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IN THE DISTRICT COURT OF GREENWOOD COUNTY, KANSAS

STATE OF KANSAS, ex rel.,)
ROBERT T. STEPHAN, Attorney General,)
)
Plaintiff,)
)
vs.)
)
MARY E. JAMISON, d/b/a)
LITTLE OLDE SHOPPE ANTIQUES,)
)
Defendant.)

Case No. 84-C-60

JOURNAL ENTRY OF JUDGMENT

NOW on this 27th day of February, 1985, this matter comes before the court for approval of this journal entry, submitted by counsel.

WHEREUPON, the court finds that this matter was tried to the court on December 19, 1984. At the conclusion of evidence, counsel submitted the depositions of Arthur Dimsdle, Charles T. Falk, Maria Jamison, and Gary Jamison to be considered by the court with the other evidence. The court took the matter under advisement and directed counsel to submit proposed findings of fact and conclusions of law.

WHEREUPON, the court received and considered the proposed findings and conclusions of both counsel, together with their briefs, and the evidence presented at trial. The court, by a letter dated January 16, 1985, adopted the Plaintiff's Findings of Fact and Conclusions of Law, except for the Proposed Conclusion of Law No. 12 relating to assessment of civil penalty. The court thereupon directed counsel for plaintiff to prepare a journal entry consistent with the court's letter decision.

WHEREUPON, the court makes the following findings of fact and conclusions of law.

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GREENWOOD COUNTY, KANSAS
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FINDINGS OF FACT

1. The defendant, Mary E. Jamison, is a resident of Madison, Greenwood County, Kansas, and is engaged in the business called "Little Olde Shoppe Antiques." The defendant has been an antique collector for approximately 40 years, and has engaged in the business of buying and selling antiques for approximately 25 years.

2. On October 14, 1981, Mary E. Jamison, d/b/a Little Olde Shoppe Antiques, purchased an art glass vase from C.T. Falk, d/b/a Collectors Harvest Antiques, Kansas City, Missouri, for the sum of \$650.00.

3. At the time of purchase, Mary E. Jamison believed she was purchasing a signed Crown Milano vase; Mr. Falk believed he was selling a signed Crown Milano vase.

4. In November, 1981, Deborah Hermann, an Emporia, Kansas resident, visited Little Olde Shoppe Antiques and was shown an art glass vase. Ms. Hermann had purchased approximately six pieces of art glass and cut glass from Mary E. Jamison, d/b/a Little Olde Shoppe Antiques, in the previous two year period. During the November 1981 visit, Mary Jamison told Ms. Hermann that the art glass vase was a signed Crown Milano, in mint condition, and of museum quality. Mary Jamison expressed some reluctance at selling the vase during this visit.

5. In December, 1981, Mary Jamison called Ms. Hermann and told her the Crown Milano vase was available for sale. Deborah Hermann returned to Little Olde Shoppe Antiques on December 30, 1981. On that date, Mary Jamison stated the vase was a signed Crown Milano, of museum quality. Deborah Hermann agreed to purchase the vase for the price of \$1,500; she paid \$200 as a down payment, and agreed to pay the balance over a period of time.

6. On both occasions when Deborah Hermann examined the vase prior to purchase she saw a small sticker on the bottom of the vase; the sticker represented the vase as a signed Crown Milano.

Mary E. Jamison identified the sticker as the type she used in her antique shop, and recognized the handwriting on plaintiff's exhibit 2 as her own handwriting. Mary Oliver, an employee of Little Olde Shoppe Antiques, testified the sticker was placed on the bottom of the vase.

7. After purchasing the vase, Deborah Hermann kept it and stored it at the home of her parents in Emporia, Kansas. The vase was displayed on the top shelf of a china cupboard.

8. The vase was not removed from the Hermann home subsequent to its purchase, until November, 1983. The vase was removed at that time and taken to Kansas City for an appraisal. Deborah Hermann took all of her cut glass and art glass collection for appraisal, for insurance purposes.

