

PIF Number:

10001541

Case Name:

GARNER V. BORCHERDING BUICK, INC.

Case Number:

A8803256

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

CHRISTINE GARNER, :
 Plaintiff-Appellant, :
 and :
 PATSY GARNER, :
 Plaintiff, :
 and :
 STANDARD PLAN, INC., :
 Intervening Plaintiff, :
 vs. :
 BORCHERDING BUICK, INC., :
 HERBERT WAYNE WISEMAN, :
 d/b/a AUTORAMA SALES, :
 and :
 WRECKS, INC., :
 d/b/a W.I. AUTO SALES, :
 Defendants-Appellees. :

APPEAL NO. C-910446
 TRIAL NO. A-8803256

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 MAY 05 1995
 ATTORNEY GENERAL OF OHIO
 CONSUMER FRAUDS & CRIMES
 PUBLIC INSPECTION FILE

JUDGMENT ENTRY

ENTERED
 DEC -2 1992
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This cause having been heard upon the appeal, the record filed herein, briefs, and arguments and

Upon consideration thereof, it is the Order of this Court that the judgment of the trial court is reversed and the cause is remanded for the reasons set forth in the Decision filed herein and made a part hereof.

And the Court, being of the opinion that there were reasonable

grounds for this appeal, allows no penalty.

It is further Ordered that costs be taxed in compliance with App. R. 24, that a copy of this Judgment with a copy of the Decision shall constitute the mandate, and that said mandate shall be sent to the trial court for execution pursuant to App. R. 27.

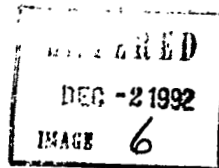
Exceptions noted.

To the Clerk:

Enter upon the Journal of the Court on 12-2-92

per Order of the Court [Signature]

Presiding Judge



IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CHRISTINE GARNER, :
Plaintiff-Appellant, :
and :
PATSY GARNER, :
Plaintiff, :
and :
STANDARD PLAN, INC., :
Intervening Plaintiff, :
vs. :
BORCHERDING BUICK, INC., :
HERBERT WAYNE WISEMAN, :
d/b/a AUTORAMA SALES, :
and :
WRECKS, INC., :
d/b/a W.I. AUTO SALES, :
Defendants-Appellees. :

APPEAL NO. C-910446
TRIAL NO. A-8803256

DECISION.

PRESENTED TO THE CLERK
OF COURTS FOR FILING

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COURT OF APPEALS

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IMAGE 7

Civil Appeal From: Hamilton County Court of Common Pleas
Judgment Appealed From is: Reversed and Cause Remanded
Date of Judgment Entry on Appeal: December 2, 1992

^{A52}
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Freund, Fresse & Arnold and Patrick J. Janis, Esq., No. 0012194, One Dayton Centre, Ste. 1800, 1 South Main Street, Dayton, Ohio 45402-2017, for Defendant-Appellee Herbert Wayne Wiseman, d/b/a Autorama Sales,

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Faulkner & Tapa and John C. Scott, Esq., No. 0029518, 2200 Central Trust Tower, Cincinnati, Ohio 45202, for Defendant-Appellee Wracks, Inc., d/b/a W.I. Auto Sales.

DEC -2 1992
IMAGE 8

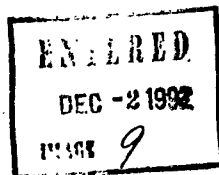
PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Hamilton County Court of Common Pleas, the transcript of the proceedings, and the briefs and arguments of counsel.

In her complaint, plaintiff-appellant Christine Garner alleged that she purchased a 1985 Buick Skylark from defendant-appellee Borcharding Buick, Inc., in December 1986. Seven months later, Garner's daughter Patsy was involved in a single-car accident while driving the 1985 Buick. The cause of this accident remains unknown.

Garner further states that the car was originally owned by a person who was involved in an accident and that the car was declared a total loss. The car was then acquired by State Farm Insurance and sold on a salvage title to defendant-appellee W.I. Auto Sales. W.I. Auto Sales then sold the vehicle with no alterations to defendant-appellee Autorama Sales. Autorama Sales restored the vehicle and sold it to Borcharding Buick.

Garner also alleged in her complaint that Borcharding Buick, Autorama Sales and W.I. Auto Sales committed "intentional acts in placing in the flow of commerce an inherently dangerous product." She predicated the defendants' liability for the damages she sustained on two theories, viz., strict liability and violations of the Ohio Consumer Sales Practices Act as contained in R.C. 1345.01 et seq.



All of the parties filed motions for summary judgment. The trial court denied Garner's motion, granted the motions filed by Autorama Sales and W.I. Auto Sales, and granted Borcharding Buick's motion only on the claims involving strict liability; Borcharding's motion on the claims involving violations of the Ohio Consumer Sales Practices Act was denied.¹ Garner then filed this appeal.

