

IN THE SUPERIOR COURT OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

MARY W. WAINAINA, )  
 )  
Plaintiff-Below, Appellant, )  
 )  
v. ) C.A. No. N12A-07-013-WCC  
 )  
BAYSHORE FORD TRUCK, INC., )  
 )  
Defendant-Below, Appellee. )

Submitted: February 25, 2013  
Decided: May 31, 2013

**On appeal from a Decision of the Court of Common Pleas – REMANDED**

**ORDER**

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Concord Pike, Wilmington, DE 19803. Attorney for Plaintiff-Below, Appellant.

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Attorneys for Defendant-Below, Appellee.

**CARPENTER, J.**

Before this Court is Mary W. Wainaina’s appeal (“Wainaina”) of a decision by the Court of Common Pleas, which granted judgment in favor of Defendant-Below, Appellee, Bayshore Ford Truck, Inc. (“Bayshore”), and against Plaintiff-Below, Appellant, Wainaina. On appeal, the Court must determine whether the trial court correctly concluded that Wainaina could not sustain viable claims for fraud or breach of contract against Bayshore.

### **FACTUAL BACKGROUND**

The appeal currently before the Court arises from an alleged failed business venture between Wainaina and David G. Mwangi (“Mwangi”). Specifically, Wainaina and Mwangi considered starting a motor vehicle salvage towing business and, therefore, decided to purchase a truck and trailer together in order to do so. Although Wainaina was a resident of Pennsylvania at the time, she contemplated moving to Maryland in late 2006 in order to start the business with Mwangi and because she was interested in a nursing position that was available in Maryland. As a result, when Wainaina was staying with friends in Maryland for several days, she obtained a Maryland driver’s license using their address. Wainaina’s Maryland driver’s license was issued on November 8, 2006 and listed her address as: 9903 Quiet Glen Ct., Springdale, Maryland, 20774.<sup>1</sup>

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<sup>1</sup> Wainaina did not obtain the nursing position nor did she ever move to Maryland.

Wainaina and Mwangi decided to purchase a Ford F-350 truck (the “truck”) from Bayshore, but they required financing in order to complete the purchase.<sup>2</sup> On or about December 2, 2006, Wainaina and Mwangi completed an application for credit to finance the purchase of the truck. This credit application was completed at Bayshore with the help of a Bayshore sales representative. Although the credit application listed Mwangi as Wainaina’s uncle, they are not related and did not live at the same address.

On or about December 5, 2006, Wainaina and Mwangi’s joint credit application with J.P. Morgan Chase Bank, N.A. (“Chase”) was approved. Subsequently, Wainaina and Mwangi executed a contract with Chase based upon their approved application. Specifically, the loan provided that the total amount financed was \$33,883.00 with an annual interest rate of 16.89%. Based on this annual interest rate and assuming the loan was paid off according to the payment schedule, Wainaina and Mwangi would incur an additional \$20,296.39 in financing charges. As such, the anticipated total amount required to be paid by Wainaina and Mwangi was \$54,179.39.

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<sup>2</sup> It appears that Mwangi had previously tried to purchase the vehicle at Bayshore but was denied credit.

The contract for the sale of the truck included Wainaina's name typed in the field for "customer name" and also included Mwangi's name, which was handwritten in the field. Additionally, the contract listed Wainaina's address as: 605 Sopwith Dr, Apt. K, Baltimore, Maryland, 21220.<sup>3</sup> Wainaina signed a "Buyer's Order" that was dated December 5, 2006 and also listed her address as the Sopwith Dr. address.

To complete the sale, Bayshore required Wainaina and Mwangi to submit proof of insurance. On December 5, 2006, Mwangi presented Bayshore with proof he had obtained insurance for the truck in the state of Maryland and Mwangi left the dealership with the vehicle. Wainaina was not a party to this insurance contract and was not made aware of the proof of insurance document until discovery in the proceeding below.

When Wainaina and Mwangi purchased the truck on or around December 5, 2006, Bayshore provided assistance to register the truck in Delaware in Wainaina's name only. This registration listed two (2) addresses for Wainaina: her Pennsylvania address and the Sopwith Dr. address. However, the Pennsylvania address was crossed out. Additionally, this registration was only a temporary registration that was effective for sixty (60) days. Since Mwangi

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<sup>3</sup> It appears this is the address of Mwangi.

picked up the truck from Bayshore, Wainaina never received a copy of the temporary registration until she contacted Bayshore in 2007.

In addition to the temporary registration, several other documents were in Wainaina's name only. Specifically, there was a document titled "Invoice/Bill of Sale," which only listed Wainaina's name, and an odometer disclosure statement issued by Bayshore at the time of sale, which only listed Wainaina in the field for "transferee." Admittedly, however, Wainaina signed the odometer disclosure statement even though it incorrectly listed her address as the Sopwith Dr. address.

