

FILED

MAY 27 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COA No. 286576

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

**Frances Clark and Shannon Hoerner-Clark, husband and wife,
Appellants**

v.

**JR's Quality Cars, Inc., Viroj "Lee" Ritdecha, Salesperson, and
Captial Indemnity Corp., Respondent**

APPELLANTS' OPENING BRIEF

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A. ASSIGNMENT OF ERROR

Assignments of Error

1. The trial court erred by applying common law principles to a contract scenario, when RCW 46.70.180(4), commonly known as the “anti-‘bushing’” statute within the Unlawful Acts and Practices statute, should govern.
2. The trial court incorrectly applied common law contract principles.

Issues Pertaining to Assignments of Error

1. After the offer and acceptance of a written contract for a car deal, does the anti-“bushing” statute RCW 46.70.180(4) prohibit the offer and acceptance of a new contract, after the car dealer has substantially changed the terms of the contract, five business days after the original contract without unwinding the original contract and rendering tender back to the buyer? (Assignment of Error 1.)
2. In Washington, is a new (2nd) contract valid, wherein the car dealer has substantially changed the terms of the contract by transferring the burden of paying off the trade-in vehicle from the car dealer to the buyer with no other change to the contract by way of consideration, which terms confused the buyer? (Assignment of Error 1.)

B. STATEMENT OF THE CASE

The dispute arose out of a conflict between two contracts between the Appellants, FRANCIS CLARK and SHANNON HOERNER-CLARK (the Clarks), and Respondent, JR'S QUALITY CARS, INC. (JR's). On October of 2007, the Clarks entered into a written contract to purchase a used car—a 2002 Chrysler Sebring—at JR's Quality Cars. CP 59, (Findings of Fact). Then, within five months, the Sebring began to have undiagnosed mechanical problems. CP 59 (Findings of Fact).

On March 13, 2008, the Clarks returned to JR's and were sold a 1995 Chevrolet truck for \$7,324 from salesman Lee Ritdecha. CP 59 (Findings of Fact). The Clarks used the Sebring for a down payment with JR's agreement to pay off the Defendant's loan for the Sebring. *Id.* Shortly after signing the contract, the Clarks testified Mr. Ritdecha made a reference to him that JR's would not honor the signed contract. (Trial Testimony, p 37, L 8). Not knowing what to make of that statement, Plaintiff left the lot. *Id.*

On its face, the agreement looks unfavorable to JR's. *See* CP 181, (Memorandum Decision on Motion for Relief, J. Clarke III). However, JR's admitted that Mr. Ritdecha had made the agreement with intent to fix the Sebring up again and “[sell] it on consignment for the customers,” making it an even-handed deal in the end. CP 125, (Trial Testimony II).

JR's then changed the written agreement, and developed a new contract which absolved JR's from the requirement of paying off the Sebring and replaced that burden onto the Clarks. CP 94, (Plaintiffs' cites in Memo. Mot. Recons). That second agreement, altered only by the replaced burden of the Sebring payoff requirements, was signed by both parties on March 13th, 2008; *five* business days after the original agreement was made. *Id.*; *see also* CP 110-113.

On November 7th, 2008, an the Clarks filed a Summons and Complaint against JR's in the Superior Court of Washington, County of Spokane, and the action moved through discovery and trial. CP 1-20. On September 24th, 2009, Judge Harold D. Clarke, III entered judgment in which he dismissed the Clarks' breach of contract claim, and Consumer Protection Act violation claim against JR's; and likewise dismissed JR's counterclaim for \$1,000 against the Clarks. CP 58-62, (Findings of Fact and Conclusions of Law). The Clarks moved for Reconsideration on October 5th, 2008, submitting a memorandum in regards to the anti-bushing statute. CP 90-125. Judge Clarke then denied the Clarks' Motion the following November 19th. The Clarks then filed a Notice of Appeal on December 7th, 2009.

C. SUMMARY OF ARGUMENT

On September 24, 2009, Judge Harold D. Clarke, III dismissed Appellants' ("the Clarks") breach of contract claim and Consumer Protection Act violation claim against Appellees' ("JR's"). He also dismissed JR's counterclaim for \$1,000 against the Clarks.

