



**MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA**  
*(Previously known as the Motor Dealer Council of B.C.)*

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 AND  
*THE BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004 c. 2**

**RE:**

**CHRYSTAL LEA HARMAN**

**COMPLAINANT**

**AND:**

**EAGLE RIDGE PONTIAC BUICK GMC LTD.**  
**(Dealer # 8214)**

**DEALER**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

Appearing for the Authority: Denis Savidan, Manager of Compliance and Investigations  
Bill Jost, Compliance Officer.

Appearing for Eagle Ridge: Seema Lal, Esq. of Shapiro, Hankinson & Knutson

Adam Isfeld – Operations Manager  
Warren Mullins – General Sales Manager  
Rob Walker – Sales Manager (December 9, 2008)

Appearing for the Complainant: Chrystal Lea Harman (December 9, 2008)

Date and Place of Hearing: November 26 and December 9, 2008, at Surrey, British  
Columbia.

**INTRODUCTION**

1. A hearing was held before me where it was alleged that Eagle Ridge Pontiac Buick GMC Ltd., Dealer Number 8214 (“Eagle Ridge”) committed a deceptive act or practice and an unconscionable act or practice contrary to sections 5(1) and 9(1), respectively, of the *Business*

*Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (“BPCPA”). Specifically, that Eagle Ridge represented to Chrystal Lea Harman that she was not legally bound to perform her obligations in a contract with Maple Ridge Chrysler where she had purchased a silver 2008 Pontiac G5, when she was; and convinced Ms. Harman to purchase from Eagle Ridge a blue 2008 Pontiac G5. Misrepresenting a person’s legal rights and obligations that causes them to make an error of judgment is deemed a deceptive act under section 4(3)(b)(iv) of the BPCPA. Alternatively, that Eagle Ridge exerted pressure on Ms. Harman to enter into the above noted agreement.

2. Ms. Harman was unable to attend the November 26, 2008, hearing for medical reasons and a summons was issued compelling her attendance at the December 9, 2008, hearing pursuant to section 151 of the BPCPA. Ms. Harman provided testimony on December 9 and was questioned by Ms. Seema Lal on behalf of Eagle Ridge.

3. An Affidavit sworn September 30, 2008, by Bill Jost was entered as Exhibit 2 with no objection from Ms. Lal. Ms. Lal did state that within the Affidavit, Mr. Jost had transcribed excerpts of taped interviews he believed pertinent. Ms. Lal stated that it would be appropriate for me to review the entirety of the taped conversations and I agreed. Copies of the taped conversations were made available to Eagle Ridge and its legal counsel. At the conclusion of the hearing I asked Ms. Lal for written submissions, which were provided, on certain points of law: (1) the duty of care in a situation such as this; and (2) whether Ms. Harman’s subject to financing with Maple Ridge Chrysler was a true condition precedent. I reviewed those submissions which were helpful. Ms. Harman was provided a copy of those submissions and provided an opportunity to respond. She did not.

4. Subsequent to the hearing, Ms. Harman was involved in an accident with the blue Pontiac G5 she purchased from Eagle Ridge. The extent of the damage and cost of repairs are currently unknown to me.

5. While I may not comment on all the evidence that was provided at this hearing, I have reviewed all the evidence and given it the appropriate due weight. For the reasons that follow, the complaint against Eagle Ridge should be dismissed.

## POSITION OF THE PARTIES

### *(a) Chrystal Lea Harman*

6. Ms. Harman states that on August 8, 2008, she went to Maple Ridge Chrysler where she entered into an agreement, subject to financing, for the silver Pontiac G5. A review of the documents presented in evidence shows this “subject to financing” was a true condition precedent. The documentary evidence does not indicate that either party could waive this condition precedent, meaning that if the condition was fulfilled, Ms. Harman and Maple Ridge Chrysler were bound to perform the contract. On August 9, 2008, at 7:30 a.m., TD Canada Trust approved the financing: pages 41-42 of the Affidavit Exhibits. At this time, an enforceable contract arose as between Ms. Harman and Maple Ridge Chrysler.

