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WASHINGTON STATE COURT OF APPEALS
FOR THE DIVISION III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 306348-III

FRANCIS CLARK and SHANNON HOERNER-CLARK,
Husband and wife,

Appellants,

V.

JR'S QUALITY CARS, INC., VIROJ "LEE" RITDECHA, salesperson,
and CAPITOL INDEMNITY CORP.,

Respondents.

APPELLANTS' OPENING BRIEF

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A. ASSIGNMENT OF ERROR

Assignment of Error

The trial court erred by interpreting RCW 46.70 as not providing a basis of relief for a breach of contract claim.

Issue Pertaining to Assignment of Error

Does a judgment against a motor vehicle dealer for breaching a contract with its customer become enforceable against a surety bond required by law, for the express purpose of protecting the consumer against “irresponsible, unreliable, or dishonest [motor vehicle dealers?]” RCW 46.70.900.

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”). CP 1 (Findings of Fact). As required by RCW 46.70.070, JR’s holds a surety bond through CAPITOL INDEMNITY CORP. (“Capitol”). CP 2 (Findings of Fact, Lines 14-17). 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 2 (Findings of Fact, Lines 19-21). Then, within five months, the Sebring began to have undiagnosed mechanical problems. CP 2 (Findings of Fact, Lines 22-25).

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 2 (Findings of Fact, Lines 27-32). The Clarks used the Sebring for a down payment with JR's agreement to pay off the Clarks' 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. CP 3 (Findings of Fact, Lines 2-7). Not knowing what to make of that statement, Plaintiff left the lot. *Id.*

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 3 (Findings of Fact, Lines 9-17). That second agreement, altered only by the replaced burden of the Sebring payoff requirements, was signed by both parties on March 13, 2008. *Id.*

On November 7, 2008, the Clarks filed a Summons and Complaint against JR's and Capitol in the Superior Court of Washington, County of Spokane, and the action moved through discovery and trial. CP 1-32. On September 24, 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 4 (Conclusions of Law, Lines 21-31); CP 5 (Conclusions of Law, Lines 1-16).

The Clarks then filed a Notice of Appeal on December 7, 2009, and the action moved through trial. CP 34-45. On July 28, 2011, Chief Judge Teresa C. Kulik entered judgment, in which Judge Dennis J. Sweeney and Judge Laurel Siddoway concurred, concluding that the anti-bushing statute did not apply, but that the second contract was invalid for want of consideration and, thus, JR's breached the first contract. *Id.*

The matter was remanded to the trial court for entry of judgment in favor of the Clarks. CP 45. At the hearing on November 9, 2011, Capitol moved for dismissal, arguing that a breach of contract claim does not implicate the surety bond they furnish to JR's under RCW 46.70. CP 74-75. On January 6, 2012, Judge Harold D. Clarke, III entered judgment in the amount of \$7,459.04 against JR's for damages on the breach of contract claim, held that "RCW 46.70 does not form a basis for relief on a breach of contract claim," and, consequently, granted Capitol's motion to dismiss. *Id.* The Clarks then filed a Notice of Appeal on February 6, 2012. CP. 72-73.

C. SUMMARY OF ARGUMENT

On January 6, 2012, Judge Harold D. Clarke, III misconstrued RCW 46.70 as not encompassing breach of contract as a violation of the

chapter. Effectively, this holding required him to further grant Appellees' (Capitol) motion to be dismissed from liability for the breach of contract found by this court on July 26, 2011, and deny Appellants' (Clarks) an award for reasonable attorney's fees.

The Clarks now appeal the decision regarding the interpretation of RCW 46.70 as not encompassing breach of contract as a violation of the chapter. The Clarks ask the court to find the breach of contract claim as within the scope of unenumerated violations of the chapter, because the chapter calls for a liberal construction in applying the policy of protecting consumers against "irresponsible, unreliable, and dishonest [motor vehicle dealers]." RCW 46.70.900.

