver of the right to rescind the contract. Dugan v. Jones, 615 P 2d 1239 (Utah, 1980); Mecham v. Benson, 590 P 2d 304 (Utah, 1979)


The Trial Court erroneously allowed plaintiff to rescind the contract, notwithstanding the fact that between August and December he had failed to deliver the vehicle back to the dealer. He had concealed it with his father-in-law. Even though he failed to pay, he kept the vehicle concealed from the dealer. When the van was repossessed for nonpayment, the dealer found that the motor had been completely disassembled. These actions constitute unreasonably delay, and are inconsistent with seeking the remedy of rescission.

Further, the out of pocket damages claimed by plaintiff were not of the type that would arise from any alleged misrepresentation as to the mileage of the machine. Plaintiff believed that it was in good mechanical condition when he bought it. There was no evidence that the purchase price was not the actual fair market value for a van of that vintage. The mechanical failure was caused by the actions of the plaintiff, not through any misrepresentation on the part of the dealer.

#### CONCLUSION

The judgment of the Trial Court is in error and should be reversed, or a new trial ordered.

DATED this 8 day of April, 1994.

  
John D. Russell  
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Appellant/Defendant Ronald K. Platts were served upon counsel for Plaintiff by delivering said copy, postage prepaid, to:

James C. Haskins  
5085 South State Street  
Salt Lake City, Utah, 84107

this 8 day of April, 1994.

John D Russell

Third Judicial Circuit Court Of Salt Lake County  
Murray Department, State of Utah

---

MARK ERICKSON,

Plaintiff,

vs.

E Z STREET AUTO SALES,

Defendant.

---

**MEMORANDUM DECISION**

Case No. 903000298

In this action, the court is called upon to construe the mileage disclosure requirements as they apply to an odometer which has "turned over" after registering 100,000 miles. The testimony presented at the trial is convoluted and each party challenges the others accuracy as to what occurred. Upon consideration of all the evidence, the court finds for the plaintiff as hereinafter set forth.

September, 1989, defendant, E Z Street Auto Sales offered a 1980 Volkswagen Camper Van for sale. The record is not clear when defendant acquired this vehicle for sale, but the facts establish that defendant had it inspected on January 25, 1989. The inspection certificate indicates that the owner is E Z Street Auto Sales and the mileage was 46,811 miles. An affidavit filed with the Motor Vehicle Department of the State of Utah by the previous owners, Steven P. and Robyn Duncan, conveying the vehicle to defendant, indicates that the actual odometer reading was 146,811 miles.

On September 26, 1989, the plaintiff, Mark Erickson, purchased the Camper Van from the defendant. Approximately one week prior to the sale date, plaintiff had test-driven the vehicle. Paul Lives, a salesman for defendant, accompanied plaintiff on the test-drive. Plaintiff stopped at his father-in-law's home which is only a short distance from defendant's lot. Plaintiff's wife and father-in-law inspected the vehicle. At this time, the odometer showed the mileage to be around 48,800 miles. Even though the vehicle was relatively old, with the low mileage shown on the odometer and the condition of the body, the three felt that it was in good mechanical condition.

Plaintiff and Mr. Lives discussed the mileage as shown on the odometer. Plaintiff remembers that Mr. Lives said the miles shown were the actual miles. Mr. Lives remembers the conversation differently. He testified that he told plaintiff to have the vehicle checked by a mechanic since there was no way to determine the actual mileage on a car that old. During the week plaintiff talked on the phone with Ronald Memmott, the manager of defendant. The two mostly talked about the sale price of the vehicle. Mr. Memmott never told plaintiff what the actual mileage was.

On the date of the sale Mr. Memmott handled the negotiations for defendant. Both Federal and State law require that the seller state the mileage of the vehicle upon transfer of ownership. The Odometer Disclosure Statement is the document that conveys this information. Mr. Memmott prepared all of the necessary documents of sale. On the Purchase Agreement, on the line asking for the odometer reading, Mr. Memmott wrote 48,831. The Odometer Disclosure Statement, as completed by Mr. Memmott, states the odometer "now reads 48,831 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle....unless one of the following statements is checked.

(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

(2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING - ODOMETER DISCREPANCY."

