

FELLEY V. SINGLETON

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, 1999
302 ILL.APP.3D 248, 705 N.E.2D 930, 235 ILL.DEC. 747

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FACTS Plaintiff, Brian Felley, purchased a used 1991 Ford Taurus from the defendants, Thomas and Cheryl Singleton, for \$5,800. The car had 126,000 miles on it. After test driving the car, the plaintiff discussed the condition of the car with the defendants who informed the plaintiff that the only thing known to be wrong with the car was that it had a noise in the right rear and that a grommet (a connector having to do with a strut) was bad or missing. Thomas further acknowledged that he told the plaintiff that the car was in good condition. Nevertheless, the plaintiff soon began experiencing problems with the

car. On the second day that he owned the car, the plaintiff noticed a problem with the clutch. Over the next few days, the clutch problem worsened to the point where the plaintiff was unable to shift the gears no matter how far he pushed in the clutch pedal. The plaintiff presented an invoice showing that he paid \$942.76 for the removal and repair of the car's clutch. The plaintiff further testified that the car developed serious brake problems within the first month that he owned it. The plaintiff presented two invoices for work he had done on the car's brakes totaling approximately \$1,500. The plaintiff brought this case

asserting that the defendants breached their express warranty. The trial court entered judgment for the plaintiff and the defendants brought this appeal.

DECISION Judgment for plaintiff affirmed.

OPINION Bowman, J. The question before the Court is whether the representations made constituted an Express Warranty ***, or whether the auto was sold "as is" and representations made were mere "puffing."

The court notes that a substantial amount of money was paid for the car, and this is one of the factor[s] which would cause the buyer to reasonably rely on affirmations that the automobile was in good mechanical shape. It makes little sense to pay thousands of dollars, and then expect to immediately sink substantial money into repair.

In this case immediate problems were experienced with the brakes and clutch. These were not minor problems, but affected the very drivability of the car, and were directly related to the mechanical condition.

Applying the rational[e] of the *Weng* case [a prior Illinois Appellate case], for the sellers here to represent that the car was in "good mechanical shape or condition", having experience[d] "no brake problems", were affirmations of fact that became the basis of the bargain, and which created an Express Warranty.

"Having shown that Defendant's [sic] are liable for damages due to Breach of Warranty, the paid repair bills are the appropriate measure of damages."

Section 2-313 of the Uniform Commercial Code (Code) governs the formation of express warranties by affirmation in the context of a sale of goods such as a used car. Section 2-313 provides, in relevant part:

"(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as 'warrant' or 'guarantee' or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty."

In defendants' view, their statements to plaintiff cannot fairly be viewed as entering into the bargain. Defendants

assert that they are not automobile dealers or mechanics with specialized knowledge of the brake and clutch systems of the car and therefore their statements were merely expressions of a vendor's opinion that did not constitute an express warranty.

Weng involved the sale of a 10-year-old used car for \$800. The car had 96,000 miles on it. When the buyers attempted to drive the car home, it failed to operate properly. An inspection at an automobile dealership revealed that the car was unsafe to drive and needed repairs costing about \$1,500. The seller had told the buyers that the car was "mechanically sound," "in good condition," "a good reliable car," "a good car," and had "no problems." *Weng*, [citation.] The trial court ruled that such representations could not become part of the basis of the bargain unless the buyer relied on them and that no one could reasonably rely on such statements with respect to such a car.

In *Weng*, the Appellate Court, Third District, disagreed and reversed the trial court on the ground that its ruling was against the manifest weight of the evidence. The appellate court determined that the representations made by the sellers were affirmations of fact that created an express warranty. The court stated that affirmations of fact made during a bargaining process regarding the sale of goods are presumed to be part of the basis of the bargain unless clear affirmative proof to the contrary is shown; that a showing of reliance on the affirmations by the buyer is not necessary for the creation of an express warranty; and that the seller has the burden to establish by clear affirmative proof that the affirmations did not become part of the basis of the bargain. [Citation.] The court also stated that the seller may be held accountable for breach of warranty where affirmations are a basis of the bargain and the goods fail to conform to the affirmations. [Citation.]

*** We agree with the *Weng* court that, in the context of a used car sale, representations by the seller such as the car is "in good mechanical condition" are presumed to be affirmations of fact that become part of the basis of the bargain.

Because they are presumed to be part of the basis of the bargain, such representations constitute express warranties, regardless of the buyer's reliance on them, unless the seller shows by clear affirmative proof that the representations did not become part of the basis of the bargain.

In this case, it is undisputed that plaintiff asked defendants about the car's mechanical condition and that defendants responded that the car was in good mechanical condition. Under the foregoing principles, defendants' representations are presumed to be affirmations of fact that became a part of the basis of the bargain.

INTERPRETATION Affirmations of fact made during the bargaining process regarding a sale of goods are presumed to be part of the basis of the bargain and thus constitute express warranties.

CRITICAL THINKING QUESTION Is it good policy to make noncommercial sellers of used cars liable for express warranties?