9. Arthur Dimsdle, d/b/a The Georgian Village Shop, Kansas City, Missouri, is an antique collector, and has been engaged in the retail sale of antiques for approximately 20 years. Dimsdle is a certified antique appraiser, certified by the Antique Appraisal Association of America. Dimsdle had experience in art glass trade and appraisal, having viewed and handled art glass at many shows, and having taken and instructed classes and seminars.

10. Dimsdle appraised several art objects brought to him by Deborah Hermann; the vase he examined showed restoration, and the mark on the bottom of the vase smudged and was erased off by Dimsdle.

11. Dimsdle was of the opinion that the vase had been restored in the neck, and that also a handle had been restored. When Dimsdle touched the mark on the bottom of the vase, the mark smudged, like graphite or pencil, and he erased it off the vase. According to Dimsdle, "it was a pretty credible looking job, but obviously it was not an original mark."

12. According to Dimsdle, the pencil mark was not an original Crown Milano marking. An original marking would not be a removable signature, although in old pieces the mark or signature may be faint. No factories would hand draw pencil marks on vases. An

authentic Crown Milano mark has a crown and an M and C. The marks are not rubable or removable. The mark is not impressed in the glass, but is printed on or stamped on, like ink.

13. Deborah Hermann could not and did not detect any evidence of restoration of the vase until after it was pointed out by Dimsdle. Deborah Hermann would not have purchased the vase if she had known it was not signed with original markings, or if she had known it was not of museum quality, but instead had been restored and repaired.

14. The vase Deborah Hermann identified at trial was the same vase she bought from Mary Jamison, and the same vase that was examined by Mr. Dimsdle.

15. According to Dimsdle, the restoration of the vase was performed by a professional. The restoration would not be noticed by the average person walking down the street. Some collectors, and even some dealers, would not detect the restoration. Dimsdle testified that some dealers have not learned how to recognize restoration, "or can't see very well. There are alot of dimly lit shops in this world."

16. Dimsdle appraised the vase at a value of \$300. Dimsdle was of the opinion the vase was a Crown Milano, unsigned, with restoration. According to Dimsdle, the restoration was just as significant or material a factor in lowering the value of the vase, as was the absence of an original Crown Milano mark or signature.

17. A mint condition, signed, Crown Milano vase would be valued at approximately \$1,500.

18. Mr. C.T. Falk, an elderly, retired, antique collector and dealer, was deposed in September, 1984. Mr. Falk did not specialize in collecting or selling art glass. Mr. Falk did not feel confident to be an appraiser because "people never see exactly the same way."

19. Mr. Falk never repaired or restored antiques. He attempted to buy antiques which had not been repaired or restored. Mr. Falk admitted that he occasionally purchased restored items, without really knowing it. He testified, "...I'm sure that I was deceived at times..." "I'm sure that somebody fooled me."

20. When Mr. Falk examined plaintiff's trial Exhibit 1, the vase, he did not detect any evidence of restoration. According to Falk, if the vase had been restored, "it was a real good job." Mr. Falk testified he would need infrared lamps to detect any evidence of restoration.

21. Prior to being shown plaintiff's trial Exhibit 1 in September, Mr. Falk described the vase he sold to Mary Jamison in 1981. The description by Mr. Falk included a vine-like thing around the opening of the vase, a Crown Milano signature or mark, flowers on the vase, and no handles. Mr. Falk was then permitted to examine the vase. Mr. Falk noted that plaintiff's Exhibit 1 did not have a mark or sign on the bottom. Aside from the absent signature, Mr. Falk testified the feel and flowers reminded him of the vase he sold to Mary Jamison. Mr. Falk admitted his earlier description was based on three-year old memory. He noted plaintiff's Exhibit 1 was similar to the vase he sold, because of the feel, the floral decorations, the thorns, the delicate top, the gold over lay, the same general coloration and satiny feel or texture.

22. Mr. Falk admitted that his recollection or remembered description of the vase he sold could be unreliable. He testified, "perhaps I tried to recall so hard that I tried to create a picture in my mind."