On appeal, Garner raises two assignments of error challenging the trial court's denial of her motion for summary judgment and the trial court's granting of the motions for summary judgment filed by Autorama Sales and W.I. Auto Sales.² For the reasons that follow, we reverse the judgment of the trial court and remand this cause for further proceedings.

Garner's two assignments of error state as follows:

1. The trial court erred in issuing summary judgment in favor of Autorama and Wrecks, Inc. [d/b/a W.I. Auto Sales] and further erred in denying summary judgment to the plaintiff because it did not review the depositions that had been submitted with the trial court that are still sealed.
2. The dismissal of the plaintiff's cause of action based on the Ohio Consumer Sales Act, R.C. 1345.01 et seq., pursuant to defendants' motion for summary judgment and the contemporaneous overruling of the plaintiff's motion for summary judgment was erroneous because the legislative intent as expressed in the statutory scheme,

¹The trial court also granted W.I. Auto Sales' motion for summary judgment with respect to the cross-claims filed against it by Borcharding Buick and Autorama Sales, and denied Autorama Sales' motion for summary judgment with respect to the cross-claim filed against it by Borcharding Buick. These rulings are not involved in this appeal by Garner.

²Garner "abandoned" her claims against Borcharding Buick on the theory of strict liability. She, therefore, does not challenge the partial granting of Borcharding Buick's motion for summary judgment.

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does not require the existence of contractual privity between the consumer and the seller as a prerequisite for the operation of the statute.

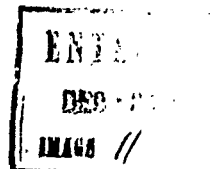
The Ohio Consumer Sales Practices Act, as contained in R.C. Chapter 1345, sets forth the standards of conduct for suppliers of consumer goods. R.C. 1345.02(A) provides as follows:

No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.

A supplier, as defined by the Ohio Consumer Sales Practices Act, includes "a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not he deals directly with the consumer." R.C. 1345.01(C).

The trial court held that Autorama Sales and W.I. Auto Sales were not "suppliers" in the transactions involving the car in this case because no privity of contract existed between them and Garner. The trial court relied on *Simpson v. Smith* (1987), 34 Ohio Misc. 2d 7, 517 N.E.2d 276, wherein the Licking County Municipal Court stated that some privity of contract, regardless of how minimal, must exist before a person may be considered a supplier within the meaning of the Ohio Consumer Sales Practices Act.

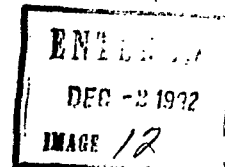
A review of the Ohio Consumer Sales Practices Act reveals that nothing in the statute provides that privity of contract is a prerequisite to the recovery of damages. Rather, the definition of a supplier under the Ohio Consumer Sales Practices Act includes those who engage in the business of effecting consumer transac-



tions, whether or not they deal directly with the consumer. R.C. 1345.01(C). Furthermore, a supplier's representations may violate the Ohio Consumer Sales Practices Act whether they occur "before, during, or after the transaction." R.C. 1345.02(A).

We believe that the Ohio Consumer Sales Practices Act was designed to protect consumers damaged by a supplier's deceptive practices which occur in connection with consumer transactions. See *Weaver v. J. C. Penney Co.* (1977), 53 Ohio App. 2d 165, 372 N.E.2d 633. We hold that a defendant must be engaged in the business of effecting or soliciting consumer transactions, R.C. 1345.01(C), and that the defendant must have some connection to the consumer transaction in question in order to be liable as a supplier for deceptive practices which violate the Ohio Consumer Sales Practices Act. See *Haynes v. George Ballas Buick-GMC Truck* (Dec. 21, 1990), Lucas App. No. L-89-168, unreported. However, we do not interpret the statutes as requiring privity of contract between the consumer and the defendant.

Accordingly, we determine that the trial court improperly granted summary judgment to Autorama Sales and W.I. Auto Sales on the theory that there was no privity of contract between them and Garner. However, Garner must still show that these defendants had some connection with her transaction as a consumer with Borcharding Buick. Whether Garner has established such a connection between the defendants and her consumer transaction must first be ascertained from the evidence submitted by the parties in support of their motions for summary judgment.



However, an examination of the record reveals that the envelopes containing the depositions filed by the parties remain sealed. Since it appears from the record that the trial court, "in passing upon the merits of a motion brought pursuant to Civ. R. 56 has failed to read a deposition filed in harmony with the provisions of that rule, the court has committed plain error." *Bardes v. West Shell, Inc.* (July 25, 1979), Hamilton App. No. C-780340, unreported; see *Citron v. Byerly* (Apr. 3, 1991), Hamilton App. Nos. C-900151 and C-900240, unreported.

Garner's two assignments of error are well taken. We, therefore, reverse the judgment of the trial court, and remand this cause for further proceedings in accordance with this Decision and the law.

DOAN, P.J., KLUSMEIER and UTZ, JJ.

PLEASE NOTE:

The Court has placed of record its own entry in this case on the date of the release of this Decision.

