

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-04-2001

APEX AUTOMOTIVE, LLC dba )  
PIEDMONT CHRYSLER JEEP )  
DODGE, )

PLAINTIFF )

v. )

EARL JAMISON NASH and )  
MURNA LEE NASH, )

DEFENDANTS. )

ORDER ON APPEAL FROM THE  
MAGISTRATE'S COURT

This matter came before me on an appeal from the Magistrate's Court. The Appellants were appearing *pro se* through Earl Jamison Nash. The Respondents appeared by and through their counsel, J. Kirkman Moorhead.

Mr. Nash filed an appeal on September 6, 2013 from a jury verdict rendered against him and Murna Lee Nash for \$5,000.00 in favor of the Respondents in magistrate's court dated August 22, 2013.

The underlying dispute arises from the sale of a vehicle by the Respondents to Mr. and Mrs. Nash. The evidence shows that the Appellants entered into an agreement to purchase a 2012 Chrysler 300 vehicle. As part of the transaction, Mr. and Mrs. Nash were to pay the sum of \$5,000.00 in cash. Evidence presented at trial by the Respondents, including a video of the transaction, support that Mr. and Mrs. Nash were allowed to take possession of the vehicle and finalize the other aspects of the transaction with the understanding that they would return within a day or two with the title to a vehicle they had traded in and the \$5,000.00 downpayment. Witnesses for the respondent testified that they were comfortable with this arrangement due to the high credit rating of Mr. and Mrs. Nash and the general demeanor of Mr. and Mrs. Nash. The respondent's witnesses testified that Mr. and Mrs. Nash did deliver the title to the trade-in, but failed to make the \$5,000.00 payment.

The respondent's witnesses testified that over the coming weeks, the payment by Mr. and Mrs Nash was not forthcoming. They testified that Mr. Nash initially communicated with them and at first claimed an anticipated tax refund had not come through. They testified that Mr. Nash then subsequently changed his story and argued that he had, in fact, paid the \$5,000.00, in cash to the respondents, although he could not relate to whom he paid the funds nor did he present a receipt. At trial, Mr. Nash was unable to identify to whom he had paid the purported \$5,000.00 payment and he testified he was not given a receipt by the unidentified individual. He further argued that because the documents evidencing the transaction have entries for "Cash Payment" of \$5,000.00 and that, essentially that because it is noted in the documents, it must have been paid. He contends that there can be no oral modifications to the contract documents and therefore the funds are not owed. Clearly, the presence of an entry indicating "Cash Payment" in the transaction documents constitutes a term of the sale and is not proof that he amount was actually paid, and, especially in light of the testimony of the respondent's witnesses and the video of the transaction, it is obvious that this is the case.

Mr. Nash then began to claim that the vehicle he came in to the dealership to purchase was not the vehicle he received, despite conceding that the vehicle he received was in fact the one identified on the paperwork. The video evidence, however, includes a discussion between Mr. and Mrs. Nash wherein the couple discusses the vehicle they were buying and identifies the vehicle by noting its color, engine size and model. The vehicle which was taken by Mr. and Mrs. Nash matched the paperwork in evidence and the vehicle described in the conversation between the Nashes on the video of the transaction in evidence.

Mr. Nash further contends that Apex Automotive, LLC cannot bring suit because "Apex is not a real person and cannot be cross examined." Apex Automotive, LLC is a duly formed Limited Liability Company organized in the State of South Carolina. Obviously, Apex's representatives appeared at trial and were available for, and in fact were, cross examined. This argument has no merit.

The overwhelming evidence provided support for the position that the \$5,000.00 was not paid by Mr. and Mrs. Nash to the respondent, and I affirm that finding of the jury and the magistrate. First, the

three representatives of Apex who had contact with Mr. and Mrs. Nash testified that the funds were not paid. Second, the videotape of the transaction confirms that the funds were not paid at the time of delivery of the vehicle. Third, Mr. Nash was unable to identify a source of funds for the \$5,000.00 he claims to have paid and has no receipt for the alleged payment. I find that the mere presence of an entries in the documents in support of the transaction indicating that a \$5,000.00 cash payment was a term of the transaction does not by itself prove the payment was made. To the contrary, the jury had ample evidence available to them to conclude that the \$5,000.00 was not paid and that therefore Mr. and Mrs. Nash owed the funds to the Plaintiff/Respondent.

I further find by the greater weight of the evidence that Mr. and Mrs. Nash in fact received the very vehicle that they bargained for and that there is no support for the contention that the respondent somehow cheated Mr. and Mrs. Nash by "baiting and switching" or otherwise surreptitiously substituting a vehicle into the transaction that was other than the very vehicle that the Nashes contemplated purchasing. This is supported by the description of the vehicle on the transaction documents and again by the video of the Nashes discussing the specifics of the vehicle they were purchasing contemporaneously with the execution of the documents requisite to the transaction.

