

35711

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA

DARYL'S CARS, INC.,
a West Virginia corporation,

Plaintiff,

vs.

// CIVIL ACTION NO: 04-C-614

JERRY L. BUNNER,

Defendant.

JUDGMENT OF THE COURT

On the 29th day of March, 2005, came the Plaintiff Daryl's Cars, Inc., a West Virginia corporation by William E. Kiger, its counsel and the Defendant Jerry L. Bunner, in person and by Michele Rusen, his counsel, for a non-jury trial.

The Court heard evidence from the following witnesses: Daryl F. Lawrence, Steve Rowland, Linda S. Garrison, Peggy C. Cain, William Rhodes, Michael D. Umensetter, Michael Guice, Gerald F. Nestor, Jerry L. Bunner, Harold F. Rodin, Dwayne Schneider and Keith Mehl. The record was left open so the parties could take the deposition of Jason Bunner which was later transcribed and delivered to the Court. After the close of evidence, the Defendant submitted "Defendant's Memorandum of Authority Supporting Dismissal of Action" and the Plaintiff submitted "Plaintiff's Summary of the Evidence and Closing Argument". The Court finds that the Plaintiff's Summary of Evidence is a fair and accurate summation of the evidence of both parties in this action. Several exhibits were also admitted at trial constituting a part of the record in this case.

Based upon the foregoing and the entire record in this case, the Court makes the

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following findings of fact and conclusions of law.

1. The Plaintiff, Daryl's Cars, Inc. was in the used car business in Parkersburg, Wood County, West Virginia. Daryl Lawrence, the sole stockholder of Daryl's Cars, Inc. was in the used car business since approximately 1970 and operated Daryl's Cars for many years. Mr. Lawrence became acquainted with Jerry L. Bunner in the 1980's as a result of motor vehicle transactions.

2. The Defendant, Jerry L. Bunner was a resident of Wood County, West Virginia at all times pertinent to this civil action. Mr. Bunner worked for many years at the Shell industrial plant which later became Kraton industrial plant. Mr. Bunner also had an interest in used cars. He would purchase vehicles, repair and improve them, and then sell these cars.

3. For several years Mr. Bunner had a business relationship with Steve Rowland, owner of Pro-Tech Auto Sales. Mr. Bunner would sell the vehicles from Mr. Rowland's lot. This relationship ended in the year 2000 and the Defendant was no longer able to sell the vehicles through Pro-Tech Auto Sales. Mr. Rowland testified that Mr. Bunner sold 30-40 vehicles per year for four to five years through his business. The Defendant agreed he had sold numerous vehicles from Steve Rowland's car lot.

4. Around the time period that Mr. Bunner's business relationship with Steve Rowland and Pro-Tech Auto Sales was ending, Mr. Lawrence testified that the Defendant began discussions with him to provide the Defendant a number of used motor vehicles to start a used car lot. The Defendant testified that the business was to be operated by a

Mr. Steve Cain, not himself. Mr. Lawrence testified he knew Mr. Bunner and did not know Steve Cain and would not have sold ten vehicles on credit to Steve Cain. Mr. Lawrence testified that he relied on Mr. Bunner's background and financial stability in entering into a contract to sell ten motor vehicles. Mr. Bunner testified he was not involved in Mr. Cain's business and was only helping Mr. Cain set up his business. Based upon Mr. Bunner's extensive involvement with the motor vehicles in question as set forth below, Mr. Lawrence's version of the transaction is more credible.

5. Based upon the discussions between Mr. Lawrence and the Defendant, the Plaintiff drafted a purchase agreement between the Plaintiff and the Defendant. The agreement was dated January 3, 2001 and listed ten (10) used cars to be purchased. The written agreement stated that "Jerry Bunner agrees to pay for cars as sold in reasonable time." The document lists the price for each vehicle for a total price of \$26,900.00 "to be paid as sold." The document appears to bear the signatures of "J. Bunner, Steve Cain, and Daryl F. Lawrence." The Defendant disputes that he signed the document and alleges his signature is a forgery. Mr. Lawrence testified that he was handed the document by Mr. Bunner with only Steve Cain's signature on it. Mr. Lawrence testified he informed Mr. Bunner that this was not acceptable, that his agreement was with Mr. Bunner not Mr. Cain, and returned the document to Mr. Bunner. He testified that Mr. Bunner then went to a desk and appeared to sign his name. Mr. Bunner then returned the document to Mr. Lawrence with what appeared to be Mr. Bunner's signature. Mr. Bunner flatly denies the testimony of Mr. Lawrence alleging that no such event ever happened and he did not sign

his name to that document and did not even know of the existence of the document until he found a copy of it later in Mr. Cain's brief case. Again, based upon Mr. Bunner's extensive involvement with the vehicles as set forth below, Mr. Lawrence's version is more credible.

6. Whether Mr. Bunner's signature is actually on the document dated January 3, 2001, prepared by the Plaintiff, is made problematic by the testimony of Harold Rodin, a well known hand writing expert. Mr. Rodin testified that the signature on the document is not Mr. Bunner's. However, on cross-examination it was established that Mr. Rodin only compared known signatures of the Defendant made after this cause of action was filed. The suitability of these comparison documents was also questioned. It is possible Mr. Bunner altered or disguised his signature. It is clear from the totality of the evidence that Mr. Bunner was reluctant to be directly involved in the used car business. He had a history of operating through other persons who were licensed dealers. Mr. Bunner was not a licensed used car dealer. It appears he may have put his name on the document only upon the insistence of Mr. Lawrence. In addition, there is contradictory evidence from the Defendant's ex-wife, Linda Garrison who testified that it was the Defendant's signature on the contract. Ms. Garrison also testified that the Defendant sometimes changed his signature. Based upon a preponderance of the evidence, the Court believes Mr. Bunner reluctantly signed the document which constitutes the contract in this case.