Mr. Memmott checked statement (2). Mr. Memmott denies that he misrepresented the mileage of the vehicle to plaintiff, even though he knew that the actual mileage was not 48,831 miles. When statement (2) was checked, people were put on notice that there was an odometer discrepancy. Both plaintiff and his wife testified that Mr. Memmott told them that the 48,831 miles, as shown on the odometer, were the actual miles of the vehicle.

Plaintiff agreed to pay a total purchase price of \$4,291.00 (\$4,266.00, plus \$25.00 for an out of state permit). Plaintiff paid for the purchase by using two credit cards by charging \$3,000.00 on one card and \$1,291.00 on the second. Plaintiff bought the vehicle "as is" and signed statements that he realized the vehicle was sold without any warranties.

Plaintiff drove the vehicle to his home in Evanston, Wyoming. During the first week of operation he repaired the brakes, tail lights, and door locks, and installed a new door rear-view mirror, all at a cost of \$123.24. At the beginning of the second week, plaintiff, his wife, and one year old daughter left Evanston to drive to Los Angeles, California. The car broke down about 80 miles north of Las Vegas, Nevada. It was towed to Las Vegas. Plaintiff was told by a Volkswagen repair shop that the engine needed a complete overhaul. That the cost of such an overhaul would be in the neighborhood of \$2,000.00. He was also told that from the condition of the engine it was evident that the actual mileage was greatly in excess of the mileage figure shown on the odometer.

So as not to ruin their vacation trip to California, plaintiff rented a car in Las Vegas and continued on to Los Angeles. On their return trip, plaintiff rented a truck large enough to tow the Camper Van and brought it back to his father-in-law's home in South Salt Lake, Utah. It cost \$150.34 to rent the car and \$939.22 to rent the truck. The father-in-law, who is an experienced Volkswagen mechanic, disassembled part of the engine in an attempt to repair it. The engine showed evidence of many miles of use, and he determined that a complete engine overhaul was necessary.

Plaintiff was able to discover the name of the previous owners of the 1980 van. They informed him that the actual mileage of the van, when they sold it, was 146,811 miles. Plaintiff's negotiations to have the defendant repair the engine were unsuccessful. Defendant insisted that under its "as-is, no warranty" contract it had no legal obligation to repair the engine. Plaintiff testified that he would not have purchased the vehicle "as is, no warranty" if he had known the mileage was over 100,000 miles. It is plaintiff's contention that Mr. Memmott knew or should have known that the correct mileage was 148,831 miles. That defendant committed fraud when both its salesman and manager misrepresented the actual mileage of the vehicle. That by putting the odometer reading of 48,831 miles on the Odometer Disclosure Statement and the Purchase Agreement, defendant violated the Federal Motor Vehicle Information and Cost Savings Act, 15 U.S.C. §§ 1981-1991 (federal odometer statute).

The U. S. Congress in § 1981 stated its findings that purchasers, when buying motor vehicles, rely heavily on the odometer reading as an index of the condition and value of such vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by the vehicle; that an accurate indication of the mileage traveled by a motor vehicle assists the purchaser in determining its safety and reliability. In actions brought under this act, courts have enforced strict accountability on any person transferring ownership of a vehicle. The standard of proof in actions based on fraud is the preponderance of evidence standard. The "intent to defraud" required for a violation includes action taken with reckless disregard, as well as action taken with the specific intent to deceive or cheat potential purchasers. See Ryan vs. Edwards, 592 F 2d 756 (1979); Haynes vs. Manning, 917 F2d 450 (1990).

In Utah, it is recognized that the mileage on the odometer of a used car is a factor which is likely to affect the judgment of the buyer and has pecuniary significance. State v. Forshee, 588 P.2d 181. Plaintiff testified that he would have made a different deal, or no deal at all, had he known the actual mileage of the vehicle.

There is a conflict in the evidence as to whether defendant's salesman and manager told the plaintiff that the mileage of the vehicle was 100,00 miles less than the actual mileage. However, the court finds that from January, 1989, defendant's agents knew or


should have known that the odometer had "turned over" and that the actual mileage was 100,000 miles more than as shown on the odometer. This information was not given to the plaintiff. Mr. Memmott should have checked statement (1), and written the actual mileage on the Odometer Disclosure Statement and the Purchase Agreement.

"...when a transferor knows that a vehicle's odometer has "turned over" after registering 99,999 miles, the "cumulative mileage" which must be stated to satisfy the requirements of [the Act] is the total of 100,000 plus the number actually appearing on the odometer." Ryan v. Edwards, 592 P2d 760.