7. During testimony and under questioning from Ms. Lal, Ms. Harman stated she felt pressured into buying the silver G5 from Maple Ridge Chrysler. Ms. Harman also testified that she was provided an opportunity to take that G5 for a test drive. She did so and said she took it to her boyfriend’s yard for him to look at it and she went back to Maple Ridge Chrysler and she said “sure”. Ms. Harman then discussed how she had signed the purchase agreement (page 24 of the Affidavit exhibits) and described that while she did sign the bank documents, she could not see the top of the forms the way they were presented to her for signing. She says she only realized she had signed bank documents sometime after going to Eagle Ridge. She also testified that she signed insurance documents for the silver G5. Ms. Harman then testified she left Maple Ridge Chrysler and her boyfriend told her she had been “hosed” on the deal; she paid too much. Ms. Harman stated that her boyfriend, Chris, informed her that she could take a car back for a refund within a few days of purchasing it: taped statement of Ms. Harman August 27, 2008. Her boyfriend suggested she go to Eagle Ridge for a better deal as they were advertising G5’s for about \$5,000 less.

8. I note that Ms. Harman paid \$20,995 (before trade-in, taxes, finance charges and additional insurance/warranties she purchased), for the 2008 silver G5 from Maple Ridge Chrysler: page 24 of the Affidavit exhibits. Ms. Harman paid \$17,290.00 before taxes for the blue G5 from Eagle Ridge: page 55 of the Affidavit exhibits.

9. On August 9, 2008, Ms. Harman attended at Eagle Ridge around 8:30 a.m. where she dealt with Warren Mullins and a salesperson. She states she showed Mr. Mullins the purchase

agreement (page 24 of the Affidavit exhibits) from Maple Ridge Chrysler. She testified she told Eagle Ridge she was sure she did not sign any bank papers. She says she told Eagle Ridge she signed only one document and she also testified that she did not tell Eagle Ridge she had signed insurance documents for the silver G5. She was told by Eagle Ridge that they could help her out and that they would take care of returning the silver G5 to Maple Ridge Chrysler. She agreed under examination that the impression she left with Eagle Ridge was that she was on an extended test drive from Maple Ridge Chrysler. Ms. Harman entered into an agreement with Eagle Ridge for the purchase of an Aveo which was completed and Eagle Ridge had one of its employees transfer her license plates from the silver G5. Ms. Harman stated she took this vehicle to Kamloops to pick up her children and then showed it to her boyfriend who did not like the vehicle and told her “no”...”you can do better than this”.

10. On August 10, 2008, Ms. Harman returned to Eagle Ridge and returned the Aveo and purchased the blue G5. She testified that at this time she was still unaware she had signed any financial papers with Maple Ridge Chrysler.

11. She then testifies that a few days later, she received a phone call from Maple Ridge Chrysler who had been told by Eagle Ridge to come get the silver G5. Maple Ridge Chrysler told Ms. Harman that she had bought that car and it was her responsibility. Ms. Harman made several calls to Maple Ridge Chrysler and Eagle Ridge. Eagle Ridge informed Ms. Harman that she should call Bill Jost of the Motor Vehicle Sales Authority of B.C. (the “VSA”).

12. Finally, Ms. Harman testified that she did not feel pressured into buying the blue G5 by Eagle Ridge.

***(b) Eagle Ridge***

13. The basic facts described above are generally consistent with Eagle Ridge’s view of the events as they unfolded. Eagle Ridge emphasizes that they made reasonable inquiries with Ms. Harman regarding her deal with Maple Ridge Chrysler and the only information they obtained was that the deal was not finalized with Maple Ridge Chrysler; that she had signed no bank papers and was not aware that insurance papers were signed regarding the silver G5. Eagle Ridge provided evidence regarding Ms. Harman’s credit check which did not show she had a loan from the TD Bank, but that there was only an inquiry made on August 8. Eagle Ridge also provided evidence that it would have been unreasonable to have called Maple Ridge Chrysler, a

competitor, to ascertain whether Ms. Harman had purchased the silver G5 as they probably would not get a factual answer, if any.

