The Motor Dealer Act of British Columbia

and

The Business Practices and Consumer Protection Act

In the matter of
Applewood Kia (DL27289)
and
Paul Ratte

Final Decision

This matter came before me following a decision of the Customer Compensation Fund Board (CCFB), finalized on June 22nd, 2007. The claimant, Paul Ratte, was issued an award of $1997.60 by the CCFB as it was felt that Mr. Ratte had suffered damages caused by the improper conduct of Applewood Kia. The funds have not been paid out pursuant to this award as Applewood Kia formally requested that the CCFB reconsider its decision on June 22nd, 2007.

By agreement, the parties requested that I consider the matter under the authorities vested in me by the Motor Dealer Act of British Columbia and the Business Practices and Consumer Protection Act. The CCFB will be issuing a separate decision following its reconsideration of its June 22nd, 2007, decision and upon their having reviewed the findings outlined the following. As a considerable amount of new evidence came to light in the hearings before me in this matter, I will review the details of this new information for everyone's benefit.

Also, because there is evidence in dispute and assertions made but not proven by both sides, it has been necessary for me to finalize and determine certain issues largely from the verbal testimony of the parties and the evidence presented by the Vehicle Sales Authority staff. Often individuals in dispute can have differing views on what actually happened and this case is no exception.

Paul Ratte was a recent graduate from the University of Toronto and a first-time car buyer when he and his father arrived at Applewood's dealership in Langley, BC, on July 29th, 2005. In response to an advertisement they were specifically looking for, and purchased, a 2004 Toyota Tacoma truck. At the time of purchase, the truck had 32,282 kilometers on it and soon after the sale Mr. Ratte drove the truck to Sudbury, Ontario, to start his new job.

One of the major issues in dispute here is what was, or wasn't disclosed to Mr. Ratte and his father at the time of sale regarding the manufacturer's warranty on this vehicle. Both the father and son gave evidence under oath at the hearings that they were told by the salesperson that the vehicle had full manufacturer's warranty remaining - up to 60,000 kilometers. They also both testified that, while they had been made aware that the vehicle

had been in a prior accident, Mr. Ratte would not have purchased this vehicle except for the fact that it still had a manufacturer's warranty remaining.

The one undisputed fact is that this vehicle, at the time of purchase, had actually been in a serious accident and was classified in the manufacturer's and ICBC's records as a "Rebuilt" - meaning that there was no manufacturer's warranty remaining on this vehicle. The transfer document completed at the time of purchase and signed by Mr. Ratte, as well as all the Dealer's intake documents, all clearly showed that the vehicle was "Rebuilt". Both Mr. Ratte and his father testified that at no time, either before or after this vehicle was purchased, did anyone from the dealership explain to them that the term "Rebuilt" meant there was no manufacturer's warranty.

The salesperson, Dale Perkins, who sold the vehicle to Mr. Ratte, provided a written statement which contradicts, in part, Mr. Ratte's memory of what had happened with this sale. According to, Mr. Perkins, he advised Mr. Ratte right at the beginning of the conversations that led up to this sale, as well as at the time Mr. Ratte paid a deposit, that the truck was a "Rebuilt" vehicle. All these representations were made over the phone with Mr. Ratte and occurred before Mr. Ratte and his father came to the dealership to view and test drive the vehicle.

The salesperson's evidence as to what happened when Mr. Ratte and his father came to the dealership to view and test drive the vehicle was that "warranty was never discussed as I knew it didn't have one". Andrew Butterworth, Sales Manager, and Darren Graham, Dealer Principle for the Dealership, both testified as to what Applewood Kia's policies are in regards to selling vehicles that are "Rebuilt", and they also repeated what their salesperson, Dale Perkins, believed to be the facts – but neither were able to provide any additional direct evidence to refute Mr. Ratte's and his father's assertions about not knowing that the term "Rebuilt" meant that there was no manufacturer's warranty on this vehicle.

In fact, Mr. Graham acknowledged during the hearings that it might just be possible that Mr. Ratte did not understand that the term "Rebuilt" meant that there was no manufacturer's warranty on his vehicle. It is my experience that this is very often the case. The word "Rebuilt" is a technical term well understood by those working in the industry but often not understood by the average consumer. To many consumers, every vehicle is "Rebuilt" after it has been in an accident.

I emphasize this particular point as Section 5(2) of the Business Practices and Consumer Protection Act of BC (BPCPA) states "that if it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that a deceptive act or practice was not committed or engaged in is on the supplier". Many dealers in BC are not aware of this specific provision in this new legislation.

Mr. Ratte is alleging here that Applewood Kia made representations regarding the manufacturers warranty available on the 2004 Toyota Tacoma truck that mislead him into purchasing the vehicle, contrary to Section 4 of the BPCPA. So the first question I need to consider in this case is - has the Dealer proven that Mr. Ratte was not deceived by the Dealer's actions as required by Section 5(2) of the Act?

What could have resolved this issue before it even became one was proper completion of the Bill of Sale. The laws of British Columbia require a Dealer to declare on the Bill of Sale if a vehicle is "Rebuilt" – along with other disclosures, such as damage over $2000, or if the vehicle has been previously used as a rental, lease, taxi, or police vehicle. In this case, most of the other required declarations were properly made but the "Rebuilt" status and "damage over $2000" declarations were not properly shown on the Bill of Sale – this notwithstanding, Mr. Ratte acknowledging that he was told verbally right from the start that this vehicle had been in a previous accident.