What the agents did do was to profess ignorance as to the actual mileage. Such conduct mislead the plaintiff and constitutes reckless disregard for the truth if not actual intent to defraud.

The court finds that defendant, through the actions of its agents, committed fraud on the plaintiff. Plaintiff is granted judgment against the defendant as follows: (1) The Purchase Agreement is rescinded. Plaintiff's obligation, as evidenced by the credit card charges, is cancelled. (2) Plaintiff is awarded damages of \$1,212.80, interest at the rate of 10% per annum from December 1, 1989, and his court costs. (3) Since the provisions of the Federal Act also apply to state actions (see § 1989), plaintiff is awarded \$1,500.00 attorney's fees. (4) No punitive damages are awarded.

Dated this 24<sup>th</sup> day of November, 1992.

  
\_\_\_\_\_  
L. H. Griffiths, Circuit Judge

James C. Haskins (1406)  
HASKINS & ASSOCIATES  
Attorney for Plaintiff  
5085 South State Street  
Murray, Utah 84107  
Telephone: (801) 268-3994

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COURT  
MURRAY DEPT.

IN THE CIRCUIT COURT OF THE STATE OF UTAH, SALT LAKE COUNTY  
MURRAY DEPARTMENT

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MARK ERICKSON,	:	
Plaintiff,	:	FINDINGS OF FACT
vs.	:	CONCLUSIONS OF LAW
E.Z. STREET AUTO,	:	Civil No. 903000298
Defendant.	:	

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This matter came on for trial on September 29, 1992 and October 19, 1992 before the Honorable Leroy H. Griffiths, Judge of The Circuit Court of the State of Utah, Salt Lake County, Murray Department.

The plaintiff, Mark Erickson, appeared in person and through his attorney, James C. Haskins and Jeff Hollingworth. The defendant, E.Z. Street Auto, appeared in person and through its attorney, John D. Russell. Evidence was produced by each of the parties through testimony and exhibits. At the conclusion of the presentation of testimony and exhibits, both parties rested. The court having heard all the evidence and being fully advised in the premises now makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. In September 1989, Defendant E.Z. Street Auto offered a

1980 Volkswagen camper van ("Vehicle") for sale.

2. On or about September 26, 1989, Plaintiff purchased the Vehicle from Defendant.

3. Plaintiff agreed to pay a total purchase price of \$4,291.00 (\$4,266.00, plus \$25.00 for an out of state permit). Plaintiff paid for the Vehicle's purchase using two credit cards. Plaintiff charged \$1,291.00 on his American Express card and \$3,000.00 on his Visa card.

4. Approximately one week prior to purchasing the Vehicle, Plaintiff test drove the Vehicle accompanied by one of Defendant's salesman, Paul Lives.

5. While on the test drive, Plaintiff stopped at his father-in-law's home and Plaintiff's wife and father-in-law inspected the Vehicle. At this time the odometer indicated that the mileage on the Vehicle was approximately 48,800 miles.

6. Even though the Vehicle was relatively old, given the low mileage shown on the odometer and the condition of the body, the three felt that the Vehicle was in good condition.

7. Plaintiff and Mr. Lives discussed the mileage shown on the odometer. Plaintiff testified that Mr. Lives told Plaintiff that the miles shown were the actual miles. Mr. Lives testified that he told Plaintiff to have the Vehicle checked by a mechanic because there was no way to determine the actual mileage on a car that old.

8. During the week prior to the Vehicle's purchase, Plaintiff spoke with Defendant's manager, Ronald Memmott,

regarding purchase terms. Both plaintiff and his wife testified that Mr. Memmott told them that the 48,831 miles, as shown on the Vehicle's odometer, were the actual miles of the Vehicle.

9. On September 26, 1989, Mr. Memmott, on behalf of Defendant, finalized the Vehicle's purchase with Plaintiff.

10. Mr. Memmott prepared all of the necessary documents transferring ownership of the Vehicle to Plaintiff.

11. Mr. Memmott prepared the Purchase Agreement on which he indicated the Vehicle's mileage as 48,831.

12. Mr. Memmott prepared the Odometer Disclosure Statement which stated in pertinent part:

I E.Z. Street Auto state that the odometer . . . now reads 48,831 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the Vehicle . . . unless one of the following statements is checked.

(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

(2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING ODOMETER DISCREPANCY.