14. Warren Mullins testified that before selling Ms. Harman the Aveo, he told her to return to Maple Ridge Chrysler to work things out and Ms. Harman said she did not want to return there. Ms. Harman did not contest this. Mr. Mullins says that Ms. Harman did not show him the bill of sale, but only a worksheet from Maple Ridge Chrysler (page 21 of the Affidavit exhibits). This is in contradiction to Ms. Harman's evidence that she showed him the purchase agreement (page 24 of the Affidavit exhibits).

## **THE LAW**

### ***(a) Deceptive Act or Practice***

15. The Notice of Hearing alleges Eagle Ridge committed a deceptive act or practice contrary to section 5(1) of the BPCPA and uses the language found in section 4(3)(b)(vi) which deems as deceptive:

(b) a representation by a supplier

(vi) that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading,

16. Also relevant would appear to be section 4(3)(b)(iv) which deems as deceptive:

(b) a representation by a supplier

(iv) that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact,

17. The later provision probably best relates to the representation made by Eagle Ridge that they would be able to take care of the silver G5 obtained from Maple Ridge Chrysler.

18. The definition of supplier would apply to Eagle Ridge and the definition of consumer transaction would apply to the sale in issue here.

19. The case law provides guidance in the application of these deceptive act or practice provisions. In *Rushak v. Henneken Auto Sales & Service* (1991), 59 B.C.L.R. (2d) 250, (B.C. Court of Appeal) the following principles emerge:

- a. a deceptive act or practice need not be intentional, may be inadvertent and may arise even if the supplier has an honest belief in the accuracy of the information it relays;

- b. a deceptive act is one “that tends to lead a person astray into making an error of judgment;”
- c. the Act must be construed so as to protect not only alert potential customers, but also those who are not alert, are unsuspecting and are credulous; and
- d. the Act imposes a high standard of candour on a supplier of goods.

20. *Henneken* was recently applied in *The Consumers’ Association of Canada et al. v. Coca-Cola Bottling Company et al* 2006 BCSC 863; additional reasons 2006 BCSC 1233 (B.C. Supreme Court); affirmed by 2007 BCCA 356 (B.C. Court of Appeal); leave to appeal to the Supreme Court of Canada refused (December 20, 2007, S.C.C. File No. 32248, 2007 CanLII 66731).

***(b) Unconscionable Act or Practice***

21. The Notice of Hearing also alleges Eagle Ridge committed an unconscionable act or practice by subjecting Ms. Harman to undue pressure contrary to section 9(1) of the BPCPA. Section 8 of the BPCPA directs me to consider specified factors as well as the whole of the case.

22. Mister Justice Tysoe in *Bain v. The Empire Life Insurance Company* 2004 BCSC 1577 provided a framework for analyzing a claim of unconscionable conduct and made it clear that one must review the factors under s. 8(3) of the BPCPA, but that those factors are not determinative of the issue. Justice Tysoe said the guiding principle/test is to consider the whole transaction to see if it is unconscionable:

[72] The test was expressed in different terms in a subsequent decision of the B.C. Court of Appeal, *Harry v. Kreuziger* (1978), 9 B.C.L.R. 166:

That single question is whether the transaction, seen as a whole, is sufficiently divergent from community standards of commercial morality that it should be rescinded. (p. 177)

See also *Ma v. MIV Therapeutics Inc.*, 2004 BCCA 483

23. Justice Tysoe also approvingly cited the following caution:

[88] In *Miller v. Lavoie* (1966), 60 D.L.R. (2d) 495 (B.C.S.C.), Wilson C.J.S.C. made the following observation about predecessor legislation dealing with unconscionable transactions:

This Court exists for many purposes and one of these purposes is the protection of unsophisticated and defenceless persons against the exactions of conscienceless persons who seek to take advantage of them. The legislation provides one method of exercising

that benevolent authority. But the Courts are not empowered to relieve a man of the burden of a contract he has made under no pressure and with his eyes open, merely because his contract is an act of folly. (p. 501) [underlining mine]

***(c) Burden of Proof***

24. Under sections 5(2) and 9(2) of the BPCPA, where a consumer, Ms. Harman, provides some evidence sufficient to establish that a deceptive or unconscionable act could have occurred, the evidentiary burden then shifts to the supplier, Eagle Ridge, to show that the alleged deceptive or unconscionable act or practice did not occur. These provisions reduce the evidentiary burden that the general law places on a person advancing a claim, in this case Ms. Harman. It should be noted that this shift of burden only relates to the deceptive or unconscionable act and not to damages; which must be proven by Ms. Harman.

***(d) Witness credibility***

25. It is important to consider the various factors the courts have identified to assist in determining the credibility and reliability of the evidence being submitted – see for example: *R v. J.W.R.* 2007 BCCA 452 at paragraph 73 (B.C. Court of Appeal); *R. v. R.W.B.* [1993] B.C.J. No. 758 (Q.L.) at paragraph 29 (B.C. Court of Appeal); *R v. Essex* 2004 BCSC 445 paragraphs 9-11 (B.C. Supreme Court); and *R v. Kok* 2007 BCPC 0162 at paragraph 8 (B.C. Provincial Court).

**DISCUSSION**

***(a) Witness Credibility***

26. I have concerns with the evidence of both Ms. Harman and Mr. Mullins.

***(i) Ms. Harman***

27. In reviewing Ms. Harman's testimony, she sometimes states she did not know she had signed bank papers, but only the purchase agreement and the insurance papers. In other parts of her testimony she says she remembers signing some documents other than the purchase agreement, but that they were presented to her in a way that she could not see the top of the documents. She infers she did not know exactly what these documents were until sometime after the agreement with Eagle Ridge. In her taped statement of August 27, 2008, she noted that there were other papers she was signing besides the purchase agreement – the bank documents. In her taped statement of August 15, 2008, Ms. Harman stated she did not flip over these papers when

she signed them and trusted the representative of Maple Ridge Chrysler; Darryl Dudek. Ms. Harman's statement infers she had an opportunity to "flip over" those documents and review them, but she chose not to. Also, in her taped statement of August 15, 2008, Ms. Harman stated that after signing all the papers, Mr. Dudek told her "congratulations" and sent her to the insurance agent to transfer the silver G5 into her name.

28. After reviewing the bank documents with Ms. Harman's signature and or initials, she has admitted them as hers; I cannot see how she did not know they were bank documents.

29. First, page 22 of the Affidavit exhibits is a Canada Trust Indirect Credit Application signed by Ms. Harman on August 8, 2008. The line right above the signature line says:

THIRD PARTY DETERMINATION – Is **this loan** being taken for the benefit of someone other than the Applicant or Co-Applicant. If the Applicant and/or Co-Applicant answered "yes", Dealer must complete and submit the Third Party Determination Form. [bold is mine]

30. The box is checked "no". I would note that Ms. Harman's signature crosses into this declaration. It was clearly visible to her. Under the signature line is the following in smaller print:

\* The TD Bank Financial Group means the Toronto-Dominion Bank and its affiliates, who provide deposit, investment, loan, securities, insurance and other products and services.

31. This too would have been clearly visible to Ms. Harman and she would have been able to recognize this as being a TD bank document.

