IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Corporate Benefits 2000 Inc. v. Steele Mazda,* 2007 NSSM 65

Date: 20071119
Claim: SCCH 285763
Registry: Halifax

Between:

Corporate Benefits 2000 Inc and Carlos Rodrigues

Claimants

v.

Steele Mazda and Keith MacNeil

Defendants

Adjudicator: W. Augustus Richardson, QC

Heard: November 5, 2007 in Halifax, Nova Scotia.

Appearances: Carlos Rodrigues for the Claimants
Keith MacNeil for the Defendants

By the Court:

[1] This is a claim by the corporate claimant against the corporate defendant. At the commencement of the hearing Mr Rodrigues confirmed that it had not been his intention to claim personally against Mr MacNeil, who is an employee of Steele Mazda. On consent the claim as against Mr MacNeil was dismissed.

[2] As well, as appears from the facts, the claim involves a contract that was entered into between the two corporate parties, and the order will reflect that fact.

[3] This claim arises out of a car lease that was entered into between Corporate Benefits 2000 Inc ("CBI") and Steele Mazda (the "Dealer") on or about December 31, 2002. Pursuant to the terms of the lease CBI leased a vehicle from the Dealer for a total of 48 months (that is, four years). At the end of that time CBI had the option of either buying the vehicle or returning it in good shape to the dealer. CBI was obligated under the terms of the lease to keep the vehicle in a state of good repair.

[4] Mr Rodrigues acted on behalf of CBI. At the time of entering into the lease he advised the Dealer's sales staff that he wanted an extended warranty to cover the vehicle, and that the warranty was to cover the four-year term of the lease. He made this clear to Kimberly Martin, who is the employee at the Dealer who was responsible for extended warranty agreements. Ms Martin did not attend to give evidence at the hearing. I am satisfied that she did understand and

agree that CBI would be able to obtain an extended warrranty for 48 months, and that the warranty would cover the term of the lease.

[5] The premium for the extended warranty for 48 months was $595.00 and was spelled out in the lease agreement. The lease called for monthly payments of 468.72. This payment included the premium for the extended warranty.

[6] CBI received delivery of the vehicle December 31, 2003. Things proceeded in due course until the closing months of the lease in early 2007. On or about January 18, 2007 CBI had a repair to the vehicle that cost a total (including towing and taxes) of $962.34. At this time the lease expiry date was February 28, 2007. This repair would have been covered by the extended warranty, except that the warranty had already expired, on January 12, 2007.

[7] Both Mr Rodrigues and Mr MacNeil were in agreement that at the time the lease was originally entered into the intent of the parties was that the extended warranty was to have an expiry date that was identical to that of the lease termination date. However, a gap existed in this case because of a promotion that the Dealer had on at the time the lease was originally entered into.

[8] In the winter of 2002-2003 the Dealer had a promotion that was designed to encourage people to lease vehicles from its dealers. The promotion involved the Dealer agreeing to pay the first month of the lease and then deferring for a short period of time the commencement of lease payments by the customer. The effect of the promotion, if accepted, was to push the termination date of the lease past the date that would otherwise by triggered by the delivery of the vehicle.

[9] It should be noted here that while the Dealer was a party to the lease it was not a party to the extended warranty. The extended warranty, while it was offered by the dealer's sales staff, is in fact administered by a separate entity. That entity takes its termination dates from the lease document, but does not otherwise co-ordinate the warranty with the lease agreement. Unfortunately, in this case the warrantor under the extended warranty did not alter its own warranty termination date to follow form with what the Dealer had done during the promotion. As a result, a customer like CBI who had purchased an extended warranty to cover the original term of the lease would, if it accepted the promotion, lose the benefit of the extended warranty for the few months of the lease.

[10] The promotion was not mandatory; the customers did not have to take the deal. However, there would be little reason on its face not to take it since there was a direct benefit to the customer (in this case, CBI) in that the first month's lease payment was paid for by the dealer. The benefit to the dealer and the Defendant, presumably, was that more people agreed to enter into leases with it. The hidden risk of the promotion, however, was its potential to cause a loss of coverage under the extended warranty for the last few months of the lease.

