SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1217-21

SHARON DENNIS,

Plaintiff-Appellant/
Cross-Respondent,

v.

CASH YOUR CAR, INC.,
and AMRO ALY,

Defendants-Respondents/
Cross-Appellants.

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Submitted May 3, 2023 – Decided July 27, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-4175-18.

Law Office of David C. Ricci, LLC attorney for appellant/cross-respondent (David C. Ricci, on the briefs).

Randall J. Perry, attorney for respondents/cross-appellants.

PER CURIAM

In this matter arising from a used-car sales contract dispute, the parties appeal from a November 8, 2021 Law Division judgment, which awarded plaintiff Sharon Dennis $10,285.77 in damages but dismissed her complaint against defendant Amro Aly, owner and manager of defendant Cash Your Car, Inc., with prejudice. Specifically, plaintiff appeals the decision to dismiss Aly as a defendant and the determination that defendants did not violate the Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 to -20; the Motor Vehicle Advertising Practices ("MVAP"), N.J.A.C. 13:45A-26A.1 to -10; the Used Car Lemon Law ("UCLL"), N.J.S.A. 56:8-67 to -80; the Truth-in-Consumer Contract Warranty and Notice Act ("TCCWNA"), N.J.S.A. 56:12-15; and the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. §§ 2301-2312. Defendants cross-appeal, arguing that they did not violate the perfect tender rule of the Uniform Commercial Code, ("UCC"), N.J.S.A. 12A:1-101 to 10-106, and, therefore, the judges award of damages was in error. We affirm, substantially for the reasons outlined in Judge Jeffrey B. Beacham's November 8, 2021 oral opinion.

We discern the following facts from the record. In January 2018, plaintiff viewed a 2006 Jeep Commander (the "Jeep") for sale by defendants

on CARFAX.com. On February 6, 2018, plaintiff noticed the Jeep on CarGurus.com for a reduced price of $7,498. Interested, plaintiff drove to defendants' dealership.

At the dealership, plaintiff met with William Lockmeyer, defendants' sales representative. Lockmeyer presented plaintiff with a CARFAX vehicle history report, which confirmed the Jeep's reduced price of $7,498, and a sales "worksheet," which indicated a higher actual sales price of $8,643. Plaintiff asked Lockmeyer about the $1,145 discrepancy and was told that the difference was due to standard additional fees consisting of a $150 sales assistance fee[1] and a $995 dealer preparation fee.[2] Whether Lockmeyer explained the breakdown of the dealer preparation fee is disputed by the parties. Regardless, plaintiff reserved the Jeep with a $100 dollar deposit before leaving the dealership.

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[1] During his July 8, 2019 deposition, Lockmeyer described the $150 sales assistance fee as a "commission."

[2] The $995 dealer preparation fee consisted of the following: a $60 vehicle history report, $370 pre-buying checkup and test drive, $195 destination and delivery fee, $90 inside and out vehicle detailing, $15 tire dressing protection, $10 disposable protective floor mats, $130 vehicle advertisement, and a $125 ninety-day powertrain extended warranty through independent insurer Continental Warranty Inc. ("Continental").

On February 10, 2018, plaintiff returned to the dealership to purchase the Jeep. Plaintiff was presented a retail order sheet with, yet again, an increased sales price, this time charging $10,035.77.[3] Still interested in purchasing the Jeep, plaintiff signed defendants' sales documents, which included: the motor vehicle retail order; two power of attorney ("POA") documents, which authorized defendants to obtain a vehicle title and registration on plaintiff's behalf; an application for a certificate of ownership; a ninety-day power train extended warranty through Continental Warranty Inc. ("Continental"); documents memorializing the Jeep's sale "as-is"; and a separate $1,899 Continental policy that provided coverage for 36 months or 36,000 miles.

Thereafter, defendants asked plaintiff to complete the purchase with a certified check rather than a personal check. As such, plaintiff and Lockmeyer drove the Jeep to plaintiff's bank, picked up a certified check, and returned to the dealership to complete the purchase. After providing defendants with the certified check, but before plaintiff could leave defendants' dealership, the

[3] Defendants' retail order sheet provided the following itemized breakdown and additional fees: $8,643 unit price, $295 clerical fee, $100 delivery fee, $598.77 state sales tax, $20 temporary tag fee, and $379 registration and title fee.