Since a breach of contract claim is within the scope of deceitful behavior the legislature sought to prevent with RCW 46.70, it follows that this court should find the surety bond Capitol furnished JR's liable for the damages caused by JR's breach of contract and, further, award reasonable attorney's fees as provided under the chapter.

D. ARGUMENT

The Clarks now appeal the lower court's ruling because, in breaching a contract with the Clarks, JR's implicated the surety bond furnished by Capitol, which is required by law to protect consumers

against “irresponsible, unreliable, and dishonest [motor vehicle dealers].”
RCW 46.70.900.

In Washington State, because the distribution, sale, and lease of vehicles is deemed to be of great public importance, an applicant seeking a vehicle dealer’s license must post a surety bond as assurance that the applicant will “conduct his or her business in conformity with the requirements of this chapter.” RCW 46.70.070(1). The purpose of the bond is to provide security against the conduct of the dealer to “protect investments of citizens[.]” (RCW 46.70.005). Further,

[A]ll provisions of [the] chapter shall be liberally construed to the end that deceptive practices or commission of fraud or misrepresentation in the sale, lease, barter, or disposition of vehicles in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in [the business].

RCW 46.70.900.

By the plain language of the statute, a vehicle dealer’s surety bond covers *any* loss resulting from violations of RCW 46.70 et seq. RCW 46.70.070(1). A number of specifically defined acts and practices by motor vehicle dealers are deemed unlawful by RCW 46.70.180, but the list is not inclusive for purposes for surety bond liability. *See Franks v. Meyer*, 5 Wn. App. 476, 480, 487 P.2d 632 (1971) (holding that all of the grounds set forth in RCW 46.70.101 for denial, suspension, or revocation

of a motor vehicle dealer's license constitute "violations" of RCW 46.70 et seq. for purposes of surety liability, regardless of whether the Director of Motor Vehicles takes action against the dealer's license on the basis of such conduct). Specifically, RCW 46.70.180(2)(a)(i) states that is unlawful

To incorporate within the terms of any purchase and sale . . . any statement or representation with regard to the sale . . . which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing . . . which is not actually due to the state

RCW 46.70.180(2)(a)(i).

In the present case, JR's induced the Clarks into a binding contract by making a representation that JR's would take over the remaining balance of the Clarks' loan for the Seabring. CP 2 (Findings of Fact, LINES 27-32). After essentially luring the Clarks' commitment to a new vehicle by enticing them with the promise to pay off the loan on the Sebring, JR's then attempted to switch the terms of the deal by having the Clarks sign a subsequent (invalid) contract that absolved JR's from the requirement of paying off the Sebring, and placed that burden onto the Clarks. CP 3 (Findings of Fact, Lines 1-17). While the Clarks concede that a breach of contract claim is not enumerated in RCW 46.70 as a basis for recovery on the surety bond, they argue that such a practice (inducing

unsuspecting citizens into a contract and then attempting to switch the terms in order to favor the motor vehicle dealer through forming an invalid contract) is well within the scope of dishonest conduct the legislature sought to prevent. *See* RCW 46.70.180(2)(a)(i); RCW 46.70.900; RCW 46.70.005.

Further, in finding that the surety bond held by a motor vehicle dealer was liable for damages resulting from dealings with citizens, the court in *Franks* noted that a “surety bond is a condition precedent to receiving a dealer’s license-which permit[s] [a motor vehicle dealer] to conduct its business in a manner which result[s] in substantial loss to [citizens].” *Franks*, 5 Wn. App. at 479, 487 P.2d at 634. It follows that, in situations where a motor vehicle dealer is liable for damages, the surety bond enabling the motor vehicle dealer’s business with citizens is implicated in order to further the statute’s purpose of preventing “deceptive practices or commission of fraud or misrepresentation in the sale, lease, barter, or disposition of vehicles in this state . . .” and “prevent[ing] irresponsible, unreliable, or dishonest persons . . . from engaging in [the business].” RCW 46.70.900.

By requiring a surety bond for the purpose of preventing such persons from engaging in the motor vehicle trade, the legislature impliedly suggests that such a bond acts as a “gatekeeper” that ought only to be

given to honest, good-faith motor vehicle dealers. *See* RCW 46.70.900.