13. Mr. Memmott checked statement (2) and at trial denied that he misrepresented the mileage of the Vehicle to Plaintiff, even though he knew that the actual mileage was far in excess of 48,831 miles. When statement (2) was checked, people were put on notice that there was an odometer discrepancy.

14. Plaintiff bought the Vehicle "as is" and signed statements that he realized the Vehicle was sold without any warranties.

15. Plaintiff drove the Vehicle to his home in Evanston, Wyoming and during the first week of operation he repaired the

brakes, tail lights, and door locks, and installed a new door rear-view mirror, all at a cost of \$123.24.

16. At the beginning of the second week, Plaintiff, his wife, and their one year old daughter left Evanston to drive to Los Angeles, California.

17. Approximately 80 miles north of Las Vegas, Nevada the Vehicle broke down and had to be towed to Las Vegas.

18. While in Las Vegas, Plaintiff was told by a Volkswagen repair shop that the engine needed a complete overhaul at an estimated cost of \$2,000.00. He was also told that from the condition of the engine it was evident that the actual mileage was greatly in excess of the mileage figure shown on the odometer.

19. So as not to ruin their trip to California, plaintiff rented a car in Las Vegas and continued traveling to Los Angeles. On their return trip, Plaintiff rented a truck large enough to tow the Camper Van and brought it back to his father-in-law's home in South Salt Lake, Utah. It cost \$150.34 to rent the car and \$939.22 to rent the truck.

20. The father-in-law, who is an experienced Volkswagen mechanic, disassembled part of the engine in an attempt to repair it. The engine showed evidence of many miles of use, and he determined that a complete engine overhaul was necessary.

21. Plaintiff's negotiations to have the defendant repair the engine were unsuccessful. Defendant insisted that under it's "as-is, no warranty" contract it had no legal obligation to

repair the engine.

22. Plaintiff, upon finding an old registration form, discovered the name of the previous owners of the 1980 van. They informed him that the actual mileage of the van, when they sold it, was 146,811 miles.

23. Plaintiff testified that he would not have purchased the Vehicle "as is, no warranty" if he had known the mileage was over 100,000 miles.

#### CONCLUSIONS OF LAW

1. The U.S. Congress stated in its findings of the Federal Motor Vehicle Information and Cost Savings Act, 15 U.S.C. §§ 1981-1991 ("Federal Odometer Statute"), that purchasers, when buying motor Vehicles, rely heavily on the odometer reading as an index of the condition and value of such Vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by the Vehicle; that an accurate indication of the mileage traveled by a motor Vehicle assists the purchaser in determining its safety and reliability.

2. In actions brought under the Federal Odometer Statute, courts have enforced strict accountability on any person transferring ownership of a Vehicle. The standard of proof in actions based on violation of the Federal Odometer Statute include action taken with reckless disregard, as well as action taken with the specific intent to deceive or cheat potential purchasers. See, Ryan v. Edwards, 592 F.2d 756 (1979); Haynes v. Manning, 917 F.2d 450 (1990).

3. In Utah, it is recognized that the mileage on the odometer of a used a car is a factor which is likely to affect the judgment of the buyer and has pecuniary significance. State v. Forshee, 588 P 2d, 181. Plaintiff testified that he would have made a different deal, or no deal at all, had he known Vehicle's actual mileage.

4. There is a conflict in the evidence as to whether Defendant's salesman and manager told Plaintiff that the Vehicle's mileage was 100,000 miles less than the actual mileage. However, the court concludes that from January, 1989, Defendant's agents knew or should have known that the odometer had "turned over" and that the actual mileage was 100,000 miles more than as shown on the odometer.

5. This information was not given to the plaintiff. Mr. Memmott should have checked statement (1), and written the actual mileage on the Odometer Disclosure Statement and the Purchase Agreement.

[W]hen a transferor knows that a vehicle's odometer has "turned over" after registering 99,999 miles, the "cumulative mileage" which must be stated to satisfy the requirements of (the Act) is the total of 100,000 plus the number actually appearing on the odometer."

Ryan v. Edwards, 592 P2d 760.

6. What the agents did do was to profess ignorance as to the actual mileage. Such conduct mislead the plaintiff and constitutes reckless disregard for the truth if not actual intent to defraud.

7. The court concludes that Defendant, through the actions

of its agents, committed fraud on the plaintiff.