Jeep's dashboard warning lights "lit up like a Christmas tree." Plaintiff exited the vehicle and promptly notified defendants of the issue.

Defendants were unable to fix the issue at the dealership so, under the impression that a different car battery would resolve the issue, defendants took the Jeep to a nearby mechanic. After the Jeep's battery was exchanged, all of the warning lights remained on. Undeterred, defendants assured plaintiff that a brand new battery would fix the issue and advised plaintiff that the Jeep would be fixed and available for pick-up on the next business day. Accordingly, plaintiff did not accept delivery of the Jeep that day.

The next business day, on February 12, 2018, plaintiff requested a refund of the Jeep's purchase price over the phone and informed defendants that she would no longer be accepting the vehicle due to its defects. Defendants denied plaintiff's request and refused to acknowledge her revocation of the sale. Plaintiff then drove to the dealership to reiterate her refund request. At the dealership, plaintiff was again denied her refund and also found that a new battery had not been acquired or installed in the Jeep. Later that day, and on the days following, defendants called plaintiff to request that she pick up the Jeep and reconsider her decision to cancel the purchase.

On February 15, 2018, despite defendants' continued possession of the Jeep and plaintiff's revocation of the sale, defendants signed a "Reassignment of Certificate of Ownership by Licensed New Jersey Dealer" and purchased a $5 temporary tag and a $131.50 registration and title for plaintiff.[4] Consequently, plaintiff was forced to assume legal ownership of the Jeep and purchase a $75.67 per month automobile insurance policy.[5] At no time were the Jeep, Jeep's title, plaintiff's certificate of ownership, or plaintiff's license plates given or sent to plaintiff.

Aly maintains that he never personally interacted with plaintiff and is, therefore, not liable for any alleged wrongdoing on the part of his employees or Cash Your Car, Inc. However, the record indicates that, in his capacity as the owner and manager of Cash Your Car Inc., he denied plaintiff's refund, supervised the progress of the Jeep's sale, and approved the reassignment of ownership, assignment of title, and assignment of tag to plaintiff.

Plaintiff filed the instant complaint on June 14, 2018, and defendants filed their answer on August 13, 2018. On July 8, 2018, plaintiff deposed

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[4] Plaintiff was originally charged $399 for tag, title, and registration. The $262.50 discrepancy was never refunded.

[5] Plaintiff maintained said insurance policy for over eighteen months at a personal cost of $1,362.

Lockmeyer and Aly.[6] On December 30, 2019, plaintiff filed a motion for partial summary judgment, which was denied on January 30, 2020.

On November 1, 2021 and November 8, 2021, the parties were heard, and the judge found that the sales contract between defendants and plaintiff had been cancelled pursuant to principles of the UCC. Accordingly, the judge awarded plaintiff the $10,035.77 purchase price of the Jeep and a $250 filing fee, totaling $10,285.77. In so doing, the judge reasoned that:

> [P]laintiff's position is that it rejected delivery and never took possession of the nonconforming vehicle and was entitled to cancel the contract and receive a refund under the [UCC]. [P]laintiff's transaction is covered under the [] UCC. . . . The UCC has a perfect tender rule which allows a buyer to reject delivery if the goods fail in any respect to conform to the contract.
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> . . . .
>
> A buyer may [] revoke acceptance so long as the demand [to revoke] is made in a reasonable time. . . .
>
> In the present case[,] [] plaintiff never took delivery of the vehicle[,] even though [] defendants kept her money. There's no dispute that the dashboard

[6] Defendants' brief objects to plaintiff's reference to the depositions of Aly and Lockmeyer on appeal, citing State v. Harvey, 151 N.J. 117, 201-02 (1997) ("An appellate court, when reviewing trial errors, generally confines itself to the record."). Defendants' argument is meritless as, at trial, defendants acknowledged entry of both depositions into evidence.

> displayed multiple warning signs. . . . The [c]ourt finds that [plaintiff] reasonably notified [] defendants of her rejection of the delivery.