Following this logic, it is counter-intuitive to conclude that bonding agencies, such as Capitol, should be encouraged to furnish bonds to a motor vehicle dealers inducing citizens into contracts, only to change the inducing terms in a subsequent invalid contract. To the contrary, if such deceptive practices were to only fall upon the liability of the motor vehicle dealer, a surety bond requirement would be unnecessary and ineffective as a preventative tool. If motor vehicle dealers such as JR's are able to engage in such contract swapping without fear of losing the surety bond that enables their status as a dealer, then the only deterrent of such deceptive behavior is the likelihood that the unsophisticated consumer will realize they have a claim for breach of contract and be willing to engage in potentially extensive litigation that can easily end up costing more than what the cause of action is worth. On the other hand, if a breach of contract in such situations was deemed a violation in liberally interpreting RCW 46.70, not only would dealers be less willing to risk their surety bond and, therefore, their license to deal, but consumers would also be able to recover reasonable attorney's fees. *See Wells v. Aetna Ins. Co.*, 60 Wn. 2d 880, 883, 376 P.2d 644, 646 (1962) (holding that part of the damages allowable under RCW 46.70.070 is reasonable attorney's fees). Thus, motor vehicle dealers would face a stronger incentive to engage in

fair practices, and victim-consumers would be able to avail themselves of the protections afforded by the law that otherwise would be a losing bet against dealers that have more resources to lend to representation and litigation.

While precedent establishing that a breach of contract claim will implicate a surety bond for motor vehicle dealers does not currently exist in this state, statutes regulating the licensing of contractors in Washington State specifically enumerate breach of contract as a claim for recovery under such a bond. RCW 18.27.040(1) (“The bond shall be conditioned that the applicant will pay . . . all amounts that may be adjudged against the contractor by reason of breach of contract . . .”). In language nearly identical to the statement of purpose in RCW 46.70.005, the statement of purpose for requiring similar licensing and surety bonds for contractors is to “protect[] . . . the public . . . from unreliable, fraudulent, financially irresponsible, or incompetent contractors.” RCW 18.27.140. The public has a similar disadvantage in contracting with both motor vehicle dealers and contractors, in that these professionals enjoy an intricate understanding of their trade that is beyond the reach of a normal citizen seeking such services. In both circumstances, the consumer is an easy victim of illegitimate practices as a result of their lack of sophistication.

E. CONCLUSION

The policy of “preventing frauds, impositions, and other abuses upon [] citizens and to protect and preserve the investments and properties of the citizens of this state[.]” (RCW 46.70.005) is met by construing RCW 46.70.180 liberally (RCW 46.70.900) so as to include a breach of contract claim as falling within the scope of “deceptive practices . . . [and] misrepresentations in the sale . . . of vehicles in this state . . .” that the legislature sought to prevent by the ratification of RCW 46.70. *See* RCW 46.70.005; RCW 46.70.900.

Appellants ask this court to reverse the January 6, 2012, judgment and find Respondent Capitol liable as a result of JR’s violation of RCW 46.70 by breach of contract. Appellants also ask this court to award reasonable attorney’s fees as permitted under RCW 46.70.070. *See Wells v. Aetna Ins. Co.*, 60 Wn. 2d 880, 883, 376 P.2d 644, 646 (1962) (holding that part of the damages allowable under RCW 46.70.070 is reasonable attorney’s fees).

RESPECTFULLY SUBMITTED this 25th day of June, 2012.

UNIVERSITY LEGAL ASSISTANCE


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) Court of Appeals Case No: 306348-III
) Superior Court Case No: 08-2-05059-3
)
) DECLARATION OF MAILING

I, Tricia Leahy-Charles, declare that I am a citizen of the United States and not a party to this action; that on the 25th day of June, 2012, I mailed a full, true and correct copy of Appellant's Opening Brief by depositing said envelope in The United States Mail with sufficient postage affixed to:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED at Spokane, Washington, on the 25th day of June, 2012.


TRICIA LEAHY-CHARLES