32. Second, page 23 of the Affidavit exhibits is a TD Canada Trust Sales Finance Contract. Halfway up that contract are the initials of Ms. Harman beside the following information:

Principal Amount of Loan (the "Principal Amount") \$22,429.77

The Principal Amount will be advanced on Aug/08/2008  
(the "Advancement Date", using mm/dd/yyyy format)

Term of Loan: 60 months

Amortization Period of Loan: 96 months\*

(\*subject to rounding up to the next month)



33. It would have been clear to Ms. Harman, as she initialed this information, that this was a loan for \$22,429.77 which was to be advanced on August 8, 2008, the day she was at Maple Ridge Chrysler and the day before she went to Eagle Ridge. Just above the signature line, is a notation that this is a finance statement and that Ms. Harman waives her right to receive a copy of it. Below the signature line are the words Toronto-Dominion bank. Ms. Harman would have been able to see these.

34. Third, page 26 of the Affidavit exhibits shows Ms. Harman purchased mechanical breakdown insurance from the New Car Dealers Association. Beside the signature line is the Policy Purchase date of 2008 08 08. This would have been seen by Ms. Harman and is the date she was at Maple Ridge Chrysler and the day before she attended Eagle Ridge.

35. Fourth, Ms. Harman purchased a Platinum Security Protection Guarantee for \$595.00 which coverage was for a 60-month term. Page 27 of the Affidavit exhibits shows Ms. Harman's signature on that form indicating this price and term and beside her signature is the effective date of 08/08/2008. Ms. Harman was clearly aware this plan took effect on the day she was at Maple Ridge Chrysler.

36. Fifth, Ms. Harman transferred her insurance to the silver G5 on August 8, 2008. There was a \$304 additional cost, which included a \$28 fee for ownership transfer, for insuring the silver G5 and her signature appears on this form: page 28 of the Affidavit exhibits. It is odd that Ms. Harman would agree to pay \$304.00 more for insurance and ownership transfer for simply taking the silver G5 on a test drive which is the impression she says she left with Eagle Ridge.

37. Finally, in the purchase agreement with Maple Ridge Chrysler: page 21 or 50 of the Affidavit exhibits, Ms. Harman's signature is on two spots and her initials near the top right corner. There are check marks throughout the document. I specifically note that beside TOTAL is "TD", meaning TD Bank and the "Amount Financed" shows \$22429.77 and below that is the cost of financing. On the bottom right corner is the term of the financing, monthly payments and final installment amount. Ms. Harman, who testified she remembers signing only this form, certainly had information from this form alone to show this transaction was going to be financed.

38. I cannot accept Ms. Harman's evidence that she did not realize she had signed "bank documents" or that she had agreed to purchase the silver G5 from Maple Ridge Chrysler. Even if she never saw the top of the documents described above, it would still be self-evident that she

was signing bank documents and that she was agreeing to a loan for the silver G5 from Maple Ridge Chrysler on August 8, 2008. She insured the silver G5, placing ownership of it in her name, and agreeing to pay the additional cost of \$304. I find this is so because she had agreed to buy the silver G5 from Maple Ridge Chrysler and that she was aware she had signed bank documents; before she arrived at Eagle Ridge.

*(ii) Warren Mullins*

39. Mr. Mullins testified that he was shown only the worksheet from Maple Ridge Chrysler, page 21 of the Affidavit exhibits. In his taped statement, Mr. Mullins first starts out saying he looked at the purchase agreement signed by Ms. Harman and commented he believed she had bought a car. Later in his taped statement, he reverts to saying he only saw the worksheet. During questioning by Ms. Lal, Mr. Mullins was presented as having 19 years “and change” in the automobile industry. He made a specific point of saying he remembers the worksheet very well because it is a four box worksheet like they use in the USA. It does seem odd that a person with so much industry experience would mix up a purchase agreement for a worksheet. I would also note that the worksheet is not signed by Ms. Harman: page 21 of the Affidavit exhibits. This was the only inconsistency I noted in Mr. Mullins’ evidence and the rest of his evidence is consistent with Ms. Harman’s and that of the documentary evidence.