Subsequently, Mwangi successfully re-titled the truck in Maryland in his name only. In 2008, Wainaina was having difficulty contacting Mwangi so in May she contacted the Baltimore police who informed her that the truck had been re-titled. This is the first knowledge by Wainaina that her ownership interest had been removed from the truck's title. Although Wainaina informed the police that she had not instructed Bayshore to re-title the truck in Mwangi's name only, the police indicated that they could not proceed further as the truck had been properly titled in Mwangi's name in Maryland.

On or about November 2008, Wainaina sought legal counsel to further investigate. From law firm investigators, Wainaina discovered that, following the sale of the truck, Bayshore sent the Delaware Division of Motor Vehicles a form

titled “Delaware Dealer’s Reassignment,” which only listed Mwangi on the form. Wainaina did not sign this document. Additionally, Bayshore issued a new odometer disclosure form, which was addressed to Mwangi only. Wainaina did not receive a copy of this new odometer disclosure form until shortly before the trial court proceeding below.

Law firm investigators also discovered that on February 16, 2007, Bayshore sent the Maryland Motor Vehicle Administration a document titled “Letter of Correction,” which stated:

“To Whom it May concern: Please except this letter of correction. Bayshore Ford Truck Sales, Inc. sold this 2003 Ford F350 Vin# 1FTWW32F33EA68053 to David Mwangi. While filling out the back of the title to Bayshore Ford Truck Sales, Inc. the word bandy was accidentally filled in an error. On the billing Mr. Mwangi’s wife’s name was printed. However she is not owner or co-owner of this vehicle. Due to that I placed white out over her name and typed his in the proper spot. Please excuse any errors. No Fraud was intended.”

Bayshore, however, did not notify or otherwise make Wainaina aware of this letter. Further, Bayshore did not request Wainaina’s authorization prior to sending the letter to the Maryland Motor Vehicle Administration. Additionally, Wainaina and Mwangi were not married and neither indicated as such to Bayshore.

When Wainaina discovered that the truck was no longer titled in her name, she stopped making payments under the Chase promissory note. As of July 24, 2008, Wainaina had paid \$11,612.38 but still owed a total of \$29,550.14.

Wainaina had made her last payment on the note in May 2008 and, therefore, was delinquent in payments.

Because Wainaina failed to make payments on the note, Chase repossessed the truck. Subsequently, the truck was sold and the sale proceeds were applied to the remaining loan balance. At the trial court proceeding, Wainaina presented no evidence regarding the amount of the sale proceeds or what deficiency balance remained on her loan.

As the general manager of Bayshore for over six (6) years, Joe Tracy testified on behalf of Bayshore at the trial court proceedings. Tracy indicated that Bayshore sales representatives typically assist customers in filling out the financing application documents when sales are made that require third party financing. Additionally, Tracy testified that after temporary motor vehicle registrations expire, vehicles must be registered in at least one name listed on the purchase order that was executed between the dealer and the buyer. According to Tracy, it is the buyer's responsibility to re-register the vehicle after the temporary registration expires and that the dealer is not typically involved in this process.

Further, in order to title a vehicle in Maryland, Tracy testified that a person seeking to obtain a Maryland title must be a Maryland resident with a Maryland mailing address. As such, Tracy indicated that the truck could not have been titled in Wainaina's name in Maryland during December 2006 because she was not a Maryland resident at this time.

### **PROCEDURAL BACKGROUND**

On April 28, 2009, Wainaina commenced a *pro se* action in the Court of Common Pleas against Bayshore and Mwangi. Specifically, Wainaina asserted claims for fraud and breach of contract relating to the sale of the truck from Bayshore and sought \$17,673.17 in damages. In response, Bayshore denied these claims and asserted affirmative defenses. Mwangi, however, did not file an Answer and, as a result, a default judgment was entered against him on May 14, 2010, which awarded Wainaina \$20,545.18 plus pre- and post-judgment interest and costs.

On March 26, 2012, a trial was held in the Court of Common Pleas. After additional briefing was submitted post-trial, the Court of Common Pleas issued a memorandum opinion and order on July 16, 2012. Specifically, the Court of Common Pleas found that while Wainaina had presented an "extremely compelling" case with respect to liability, she had failed to prove by a

preponderance of the evidence that she incurred damages on her claims for fraud or breach of contract. As a result, the Court of Common Pleas entered judgment for Bayshore and against Wainaina. Critical to this decision was the failure of Wainaina to present any evidence as to the repossession sale of the vehicle and whether there was a remaining deficiency balance.

On July 31, 2012, Wainaina filed a *pro se* appeal with this Court. On October 5, 2012, Bayshore filed a Motion to Dismiss Wainaina's appeal or, in the alternative, strike Wainaina's Opening Brief, contending that Wainaina's Opening Brief did not conform to proper procedure and contained attached exhibits that were not admitted at trial.

