

IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS

STATE OF KANSAS, EX REL,
ROBERT T. STEPHAN, Attorney
General,
Plaintiff,

vs.

KENNETH R. & TRUDY C. DAMON, a
General Partnership, d/b/a
DAMON'S CAR CENTER,

and

DOUG J. LINEBACK, d/b/a LINEBACK
AUTOMOTIVE,

Defendants.

CASE NO. 92 C 241

FILED
NOV 16 PM 2:15
m⁴

MEMORANDUM DECISION

This case is before the Court upon plaintiff's motion for summary judgment on Counts I and IV of plaintiff's petition. The summary judgment motion was filed October 1, 1993. Oral argument was waived October 4, 1993.

STANDARDS OF SUMMARY JUDGMENT

Summary judgment is proper when there remains no genuine issue of material fact. Hunt v. Dresie, 241 Kan. 647. Disputed facts must be "material to the conclusive issues in the case" to preclude summary judgment. Busch v. City of Augusta, 9 Kan. App. 2d 123. All reasonable inferences which can be drawn from the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits are to be construed in favor of the party

against whom judgment is sought. Richardson v. Northwest Central Pipeline Co., 214 Kan. 752 @ 756. A mere surmise by the District Court that the defending party cannot prevail at trial will not justify a grant of summary judgment. Hunt v. Dresie, Supra. Finally, there is an affirmative duty of the nonmoving party to respond with counter affidavits and other evidence to present facts essential to justify his position. Willard v. City of Kansas City, 235 Kan. 655 @ 659.

UNCONTROVERTED FACTS

Defendants Damon and Lineback admit in their answers a large number of the plaintiff's factual allegations. The Court is advised by counsel for the plaintiff and for Damons the admission of paragraph 49 by Damons is an error and is withdrawn. The Court will not make detailed findings of fact as the parties are all familiar with the facts. However, the following condensed version of the facts is admitted.

Lineback bought two wrecked automobiles (1988 and 1989 Chrysler LaBaron) and combined them into one vehicle. Lineback received a salvage title on both vehicles at the time of purchase. Lineback obtained a Kansas title for the new vehicle that failed to state the vehicle had previously been titled as a nonhighway vehicle.

Lineback sold the car to Damon with a "clean" title. Lineback told Damon the vehicle had been reconstructed from two wrecked cars.

Damon sold the automobile to Jennifer L. Kurtz telling her the previous owner was a lady who lived in Hutchinson. Damon concealed the automobile's history from Ms. Kurtz.

CONCLUSIONS OF LAW

The sale to Ms. Kurtz was a consumer transaction as defined by K.S.A. 50-624(c). Defendant Lineback is a supplier in connection with a consumer transaction as defined by K.S.A. 50-626(i). Defendant Damon is a supplier in a consumer transaction as defined by K.S.A. 50-624.

A deceptive act under the Kansas Consumer Protection Act includes the "willful failure to state a material fact, or the intentional concealment, suppression or omission of a material fact." K.S.A. 50-626(b)(3).

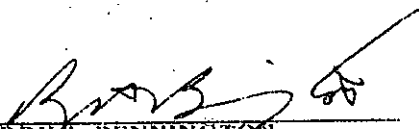
The reconstruction of the car from two wrecked cars is a material fact. A salvage title or nonhighway title is a material fact. The identity of the previous owner is a material fact.

When Lineback sold the automobile with "clean title" which did not disclose the history of the automobile he committed a deceptive act under the terms of the Kansas Consumer Protection Act. When defendants Damon sold the automobile concealing the nature of the automobile's history from Ms. Kurtz and the nature and the identity of the former owner from Ms. Kurtz they committed a deceptive act under the Kansas Consumer Protection Act.

The Court finds the plaintiff is entitled to judgment

against defendant Lineback on Count I and against defendants Damon on Count IV. The assessment of costs and penalties is reserved for future hearing. The hearing on costs and penalties is set for Tuesday, December 21, 1993 at 1:30 p.m.

This judgment rendered November 15, 1993.



BARRY A. BENNINGTON
District Judge, Div. I
Twentieth Judicial District

Theresa Marcel Nuckolls, #13117
Deputy Attorney General
Office of the Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(913) 296-3751
DISMISS2/TERRYN/DAMON

FILED
94 SEP 28 PM 1:02

BARTON COUNTY
CLERK OF THE DISTRICT

IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS
Division 1

STATE OF KANSAS, ex rel.
ROBERT T. STEPHAN, Attorney General,

Plaintiff,

vs.

Case No. 92 C 241

KENNETH R. & TRUDY C. DAMON, a
General Partnership, d/b/a/
DAMON'S CAR CENTER,

and

DOUG J. LINEBACK, d/b/a LINEBACK
AUTOMOTIVE,

Defendant.

Pursuant to K.S.A. Chapter 60

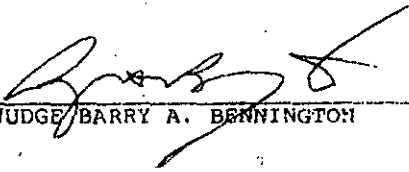
ORDER GRANTING
DISMISSAL OF REMAINING TWO COUNTS
AND
WITHDRAWAL OF REQUEST FOR CIVIL PENALTIES

Now on this 28 day of Sept, 1994, this matter comes
on for hearing upon the plaintiff's motion requesting that the
court enter an order dismissing Counts II and III of the
petition and allowing plaintiff to withdraw its request for
civil penalties. Defendant Damon appears by and through

counsel, Thomas Berscheidt. Defendant Lineback appears by and through counsel, Stan Junhke.

THEREUPON, after reviewing the MOTION, and being duly advised, the court finds that the motion should be granted and Counts II and III are hereby dismissed with prejudice and civil penalties will not be awarded.

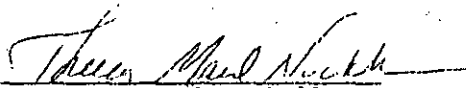
IT IS SO ORDERED.



JUDGE BARRY A. BENNINGTON

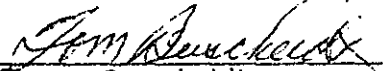
APPROVED:

OFFICE OF ATTORNEY GENERAL

By: 
Theresa Marcel Nuckolls
Kansas Judicial Center
Topeka, Kansas 66612

Attorney for Plaintiff

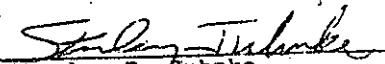
DEFENDANT DAMON

By: 
Thomas Berscheidt
2107 Forrest
P. O. Box 550
Great Bend, Kansas 67530

Attorney for Defendants Kenneth R. and Trudy C. Damon

DEFENDANT LINEBACK

By:



Stanley R. Juhnke
400 W. 1st
P. O. Box 567
Hutchison, Kansas 67504

Attorney for Defendant Doug J. Lineback