As for plaintiff's claims brought pursuant to the CFA; MVAP; UCLL; TCCWNA; and MMWA, related to defendants' actions throughout the sales process, the judge denied relief on all counts. First, the judge found no violation of the CFA, reasoning that:

> To establish a violation of the [CFA], a consumer must show unlawful conduct by the defendant, an ascertainable loss by the plaintiff, [and] a causal relationship between the unlawful conduct and the ascertainable loss. [Boslin v. Warnock Dodge], 197 N.J. 543, 557 (2009).
>
> . . . .
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> [P]laintiff [] argues that [] defendants committed an unconscionable commercial practice in violation of the [CFA] when they forged [] [plaintiff's] name[] on the title documents submitted to the Motor Vehicle [] Commission. But the [c]ourt finds that [] plaintiff did sign the [POA] and the [POA] was not revoked. So[,] when [] defendants did sign the plaintiff's name it was to [] change the title documents. So[,] the [c]ourt finds that [] defendants did not commit [an] unconscionable commercial practice in violation of the [CFA] when they signed [] plaintiff's name.
>
> . . . .
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> Regarding [] plaintiff's claim that [] defendants overcharged [] plaintiff for the title and registration in violation of the C[F]A, the court finds that []

> defendants did not violate the [CFA], because [] Aly [] testified. . . that he was planning on returning the overcharges of the registration and title fee[,] but [] plaintiff never returned to the dealership[,] and that's why those fees were not returned to the plaintiff. So[,] the [c]ourt finds there's no violation of the [CFA].

Next, the judge found no violation of the MVAP, reasoning that:

> [P]laintiff also argues that [] defendants violated the MVAP regulations . . . when they charged more than the advertised price [of the Jeep]. The MVAP regulations at N.J.A.C. 13:45A-26A-5(a)(2) and 26A-5(b) require certain disclosures[:] A statement that price includes all costs to be paid by a consumer except for licensing, costs, registration fees, and taxes. . . .
>
> There was extensive testimony today from [] Aly[,] . . . and the [c]ourt finds [] Aly credible[.] [The court further] finds that the statement of price in the advertisements included [a] disclaimer. . . that the price includes all costs to be paid by the consumer except for licensing costs, registration fees, and taxes. The [c]ourt finds that they were prominently displayed in the advertisement on the internet.
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> . . . .
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> [A]ll of the fees were explained to [] plaintiff. So[,] the [c]ourt finds [] defendants did not overcharge [] plaintiff. . . .

Similarly, the judge found no violation of the UCLL or the MMWA, reasoning that:

> [T]he [c]ourt finds[,] . . . [that] the warranties were not provided by [] defendants. The warranties were provided by Continental. So[,] [] defendants did not commit violations of the UCLL [] when they alleged[ly] misrepresented [that] the vehicle was sold as-is and without warranties, while at the same time, charging [] plaintiff for a written warranty. The written warranty [] plaintiff purchased was outside of the contract . . . it was not mandatory[,] and [] plaintiff chose to purchase that.

In addition, the judge found no violation of the TCCWNA, reasoning that:

> The [c]ourt [] finds that [] defendants did not violate the [TCCWNA] by providing plaintiff with [] sales documents containing the terms that violated her legal rights. All of the charges were explained to the plaintiff[,] and she fully understood them. She testified that she was a legal assistant and she had purchase[d] many cars before. She totally understood all of the charges. And she even checked off the charges when they were explained to her.

Finally, the judge rejected plaintiff's claims against Aly, finding that he was not individually liable for any of the alleged violations:

> [P]laintiff argues that [] Aly is liable for the claims against Cash Your Cars Inc, but the [c]ourt finds that [] defendants[,] . . . did not commit any consumer fraud violations. So[,] Aly is not liable for any [CFA] allegations. [] [There is] no basis to pierce the corporate veil in this matter. . . . He had no conversations with [] plaintiff whatsoever. He testified that he was not the sole person that would make all of the decisions. He would also speak to the manager,

> and the manager would make suggestions[,] and after the manager would make suggestions, then [] Aly would make a decision after a consideration of the manager's suggestions.

