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

In the matter of
Parkwood Auto Sales Limited (DL10342)
and
Satinder, Jasvinder and Balwinder Gill
and
Monica Pirvulescu
and
Trent Martens

Final Decision

These matters first came before me on November 30th, 2007, with adjournments to, and subsequent hearings on December 20th, 2007, and February 6th, 2008. All three matters are properly before me pursuant to the Motor Dealer Act of British Columbia (MDA) and the Business Practices and Consumer Protection Act (BPCPA).

The dealer principle, Marc Beune, is of the view that these matters "should" be before the courts and not before the Registrar of Motor Dealers. In one sense he is correct, as these matters could have been before a court of law had the parties chosen to take them there. Also, as Parkwood Auto is a member of the Better Business Bureau these same matters might have been better resolved through the Bureau's dispute resolution processes.

That said, the three sets of purchasers (the Gills, Ms. Pirvulescu, and, Mr. Martens) have all formally complained to our office regarding Parkwood Auto's conduct and business practices. These complaints have been investigated by our staff and properly brought before me. Therefore, notwithstanding that the courts, and/or others, might choose to get involved, I am required to review and decide on the complaints before me as the activities complained of falls under the legislation mentioned above.

As will be detailed following I have determined that each of the three sets of complainants (the Gills, Ms. Pirvulescu and Mr. Martens) all have valid complaints against Parkwood Auto pursuant to the BPCPA. In addition to this however, I as the Registrar of Motor Dealers for the Province of British Columbia, remain very concerned as to the ongoing business practices of Parkwood Auto. Accordingly, the licensing issues under the MDA will be dealt with at the very end of this decision.

Satinder and Balwinder Gill

Jasvinder and Balwinder Gill and their 20 year old son, Satinder, attended at Parkwood Auto on November 5th, 2005 and purchased from Parkwood a 1999 BMW 323i automobile with, what they believed was 50,000 kilometers on it, for $26,975.00. They traded in a 2000 Dodge vehicle with 80,000 kilometers. In June of 2007 the purchasers were advised by another dealer that the vehicle they purchased from Parkwood in fact had over 250,000 kms on it at the time of sale.

The Gills (all three of them) testified that during the negotiations leading up to the purchase of the BMW they repeatedly had asked the salesperson for Parkwood Auto if the odometer reading (i.e. 50,000 kms) was in fact correct. Their evidence was that they asked the salesperson this question on several occasions because the odometer reading in their mind was very low for a vehicle of this age (i.e. a six-year old vehicle with 50,000 kms). The Gills further testified that they received verbal assurances from the salesperson that the odometer reading was correct before they agreed to purchase the vehicle.

The salesperson for the dealership who dealt with the Gills, Rob Hawes, and the dealer principle, Marc Beune, both gave extensive evidence that they at no time made representations to the Gills regarding the accuracy of the odometer reading on this vehicle. In support of their evidence in this regard they produced a copy of the sale agreement between Parkwood Auto and Satinder and Balwinder Gill which has marked on it in the appropriate place that the distance traveled by this vehicle was "unknown."

It is also important to point out that this notation of "unknown" for the distance traveled has Mr. Gill's initials marked near it. Mr. Beune made quite a point of this during the hearings. Mr. Gill's evidence is that his initials are on the agreement to highlight his acceptance of the term "subject to finance" which is the phrase immediately below the distant traveled statement. I would also add the phrase "No Refunds" is stamped on the contract right beside the mileage "unknown" and the "subject to financing" phrases, so I could interpret Mr. Gill's initials as an acknowledgement of any one these three notations.

Suffice it to say that the written agreement (Exhibit #12) does not help to clarify the issues in dispute in this matter as it might have, had it been more carefully completed. Often individuals in dispute can have differing views on what actually happened and this case is no exception. Had the signed document been more carefully prepared as to the declarations and representations being made, or not being made by the seller, and then initialed off by both purchases, perhaps the dealer could use this document to support his argument that the purchasers knew that the true distance traveled by the vehicle they were purchasing was "unknown" - and that the Gill family was actually making up the whole story that the salesperson had assured them that the odometer reading was correct.

A great deal of discussion occurred during the hearings in this matter related to the APV9T forms used by Autoplan agents and ICBC for the transfer of vehicles from one owner to another. The evidence was that these documents were for the most part filled out by Autoplan agents and may or may not accurately reflect what was actually said between a

purchaser and seller. Parkwood Auto's argument that declarations written on the APV9T form that was later filled out and used when Mr. and Mrs. Gill transferred the 1999 BMW 323i automobile to their son Jasvinder does not answer the key issue in this case.

The key issue here is whether or not this dealer committed a *deceptive act* as outlined in Sections 4 and 5 of the BPCPA when it sold the 1999 BMW 323i automobile to Satinder and Balwinder Gill in November of 2005. Section 5(2) of the BPCPA in my mind resolves the issue in favor of the Gills. This section states that when *"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"*

Parkwood Auto has not provided sufficient evidence to prove that they did not deceive Mr. and Mrs. Gill and therefore Parkwood has committed a *deceptive act* as outlined in Sections 4 and 5 of the BPCPA.