On October 18, 2012, William P. Brady, Esquire entered his appearance on behalf of Wainaina. Acknowledging that Wainaina's Opening Brief did not comply with the Superior Court's rules, Wainaina's counsel also requested leave to either file an amended Opening Brief in lieu of the hearing scheduled for October 24, 2012 to address Bayshore's Motion to Dismiss or, alternatively, to strike the Opening Brief.

On account of counsel entering an appearance on Wainaina's behalf, Bayshore's counsel withdrew its Motion to Dismiss. Additionally, the Court ordered an amended briefing schedule. As a result, Wainaina's counsel filed an

amended Opening Brief on November 29, 2012. After receiving a grant for an extension of the briefing schedule, Bayshore filed its Answering Brief on January 2, 2013. On January 25, 2013, Wainaina filed a Reply Brief.

### **STANDARD OF REVIEW**

This Court reviews an appeal from a decision of the Court of Common Pleas as the Supreme Court would consider an appeal from a decision of this Court.<sup>4</sup> Specifically, this Court views all facts in the light most favorable to the non-moving party and reviews the decision for legal error *de novo*.<sup>5</sup> If it appears from the record that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law, then the trial court's decision will be affirmed.<sup>6</sup> However, the trial court's decision will not be affirmed if the record indicates that a material fact is in dispute or if judgment as a matter of law is not appropriate.<sup>7</sup>

### **DISCUSSION**

Despite the various arguments made by the parties on appeal, the only actual finding by the Court of Common Pleas below was that Wainaina had failed to

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<sup>4</sup> *Massey v. Vugrinec*, 2003 WL 1387130, at \*1 (Del. Super. Feb. 28, 2003) (citing *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985)).

<sup>5</sup> *In re Asbestos Litig.*, 673 A.2d 159, 161 (Del. 1996).

<sup>6</sup> *See Pfeiffer v. State Farm Mut. Auto. Ins. Co.*, 2011 WL 7062498, at \*3 (Del. Super. Dec. 20, 2011).

<sup>7</sup> *See id.*

present a “scintilla” of evidence regarding the repossession sales price or the remaining deficiency on the car loan. As such, the Court below found that Wainaina had failed to prove by a preponderance of the evidence that she had suffered any damages. While the Court agrees that such information would clearly have been helpful to a determination of damages, it finds that the failure to present such evidence is not totally fatal to the damage claim asserted by Wainaina.

A reasonable reading of the record would reflect that in December of 2006, Wainaina and Mwangi were granted an automobile loan from Chase Bank. From the time the loan was granted until May of 2008, the evidence also suggests that Wainaina was the only party making payments on the vehicle’s loan. However, notwithstanding the numerous sales documents executed by Wainaina, in early 2007 Bayshore provided documentation assistance to Mwangi to retitle the vehicle in his name only without providing any notice to Wainaina who obviously had an ownership interest in the vehicle. It is unclear whether the lower court would have found that Bayshore breached its contract or committed fraud in early 2007, but if it did, Wainaina had presented evidence that she had made monthly payments for over a year and a half since the breach or fraud. Further, Wainaina would likely not have made those payments which reduced the amount of the outstanding balance owed on the car loan if she was aware of the potential fraud or breach of

the contract. As a result, these payments, which Wainaina testified was \$11,612.38 and uncontested by Bayshore, should have been considered in determining an appropriate damage award.

Unfortunately, in spite of passing comments regarding liability in the trial court's opinion, it made no finding regarding the underlying claims of fraud or breach of contract. In fact, it is even difficult to determine whether the trial court's comments relate to the conduct of Bayshore or Mwangi or both. Instead, the trial court simply found for Bayshore because Wainaina had failed to introduce evidence regarding the repossession and the remaining loan difference.

Unfortunately, this leaves the Court with no recourse other than to reverse and remand this matter to allow the trial court to more fully develop and decide whether Wainaina has established a fraud or breach of contract and if so, when either occurred. These findings would in fact have an effect on the potential damage award, if any, in this case. Since it appears the parties also now have evidence to satisfy the concerns expressed in the trial court's opinion, it will leave it up to that Court whether it desires to reopen the proceedings and allow presentation of evidence on this limited issue.

Finally, the Court would also strongly suggest that counsel discuss resolving this matter before an additional decision is rendered by the trial court.

Frankly, the Court finds the conduct of all parties here less than candid or appropriate and neither Wainaina or Bayshore can assert in good faith that all matters in this transaction were conducted in a professional and honest manner. It is possible that both parties here were pawns in Mwangi's scheme to obtain this vehicle, but even if so, their conduct clearly fostered and allowed the fraud to occur. This is a case where an amicable middle ground should be found.

Lastly, because of the decision to remand the matter to the Court of Common Pleas, the other claims made by Wainaina will not be addressed. The Court would expect the new decision by the lower court would make most of the other claims moot. If those claims remain, they will be addressed if the case is subsequently appealed to this Court.

**IT IS SO ORDERED.**

/s/ William C. Carpenter, Jr.  
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Judge William C. Carpenter, Jr.