23. Mr. Falk testified that if plaintiff's trial Exhibit 1 had a Crown Milano signature or mark on its bottom, "it would lead to drop any questions that I would have in mind."

24. Although Mary Jamison, Maria Jamison, Mary Oliver and Gary Jamison described the vase sold as looking different than the vase admitted as plaintiff's Exhibit 1, each description

varied in some details, and was based upon a three-year old recollection of facts. Even the vase described by defense witnesses contained similarities to plaintiff's Exhibit 1, for example - thorns, general size, floral design and irregular top.

25. The unreliability of three year old recollection is shown by inconsistency of testimony of Mary Oliver and Gary Jamison. Mary Oliver testified at trial that Mary Jamison, her employer, brought the vase to the antique shop for display the next day after buying it in Kansas City. Gary Jamison testified in his deposition that he saw the vase at his mother's home "several weeks to perhaps several months" before she took it out to the antique shop.

26. Plaintiff's Trial Exhibit 1, a vase, is the same vase purchased by Deborah Hermann from the defendant on December 30, 1981.

CONCLUSIONS OF LAW

1. Plaintiff, Robert T. Stephan, Attorney General, is authorized to bring this action pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 et seq.

2. Defendant, Mary E. Jamison, d/b/a Little Olde Shoppe Antiques, is a proper party defendant, and venue of this action is properly in Greenwood County District Court.

3. The court has jurisdiction of the parties and subject matter of the action.

4. Defendant has engaged in the sale of antiques to consumers within the state of Kansas, and is therefore a supplier within the meaning of the Consumer Protection Act. The defendant's sale of antiques, and more particularly the sale to Deborah Hermann, constitute consumer transactions within the meaning of the Consumer Protection Act.

5. Because of defendant's experience and defendant's holding herself out as a knowledgeable art collector and dealer, combined with the fact that Deborah Hermann had previously made

reliable purchases from the defendant, Deborah Hermann reasonably relied on the representations made by the defendant. Defendant either knew or had reason to know of true condition of the vase.

6. The defendant's representations included verbal statements and the use of the sticker.

7. The defendant represented to Deborah Hermann that the Crown Milano vase was a signed Crown Milano, in mint condition and of museum quality, when in fact, the vase did not have the characteristics represented, had been restored, and was of a materially different quality.

8. No proof of intent is required to meet the burden of proof that violation of the Consumer Protection Act occurred.

9. The plaintiff has shown by preponderance of the evidence that the defendant violated the Consumer Protection Act, by committing deceptive acts, as defined by K.S.A. 50-626(b)(1)(A), (C) and (D).

10. The contract between Deborah Hermann and the defendant should be declared null and void, cancelled and rescinded. Deborah Hermann is entitled to have refunded to her the total amount of the price, plus sales tax, paid to the defendant by Deborah Hermann to wit: \$1,525. The defendant is entitled to return of the vase.

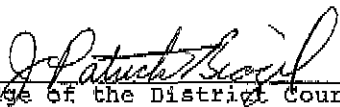
11. Defendant should be enjoined from committing deceptive acts in future consumer transactions.

12. Defendant should be ordered to pay costs of this action, including payment of deposition costs.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment is entered on behalf of the plaintiff, against the defendant, in the amount of \$1,525, payable to Deborah Hermann as actual damages. Upon filing of proof of payment with the Clerk of the District Court, the defendant shall be entitled to return of the vase, plaintiff's Trial Exhibit 1. Defendant is further ordered to pay the costs for this action, including deposition costs. Plaintiff shall submit to

the Clerk of the District Court proof of the deposition costs for which defendant must reimburse the plaintiff.


IT IS SO ORDERED.



Judge of the District Court

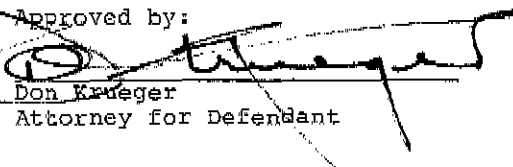
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Don Krueger
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