IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

VIRGINIA DELGADO-RIVERA,	)	
	)	
Plaintiff-Appellant,	)	
v.	)	C.A. No. CPU6-08-001190
	)	
PARTNERS AUTO SALES SOUTH, INC.	)	
	)	
Defendant-Appellee.	)	

Submitted: February 8, 2011
Decided: March 4, 2011

Tasha M. Stevens, Esq. counsel for Plaintiff.
John E. Tarburton, Esq., counsel for Defendant.

DECISION AFTER TRIAL

CLARK, J.

Plaintiff Virginia-Delgado Rivera brings this action for common law fraud and breach of contract in connection with the purchase of an automobile from the Defendant, Partners Auto Sales South, Inc. Trial was held on January 26, 2011 and the parties subsequently submitted written closing arguments. The Court finds in favor of the Defendant for the reasons set forth below.

FACTS

Plaintiff's native tongue is Spanish; she does not speak English. Defendant's used-car dealership expressly seeks and encourages business from Spanish-speaking customers. Indeed, Defendant's office manager/salesperson, Maria Lopez, is bi-lingual in both her native Spanish and English. Defendant's vice-president, John Harris, Jr., is also bi-lingual. Ms. Lopez negotiates sales with Defendant's Spanish-speaking customers, and also translates and explains the English contracts and financing documents that customers execute.

About two years prior to the transaction in question, Plaintiff had purchased a 1997 Toyota 4Runner from Defendant, with dealer financing. Ms. Lopez had negotiated that prior deal on behalf of Defendant, and had translated and explained the sales and financing agreement to Plaintiff.

On June 5, 2007, after several hours of discussion and negotiation in Spanish between Ms. Lopez, Plaintiff, Plaintiff's husband and two daughters, Plaintiff and Defendant entered into a written agreement for the purchase of a used 1999 Ford F-150 pickup truck, at a price of $12,995.00, plus a $1,300.00 service agreement. Under the terms of the agreement, Plaintiff was to pay a cash down-payment of $4,300.00, and trade in two vehicles she owned; the 1997 4Runner, which had a loan payoff of $7,610.00, and a 2001 Lincoln Navigator. The agreement assigned trade-in values of $7,610.00 for the 4Runner, and $10,000.00 for the Navigator. In fact, the 4Runner was "upside down" at the time of trade-in, being worth less than the lien payoff on the vehicle.

The contract was performed in accordance with its terms. Defendant delivered the F-150 to Plaintiff. Plaintiff delivered the 4Runner to Defendant that day and paid the $4,300 down payment. Plaintiff's daughter, Isela delivered the Navigator the next day. Both vehicles' titles were transferred to Defendant. Defendant paid off Plaintiff's outstanding car loan on the 4Runner. However, several days after the completion of the transaction, Plaintiff contacted Defendant, questioning when she would be paid $10,000.00 for the sale of the Navigator. Defendant denied any obligation to pay anything further, asserting the transaction was completed. The dispute resulted in the present action.

Plaintiff alleges that the English language contract she signed does not reflect the verbal agreement reached with Defendant in Spanish, and that she has been defrauded.

She asserts that she actually reached two separate agreements with Defendant. Under one agreement, she was to purchase the F-150 for $12,995.00 plus the $1,300.00 service agreement, in exchange for the 4Runner trade-in, pay $4,300.00 in cash, and receive financing for the balance. As a separate agreement, she was to sell the Navigator to Defendant for $10,000.00 cash, for the benefit of her daughter Isela.[1] Plaintiff alleges that Defendant, through Ms. Lopez, committed fraud by misrepresenting to her in Spanish the English terms of the contract she signed, which she could not read herself. Plaintiff further contends that Defendant breached the "actual" verbal contracts by failing to perform their terms.

DISCUSSION

Written contracts are often executed after the parties engage in extensive negotiations, give assurances, and reach understandings. The written contract is designed to embody the complete and final understandings of the parties. It is clear from the evidence in this case that there were extensive negotiations between the parties, in Spanish, before a written agreement was signed in English. Generally, parol evidence of such prior negotiations offered to contradict or supplement terms of the written agreement is inadmissible, subject to a few broad exceptions.[2] One such exception is applicable here: parol evidence is admissible to show proof of fraud.[3] The Court will, therefore, review the negotiations preceding the written contract execution to determine whether the Defendant committed the alleged common law fraud.