8. Plaintiff should be granted judgment against the defendant as follows:

(1) The Purchase Agreement should be rescinded. Plaintiff's obligation, as evidenced by the credit card charges, should be cancelled;

(2) Plaintiff should be awarded damages of \$1,212.80, interest at the rate of 10% per annum from December 1, 1989, and his court costs of \$104.00;

(3) Since the provisions of the Federal Act also apply to state actions (see § 1989), Plaintiff should be awarded \$1,500.00 attorney's fees.

(4) No punitive damages should be awarded.

DATED this 1st day of February, 1993.

By the Court:

L. H. Griffiths  
L. H Griffiths Circuit Judge

James C. Haskins (1406)  
HASKINS & ASSOCIATES  
Attorney for Plaintiff  
5085 South State Street  
Murray, Utah 84107  
Telephone: (801) 268-3994

FILED

CLERK OF THE CIRCUIT COURT  
DEPT

IN THE CIRCUIT COURT OF THE STATE OF UTAH, SALT LAKE COUNTY  
MURRAY DEPARTMENT

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MARK ERICKSON,	:	
Plaintiff,	:	
vs.	:	ORDER
E.Z. STREET AUTO,	:	Civil No. 903000298
Defendant.	:	

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This matter came on for trial on September 29, 1992 and October 19, 1992 before the Honorable Leroy H. Griffiths, Judge of The Circuit Court of the State of Utah, Salt Lake County, Murray Department and the court having made its Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:


1. Plaintiff is granted judgment against the Defendant;
2. The Purchase Agreement is rescinded;
3. Plaintiff's obligation, as evidenced by the credit card charges, is cancelled;
4. Plaintiff is awarded damages of \$1,212.80, plus interest at the rate of 10% per annum from December 1, 1989 until paid in full.
5. Plaintiff is awarded his court costs of \$104.00;

6. Plaintiff is awarded \$1,500.00 attorney's fees.

7. Plaintiff is not awarded any punitive damages.

DATED this 1st day of February, 1993.

By the Court:

  
\_\_\_\_\_  
L. H Griffiths, Circuit Judge

SELLER:

## VEHICLE BUYER'S ORDER AND PURCHASE AGREEMENT

**E.Z. STREET AUTO**  
4100 South State  
Salt Lake City, Utah 84107  
(801) 268-6322

9/26/89

Date

MARK ERICKSON

Purchaser's Name

226 High Ridge Point

Street Address

EVANSTON UTAH

City

County

82980

State

Zip Code

307 789 8725

Res Phone

789 9802

Bus Phone

I/We hereby order from you and agree to purchase from you subject to all terms, conditions and agreements contained herein, and the conditions printed on the reverse side hereof the following vehicle.

SALESMAN

RON-PAUL

☐ NEW☒ USED☐ DEMO

YEAR

88

MAKE

V.W

SERIES

Camper

BODY TYPE

VAN

COLOR

Goldish

ODOMETER

45831

V.I.N.

25A0106002

STOCK NO.

DEL. DATE

9/26/89

CASH SELLING PRICE	\$ 4266.00	USED TRADE-IN AND/OR OTHER CREDITS
ACCESSORIES/OPTIONS		MAKE OF TRADE-IN
		MILES
		YEAR
		BODY TYPE
		SERIES
		V.I.N.
Buyer is responsible for all liability, insurance, damage due to collision.		BALANCE OF \$
		OWED TO
		TO BE PAID BY: <input type="checkbox"/> PURCHASER <input type="checkbox"/> SELLER
		ADDRESS
Car sold as is, as equipped, no free work promised, no implied warranty		GOOD UNTIL:
		VERIFIED BY:
		DATE:
		USED VEHICLE ALLOWANCE
		BALANCE OWED ON VEHICLE
		NET ALLOWANCE ON USED VEHICLE
		DEPOSIT
		CASH WITH ORDER
		TOTAL CREDIT (Transfer to Left Column)
		DOCUMENTS — Signed and Received
		<input type="checkbox"/> Title (If not, explain: _____)
		<input type="checkbox"/> Registration <input type="checkbox"/> Out-of-State Aff.
		<input type="checkbox"/> Odometer Statement <input type="checkbox"/> Power of Attorney
		<input type="checkbox"/> Bill of Sale <input type="checkbox"/> Auth. for Payoff
		OTHER TERMS AGREED TO:
VEHICLE WITH ACCESSORIES/OPTIONS		
SERVICE CONTRACT		
DOCUMENTARY SERVICE FEE	8000	
SUB TOTAL		
TRADE ALLOWANCE		
TAXABLE AMOUNT		
UTAH SALES TAX		
LICENSE & REGISTRATION		
PROPERTY TAX DUE		
DEALER HANDLING FEE	2500	
OUT OF STATE Permit	2500	
TOTAL OF ABOVE ITEMS	\$ 4291	
TOTAL CREDITS (Transferred from right column)	( )	
BALANCE DUE	\$	