7. After the contract was executed, the ten (10) used motor vehicles were moved

from the Plaintiff's lot to a lot on Pike Street and soon thereafter moved to real estate owned by Jason Bunner, the Defendant's nephew. Jason Bunner later asked his Uncle to have the vehicles removed from his land. The vehicles were then moved at the direction of the Defendant to the storage area of witness Dwayne Schneider. Mr. Bunner testified he did this because Mr. Lawrence would not take the vehicles back.

8. On February 14, 2001, Mr. Steve Cain suffered a serious heart attack and later died on October 27, 2002. Peggy Cain, Steve Cain's daughter, testified that her father had very limited financial resources. She stated her father was unemployed before January, 2001. She stated she supported both her mother and father on her modest salary working at a local cemetery. She testified her father did not have the financial resources to open a business in January, 2001.

9. Peggy Cain testified that after her father's heart attack in February, 2001, the Defendant came to her residence and took possession of a 1986 Pontiac Firebird that her father had been driving which was one of the vehicles listed in the motor vehicle purchase agreement and the dealer tags for Kustom Used Cars. Mr. Bunner agrees he took possession of the vehicle to protect Mr. Lawrence's interest. He also claims that when he took the vehicle he found a briefcase in the trunk with the certificates of title to the vehicles and a copy of the January 3, 2001 agreement which he testified was the first time he saw that agreement. Peggy Cain testified there was no briefcase in the vehicle and no briefcase was given to the Defendant. The Defendant never returned the certificates of title or the vehicles to the Plaintiff.

10. The evidence is uncontradicted that the Defendant would from time to time contact Mr. Lawrence or his business and try to negotiate lower prices for the vehicles which are the subject matter of this lawsuit.

11. One vehicle, a 1974 Ford pickup truck, Serial #F10YNB40663 was sold by Mr. Bunner to David B. Collins. The Defendant claimed the sale occurred in August 2002. However, the certificate of title was dated on May 17, 2001, approximately fifteen (15) months before the Defendant testified the sale was consummated. In August, 2002, the Defendant delivered his personal check to Daryl's Cars in the amount of eighteen hundred (\$1,800). This is apparently the only one of the ten cars sold and was the only payment the Plaintiff ever received under this contract.

12. The Defendant's ex-wife also testified she was aware of the business relationship between the Defendant and Steve Rowland whereby the Defendant would purchase used motor vehicles, do necessary repair work and sell them through Pro-Tech Auto Sales. The Defendant definitely did repair work on used vehicles at his residence. Witness Rhodes confirmed seeing used vehicles at Defendant's residence with no registration tags on them. Sometimes the Defendant would operate vehicles with dealer's tags.

13. The overwhelming circumstantial and direct evidence proves by a preponderance of the evidence that Jerry Bunner was the party that entered into a contract with the Plaintiff to buy ten (10) used cars and to pay the Plaintiff the amounts of money listed in the agreement. The preponderance of the evidence leads the Court to conclude

that the Plaintiff's description of Mr. Steve Cain as a "front man" for Mr. Bunner is true and correct. Mr. Cain was to be the conduit through whom Mr. Bunner was going to sell used cars. The Defendant's extensive involvement with the ten (10) motor vehicles makes it clear he was the actual and real party purchasing the motor vehicles from the Plaintiff. The Plaintiff has proved by a preponderance of the evidence that the contract to purchase the motor vehicles existed between the Plaintiff and Defendant.

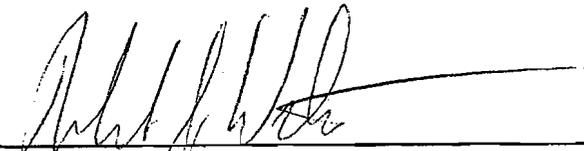
14. The Plaintiff produced expert testimony that the outermost reasonable time to sell a used car in Wood County, West Virginia in 2001 was six (6) months. Therefore, giving the Defendant the benefit of the doubt, the vehicles were to have been sold within six (6) months after January 3, 2001, that is, by July 3, 2001.

15. The total amount due under the contract was \$26,900 with credit for \$1,800. Therefore, the amount due and owing to the Plaintiff is \$25,100, plus interest from July 3, 2001, plus court costs.

Accordingly, it is hereby ORDERED that JUDGMENT be entered in favor of the Plaintiff, Daryl's Used Cars, Inc. and against the Defendant, Jerry L. Bunner in the sum of Twenty-five Thousand One Hundred Dollars (\$25,100) plus interest at the legal rate from July 3, 2001, plus court costs. The Clerk shall send a certified copy of this Order to Daryl Lawrence, c/o Daryl's Cars, Inc., 1400 Oakhurst Avenue, Parkersburg, WV 26101

and to Michele Rusen, Counsel for Defendant, at 1206 Market Street, Parkersburg, WV
26101.

ENTERED: November 16, 2009



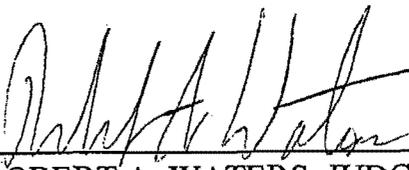
ROBERT A. WATERS, JUDGE

CERTIFICATE OF SERVICE

This 16th day of November, 2009, the undersigned certifies that the foregoing Judgment of the Court was served upon the following persons, by mailing, first class postage prepaid, a true and accurate copy thereof to:

Daryl Lawrence
c/o Daryl's Cars, Inc.
1400 Oakhurst Avenue
Parkersburg, WV 26101

Michele Rusen, Esquire
1206 Market Street
Parkersburg, WV 26101



ROBERT A. WATERS, JUDGE