The Clarks now appeal the decision regarding the breach of contract issue. Statutory and common law principles were misapplied in the lower court's reasoning. JR's defense relied on the second March 13th contract to void the first March 6th contract. The Clarks ask the court to find the second contract invalid because it *per se* violates the anti-bushing statute, RCW 46.70.180(4); RCW 46.70.310. Further, the second March 13th contract is void of consideration and unambiguous mutual intent and therefore violates Washington common law.

Since the second contract is invalid, it follows that this court should uphold first contract and award damages based upon JR's breach of the first contract, a violation of the Common Law Breach of Contract; Unlawful Acts and Practices for Auto Dealers and Manufacturers, RCW 46.70.180(2); and Violations of the Consumer Protection Act, RCW 19.86.020 and 19.86.030. Washington statutes and case law support the Clarks' request for a reversal of the September 24th judgment on this breach of contract issue.

D. ARGUMENT

The Clarks now appeal the lower court's rulings because the second contract for the Chevy truck violates, *per se*, RCW 46.70.180(4) and is therefore invalid; and because the second contract lacked unambiguous mutual intent and new and separate consideration. The facts listed in Judge Clarke's Findings of Fact and found in the trial transcript satisfy all three elements of RCW 46.70.180(4), the anti-bushing statute. CP 58- 62. First, there was a written agreement between the Clarks and JR's on March 6, 2008. CP 60-61, ¶ XII. Second, the March 6th agreement was conditioned upon the trade-in, the down payment, the delivery of the pickup, all before the Final Purchase Order was signed on March 13th. CP 60, ¶ IX; *citations found at* CP 118, 119, 122, 123; CP 106. Third, JR's did not accept the deal and sign the Final Purchase Order before the end of the fourth business day nor did JR's notify the Clarks by the end of the fourth business day that it rejected the contract or tender any refund. CP 115-116; CP 106.

Since all three elements of RCW 46.60.180(4) are met, the second contract is a *per se* consumer protection violation, and the second contract is therefore invalid. RCW 46.70.310. Even without the bushing violation, the second contract on March 13th is still invalid because there was no unambiguous, mutual intent between Mr. Clark and JR's to modify the existing contract and there was no new and separate consideration from that of the original contract. *Wagner v. Wagner*, 95 Wn.2d 94, 103

(1980); *Foelkner v. Perkins*, 197 Wn. 462, 467 (1938). The second March 13th contract invalid as its very fabrication is contrary to RCW 46.60.180(4). Therefore, JR's breached the first March 6th contract and are further liable to Petitioner for damages.

I. JR's committed "bushing," a per se violation of RCW 46.70.180(4) when it failed to either sign the purchase order within four days of the initial agreement or reject the agreement and return the tendered trade-in.

The question is whether JR's violated the RCW 46.70.180(4)—the "anti-bushing" statute—when it did not sign the purchase order within four days of the agreement or return the trade-in when rejecting the first agreement. Basically, in Washington, a car dealer violates the "bushing" statute when he or she "obligates a buyer to buy, but leaves the dealer room to change the terms of the deal" beyond any more than four business days after the contract was signed. *Banuelos v. TSA Washington, Inc.*, 134 Wn.App. 607, 611-12 (2006) (citing *Plouse v. Bud Clary of Yakima, Inc.*, 128 Wn.App. 644, 654 (2005)). "Bushing" is defined with three elements. RCW 46.70.180(4). First, a dealer "enter(s) into a written contract" with a buyer. *Id.* Second, the written contract "is subject to any conditions" or future acceptance by the dealer. *Id.* Third, "the dealer fails to inform the buyers within four calendar days," exclusive of weekends and holidays, that the dealer accepts or rejects the contract. *Id.* To accept the deal, the dealer must sign the final contract within four business days. *Id.*

Significantly, to void the deal, the car dealer has two statutory obligations: first it must tell the buyer the contract is rejected and second, it must “tender the refund of any initial payment or security made by the buyer.” *Id.* Tender “include(s), but (is) not limited to, any down payment. . . trade-in vehicle, key. . . or certificate of title to a trade-in.” *Id.* This unwinding of the whole deal, effectively bringing the parties back to square one, must occur before any renegotiation over a new contract with different terms. RCW 46.70.180(4)(a).

The policy behind this statute is to bar sellers from taking advantage of unsophisticated consumers by changing terms of agreements and forcing consumers “to sign a new contract that requires more money, higher interest rates, or a co-signer. This switch is known as “bushing” or “yo-yo sales” and the practice is illegal.