Purchaser agrees that this agreement includes all of the terms and conditions 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, and that THIS AGREEMENT SHALL NOT BECOME BINDING UNTIL ACCEPTED BY SELLER OR HIS AUTHORIZED REPRESENTATIVE. Purchaser by his execution of this agreement acknowledges that he has read its terms and conditions and has received a true copy of this agreement.

✓ Mark Z. Erickson 9/26/89  
Purchaser's Signature Date

ACCEPTED BY: Ron M. Mennard  
Dealer or Sales Manager

# CONDITIONS

## IT IS FURTHER UNDERSTOOD AND MUTUALLY AGREED:

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

1. The manufacturer has reserved the right to change the list price of new motor vehicles without notice and in the event that the list price of the new vehicle purchased hereunder is so changed, the cash delivered price, which is based on list price effective on the day of delivery, will govern in this transaction. But if such cash delivered price is increased the buyer may, if dissatisfied with such increased price, cancel this order, in which event if a used vehicle has been traded in as a part of the consideration herein, such used vehicle shall be returned to the purchaser upon the payment of a reasonable charge for storage and repairs (if any) or, if the used vehicle has been previously sold by the dealer, the amount received therefor, less a selling commission of 15% and any expense incurred in storing, insuring, conditioning or advertising said vehicle for sale, shall be returned to the purchaser.
2. The 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 the buyer warrants such used vehicle to be his property free and clear of all lien and encumbrances except as otherwise noted of the reverse side hereof.
3. Upon the failure or refusal of the purchaser to complete said purchase for any reason other than cancellation on account of increase in price, the cash deposit may be retained as liquidated damages, or in the event a used vehicle has been taken in trade, the purchaser hereby authorizes dealer to sell said used vehicle, and the dealer shall be entitled to reimburse himself out of the proceeds of such sale, for the expenses specified in paragraph 1 above and also for his expenses and losses incurred or suffered as the result of purchaser's failure to complete said purchase.
4. The manufacturer has the right to make any changes in the model or design of any accessories and part of any new motor vehicle at any time without creating any obligation on the part of either the Dealer or the Manufacturer, to make corresponding changes in the vehicle covered by this agreement either before or subsequent to the delivery of such vehicle to the purchaser.
5. Dealer shall not be liable for delays caused by the manufacturer, accidents, sureties, fires, or other causes beyond the control of the dealer.
6. NO WARRANTIES, EXPRESSED OR IMPLIED, ARE MADE OR WILL BE DEEMED TO HAVE BEEN MADE BY EITHER THE DEALER 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 MERCHANT ABILITY 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 THE DEALER WITH RESPECT TO USED MOTOR VEHICLES OR MOTOR VEHICLE CHASSIS FURNISHED HEREUNDER EXCEPT AS MAY BE EXPRESSED IN WRITING BY THE DEALER FOR SUCH USED MOTOR VEHICLE OR MOTOR CHASSIS, WHICH WARRANTY, IF SO EXPRESSED IN WRITING, IS INCORPORATED HEREIN AND MADE A PART HEREOF.
7. In case the vehicle covered by this agreement is a used or demonstrator vehicle, no warranty or representation is made as to the extent such vehicle has been used, regardless of the mileage shown on the speedometer of said used vehicle.
8. In the event that it becomes necessary for Dealer to enforce any of the terms and conditions of this agreement, purchaser agrees to pay reasonable attorney's fees and court costs.
9. This agreement is Non-Transferable.
10. LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS AGREEMENT.
11. PURCHASER REPRESENTS that he/she is 18 years of age or older.
12. Title to the vehicle is to remain vested in the Dealer until purchase price is paid in full; purchaser grants to dealer a security interest in the subject vehicle to secure said payment in full.
13. No agreement, verbal or otherwise, not contained in this agreement will be recognized.
14. In case the vehicle covered by this agreement 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 the contract sale.

# ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, E-Z Street Auto, state that the odometer (transferor's name - PRINT) 48831 (no tenths) miles

(of the vehicle described below) now reads 48831 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked

- ☐ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits
- ☒ (2) I hereby certify that the odometer reading is NOT the actual mileage WARNING - ODOMETER DISCREPANCY.

MAKE <u>V.W.</u>	BODY TYPE <u>VAN</u>	MODEL <u>Champion</u>
VEHICLE ID-NUMBER <u>25A006002</u>		STOCK NUMBER
COLOR <u>Gold</u>	TRIM <u>/</u>	YEAR <u>80</u>

TRANSFEROR'S PRINTED NAME (SELLER) <u>E-Z Street Auto</u>		
TRANSFEROR'S STREET ADDRESS <u>4100 SO STATE</u>		
CITY <u>SAINT LAKE UTAH</u>	STATE <u>UTAH</u>	ZIP CODE <u>84107</u>
DATE OF STATEMENT <u>9/26/89</u>	TRANSFEROR'S SIGNATURE (SELLER) <u>X Ron Mummert</u>	
	PRINTED NAME OF PERSON SIGNING <u>X RON MUMMERT</u>	

TRANSFEEE'S PRINTED NAME (BUYER) <u>MARK W ERICKSON</u>		
STREET ADDRESS <u>226 HIGH RIDGE PT</u>		
CITY <u>EVANSTON</u>	STATE <u>WY</u>	ZIP CODE <u>82930</u>
RECEIPT OF COPY ACKNOWLEDGED <u>X Mark W Erickson</u>		
TRANSFEEE'S SIGNATURE - BUYER <u>X MARK W ERICKSON</u>		DATE
PRINTED NAME OF PERSON SIGNING		DATE

**MOTOR VEHICLE SOLD AS IS  
WITHOUT ANY WARRANTY**

**VEHICLE PURCHASED**

DATE 9/26/89 ODOMETER MILEAGE 48831  
MAKE V.W MODEL CAMPER VAN  
YEAR 80 SERIAL NO. 25A0106002

THE ABOVE DESCRIBED MOTOR VEHICLE IS SOLD AS IS WITH THE FOLLOWING WARRANTY DISCLAIMERS

THIS MOTOR VEHICLE IS SOLD "AS IS" AND THE SELLING DEALER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THIS VEHICLE. THE BUYER SHALL NOT BE ENTITLED TO RECOVER FROM THE SELLING DEALER ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.

BUYER ACKNOWLEDGES RECEIPT OF THIS DISCLAIMER ON

THE 26th DAY OF Sept, 19 89

Mark H. Fisher Don Munn  
BUYER WITNESS

BUYER

WITNESS

# ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, ROBYN DUNCAN, state that the odometer (transferor's name — PRINT)

(of the vehicle described below) now reads 48807 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked

- ☐ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits
- ☒ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING — ODOMETER DISCREPANCY

MAKE <u>V.W.</u>	BODY TYPE <u>VAN</u>	MODEL <u>CAMP VAN</u>
VEHICLE ID-NUMBER <u>25A0106002</u>		STOCK NUMBER
COLOR <u>BROWN</u>	TRIM <u>DRK. BROWN</u>	YEAR <u>1980</u>

TRANSFEROR'S PRINTED NAME (SELLER) <u>ROBYN DUNCAN</u>		
TRANSFEROR'S STREET ADDRESS <u>1250 NORWALK ROAD</u>		
CITY <u>TAYLORSVILLE</u>	STATE <u>UT</u>	ZIP CODE <u>84123</u>
DATE OF STATEMENT <u>8-25-89</u>	TRANSFEROR'S SIGNATURE (SELLER) <u>[Signature]</u>	
	<input checked="" type="checkbox"/> <u>Robyn Duncan</u> PRINTED NAME OF PERSON SIGNING	

TRANSFeree'S PRINTED NAME (BUYER) <u>E-Z Auto</u>		
STREET ADDRESS <u>4100 S State</u>		
CITY <u>Salt Lake</u>	STATE <u>UT</u>	ZIP CODE <u>84107</u>
RECEIPT OF COPY ACKNOWLEDGED		
TRANSFeree'S SIGNATURE — BUYER <u>[Signature]</u>		DATE
PRINTED NAME OF PERSON SIGNING <u>Paul Liles</u>		DATE

## RESEARCH GUIDE

**Am Jur:**

7A Am Jur 2d, Automobiles and Highway Traffic §§ 183, 185.