A *prima facie* case of common law fraud requires a plaintiff to demonstrate (1) a false representation of fact made by the defendant; (2) the defendant's knowledge, belief, or reckless indifference as to the falsity of the representation; (3) an intent to

[1] Plaintiff and her daughter testified that, although the Navigator was titled in Plaintiff's name, it was used by Isela, who wished to sell it for cash that Isela would receive.
[2] *See Carey v. Shellburne, Inc.*, 224 A.2d 400, 402 (Del. 1966).
[3] *Ed Fine Oldsmobile, Inc. v. Knisley*, 319 A.2d 33, 36 (Del. Super. Ct. 1974).

induce the plaintiff to act or refrain from acting; (4) the plaintiff's action or inaction taken in justifiable reliance upon the representation; and (5) damage to the plaintiff as a result of such reliance.[4] The Plaintiff must prove these elements by a preponderance of the evidence.[5]

The Court finds that the Plaintiff has failed to meet her burden of proof for common law fraud. The Court is satisfied that the Plaintiff and her witnesses testified truthfully to the best of their abilities; however, the substance of their testimony lacked credibility and consistency, which the Court, as the trier of fact, cannot reasonably reconcile. In addition, the Court found the testimony of the Defendant's witnesses to be more credible. Consequently, the Plaintiff failed to convince the Court that she and Ms. Lopez, the Defendant's agent, reached a verbal agreement of terms wholly different than those in the written agreement the parties signed.

Although Plaintiff may have misunderstood the substance of some of the negotiations, the Court is satisfied from the evidence that Defendant's agent attempted to accurately translate and explain the written agreement to Plaintiff before she signed it. No credible evidence establishes that Defendant or Ms. Lopez made any false representations of fact to induce Plaintiff to sign the contract, or knowingly or recklessly misrepresented in Spanish the English terms of the contract with the intent to induce the Plaintiff to act. Rather, the evidence establishes an objective meeting of the minds as to the terms of the written agreement. Plaintiff is not entitled to a remedy if she subjectively misunderstood Defendant's good faith translation and explanation of the terms of the written agreement.

The terms of the written contract accurately reflect the terms explained to the Plaintiff on the day of the sale. Ms. Lopez testified in great detail concerning her

[4] *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. 1983).
[5] *Nye Odorless Incinerator Corp. v. Felton,* 162 A. 504, 509 (Del. Super. Ct. 1931).

habitual practice in closing sales with Spanish speaking customers. This practice, corroborated by the Defendant's vice president, John Harris, Jr., includes a thorough translation and explanation of each document associated with a sale. John Harris, Jr., who speaks Spanish and is typically within earshot of Ms. Lopez during closings, credibly testified that he never heard Ms. Lopez translate or explain the terms of a sale inaccurately.

The Plaintiff's dissatisfaction with the written contract did not materialize until several days later and was not intrinsically motivated. It was Plaintiff's daughter, Isela who caused doubt in the Plaintiff's mind concerning the transaction when she demanded $10,000.00 from her for the Navigator. The Court is not convinced that this subsequent dissatisfaction is evidence of misrepresentation. Rather than fraud, it is at least equally likely, based on the evidence presented to the Court, that Isela misunderstood the terms of the contract as explained to her by family members and did not know of the Navigator's inclusion as a trade-in.

The only evidence offered by the Plaintiff as to Defendant's fraudulent intent was her testimony that, some days after the transaction and on several occasions since, she drove by Ms. Lopez' residence and observed the Navigator parked in her yard without tags. Plaintiff implies that Ms. Lopez defrauded her to obtain the Navigator and keep it for herself. However, Ms. Lopez testified credibly that the Navigator has never been in her yard. John Harris, Jr. testified that the Navigator was in fact sold and transferred within a week or two to a third-party customer.

Indeed, Plaintiff was credited $10,000.00 for the trade-in of the Navigator under the written contract, exactly the same amount for which she alleges she agreed to sell the vehicle. Thus, the only monetary difference between the written agreement and the alleged verbal agreements Plaintiff maintains were reached is that, under the written

agreement, Plaintiff came out of the transaction ***without indebtedness***[6]***.*** This resulting "harm" to the Plaintiff is scant evidence of a scheme or intent by Defendant or its agent to defraud her.

CONCLUSION

The parties signed an auto sales contract with clear and unambiguous terms. Both parties performed the contract in full accordance with those terms. The Court cannot second-guess or otherwise consider the wisdom or fairness of an arms-length transaction. In order to establish that the parties' actual agreement was altogether different than what they signed and performed in this case, Plaintiff must prove that Defendant committed fraud by their agent's reckless, knowing or intentional misrepresentation to Plaintiff, in Spanish, of the English terms of the contract she signed but was unable to read for herself. Plaintiff has not met that burden of proof. Accordingly, judgment is entered in favor of Defendant Partners Auto Sales South, Inc., and against Plaintiff Virginia Delgado-Rivera. Plaintiff shall pay costs of suit.

IT IS SO ORDERED.

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Kenneth S. Clark, Jr.
Judge

[6] No evidence was offered as to any discussion of financing terms for such indebtedness.