40. In assessing the impact inconsistencies have on witness credibility, the B.C. Court of Appeal in *R. v. R.W.B.* [1993] B.C.J. No. 758 (Q.L.) provides the following guidance at paragraph 29:

...[M]inor inconsistencies may not diminish the credibility of a witness unduly, a series of inconsistencies may become quite significant and cause a trier of fact to have a reasonable doubt about the reliability of the witness’ evidence. There is no rule as to when, in the face of inconsistency, such doubt may arise but at least the trier of fact should look to the totality of the inconsistencies in order to assess whether the witness’ evidence is reliable. This is particularly so when there is no supporting evidence on the central issue, which was the case here.

41. In considering all the evidence, I find the one inconsistency of Mr. Mullins’ does not detract from the rest of his evidence as will be seen below. Ms. Harman’s inconsistencies are too glaring to be discounted.

***(b) Unconscionable Act or Practice***

42. From Ms. Harman's own evidence, she did not feel she was pressured into purchasing the blue G5 from Eagle Ridge. In reviewing the totality of the evidence presented before me, as I am required to do, I find there was no unconscionable act committed by Eagle Ridge: *Bain*.

43. There was some discussion that Ms. Harman felt pressured into buying the silver G5 from Maple Ridge Chrysler. Maple Ridge Chrysler was not part of this hearing and it would not be appropriate for me to make any determination or comment on that allegation.

***(c) Deceptive Act or Practice***

44. Mr. Mullins represented to Ms. Harman, either directly or by inference that he could take care of the silver G5 and have it returned to Maple Ridge Chrysler. This turned out to be incorrect and Ms. Harman has made an error of judgment by purchasing the blue G5 from Eagle Ridge and is now responsible for two cars. Based on the information and evidence before me, it is clear Ms. Harman was not as forthcoming with information to enable Eagle Ridge to properly comment on her options to return the silver G5 to Maple Ridge Chrysler. In this factual situation, the question is who should be responsible for Ms. Harman's predicament?

45. First, I do not believe section 4(3)(b)(vi) of the BPCPA is applicable here. That section is intended to capture what might be called half-truths or statements which are contradicted or negated by the facts. For instance, stating that a motor vehicle has some minor accident repairs when in fact it was in a major accident and rebuilt is being vague and a misrepresentation under this section. In the case before me, there was no ambiguity or half-truths. Eagle Ridge made a representation that they could get the silver G5 back to Maple Ridge Chrysler, inferring Ms. Harman was not bound by her agreement with Maple Ridge Chrysler.

46. I find that section 4(3)(b)(iv) of the BPCPA is the more applicable section here. While I have found no evidence that Eagle Ridge deliberately intended to deceive Ms. Harman; an intention to deceive is not necessary for a finding of a deceptive act or practice: *Rushak*. Under the facts of this case, the claim is akin to the common law claim of negligent misrepresentation on the part of Eagle Ridge which induced Ms. Harman into entering the agreement to purchase the blue G5.

47. At this point I should note that “[s]tatutory tribunals empowered to decide questions of law are presumed to have the power to look beyond their enabling statutes in order to apply the whole law to a matter properly before them.”: *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513 headnote (Supreme Court of Canada). I therefore may apply the common law principles of negligent misrepresentation to the case before me.

48. For a claim of negligent misrepresentation to be made out, five things must be established:

- i. there must be a duty of care based upon a special relationship between the parties;
- ii. the statement or advice given must be untrue, inaccurate or misleading;
- iii. the representor (Eagle Ridge) must have acted negligently in making the representation;
- iv. the representee (Ms. Harman) must have reasonably relied on the misrepresentation; and
- v. the reliance must have resulted in financial detriment.

*Queen v. Cognos Inc.* [1993] 1 S.C.R. 87 (Supreme Court of Canada)

49. A negligent misrepresentation as to a fundamental term of a contract is grounds to claim damages or where appropriate, cancellation of that contract with the damaged party being put back into the position they were in before the contract: *BG Checo International v. B.C. Hydro & Power Authority*: [1993] 1 S.C.R. 12 (Supreme Court of Canada).