To their credit, Applewood Kia discovered these errors on the Bill of Sale a few days after Mr. Ratte had purchased and registered the vehicle in his own name and left for his new job in Ontario. Again to their credit, once the dealership discovered their errors they took specific steps to correct the documentation. In evidence we have VSA investigator Bruce Forbes reporting on his interview with Jackie Saade, the person then employed with Applewood Kia who helped Mr. Ratte sign the first Bill of Sale, and who a few weeks later arranged for Mr. Ratte to re-sign a revised Bill of Sale, showing the vehicle as having had prior "damages over $2000" and as being "Rebuilt".

According to Ms. Saade, Mr. Ratte made comments during the signing of the first agreement that made it clear to her that he knew the truck had been in a prior accident. Also, Ms. Saade advised VSA investigator Forbes that she went over the changes in the revised Bill of Sale in detail with Mr. Ratte on the phone while he was preparing himself to re-sign the document. Ms. Saade is of the view that before Mr. Ratte signed the revised document, he knew both that the truck was a "Rebuilt" and that there was no manufacturer's warranty on his vehicle.

Mr. Ratte denies that this conversation even happened. His evidence was that he did re-sign and initial this revised document, but he did not read the agreement carefully. He also testified that where the revised agreement sent to him in the mail contained in large print the phrase, *"No Existing Warranty"*, that he understood this statement to just reconfirm his original decision not to purchase any of the "additional warranty" options offered to him at the time of sale.

Also of interest here is that apparently Ms. Saade also tried to sell Mr. Ratte an additional warranty package as part of the re-signing process. During her interview, she remembered specifically pointing out to Mr. Ratte that the vehicle had no manufacturer's warranty due to its "Rebuilt" status and that for this reason she suggested to Mr. Ratte that he should purchase the additional warranty package. Contradicting this, we have Mr. Ratte's direct testimony that if someone had told him this, then he would not have re-signed the documents sent to him – as he believed the opposite was true - that the vehicle did have a manufacturer's warranty on it and he therefore did not need the additional warranty package.

As mentioned above, Section 5(2) of the BPCPA requires that Applewood Kia provide sufficient evidence to show that the dealership made proper representations that did not have the "capability, tendency or effect of ...misleading" Mr. Ratte. In my view, the evidence the dealer provided did not answer the requirements of Section 5 of the BPCPA. I could have accepted Ms. Saade's evidence over Mr. Ratte's on what happened with the re-signing of the original agreement but the dealer's documentation leaves a large doubt in my mind.

Mr. Ratte's claim that he was misled, specifically on the availability of the manufacturer's warranty on this purchase, is certainly supportable up until the time that he was asked to sign an amended agreement. And, in my view, Mr. Ratte's casual approach to signing but not carefully reading the revised document is more consistent with the short, hand written note he received in the mail (Exhibit 6) from Ms. Saade, than is her evidence that she provided all the needed details and information to Mr. Ratte over the phone.

During the hearings, the dealer asked how this type of matter could be better handled in the future. When an important document like an original Bill of Sale needs to be amended weeks later, by mail and over the phone, more care should be taken to document the "over-the-phone" part. It would have been very helpful to Applewood's case, and given the requirements of Section 5(2) of the BPCPA, if Ms. Saade's hand written note to Mr. Ratte (Exhibit 6) had been a properly written letter specifically outlining the errors and omissions that necessitated Mr. Ratte's new signature. Also, and because the nature of the changes here involved disclosures that go to the very heart of the agreement, Mr. Ratte should have been advised in writing not only that "Rebuilt" means "no manufacturer's warranty", but also that he had the option of returning the vehicle at the dealer's expense now that he had been made aware of the fact that no warranties were available on this vehicle. This, of course, is something quite different than him being offered over the phone an additional warranty package for an extra charge, as apparently is what actually happened in this case.

The next part of this decision is less complicated. It is Applewood's submission that Mr. Ratte suffered no damages in this situation - and I agree with them. Mr. Ratte purchased a one-year old vehicle in June of 2005 for $28,488. He sold it in February of 2007 for $21,500.00 to a Joel Gummeson after having driven it for a little less than 2 years and over 50,000 kilometers (Exhibit 15). This represents a little less than 0.15 cents per kilometer which is a very acceptable rate of depreciation on a 2 to 3-year old vehicle in this price range. I base these calculations determining a reasonable rate for depreciation using my experience in adjudicating similar matters as the Registrar of Motor Dealers and from a review of the "Canadian Black Book" price summaries as published by Wm. Ward Publishing Ltd. of Markham Ontario.

On an additional matter, Mr. Ratte alleges that he made a few repairs while he owned the vehicle and that he would like to be reimbursed for those as well. This part of his claim fails as well. He has failed to produce invoices for these repairs, and has provided no verifiable evidence to show that any of these repairs would have related to the manufacturer's warranty - had there been one.

It is therefore my decision that Mr. Ratte is not entitled to any compensation in this matter.

As I have determined that Applewood Kia failed to make proper disclosures on the 2004 Toyota Tacoma truck sold to Mr. Ratte and therefore committed a deceptive act under Section 4 of the BPCPA, the administrative assessment against Applewood Kia shall be $2000. They will also need to reimburse the VSA for all investigation and hearing costs. These will be calculated and invoiced separately.

I would like to thank everyone involved here for their patience and cooperation in concluding this matter. The proceedings took much longer than we would have liked. Much of the delay in this most recent round of hearings was the result of VSA staff gathering more complete evidence and needing to arrange for the attendance of key witnesses who provided important evidence.

Signed: April 16th, 2008

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