

**IN THE SUPREME COURT OF NOVA SCOTIA**

Citation: Trim v. City Motors - 2003 NSSC 216

Date: 20031112

Docket: S.H. No. 178515

Registry: Halifax

Between:

**Faye Trim**

Plaintiff

-and-

**Nathan Beaudet and City Motors Limited c.o.b. City Mazda**

Defendants

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**Judge:** The Honourable Justice Robert W. Wright

**Heard:** October 24 and November 6, 2003 in Halifax, Nova Scotia

**Written**

**Decision:** November 12, 2003

**Subject:** Formation of contract - general, aggravated and punitive damages claims - costs.

**Summary:** The plaintiff, in urgent need of a replacement vehicle, went to the defendant dealership to negotiate the purchase of a used car. After meeting first with a salesman and then the business manager, she signed a Bill of Sale whereby she agreed to purchase a 1998 Chevrolet Cavalier for \$11,250 which was to be financed by the dealership through 48 monthly instalments of \$350 each. The plaintiff thereupon paid a \$500 deposit with the intention of taking delivery of the car the following Monday. The only document she was given was a copy of the signed Bill of Sale.

The intention of the dealership from the outset was to enter into a lease transaction with the plaintiff at the expiry of which the plaintiff would be required to pay a lease end option price of \$1,000 if she wished to buy the car (and to pay, if triggered, an excess kilometres charge). Its business practice was to use a Bill of Sale form in the first instance, with a handwritten notation that it was to be a lease transaction, and to then require the customer to sign a yet unseen Vehicle Lease Agreement when the customer later came in to take delivery of the car. In this instance, however, the Bill of Sale made no reference to its being a lease transaction or the lease end option provision.

Before the plaintiff returned to take delivery of the car, she received a telephone call from the business manager who advised that his superior, in reviewing the credit application, wanted a higher monthly payment of \$385 spread over 42 months. The plaintiff refused those changed terms and that same day, went elsewhere to purchase another vehicle. Later, there was a telephone message from the business manager advising that the dealership was willing to revert to the original payment terms. The plaintiff was then no longer interested in purchasing the vehicle and demanded the return of her deposit which was brusquely refused.

It was not until his own discovery examination that the co-owner of the dealership realized that a mistake had been made by inadequate disclosure to the plaintiff about the nature and terms of the intended transaction. He thereupon paid \$500 into court plus an additional \$125 in costs in satisfaction of the whole of the plaintiff's claim. That was not acceptable to the plaintiff who brought the case to trial seeking an award of general, aggravated and punitive damages together with solicitor-client costs.

**Issue:** Damages and costs

**Result:** Apart from the limit of the types of contract cases where general damages have been awarded in the evolution of this area of the law, and the test of remoteness, there must be compelling evidence of mental suffering having been inflicted by the defendant's impugned conduct, beyond mere upset and frustration, having medical repercussions of some degree. Here, the plaintiff's evidence fell short of establishing intangible injuries arising out of the defendants' conduct, such as distress and humiliation, of such impact that would warrant an award of general damages. Neither could it therefore support an award of aggravated damages as a compensatory measure.

This was a case where a binding contract was never formed because there was no *consensus ad idem* reached by the parties as to the nature and terms of the transaction. The fact that there was no meeting of the minds can be laid squarely at the feet of the defendant because of its poor business practice which led to inadequate disclosure and confusion over the nature of the transaction. However, the court was not satisfied that this poor business practice was by design to take advantage of customers, or a deliberate scheme of deception, that might otherwise attract an award of punitive damages. Overall, the plaintiff did not meet the respective tests for any of the types of damages claimed. Submissions on costs were requested for a supplemental decision.

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DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**

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