

## SUPREME COURT OF NEW HAMPSHIRE

# Douglas C. Beer v. Terry M. Bennett, 160 N.H. 166

993 A.2d 765 (2010) · No. No. 2008-808 · Decided April 20, 2010

### SUMMARY

The Supreme Court of New Hampshire affirmed a judgment arising from the sale of a partially disassembled Fiat automobile. The court held that the dealer's reckless disregard for the truth of advertising statements supported a violation of the Consumer Protection Act and upheld the remedy of refunding the purchase price and shipping costs as rescission or revocation of acceptance under the Uniform Commercial Code. The court declined to treat the refunded amounts as damages subject to doubling or trebling under the Consumer Protection Act.

### CASE DETAILS

|                       |                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                      |
| WRITING FOR THE COURT | Hicks, J.; Broderick, C.J.; Conboy, J.; Dalianis, J.; Duggan, J.                                                                                                                                                    |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                       |
| DECIDED               | April 20, 2010                                                                                                                                                                                                      |
| DOCKET                | No. 2008-808                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | The automobile dealer appealed a Portsmouth District Court judgment finding him liable under the New Hampshire Consumer Protection Act and other theories. The buyer cross-appealed the denial of enhanced damages. |
| STANDARD OF REVIEW    | The trial court's findings of fact and rulings of law are upheld unless they lack evidentiary support or constitute clear error of law.                                                                             |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                      |
| PARTIES               | Terry M. Bennett v. Douglas C. Beer                                                                                                                                                                                 |

### TOPICS

consumer protection   deceptive trade practices   rescission   uniform commercial code   appellate procedure

### PRACTICE AREAS

consumer protection   contracts   uniform commercial code   remedies   appellate procedure

## QUESTIONS PRESENTED

1. Whether Bennett's advertisement constituted an unfair or deceptive act or practice under the New Hampshire Consumer Protection Act despite the absence of proof that he intentionally made a misrepresentation.
2. Whether Bennett owed a special statutory or common-law duty of disclosure as a registered automobile dealer.
3. Whether the district court's remedy of refunding the purchase price and shipping costs in exchange for return of the vehicle was proper under the Uniform Commercial Code's revocation-of-acceptance provisions.
4. Whether the buyer's refunded purchase price and shipping costs constituted damages subject to double or treble enhancement under the Consumer Protection Act.

## HOLDINGS

1. A seller's reckless disregard for the truth of representations about goods, including representations made without sufficient knowledge or inspection, satisfies the knowledge or intent requirement for a Consumer Protection Act violation when the representations induce the purchase and attain the requisite level of rascality.
2. The court did not recognize or need to decide whether New Hampshire law imposes a special duty of disclosure on registered automobile dealers because any error concerning that theory was harmless and other valid claims supported the judgment.
3. The remedy requiring Bennett to refund the purchase price and shipping costs in exchange for return of the Fiat was proper as enforcement of the buyer's revocation of acceptance under the Uniform Commercial Code.
4. Purchase-price and shipping-cost refunds awarded as part of rescission are not damages subject to double or treble enhancement under RSA 358-A:10.

## KEY QUOTATIONS

*"We conclude that the defendant's reckless disregard for the truth of his statements satisfies the degree of knowledge or intent required by Kelton."* (at 769)

*"Rather, he made representations, knowing he lacked sufficient knowledge to substantiate them, to induce the plaintiff's"* (at 770)

*"The remedy ordered here—return of the purchase price to the plaintiff and return of the Fiat to the defendant upon his payment of the judgment and his arrangement for return shipment and payment for the same—is entirely proper under the UCC."* (at 772)

## FACTUAL BACKGROUND

Bennett, a New Hampshire automobile dealer, advertised a 1958 Fiat as having a 1.5-liter engine, transmission, and vigorous performance, while acknowledging that the engine and transmission were out of the car. Beer purchased the vehicle for \$6,000 and paid \$1,298 for shipping. Upon receipt, Beer discovered that the Fiat

lacked numerous parts needed to make it operable, including the starter, generator, distributor, engine mounts, fan, exhaust manifold, and hand-brake mechanism. Bennett had not inventoried the car's parts and had not inspected it sufficiently to substantiate the representations in his advertisement.

## PROCEDURAL HISTORY

After purchasing an advertised 1958 Fiat, Beer discovered that the vehicle lacked numerous parts necessary for operation and sued Bennett. Following a hearing on the merits, the Portsmouth District Court entered judgment for Beer in the amount of \$16,197, including the purchase price, shipping costs, travel expenses, attorney's fees, and costs, and ordered return of the vehicle upon payment. The district court declined to award double or treble damages because it found no willful or knowing CPA violation. The Supreme Court of New Hampshire affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Milford Lumber Co. v. RCB Realty, 147 N.H. 15, 19, 780 A.2d 1259 (2001)
- Union Ink Co., Inc. v. AT & T Corp., 352 N.J. Super. 617, 801 A.2d 361, 379 (App. Div. 2002)
- Kelton v. Hollis Ranch, 155 N.H. 666, 927 A.2d 1243 (2007)
- Glickman v. Brown, 21 Mass. App. Ct. 229, 486 N.E.2d 737, 741 (1985)
- Cigal v. Leader Development Corp., 408 Mass. 212, 557 N.E.2d 1119, 1121 n. 8 (1990)
- Hair Excitement v. L'Oreal U.S.A., 158 N.H. 363, 370, 965 A.2d 1032 (2009)
- Snierston v. Scruton, 145 N.H. 73, 81, 761 A.2d 1046 (2000)
- State v. Moran, 151 N.H. 450, 453-54, 861 A.2d 763 (2004)
- Centronics Corp. v. Genicom Corp., 132 N.H. 133, 139, 562 A.2d 187 (1989)
- Handley v. Town of Hooksett, 147 N.H. 184, 189-90, 785 A.2d 399 (2001)
- Becksted v. Nadeau, 155 N.H. 615, 621, 926 A.2d 819 (2007)
- Copeland v. Reynolds, 86 N.H. 110, 111, 164 A. 215 (1933)
- Mooney v. Nationwide Mut. Ins. Co., 149 N.H. 355, 357, 822 A.2d 567 (2003)
- Patch v. Arsenault, 139 N.H. 313, 318, 653 A.2d 1079 (1995)
- Matte v. Shippee Auto, 152 N.H. 216, 223, 876 A.2d 167 (2005)
- Schwartz v. Rose, 418 Mass. 41, 634 N.E.2d 105, 108-09 (1994)
- Werner v. Montana, 117 N.H. 721, 729, 378 A.2d 1130 (1977)
- Sanborn v. Aranosian, 119 N.H. 969, 970, 409 A.2d 1352 (1979)