**Am Jur Proof of Facts:**

Fraudulent Alteration of Odometer, 1 Am Jur Proof of Facts 2d, p. 677.

**Forms:**

10 Federal Procedural Forms L Ed, Highways and Bridges § 38:4.

12 Am Jur Pl & Pr Forms (Rev), Fraud and Deceit, Form 40.

**Annotations:**

Validity, construction, and application of odometer requirement provisions of Motor Vehicle Information and Cost Savings Act (15 USCS §§ 1981–1991). 28 ALR Fed 584.

**Law Review Articles:**

Consumer Remedies for Odometer Tampering: The Odometer Requirements of the Motor Vehicle Information and Cost Savings Act. 10 Clearinghouse Rev 25, May, 1976.

## INTERPRETIVE NOTES AND DECISIONS

Although 15 USCS § 1987 requires notice to be attached to left door frame of vehicle when odometer is serviced, repaired, or replaced, disclosure requirements as to motorcycle odometers may be satisfied merely by hanging tag on motorcycle to place potential purchasers on notice of alteration in mileage registered on odometer, and statutory provision is not so vague and uncertain as to be unconstitutional as applied to motorcycles. *Grambo v Loomis Cycle Sales, Inc.* (1975, ND Ind) 404 F Supp 1073.

Defendant's (truck seller's) motion for summary judgment in his favor as to plaintiff's (buyer's) claim under 15 USCS § 1987 for alleged odometer alteration without disclosure of actual mileage traveled would be denied, because whether failure to post required notice was done with intent to defraud was question of fact which could be established by inference, and evidence alleged by plaintiff—which must be assumed to be true on motion for summary judgment—could have led to inference of intent to defraud. *Lair v Lewis Service Centers, Inc* (1977, DC Neb) 428 F Supp 778.

**§ 1988. Disclosure requirements upon transfer of ownership of motor vehicle**

(a) **Promulgation of rules.** Not later than 90 days after the date of enactment of this Act [enacted Oct. 20, 1972], the Secretary shall prescribe rules requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

- (1) Disclosure of the cumulative mileage registered on the odometer.
- (2) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

Such rules shall prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained.

(b) **Violations of rules and giving false statements to transferees prohibited.** No transferor shall violate any rule prescribed under this section or give a false statement to a transferee in making any disclosure required by such rule.

(c) **Acceptance of incomplete written disclosure by transferees acquiring ownership for resale prohibited.** No transferee who, for purposes of resale, acquires ownership of a motor vehicle shall accept any written disclosure required by any rule prescribed under this section if such disclosure is incomplete.]

(Oct. 20, 1972, P. L. 92-513, Title IV, § 408, 86 Stat. 962; July 14, 1976, P. L. 94-364, Title IV, § 406, 90 Stat. 983.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

##### **Explanatory notes:**

Subsec. (c) has been set out in brackets because Act July 14, 1976, provided for the amendment of subsec. (b) of this section and in addition set out a subsec. (c), but the Act contained no enacting clause for subsec. (c).

##### **Effective date of section:**

Subsec. (a) of this section effective Oct. 20, 1972, and subsec. (b) effective “ninety calendar days following” such date; see the note to 15 USCS § 1981.

##### **Amendments:**

**1976.** Act July 14, 1976, substituted subsec. (b) for one which read: “It shall be a violation of this section for any transferor to violate any rules under this section or to knowingly give a false statement to a transferee in making any disclosure required by such rules.”; and purportedly added subsec. (c); see the Explanatory note to this section.

#### **CODE OF FEDERAL REGULATIONS**

Rule-making procedures, Office of the Secretary of Transportation, 49 CFR Part 5.

Rule making procedures of the National Highway Traffic Safety Administration, 49 CFR Part 553.

Odometer disclosure requirements, 49 CFR Part 580.

#### **CROSS REFERENCES**

Definitions, 15 USCS §§ 1901, 1982.

Conspiracy to violate prohibitions, 15 USCS § 1986.

Disclosure requirements regarding repair or replacement of odometer, 15 USCS § 1987.

Civil liability for violations, 15 USCS § 1989.

Injunctions against violations, 15 USCS § 1900.

This section is referred to in 15 USCS § 1986.