NOW THEREFORE, IT IS ORDERED that the findings of fact of the Magistrate's Court, in addition to any findings of this Court to the extent they are supplementary, are hereby affirmed, together with the Judgment in favor of the Respondents and against the Appellants in the amount of \$5,000.00.

IT IS SO ORDERED.

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The Honorable J. Cordell Maddox Jr.

Anderson, South Carolina

Dated \_\_\_\_\_, 2014

THIS IS WHAT THIS ATTORNEY FILE SUITE AGAINST ME FOR  
AND HE HAS STATED HE HAS NOTHING TO PROVE THIS IN WRITING  
AS IS REQUIRED HERE

STATE OF SOUTH CAROLINA )

) IN THE MAGISTRATE'S COURT

COUNTY OF ANDERSON )

APEX AUTOMOTIVE, LLC dba )  
PIEDMONT CHRYSLER JEEP DODGE )  
c/o J. Kirkman Moorhead, Esq. )  
207 E. Calhoun Street )  
Anderson, SC 29621 )

PLAINTIFF )

v. )

COMPLAINT

(Bench Trial Requested)

EARL JAMISON NASH and )  
MURNA LEE NASH )  
209 Camson Rd. )  
Anderson, SC 29625 )

DEFENDANTS )

The Plaintiff, complaining of the Defendants herein, hereby alleges and says as follows:

- 1) The Plaintiff is a limited liability company organized and existing under the laws of the State of South Carolina and doing business as a retail seller of automobiles in Anderson County. The Plaintiff does business under the name Piedmont Chrysler Jeep Dodge.
- 2) The Defendants are citizens and residents of the County of Anderson, State of South Carolina.
- 3) The amount in controversy is within the limits imposed for Magistrate's Court in South Carolina.

#### FACTUAL ALLEGATIONS

- 4) All of the previous allegations of this complaint are hereby incorporated by reference, to the extent, however, that they are not inconsistent herewith.
- 5) On or about October 20, 2012, the Defendants agreed to purchase and the Plaintiff agreed to sell to the Defendants a new 2012 Chrysler 300, VIN 2C3CCAAGXCH261422.
- 6) The Defendants agreed to pay the sum of \$30,439.00, which constitutes good and valuable consideration to the Plaintiff, in exchange for delivery and title to the vehicle. The Defendants

also purchased an extended warranty for \$1,750.00, bringing the amounts due to the Plaintiff by the Defendants to \$32,189.00.

- 7) The Defendants traded in a vehicle, for which they were given credit by the Plaintiff for \$2,500.00, received a rebate on the purchase price of \$3,000.00 and financed \$21,689.00 of the purchase price through a lending institution, for a total paid to the Plaintiff of \$27,189.00. This left a balance of \$5,000.00, which the Defendants agreed to pay in cash.
- 8) At the time of the closing of the transaction, the Defendants did not have cash or cash equivalent of \$5,000.00 immediately available. Because the Defendants promised to promptly return and pay the \$5,000.00 due, the Plaintiff allowed the Defendants to leave the premises of the Plaintiff's automobile dealership in the vehicle they had agreed to purchase.
- 9) The Plaintiff pleads the bill of sale #36221, which is incorporated herein by reference and is attached hereto as an Exhibit.
- 10) The Defendants refused to return the vehicle to the Plaintiff, despite demands by the Plaintiff to do so.
- 11) The Defendants failed and refused to return to the dealership to make payment of the \$5,000.00, and continue to refuse to make payment of the \$5,000.00, despite multiple requests of the Plaintiff to do so.

**FOR A FIRST CAUSE OF ACTION  
BREACH OF CONTRACT**

- 12) All of the previous allegations of this complaint are hereby incorporated by reference, to the extent, however, that they are not inconsistent herewith.
- 13) That the failure of the Defendants to pay the \$5,000.00 as promised constitutes a breach of contract.
- 14) As a result of the breach of contract by the Defendants, the Plaintiff has been damaged in the amount of \$5,000.00.

15) That the Plaintiff is entitled to pre-judgment interest at the legal rate, plus fees associated with filing suit in magistrates court.

**FOR A SECOND CAUSE OF ACTION  
UNJUST ENRICHMENT**

16) All of the previous allegations of this complaint are hereby incorporated by reference, to the extent, however, that they are not inconsistent herewith.

17) That the Defendants herein took possession and title to a vehicle along with a service contract applicable to it valued at \$32,189.00, but only paid \$27,189.00 for it, resulting in an unjust enrichment to the Defendants of \$5,000.00.

18) That the Plaintiff is entitled to \$5,000.00 from the Defendants as a result thereof.

19) That the Plaintiff is entitled to pre-judgment interest at the legal rate, plus fees associated with filing suit in magistrate's court.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in the amount of \$5,000.00, plus pre-judgment interest at the legal rate and fees associated with filing suit in magistrates court.

Respectfully Submitted,



J. Kirkman Moorhead, Esq.  
Krause, Moorhead and Draisen, PA  
207 East Calhoun Street  
Anderson, South Carolina 29621  
864-225-4000

*Jan 9, 2013*

~~December 28, 2012~~