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Used Car Dealer Liable for Selling Excessively Damaged Car

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by John Bartels

In ***Payne v. Parks Chevrolet, Inc.*, 458 S.E.2d 716 (N.C. Ct. App. 1995),** the Court of Appeals of North Carolina affirmed the verdict of the district court, holding a dealership liable for the repair costs of a used vehicle. The appellate court held that the dealership either knew or should have known that a used truck it sold was involved in a prior collision resulting in repair costs exceeding 25 percent of fair market value of the vehicle.

Investigation shows long history of vehicle damage

The vehicle in question was a 1986 Ford truck. The vehicle's Department of Motor Vehicle title history disclosed a long chain of title, showing it had been owned by six different parties at various times. Defendant Parks Chevrolet had purchased the vehicle from Matthew Cain in 1990. At the time of the purchase, defendant questioned Cain about the vehicle's history. Cain disclosed that he had purchased the truck from a dealership specializing in the purchase and resale of wrecked vehicles and that he had been involved in a minor accident (costing $250 to $300 to repair). Parks Chevrolet specifically asked Cain whether the truck was ever involved in an accident prior to his purchasing it in which repair costs had exceeded 25 percent of its fair market value. Cain lacked any such knowledge, and signed a "Damage Disclosure Statement" to that effect.

Plaintiff Payne purchased the vehicle from defendant in late 1990 for $7000 without a warranty. Defendant's salesperson represented that Parks Chevrolet mechanics had inspected the vehicle and found no mechanical defects. However, defendant failed to give Payne a damage disclosure statement as was required, and failed to disclose to Payne its knowledge of the prior accident involving the vehicle as disclosed by Cain.

Payne drove the truck for a year, putting over 16,000 miles on the vehicle, when several significant mechanical difficulties forced him to take the vehicle to a body shop for inspection. The shop found "multiple serious problems with the frame and related parts," and suggested that the damage had been caused by a serious accident, which an experienced mechanic would have discovered upon inspection. The body shop further estimated that the cost of repair would exceed $2700, which represented approximately 40 percent of the purchase price of the vehicle. Payne filed suit, alleging that defendant had sold him the truck without disclosing that the vehicle had been involved in a prior accident resulting in damages exceeding 25 percent of the fair market value of the vehicle, a violation of North Carolina statute.

Jury finds dealer knew, or should have known, of extent of damage

A jury found that the Ford truck at the time of sale to Payne was damaged in a prior accident to the extent of at least 25 percent of its fair market value; that Parks Chevrolet either knew, or should have known, of the extent of that damage; and that Parks Chevrolet acted with intent to defraud Payne. Defendant filed motions for judgment notwithstanding the verdict and a new trial. The judge denied those motions, and this appeal followed.

The defendant argued that plaintiff failed to present a prima facie case of violation of N.C. Gen. Stat. § 20-71.4(a) (1993) and 20-348(a) (1993). Plaintiff Payne contended that the evidence presented was sufficient to sustain a violation of both statutes. The General Statutes of North Carolina section 20-71.4 provide in part:

> It shall be unlawful and constitute a misdemeanor for any transferor who knows or reasonably should know that a motor vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle exceeds twenty-five percent (25%) of its fair market value, or that the motor vehicle is, or

was . . . a reconstructed vehicle . . . to fail to disclose that fact in writing to the transferee prior to transfer of any vehicle up to five model years old. Failure to disclose any of the above information will also result in civil liability under N.C. Gen. § Stat. 20-348.

The General Statutes of North Carolina section 20-348 impose monetary damages of up to three times actual damages upon any party who violates N.C. Gen. Stat. § 20-71.4 with intent to defraud.

Evidence sufficient to sustain jury verdict

In describing its standard of review, the court of appeals noted that it must determine whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury. The court found the evidence presented by plaintiff to be sufficient, holding that: 1) the defendant ignored statements made by the previous owner (Cain) as to the condition of the truck and signs of damage to the truck; and 2) the defendant failed to provide plaintiff with a damage disclosure statement. The court stated that to prove a violation of N.C. Gen. Stat. § 20-71.4, the plaintiff was required to show that:

1) defendant was a transferor;

2) defendant knew or reasonably should have known that the truck had been involved in a collision resulting in over 25 percent damage in relation to its fair market value;

3) defendant failed to disclose such fact in writing to plaintiff prior to transfer;

4) that the vehicle, prior to transfer, was not more than five model-years-old.

Defendant did not dispute that it was a transferor, that it failed to make a written disclosure, or that the truck was under five-years-old. Defendant did argue that plaintiff failed to carry his burden of proof in respect of the second requirement. The court, examining the evidence in the light most favorable to the plaintiff, found defendant's position to be without merit.

The court found that the evidence was sufficient to show that Parks Chevrolet should have known of the extent of the damage to the truck. Specifically, Cain had disclosed to a Parks Chevrolet employee that he purchased the truck from a seller of wrecked vehicles; stated he did not know whether the vehicle had ever suffered damage in excess of 25 percent of its fair market value; and yet despite his lack of knowledge, was still instructed to sign a Damage Disclosure Statement on express instructions from defendant's employee. Other evidence in favor of the jury verdict was that of the body shop mechanic who inspected the car and testified as to the extent of the damage and the strong likelihood that had the car been inspected by an experienced mechanic, the degree of damage would have been discovered.

Parks Chevrolet possesses intent to defraud

The court also addressed the extent of any intent to defraud on the part of the defendant. Intent to defraud is required under N.C. Gen. Stat. § 20-348 in order to impose triple damages. Citing *Levine v. Parks Chevrolet, Inc.*, 331 S.E.2d 747,750 (N.C. Ct. App. 1985), the court stated: "We hold that a transferor who lacked actual knowledge may still be found to have intended to defraud and thus may be civilly liable for a failure to disclose that a vehicle's actual mileage is unknown. A transferor may not close his eyes to the truth." The court in *Levine* had found that defendant should have reasonably known a vehicle's odometer reading was incorrect. Finding the present case to be analogous, the court here likewise held that Parks Chevrolet should have known of the extent of the vehicle's damage (regardless of actual knowledge, or any lack thereof), and that its behavior was therefore either grossly negligent or in reckless disregard of the information provided by the vehicle's previous owner.

Accordingly, having determined that plaintiff sustained his burden of proof, the court of appeals affirmed the trial court's order denying a motion for judgment notwithstanding the verdict and upheld the jury verdict.