Loyola Consumer Law Review

Volume 1 | Issue 3 Article 4

1989

Two Circuit Courts Interpret the "Intent to Defraud" Provision of the Federal Odometer Act to Require More than Mere Negligence

Catherine M. Crisham

RECENT CASES

TWO CIRCUIT COURTS INTERPRET THE "INTENT TO DEFRAUD" PROVISION OF THE FEDERAL ODOMETER ACT TO REQUIRE MORE THAN MERE NEGLIGENCE

In 1972, Congress passed the Motor Vehicle Information and Cost Savings Act ("Odometer Act" or "the Act"), 15 U.S.C. §§ 1901-1990 (1982 and Supp.V 1987). The Act prohibits tampering with car odometers and establishes safeguards for the protection of consumers. In two recent decisions, the United States Courts of Appeals for the Seventh and Eighth Circuits interpreted the "intent to defraud" provision of the Act. In *Jones v. Hanley Dawson Cadillac Co.*, 848 F.2d 803 (7th Cir. 1988), the court held that a car dealer's mere negligence in failing to ascertain whether an odometer reading was accurate was insufficient to constitute intent to defraud pursuant to the Act. In *Van Praag v. Columbia Classics Corp.*, 849 F.2d 1106 (8th Cir. 1988), the court held that conflicting testimony regarding a dealer's intent to give a false odometer statement presented a question for the jury.

Jones v. Hanley Dawson Cadillac Co.

In July 1984, Edward Jones purchased a 1979 Eldorado Biarritz from Hanley Dawson Cadillac Company ("Hanley Dawson"). Section 1988 of the Odometer Act requires a dealer to disclose mileage information to the purchaser. Hanley Dawson's salesman filled out an odometer statement certifying that the mileage on Mr. Jones' car was 46,016 miles.

Hanley Dawson had previously purchased the car from Tom's Used Cars ("Tom's"). At the time of the purchase from Tom's, the car had an odometer mileage statement of 48,964 miles. When Tom's had purchased the car from an auction several months earlier it had a mileage statement of 65,198 miles. The actual mileage on the car at the time Tom's purchased it was more than 95,000 miles.

When Hanley Dawson purchased the car from Tom's, it performed a routine inspection for mechanical defects and checked the vehicle's safety devices. Pursuant to its regular practice, Hanley Dawson did not inspect the area under the dashboard, nor did it inspect the odometer other than to determine if it was operating. Hanley Dawson routinely relies upon the accuracy of the previous owner's odometer statement.

Although Mr. Jones had the car repaired five times, mechanics never reported any problem with the odometer reading. After Mr. Jones had driven the car almost 20,000 miles, he received a notice from the state of Michigan, where the car previously had been titled. This notice stated that the car's odometer statements were inconsistent. Mr. Jones filed an action against Hanley Dawson and Tom's in federal court alleging violations of the Odometer Act. The court entered a default judgment against Tom's for failing to appear. Mr. Jones and Hanley Dawson subsequently agreed to proceed before a magistrate and to the entry of judgment by a magistrate pursuant to federal statute.

Magistrate's Decision: Liability if Failure to Exercise Reasonable Care

At trial before the magistrate, an odometer specialist testified that upon removing the dashboard he noticed that a turn signal lens was missing. According to the specialist, the turn signal lens could be dislodged only after one removes the dashboard. Consequently, the specialist testified that someone had tampered with the odometer, but that he was uncertain whether that person had rolled back the odometer. The magistrate determined that it was permissible to infer that the colored turn signal lens was missing when Mr. Jones purchased the vehicle, noting that the lens could have been dislodged only if the dashboard were removed and that the dashboard clearly had not been removed during the period Mr. Jones owned the car.

The magistrate concluded that a dealer is liable to the purchaser under the Odometer Act if the dealer sells a car with an inaccurate mileage statement and if the dealer acts with intent to defraud. Intent to defraud exists if the dealer

acts with "recklessness, gross negligence, or with constructive knowledge of an inaccuracy based on a failure to exercise reasonable care." 848 F.2d at 805. The magistrate concluded that Hanley Dawson had an affirmative duty to use reasonable care to protect the purchaser, and that this duty extended to employing odometer experts or to training mechanics to check for obvious signs of odometer tampering. The magistrate ruled that because Hanley Dawson had failed to exercise reasonable care, it was liable under the Odometer Act. Hanley Dawson appealed, alleging that the magistrate had employed an improper standard of liability and that the language of the Act did not require a dealer to employ an odometer expert in order to avoid liability.

Seventh Circuit Analysis: Mere Negligence Insufficient to Impose Civil Liability

The United States Court of Appeals for the Seventh Circuit reversed the magistrate's ruling, holding that the Act did not place on car dealers an affirmative duty to exercise reasonable care. In interpreting the Act, the court noted that the magistrate had relied upon a Senate Report accompanying the Act when it was passed. The magistrate had read a passage in the Report to require that a failure to exercise reasonable care could constitute the basis for civil liability. The court disagreed with the magistrate's interpretation of this passage, explaining that it applies only to § 1988 of the Act. Section 1988 of the Act requires a dealer to disclose the mileage registered on the vehicle's odometer as well as the actual mileage of the vehicle if it is different from the odometer reading. Section 1989, on the other hand, expressly requires that an *intent to defraud* be present before civil damages may be imposed. The court held that the plain meaning of this language is that negligence is insufficient to impose civil liability under the Odometer Act. Because, at most, Hanley Dawson was negligent in failing to investigate the missing turn signal lens, the court held Hanley Dawson was not liable to Mr. Jones.

Van Praag v. Columbia Classics Corp.