For example, in *Banuelos*, 134 Wn.App. at 612, the buyers wanted to buy a van from a dealer and offered a \$1,000 down payment and a trade-in car in exchange for a van. When the buyers returned the van, the dealer refused to return the \$1,000 down payment. *Id.* At no time was a vehicle purchase order signed by the dealer. *Id.* The court held that since the dealer did not sign the purchase order within the statutorily required time, the dealer failed in its duty to either “unconditionally deliver its signed acceptance or unconditionally void the offer and ‘tender the return of any initial payment or security made or given by the buyer.’” *Id.* (quoting RCW 46.70.180 (4)). In other words, the court ruled that RCW

46.70.180(4) was violated because the dealer did not accept or unwind the agreement within the statutorily required time by either signing the purchase order or voiding the agreement and returning tender. *Id.*

The flip-side of that coin is in *Plouse*, 128 Wn.App. at 645, where the court ruled that bushing did not occur. There, the car dealer signed an acceptance of the buyer's offer but did not get financing until seven business days later. *Id.* Even so, because the purchase agreement was signed within the statutory time frame the contract was not a conditional contract and the requirements of acceptance per RCW 46.70.180(4)(a) were met. *Id.*

Here, the Clarks signed a written contract with JR's on March 6th, 2008 that provided that JR's would pay off an underlying loan of \$4,300 on a 2002 Chrysler Sebring in exchange for a 1995 Chevrolet pickup truck. CP 60, ¶ VIII (Findings of Fact). However, the Final Purchase Order was not signed until five business days later, March 13th, which contained a fairly significant change in terms—that JR's would not pay off the underlying loan. CP 60, ¶ IX. So, JR's failed in its obligation to, within four business days, either sign the Final Purchase Order or unconditionally reject the March 6th contract, return the tender, and unwind the agreement. CP 115; CP106; RCW 46.70.180(4). Therefore, Defendants committed a *per se* bushing violation, rendering the second March 13th contract void.

Additionally, like in *Banuelos*, the elements constituting “bushing” were all met here too. First, there was a written agreement between the consumer, the Clarks, and the seller, JR’s. CP 59, ¶ VII; RCW 46.70.180(4). Second, the March 6th agreement was “subject to any condition,” namely the trade-in, the down payment, and the financing, all needing to be finalized before the Final Purchase Order could be signed. CP 60, ¶ XI; RCW 46.70.180(4). Third, five business days had lapsed before the Final Purchase Order was signed on March 13th. CP 60, ¶ IX. Again, just like in *Banuelos*, JR’s did not fulfill its duty within the required time to either sign the Final Purchase Order, or tell the Clarks the contract was void, unwind the agreement, and return the tendered 2002 Sebring. CP 60, ¶ IX; CP 118, 119, 122, 123; CP 106; RCW 46.70.180(4).

Not only was the Final Purchase Order not signed within the statutorily required time, but JR’s changed a major contract term, originally favorable to the Clarks, in its own favor. This JR’s did without unwinding the deal and starting over as required. RCW 46.70.180. Keeping the deal open for changes after the statutory time period is against public policy. *Banuelos*, 134 Wn.App. at 612-13. Speaking to that policy behind the statute, the court in *Banuelos* stated that “to allow new conditions on acceptance or avoidance would constitute negotiations precluded by RCW 46.70.180(4)(a).” *Id.* Specifically, the unwinding must occur before the renegotiation of a new contract with different terms.

RCW 46.70.180(4). JR's did not unwind the agreement before renegotiating the terms with the Clarks.

Instead of unconditionally rejecting and voiding the entire contract, the salesman, Mr. Ritdecha, told the Clarks immediately after the signing of the March 6th contract that JR's was not going to pay the loan on the Sebring. CP 60, ¶ VIII; CP 111. However, this statement from the salesman does not amount to the required voiding of the contract because the Clarks were never told that the entire deal was voided. Instead, the Clarks were simply told that one of the major conditions in the contract would not be honored, but that everything "would be taken care of." CP 60, ¶ VIII; CP 110, 113; Verbatim Report of Proceedings, 102 (Appendix 1). And, most importantly, the tender (here the 2002 Sebring) was not returned to the owner but sat on the JR's lot until sold to somebody else. (CP 59, ¶ VI; Verbatim Report of Proceedings, 95(Appendix 2); RCW 46.70.180(4).