[11] Mr Rodrigues's evidence was that the promotion was not really discussed at the time; that is just "became part of the deal." He was emphatic, however, that no mention was made of the fact that the promotion, by pushing the termination date of the lease three months later than what was called for in the lease, had the effect of pushing CBI outside the protection of the

extended warranty. In other words, the last months of the lease would not be covered by the extended warranty. He says that had he known that he would not have accepted the promotion, because his bottom line was that he wanted the extended warranty to cover the term of the lease.

[12] CBI accordingly brought this claim against the Dealer for the cost of the repair. Its position was that it had wanted the warranty to cover the term of the lease; the Dealer had agreed to that in the beginning; and that the repair cost should accordingly be paid by the Dealer.

[13] Mr MacNeil's argument on behalf of the Dealer was that when CBI eventually received the warranty documentation (which was sometime after the vehicle was delivered) it would have seen that the warranty's termination date was now different from that of the lease. He says that CBI could have extended the warranty to cover the gap by purchasing even more coverage. Additional coverage would have been available, at a rate of $1,195.00. (Mr MacNeil testified that CBI could not have purchased anything less than 1 year of additional coverage.)

[14] Mr MacNeal's argument in support of the Dealer's position thus came down to this:

a. CBI had the documentation, ought to have read it, and if it had it would have understood that the extended warranty no longer covered the full term of the lease;

b. CBI could have purchased the additional coverage it needed, but didn't; and

c. CBI had just knowingly run the risk that something might go wrong because it didn't want to pay the additional $1,195.00 to cover the last three months of the lease.

[15] This did not strike me as a very reasonable argument for the Dealer to make.

[16] First, we have to go back to the original lease agreement and the original discussions between Mr Rodrigues and the Dealer's staff, and in particular with Ms Martin. I am satisfied on the evidence that both parties knew, understood and agreed that the extended lease was to cover the term of the lease. Indeed, the premium for the warranty was part of the monthly lease payment.

[17] I am accordingly satisfied that it was an express as well as an implied term of the lease agreement itself that the extended warranty would cover the lease term. That being the case any attempt by the Dealer to alter that agreement would require more than a printed statement after the fact from the warranty entity that specified a different expiry date.

[18] Second, even if it was not a term of the lease that the extended warranty cover the lease term, I am satisfied that the Dealer was negligent in failing to explain to CBI the full ramifications of accepting its promotion. The Dealer knew that having full coverage was important to CBI. It was also the party who prepared the forms and took advantage of (and fully understood) the promotion and its consequences. In these circumstances I am of the view that the

Dealer owed a duty to CBI to explain carefully and fully the consequences on its part of its agreement to accept the promotion.

[19] And I am satisfied on the evidence that had anyone at the Dealer explained the situation to CBI it would not have agreed to the modification. Indeed, simply to state the situation – that in exchange for

a. the dealer paying one monthly lease payment of $468.72 and deferring payments for an additional two months,

b. the customer had to pay an additional $1,195.00 to cover the last few months of the lease,

– is to emphasize the unlikelihood of any customer accepting it. It is only common sense to suggest that a customer who is purchasing an extended lease to cover a four-year lease would be most concerned with the last months of the lease since as the vehicle ages the chances of something going wrong with it mount. Under such circumstances it does not make sense (at least in the absence of evidence to the contrary) that any customer would accept such a "benefit."

[20] Finally, I do not accept Mr MacNeil's argument that CBI is the author of its own misfortune because it could have purchased additional coverage for $1,195.00. It is true that CBI could have done that. But that ignores the fact that the Dealer was either in breach of its own lease contract (by changing the expiry date of the warranty), or was negligent in failing to explain the effects of the change, as discussed above. In such circumstances I am satisfied that even if CBI had discovered the problem once it received the extended warranty documents, it was not under any obligation to purchase additional warranty coverage.

[21] I will accordingly make an order that the Dealer pay for the repair bill plus costs.

Dated at Halifax, this 19th day of November, 2007

Original: Court File)
Copy: Claimant)
Copy: Defendants)

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W. Augustus Richardson, QC
ADJUDICATOR