

Hearings of the Registrar of Motor Dealers

pursuant to

The Motor Dealer Act of British Columbia, and the Business Practices and Consumer Protection Act

Colleen and Gavin Simpson

and

Barnes Wheaton Pontiac – DL 6928

Final Decision

This matter was heard on December 20th, 2007 in Burnaby BC. In attendance were Gavin Simpson, representing himself, and four representatives from Barnes Wheaton; Greg Barnes, Peter Kulyk, Sunil Desai and Jun-guang Lui.

The facts in this matter are fairly straightforward and for the most part not in dispute. On February 11th, 2007 Mr. and Mrs. Simpson acquired a 2007 Pontiac Montana through a lease/purchase agreement negotiated with Barnes Wheaton Pontiac. This was to become the Simpsons' third vehicle and it was purchased by the Simpsons to transport small children to and from school and while on vacation.

The unresolved issue here relates to the clear request made by Mr. and Mrs. Simpson when the vehicle was purchased. The request was that the vehicle needed to have four proper car seat anchors – as opposed to the three that came with the vehicle. The dealership agreed to install the fourth seat anchor for the Simpsons. The fact that the Simpsons entered into this agreement with the clear understanding that the vehicle would have a fourth car seat anchor installed is not in dispute. Nor is the fact that after several months, and repeated inquiries and visits to the dealership by the Simpsons, the manufacturer formally advised both the dealer and the Simpsons that there was no way to properly install a fourth car seat anchor in this particular vehicle.

What isn't resolved is what Barnes Wheaton Pontiac needs to do to resolve the issue. That is not because Barnes Wheaton Pontiac hasn't tried to resolve the issue but because the parties haven't been able to agree on a solution.

The Simpsons returned the vehicle and left it with the dealer some time in July of 2007 after having driven it for approximately 10,000 kms. The dealer attempted to find the Simpsons another suitable vehicle to replace the Pontiac Montana, thus allowing the dealer to unwind the transaction. To date negotiations have failed to produce a result and further settlement discussion would seem to be pointless.

My legal authority to address the main issue in this matter flows from the Business Practices and Consumer Protection Act (BPCPA). This matter might have been better resolved by a court of law.

In any event, Barnes Wheaton Pontiac has committed a deceptive act as outlined in Sections 4(3)(a)(i) and (v) of the BPCPA in that they represented to the Simpsons that the 2007 Pontiac Montana would have a proper fourth seat anchor installed when in fact the vehicle was not manufactured to a standard that allowed for a fourth seat anchor.

Compliance Order

Section 155 of the BPCPA allows for the issuing of a Compliance Order in this situation and specifically Section 155(4) allows me to issue the following directions:

1. Barnes Wheaton Pontiac shall take back the 2007 Pontiac Montana, which I understand is already in their possession,
2. Barnes Wheaton Pontiac is to unwind the lease arrangement entered into by the Simpsons ending all their legal obligations under the lease,
3. Barnes Wheaton Pontiac shall return to the Simpsons all monies they have paid to date for this vehicle, including the \$8500 value for their trade-in and the \$1893.89 cash down payment - less an adjustment for the use of the vehicle, which shall be calculated at \$0.22 per kilometer, and
4. Barnes Wheaton Pontiac shall reimburse the Motor Vehicle Sales Authority its investigation costs in this matter. An invoice will be provided for this.

Both Mr. Simpson and the dealership representatives made argument as to what adjustment should be made to take into account the kilometers driven by the Simpsons. I understand that this was a significant obstacle in the settlement discussions. The \$0.22 per kilometer decision is a number I have chosen after reviewing these arguments and evidence presented in this matter.

Should there be any difficulties in completing the above requirements please contact Denis Savidan, **604 293-3527**, at the VSA office and he will assist in the completion of this Order.

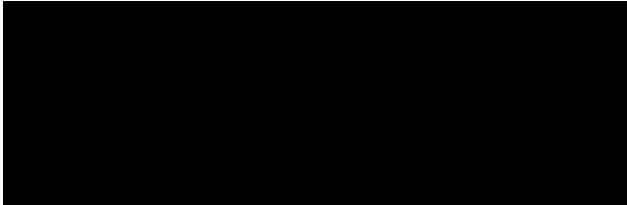
Also we advise that the Compliance Order contained within this decision can be filed with the Supreme Court of British Columbia and if so filed is deemed to have the same force and effect as an order of the Supreme Court itself.

Administrative Assessment

Section 164 of the BPCPA allows for an administrative assessment in this matter after consideration of all matters referred to specifically in Section 164(2) - which I have done. In particular I note the dealer's efforts to resolve this matter, which were underwhelming to say the least. I also note the considerable delays and inconveniences suffered by the Simpsons.

The administrative assessment will be \$2000 for the reasons outlined above. This assessment must be paid to the VSA at #150 6400 Roberts Street, Burnaby BC V5G 4C9 within 30 days from the date of receipt of this decision.

Pursuant to Section 181 of the BPCPA, a request can be made for this decision to be reconsidered. This can be done by writing the VSA office at #150 6400 Roberts Street, Burnaby, BC V5G 4C9, requesting reconsideration of the decision and outlining the error or mistake that is believed to have been made, and/or, indicating what new evidence is to be provided.



Ken Smith – Registrar of Motor Dealers for the
Province of British Columbia

8th February 2008
Date