What is more, at trial the Clarks had an expert witness, Robert Oster, from the Department of Licensing specifically testify that this second March 13th contract did in fact constitute bushing. CP 114-116. The expert witness stated that auto dealers in Washington have:

[F]our working days in which to get financing in place. If it's not in place within the four(th) day, the deal would have (to be) completely unwound, any cash down payment has to be refunded, any vehicle that had been used in a trade would have to go back.

CP 115. The expert further explained that a dealer has only four days to make changes to the contract. CP 115-116. If four working days have passed, and there have been changes or “if that contract is not totally complete, then it has to be unwound.” CP 116.

Applying the facts of this case to the expert’s explanation, more than four business days had passed between the initial March 6th contract and when the Final Purchase Order was signed on March 13th. CP 60, ¶¶ VII, XI; CP 118, 119, 122, 123; CP 106). Further, since there was a major change to the initial contract, the deal would need to be completely voided. CP 115, 116. To properly void the contract within the meaning of RCW 46.70.180(4), the 2002 Sebring needed to be returned to the Clarks and the contract negotiations restarted from the beginning. The owner of JR’s, Kenneth Vandenburg, candidly admitted that unwinding was not done. CP 106. Since the Final Purchase Order was not signed within four business days and the owner admits the deal was not unwound, the court must find that the anti-bushing statute was violated.

Additionally, the trial court reasoned that “(i)f JR’s had paid off the loan on the 2002 Sebring to American General Finance in the sum of \$4,200 or \$4,300, it would not have made money on the sale of the pickup truck and would have lost money in the transaction.” CP 181. Initially, the lower court was incorrect in its reasoning because Jake Krummel, plaintiff’s witness, testified that JR’s salesperson had admitted that JR’s “intended on selling the vehicle, or fixing it up and selling the vehicle on

consignment for the customers.” CP 125-126. JR’s salesperson, who made the agreements with the Clarks, had the intent to fix up the car and make money on this transaction through sale of the vehicle later on.

However, even if JR’s could not have made money, it does not follow that the first contract is invalid. Instead, a bad contract would be evidence that JR’s had the motivation to breach an unprofitable contract and make a new contract that better serves its own business once the customer was in agreement to buy the car. Allowing a business to lure in the unsophisticated customer to an enticing deal and then switch the terms of the contract once the deal is made, would be against the public policy founded in RCW 46.70.180(4). The need for consumer protection is illustrated by the Washington legislature making this anti-bushing law, to guard against this type of “switcheroo,” “bait and switch,” or “yo-yo sales” tactics. “Ask the AG,” ¶ 2, (Appendix 1). As the *Banuelos* court articulated, 134 Wn.App. at 611-12, this law stops a dealer from obligating the buyer to buy, but leaving itself the power to change the terms of the deal. If JR’s made a bad business contract, they cannot switch the terms of the deal without fully unwinding the deal, as required by RCW 46.70.180(4). It should be further noted that a requirement of knowledge on the consumer’s part is nowhere mentioned in this anti-bushing statute, and is therefore irrelevant. The *per se* violation does not include state of mind of the buyer, and any discussion of knowledge on the consumer’s part is a red herring.

The Common Law is subordinate to Statutory Law. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254, 112 S. Ct. 1146, 1149 (1992). “We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Id.* “When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.* at 254, 112 S.Ct. 1149. By discounting the statutory language, and applying common law principles, such as “benefit of the bargain,” etc., the lower court essentially replaces Washington statute with the common law. CP 181.

Since the Final Purchase Order was not signed within the statutorily allocated time or the contract was not fully voided and tender returned, JR’s violated the *per se* anti-bushing statute. RCW 46.70.180(4). Because JR’s committed a bushing violation, the second contract is invalid and the first contract remains intact and breached.

II. The second March 13th, 2009 contract is also invalid for lack of unambiguous mutual intent and new and separate consideration from that of the first contract on March 6th, 2009.

Even in the event that this court were not to find a bushing violation, the second March 13th contract did not contain mutual unambiguous intent nor did it contain new and separate consideration from that of the March 6th contract. The latter contract nearly mirrors the first contract except that it does not require JR’s to pay off the underlying loan, and replaces that burden upon the Clarks.

