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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHARLES HALL,	)	
Plaintiff-Appellee,	)	Filed January 27, 1988 **84**
vs	)	
BILL HOLT, d/b/a AUTO WHOLESALERS,	)	7-417 86-1863
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Fremont County (No. 2162B 31-28), Glen M McGee, Judge.

Defendant appeals from a district court ruling finding him in violation of the odometer requirements of 15 U.S.C. §§ 1983, 1984, 1986, and 1988 and awarding plaintiff treble damages and attorney fees. **AFFIRMED.**

Verd R. Bailey of Bailey Law Office, P.C., Clarinda, for defendant-appellant.

Jon H. Johnson of Leonard, Johnson, and Graeser, P.C., Sidney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J. 85

Defendant appeals from a district court ruling finding him in violation of the odometer requirements of 15 U.S.C. §§ 1983, 1984, 1986, and 1988 and awarding plaintiff treble damages and attorney fees. Defendant contends that the evidence was insufficient to establish any violation of the statute or the award of damages and attorney fees. We affirm.

Plaintiff purchased a 1979 Oldsmobile Cutlass automobile from A and A Repair in November 1983 for $4,682. A and A purchased the vehicle from the Omaha Automobile Auction Company by way of Belt Motors in Oklahoma. Belt Motors bought the vehicle from Auto Wholesalers, Bill Holt, in Missouri in October 1983. When the defendant purchased the vehicle from Ketcham Oldsmobile, the odometer statement indicated the car had 101,358 miles. However, when the title was transferred to Belt Motors, 57,358 miles was indicated on the title. At trial, it was indicated that the mileage difference resulted in the vehicle being worth only $2,500.

The trial court found that Bill Holt was doing business as Auto Wholesalers; that he violated the odometer requirements of 15 U.S.C. §§ 1983, 1984, 1986, and 1988; that plaintiff was damaged in the amount of $2,182, being the difference between the amount paid for the vehicle and the value of the vehicle had it had the correct mileage; and that judgment should be three times the amount of actual damages sustained, for a total judgment against defendant in the amount of $6,546 with interest at 10%, plus $1,300 in attorney's fees and costs.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

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I. Defendant's first assignment of error is that the trial court erred in finding that he violated the odometer requirements of 15 U.S.C. §§ 1983, 1984, 1986, and 1988 (1982).

Congress passed the Motor Vehicle Information and Cost Savings Act to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers. 15 U.S.C. § 1981 (1982); Clayton v. McCary, 426 F. Supp. 248, 255 (N.D. Ohio E.D. 1976). No person shall advertise for sale, sell, use, or install any device which causes an odometer to register any mileage other than the true mileage drive. 15 U.S.C. § 1983 (1982). No person shall disconnect, reset, or alter the odometer of a motor vehicle with the intent to change the mileage thereon. 15 U.S.C. § 1984 (1982). The seller of a motor vehicle shall fill out a disclosure form which gives the odometer reading; it shall be a violation to give a false statement to a buyer in making any disclosure required by the rules. 15 U.S.C. § 1988(a) & (b) (1982). A buyer acquiring a motor vehicle shall not accept any written disclosure if it is incomplete. 15 U.S.C. § 1988(c) (1982). In civil actions to enforce liability against transferors who, with an intent to defraud, violate any requirement imposed under the subchapter on odometer requirements, damages may be three times the amount of actual damages and include costs and attorney fees. 15 U.S.C. § 1989 (1982). Intent to defraud may be inferred from all surrounding facts. Clayton, 426 F. Supp. at 258.

Defendant argues he had no ownership interest in the motor vehicle in question, but only that he was an employee of Auto Wholesalers with his son owning the business. While we find defendant may have merit in this argument, based on the exhibits entitled "Odometer Mileage Statements" which show Auto Wholesalers as the transferor and Bill Holt's signature thereon, 15 U.S.C. § 1986

states "no person shall conspire to violate section 1983, 1984, 1985, 1987, or 1988 of this title."

The exhibits in this case reveal Bill Holt bought and acknowledged receipt of an odometer statement for the vehicle on September 26, 1983, showing 101,358 miles. In early October 1983, the vehicle was then sold to Belt Motors of Oklahoma stating the mileage as 57,358 on the Missouri title. We find there is substantial evidence to show Holt was involved in the incorrect odometer statement or that he conspired to transfer the vehicle with an incorrect odometer statement based on his acknowledgment of receipt of a correct odometer statement and his acknowledgment that he filled out the odometer reading on the reassignment of the Missouri title. No explanation of the change in the odometer statement was given by defendant; hence, an intent to defraud arises. See Delay v. Hearn Ford, 373 F. Supp. 791, 795 (D.C.S.C. 1974). We therefore affirm the trial court's decision in this regard.

II. Defendant's second contention on appeal is that the trial court erred in awarding treble damages and attorney's fees.

15 U.S.C. § 1989 (1982) recites the law with regard to this issue relating to violations of odometer statutes:

> (a) Any person who, with intent to defraud, violates any requirement imposed under this subchapter shall be liable in an amount equal to the sum of--
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> (1) three times the amount of actual damages sustained or $1,500, whichever is the greater; and
>
> (2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

An award of damages against an automobile dealer under this section is a penalty and a reward to purchasers for bringing the action successfully. Darr v. Long, 210 Neb. 57, 67, 313 N.W.2d 215, 220 (1981). We find the trial

court correctly calculated the damage award as three times the difference between the price paid for the vehicle and the value of the vehicle had it had the correct mileage See Gonzales v Van's Chevrolet, Inc , 498 F. Supp. 1102, 1103 (D C Del 1980)

An affidavit of plaintiff's attorney's fees was filed on November 14, 1986, in an amount of $1,718 02 The trial court's decision was rendered November 21, 1986, awarding $1,300 in attorney's fees No objection was ever filed by defendant in the interim We find the trial court's award of attorney's fees was reasonable and affirm its decision

AFFIRMED