Parkwood Auto shall pay to Mr. and Mrs. Gill the full amount of **$6000** which is my estimate of the value difference for a 6 year old BMW 323i automobile with 250,000 kms on it as compared to one with 50,000 kms on the odometer. The difference in value here is being calculated at $0.03 per kilometer. The administrative assessment and investigation cost recoveries to be paid by Parkwood Auto are dealt with later in this report.

Monica Pirvulescu

On August 8th, 2006, Ms. Pirvulescu purchased a 2004 Ford Lincoln LS automobile from Parkwood Auto Sales Limited for $23,975. The sales contract completed at that time contained a proper declaration showing that the vehicle being purchased had "sustained damages over $2000" and Ms. Pirvulescu acknowledges that she was aware of this declaration.

What is at issue here is very similar to the issue in the case with Mr. and Mrs. Gill discussed above. Ms. Pirvulescu states categorically that she asked the salesperson for details on the "prior damages" on the vehicle before she purchased it and was told that there was "a small accident over $2000, nothing else, and the car is running properly." What she later discovered was that the "prior damages" exceeded $24,000 and this information was available had either she or Parkwood Auto ordered an ICBC search at the time of sale – no search of ICBC records was made prior to the time of sale.

Again, the salesperson for the dealership who dealt with Ms. Pirvulescu, Rob Hawes, and the dealer principle, Marc Beune, both gave extensive evidence that they made no representations to Ms. Pirvulescu regarding any of the accidents on the 2004 Ford Lincoln LS automobile other than what was marked on the sale agreement. In support of their evidence in this regard they again pointed only to the sale agreement between Parkwood Auto and Ms. Pirvulescu which has marked on it the declaration showing that the vehicle had sustained damages over $2000.

While there was much discussion about the business practices of this dealership and questions that I have as to why a dealer should, or should not do an ICBC search if it knows that the vehicle had a declaration for damages over $2000, the decision in this case does not turn on these discussions.

Again, the key issue here is whether or not this dealer committed a *deceptive act* as outlined in Sections 4 and 5 of the BPCPA when it sold the 2004 Ford Lincoln LS automobile to Ms. Pirvulescu on August 8th of 2006. And here again, Section 5(2) of the BPCPA in my mind resolves the issue in favor of Ms. Pirvulescu. The section states that when *"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"*

Parkwood Auto has not provided sufficient evidence to prove that they did not deceive Ms. Pirvulescu and therefore Parkwood has committed a *deceptive act* as outlined in Sections 4 and 5 of the BPCPA.
Parkwood Auto shall pay to Ms. Pirvulescu the full amount of **$7000** which is my estimate of the value difference in a vehicle with this much prior damage as compared to one with "a small accident over $2000, nothing else." The calculation is based on approximately 30% of the original purchase price. The administrative assessment and investigation cost recoveries to be paid by Parkwood Auto are dealt with later in this report.

Trent Martens

While this third case may be another example where Parkwood Auto's business practices leave much to be desired, I do not believe that the purchaser here has a proper case under the BPCPA nor the MDA.

Mr. Martens' complaint is based on errors made by Parkwood Auto in advertisements that the dealer placed in the Auto Trader and that originally caused Mr. Martens to travel from Williams Lake to Surrey to look at this vehicle. The dealer advertised a 1998 Jimmy 4X4 showing options for an *alarm, anti-theft, CD player and Tow Package*, none of which actually existed on the vehicle purchased by Mr. Martens.

During the negotiations, Mr. Martins noticed some of these discrepancies and Mr. Beune, the dealer principle, explained to Mr. Martens that the advertisement contained a few mistakes. Subsequent to this conversation Mr. Martens still went ahead and bought the vehicle and signed the purchase agreement.

Mr. Martens knew that not everything listed in the original advertisement was on this vehicle. He discovered this for himself when he first looked at the vehicle in the dealer's yard. At that point he clearly knew, or ought to have known that he should check further before deciding to buy. The fact that he did or did not check further into the options on the vehicle is not the dealer's responsibility.

Accordingly there is no evidence before me that Parkwood did anything improper in this situation.

Closing Comments

Repeatedly through the hearings in this matter, I and our staff tried to explain to Mr. Beune his obligations as a seller under Sections 4 and 5 of the Business Practices and Consumer Protection Act. It seems he does not want to believe that this law applies to his dealership when selling a motor vehicle. During both adjournments in this matter we encouraged him to seek legal counsel and to consider the possibility of negotiating a settlement with the Gills and Ms. Pirvulescu.

Now at the end of all this I must finalize the matters reviewed above and also determine what else needs to be done, in the interests of the public, to ensure that Parkwood Auto begins to improve its business practices and begins to operate within the laws of British Columbia. Mr. Beune is clearly on the record as still believing that he has done nothing wrong and that his dealership is under no obligation to reconsider its business practices.

After considering carefully Section 164 of the BPCPA it is my decision that Parkwood Auto Sales Limited shall pay an administrative penalty of **$5000** plus all investigation and hearing costs in the Gill and Pirvulescu matters.

Under the Motor Dealer Act it is my determination that Parkwood Auto's license shall immediately have two conditions attached to it;

1. the first condition being a complete prohibition on consignment sales
2. the second condition being that Mr. Beune, dealer principle for Parkwood, shall take the Salesperson Certification Program, at his expense, no later than 3 months from the date of this decision.

In the usual course, should either of these conditions not be complied with then Parkwood Auto's license shall be cancelled.

Signed: April 23rd, 2008

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