This appeal followed. On appeal, plaintiff presents the following points for our consideration:

> POINT I
>
> THE TRIAL COURT ERRED BY FAILING TO CONCLUDE THAT DEFENDANTS' ADVERTISEMENTS VIOLATED THE MOTOR VEHICLE ADVERTISING PRACTICES REGULATIONS, THE CONSUMER FRAUD ACT, AND THE TRUTH-IN-CONSUMER, CONTRACT, [] WARRANTY [AND] NOTICE.
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> > A. The Trial Court Erred By Finding That Defendants' Advertisements Contained The Statement That "The Price Includes All Costs To Be Paid By The Consumer Except For Licensing Costs, Registration Fees, And Taxes."
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> POINT II
>
> THE TRIAL COURT ERRED BY FAILING TO CONCLUDE THAT DEFENDANTS' SALE OF THE VEHICLE VIOLATED THE MOTOR VEHICLE ADVERTISING PRACTICES REGULATIONS, THE CONSUMER FRAUD ACT AND THE TRUTH-IN-CONSUMER, CONTRACT, [] WARRANTY [AND] NOTICE [ACT].

POINT III

THE TRIAL COURT ERRED BY FAILING TO CONCLUDE THAT DEFENDANTS MISREPRESENTED THE JEEP'S WARRANTY STATUS IN VIOLATION OF THE USED CAR LEMON LAW, THE CONSUMER FRAUD ACT AND THE TRUTH-IN-CONSUMER, CONTRACT, [] WARRANTY [AND] NOTICE [ACT].

> A. Defendants' As-Is Disclosures, Notice to Purchaser Regarding Vehicle Service Contract Availability, and 90 Day Powertrain Extended Warranty Were Misleading, Deceptive, and the Trial Court Erred Not to Find a Violation of the Used Car Lemon Law.

POINT IV

THE TRIAL COURT ERRED BY FAILING TO CONCLUDE THAT DEFENDANTS' ORDERING TITLE AND REGISTRATION IN PLAINTIFF'S NAME AFTER SHE HAD RIGHTFULLY REJECTED DELIVERY VIOLATED THE CONSUMER FRAUD ACT.

POINT V

THE TRIAL COURT ERRED BY FAILING TO CONCLUDE THAT DEFENDANTS VIOLATED THE CONSUMER FRAUD ACT WHEN THEY CHARGED EXCESS TITLE AND REGISTRATION FEES YET FAILED TO ISSUE A REFUND IN THE ORDINARY COURSE OF BUSINESS.

POINT VI

[THE] TRIAL COURT ERRED BY FAILING TO CONCLUDE THAT DEFENDANT AMRO ALY WAS NOT LIABLE FOR THE CONDUCT OF THE DEALERSHIP.

A. The Trial Court Erred by Failing to Conclude that Defendant Aly Was Liable for the Unlawful Conduct of the Dealership Under the Dealer Regulations.

B. The Trial Court Erred by Failing to Conclude that Defendant Aly Was Liable for the Unlawful Conduct of the Dealership Because It Erred in Not Finding any Violations of the CFA and the TCCWNA.

POINT VII

THE TRIAL COURT ERRED BY FAILING TO ADD PLAINTIFF'S AUTO INSURANCE EXPENSE, PRE-JUDGMENT INTEREST AND ALL COURT COSTS TO PLAINTIFF'S DAMAGE AWARD.

Our scope of review of a judgment following a bench trial is limited. D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013). Final determinations of a trial court "premised on the testimony of witnesses and written evidence at a bench trial" are deferentially reviewed. Ibid. Accordingly, we defer to a trial judge's credibility determinations unless the court's fact-findings are not

"supported by substantial credible evidence" and "would work an injustice." In re Return of Weapons to J.W.D., 149 N.J. 108, 116 (1997).

Guided by these principles, and our detailed review of the record, we affirm, substantially for the reasons outlined in Judge Beacham's November 8, 2021 oral opinion. The judge's findings of fact and resultant decision were grounded in his determination that Aly's testimony, regarding defendants' conduct and plaintiff's actions, was credible. Specifically, the judge found credible Aly's statements denying knowledge of a material defect with the Jeep prior to the subject sale; refuting personal interactions with plaintiff; and reporting the presence of fee disclaimers in all of defendants' advertisements. We see no reason to second guess his finding that Aly was credible.

We deem meritless any arguments left unaddressed, and decline to comment upon them in this written opinion. Rule 2:11-3(e)(1)(E).

Affirmed.