Generally, there are “five essential elements of a contract, (1) the subject matter, (2) the parties, (3) the promise, (4) the terms and conditions, and (5) consideration.” *Trotzer v. Vig*, 149 Wn. App. 594, 605 (2009) (citing *Bogle & Gates, P.L.L.C. v. Holly Mountain Resources*, 108 Wn. App. 557, 561 (2001)). Consideration is defined in Washington as “any act, forbearance, creation, modification or destruction of a legal relationship, or return promise given in exchange.” *King v. Riveland*, 125 Wn.2d 500, 505 (1994). Consideration is also commonly defined as a “bargained-for exchange of promises.” *Williams Fruit Co. v. Hanover Ins. Co.*, 3 Wn.App. 276, 281 (1970).

In order to modify an existing contract, there must be mutually unambiguous intent, a meeting of the minds, and new “consideration separate from that of the original contract.” *Wagner v. Wagner*, 95 Wn.2d 94, 103 (1980). See *Barnett v. Buchan Baking Co.*, 45 Wn.App. 152, 159 (1986); see also *Rosellini v. Banchemo*, 83 Wn.2d 268, 273 (1974). Even if there is a “subsequent oral agreement” after the original contract is signed, new consideration is still required; otherwise the second agreement “is of no force and validity.” *Foelkner v. Perkins*, 197 Wn. 462, 466 (1938). Consideration is not adequate for a modifying or subsequent agreement “if one party is to perform some additional obligation while the other party is simply to perform that which he promised in the original contract.” *Rosellini v. Banchemo*, 83 Wn.2d 268, 273 (1974).

In *Wagner*, 95 Wn.2d at 96-97, there was an issue concerning a post-dissolution proceeding involving a husband attempting to purchase the wife's one-half interest in the residence pursuant to a settlement agreement. The wife argued that the husband's actions, assistance in the attempted sale of the home, modified the settlement agreement. *Id* at 103. However, the court held that despite the husband's actions, he "did not manifest any intent to modify the contract so as to abolish his option" to purchase, and further, there was no new or additional consideration. *Id*.

Another example: in *Foelkner*, 197 Wn. at 463-66, there was a written agreement to sell a hotel and two subsequent oral modifications concerning the timing and amount repayment. The court ruled that oral modification was acceptable because there was definiteness, valid new consideration, and mutuality of obligation. *Id* at 466-67.

Here, like in *Wagner*, 95 Wn.2d at 103, the Clarks actions of returning to JR's and signing the second contract is not adequate to validate the second contract if the Clarks "did not manifest any intent to modify the contract so as to abolish (their) option" to have JR's pay off the underlying loan. CP 60, ¶ IX. Francis Clark, the only one to sign the Final Purchase Agreement, testified that after the oral statement by the salesperson, he panicked and was very upset. CP 81; CP 111. Further, he testified that it was his understanding that JR's would pay off the underlying loan and that he was never informed that he was still responsible for the payments. CP 111. These facts establish that there

was no mutually unambiguous intent required for a modification of an existing agreement. *Wagner*, 95 Wn.2d at 103.

More importantly, there was no new or additional consideration rendered by JR's, which is required to modify an existing agreement. *Id.* It is undisputed that after the first contract there was no additional "return promise given in exchange" or "bargained-for exchange of promises" that could be construed as new and additional consideration. CP 60, ¶ IX; *King*, 125 Wn.2d at 505; *Williams Fruit Co.*, 3 Wn.App. at 281. Instead, in the second contract, JR's kept the terms of the first contract intact, except that it released itself of a major obligation—the very obligation that induced the Clarks' to trade-in the 2002 Sebring in the first place. CP 60, ¶ IX.

The Clarks gained nothing from the second contract but instead lost \$4,300 by signing it. There can be no consideration for a modifying or subsequent agreement "if one party is to perform some additional obligation," such as the Clarks suddenly having to pay the loan themselves, "while the other party is simply to perform that which he promised in the original contract," such as JR's not obligating itself of any return promise, only the release of an obligation. *Rosellini*, 83 Wn.2d at 273. Therefore, there was no new and separate consideration rendered by JR's to validate the second contract. *Wagner*, 95 Wn.2d at 103.