In March 1981, Sam Schwartz purchased a 1969 Mercedes Benz Model 600 from Monica Petricek. Schwartz was then president and sole stockholder of Columbia Classics Corporation ("Columbia"), a corporation which buys and sells special interest automobiles. At the time of purchase, the car's odometer read 8,200 miles. In February 1982, Columbia sold the car to Kirkwood Classic Motorcars ("Kirkwood"), who in turn sold the car to James Van Praag in April of the same year. Kirkwood represented to Mr. Van Praag that the mileage was 11,500 miles. Soon after the purchase, Mr. Van Praag began to have mechanical problems with the car and he became suspicious of the reported mileage. After contacting several Mercedes distributors and dealerships, Mr. Van Praag learned that the actual mileage of the car was in excess of 105,000 miles.

Mr. Van Praag first filed an action against Kirkwood and Columbia in state court but the action was dismissed for lack of personal jurisdiction over Columbia. Mr. Van Praag then filed the same complaint in federal court. He subsequently dismissed his action against Kirkwood, but proceeded to trial against Columbia. The jury returned a verdict against Columbia for $10,000 and the district court awarded treble damages pursuant to § 1989 of the Odometer Act. Columbia moved for a judgment notwithstanding the verdict, the court denied the motion, and Columbia appealed.

Eighth Circuit Analysis: Evidence Sufficient to Support a Finding of Intent to Defraud

On appeal, Columbia raised five points of error, each of which the Eighth Circuit rejected. The court held that Columbia's motion for summary judgment based on a lack of personal jurisdiction, as well as its motion for a directed verdict based on whether Mr. Van Praag was the real party in interest, had been properly denied. In addition, the court held that Mr. Van Praag had filed his action within the appropriate time period, and that the trial court had properly allowed unsigned depositions of the car's prior owners to be admitted into evidence.

In its final point of error, Columbia argued that Mr. Van Praag failed to make a sufficient case under the Odometer Act for two reasons. First, Mr. Van Praag had failed to establish that Columbia had an intent to defraud, as required by § 1989 of the Odometer Act. Second, Colum-

(continued on page 74)

FEDERAL ODOMETER ACT (from page 73)

bia also argued that the trial court improperly instructed the jury regarding the reasonableness of Mr. Van Praag's reliance on the false odometer statement.

The Eighth Circuit held that the evidence was sufficient for the jury to find that Columbia acted with an intent to defraud by "knowingly, recklessly, or with gross negligence [giving] a false odometer statement." 849 F.2d. at 1110. In her deposition, Monica Petricek stated that when she sold the car to Columbia, the company's president gave her a blank odometer statement to sign. They never discussed the car's mileage. In contrast, Columbia claimed that the parties filled out the mileage statement together. The court noted that when there is conflicting testimony regarding a material issue, such as the intent to defraud, then the court may not grant a motion for a directed verdict. Such a factual conflict must be resolved by the jury.

The court also held that the trial court properly instructed the jury that Mr. Van Praag exercised a reasonable degree of care in relying on Columbia's odometer statement. Columbia had maintained that Mr. Van Praag's reliance on the odometer statement was not reasonable because Mr. Van Praag is an expert on classical cars. The court disagreed, explaining that the jury was the appropriate body to decide this issue and that it possessed sufficient facts from which to make this determination. The court affirmed the judgment of the district court.

Catherine M. Crisham

FIRST CIRCUIT HOLDS BRAZILIAN MANUFACTURER AND SALES REPRESENTATIVE LIABLE FOR DEFECTIVE PRESSURE COOKERS SOLD IN PUERTO RICO

In *Benitez-Allende v. Alcan Aluminio do Brasil*, S.A., 857 F.2d 26 (1st Cir. 1988), *cert. denied*, 109 S.Ct. 1135 (1989), the United States Court of Appeals for the First Circuit upheld the district court's assertion of jurisdiction over a Brazilian manufacturer of defective pressure cookers. The court also held that the jury's findings of strict liability against the manufacturer and the manufacturer's sales representative in Puerto Rico were supported by the weight of the evidence.

Background

Alcan Aluminio do Brasil, S.A. ("Alcan/Brasil") manufactures the Rochedo pressure cooker in Brazil and distributes it in large quantities in the United States. The cooker operates by sealing food and water inside a pot with a tight-fitting lid. When the water inside the pot is heated, it turns to steam, creating the pressure which cooks the food. There are two safety devices on the Rochedo cooker. The first is an escape valve in the lid that, during normal use, releases steam as pressure builds to prevent the cooker from exploding. The second is a "fusible seal" in the cooker's handle which is designed to melt if the pressure within the cooker becomes too high. When the fusible seal melts, a hole is created which lets the excess steam escape. Alcan/Brasil designed the "fusible seal" to melt when the pressure inside the cooker is approximately four times the maximum operating pressure. Alcan/Brasil also designed the cooker to be opened by a user applying 25 pounds of force to the handle on the lid, even when the pressure inside the cooker is dangerously high. Underwriters' Laboratories specifications state that a pressure cooker's lid should require 100 pounds of force to be opened when the pressure inside the cooker reaches a dangerous level. Moreover, the specifications state that the "fusible seal" should melt at twice the maximum operating pressure rather than four times the maximum operating pressure.

Three plaintiffs were injured by Alcan/Brasil pressure cookers. Lercy Benitez Allende was burned when the contents of the cooker flew out as she removed the lid. Ramonita Garcia Andino and Carmen Cruz Diaz were injured when their Rochedo cookers exploded spontaneously, causing the lids and heated contents to fly from the pots and strike them. All three