Here, unlike in *Foelkner*, 197 Wn. at 466-67, there was no actual oral agreement subsequent to the first written contract. Instead, the

salesperson simply stated that JR's would not be honoring its major obligation to pay off the underlying loan on the 2002 Sebring. CP 110, 121. The Clarks did not verbally or in writing agree to this modification. Rather, the trial testimony shows that the Clarks were confused by the salesperson's statement and continually asked about the payment and were assured that everything would be taken care of. CP 110, 113; Verbatim Report of Proceedings, 102 (Appendix 1). The trial testimony here does not show what the *Foelkner*, 197 Wn. at 466-67, court ruled must exist for an oral agreement to modify a written contract: definiteness, valid new consideration, and mutuality of obligation. Indeed, the Clarks were confused by the indefiniteness of the oral statement, there was no new consideration offered by JR's to bargain for the absence of their loan repayment obligation, and the second contract unbalanced the mutuality of obligation that consisted in the first contract. *Id.*; CP 110, 113; Verbatim Report of Proceedings, 102 (Appendix 1). Even without the anti-bushing statute violation, the second contract still cannot be upheld as valid. Therefore, the first contract, which was breached by JR's, remains enforceable with damages owing to the Clarks.

E. CONCLUSION

All elements of RCW 46.60.180(4) are met and therefore the second contract is invalid because it is a *per se* violation of the anti-bushing statute. When dealers are allowed to renegotiate an auto loan and purchase of a vehicle without unwinding the deal, they are place in an

unfairly superior bargaining position. The practice is so prevalent that the legislature needed to pass a strict law against the very practice. Even without the bushing violation, the second contract on March 13th is still invalid because there was no unambiguous mutual intent and no new and separate consideration from that of the original contract.

Appellants ask this court to Reverse the September 24, 2009 Judgment and find the second March 13th contract invalid. Appellants also ask this court to find Appellees breached the first March 6th contract and find Appellees liable in damages.

DATED this 27th day of May, 2010.

UNIVERSITY LEGAL ASSISTANCE



ALAN L. McNEIL, WSBA #7930
Attorney for Appellants

APPENDIX 1

S. CLARK/Direct

1 Q. But at the time was the Sebring still on J.R.'s lot?

2 A. Yes, it was.

3 Q. And what conversation -- what did your

4 conversation -- Did you have a conversation with

5 Mr. Ritdecha regarding the trade-in of the Sebring?

6 A. I believe I did, yes.

7 Q. Okay. And do you recall what the terms of that deal
8 were to be?

9 A. I asked him if -- if they were going to pay off the
10 Sebring. And at that point he told us, don't worry about
11 it; that they would take care of it.

12 Q. Okay. He said, don't worry about it, we'll take
13 care of it?

14 A. And he also said, stop paying the payments on the
15 vehicle.

16 Q. Okay. And did you stop making payments on the
17 vehicle?

18 A. Yes, I did.

19 Q. And why did you stop making payments on the vehicle?

20 A. I thought it was kind of ridiculous on my part to
21 make payments on a car that I didn't have.

22 Q. And did you -- We've talked about your contact with
23 American General.

24 A. Yes.

25 Q. Do you remember contacting American General?

Joe Wittstock, RPR - Official Court Reporter
Spokane Superior Court - Spokane, Washington

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Appendix I

APPENDIX 2

EXAMINATION

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BY THE COURT:

Q. On the Sebring that was towed on February 1st --

A. Right.

Q. -- was the car towed to, was it J.R.'s or J.R.'s --

A. J.R.'s lot in the back.

Q. Was the Sebring still there in the first part of March?

A. Yes.

Q. Did you ever take the Sebring back?

A. No.

Q. Okay.

A. It was buried in the snow, about that deep (indicating).

Q. Okay.

A. Couldn't.

Q. When was the last time you saw the Sebring; was it in March of '08?

A. Last time I saw it -- I never drove around looking for it -- the last time I saw it was, oh, April -- April. That was the last time I can remember seeing it.

Q. As of April of '08 it was at J.R.'s?

A. Yes. As far as I can remember, yes.

Q. Okay. And a curiosity question I suppose more than anything: The cash price -- the price, excuse me -- of

Joe Wittstock, RPR - Official Court Reporter
Spokane Superior Court - Spokane, Washington

Appendix 2