50. In the case before me, I accept that it was a fundamental term of the agreement between Ms. Harman and Eagle Ridge, that Eagle Ridge could take care of the silver G5 for Ms. Harman (return it to Maple Ridge Chrysler) so that she would not be responsible for the two cars. I am satisfied on the evidence that items (i), (ii), and (v) noted in *Cognos* above have been established. The question in this case is: (iii) did Eagle Ridge act negligently in making the representation; and (iv) was it reasonable for Ms. Harman to have relied on Eagle Ridge’s representation? For the reasons that follow I would answer no to both.

### ***Was the Representation Negligent?***

51. I find on the evidence that Eagle Ridge made all due inquiries one would expect in these circumstances. The uncontested evidence is that Eagle Ridge questioned Ms. Harman as to the nature of the agreement she had with Maple Ridge Chrysler. Under questioning by Ms. Lal, Ms. Harman agreed that the impression she left with Eagle Ridge was that she was only on an extended test drive with the silver G5. When questioned by Eagle Ridge, Ms. Harman denied she had signed bank documents and did not divulge that she had signed insurance papers transferring ownership of the silver G5 to herself. Eagle Ridge also produced evidence that they did a credit

check on Ms. Harman, but the results did not show a loan from TD for the silver G5, but only an inquiry. This would be consistent with Maple Ridge Chrysler checking Ms. Harman's credit rating but it does not establish that a loan was imminent. Eagle Ridge noted that calling Maple Ridge Chrysler, a competitor, and asking if they had a deal with Ms. Harman, would not result in a factual answer, if any. I accept that the retail motor vehicle sales industry is highly competitive and calling a competitor may not result in a factual answer, if any. In any event, Eagle Ridge was allowed to rely on what Ms. Harman told them about the nature of the agreement she had with Maple Ride Chrysler. I do not find Eagle Ridge was negligent in its inquiries and its representation was consistent with the information provided by Ms. Harman.

52. In Ms. Harman's taped statements she says Maple Ridge Chrysler never called her to tell her the financing went through. She does say Mr. Dudek told her on August 8, 2008, that there should be no problems. Based on the evidence before me, Ms. Harman never called to confirm for herself whether the financing went through before entering into the agreement with Eagle Ridge. Ascertaining whether financing had in fact gone through for the silver G5 was the responsibility of Ms. Harman and not Eagle Ridge.

53. I would note that whether Mr. Mullins saw a worksheet or a purchase agreement is really irrelevant under these facts. Had he seen the purchase agreement, he would have been put on notice that an agreement may be in place with Maple Ridge Chrysler including financing. This would require Mr. Mullins to make further inquiries about the agreement with Maple Ridge Chrysler before making the representation that he did. On the evidence before me, from Ms. Harman herself, he did make those inquiries, but Ms. Harman provided him with inaccurate information or failed to provide relevant information. Again, I cannot find negligence on the part of Mr. Mullins or Eagle Ridge.

***Was it reasonable for Ms. Harman to rely on the representation?***

54. I have found Ms. Harman must have known bank documents were signed on August 8, 2008, and that a loan was imminent – the day before she went to Eagle Ridge. She inaccurately told Eagle Ridge no such papers were signed. Also on August 8, 2008, she signed insurance papers and agreed to pay an additional \$304.00 to insure and transfer ownership of the silver G5 into her name. She withheld this information from Eagle Ridge. Ms. Harman has acknowledged that Eagle Ridge asked her about the nature of the agreement she had with Maple Ridge Chrysler

and that she left the impression she was only on an extended test drive having only signed the purchase agreement: taped statement of August 27, 2008. It would be unreasonable for a person to provide inaccurate information to, and withhold relevant information from, an “advisor” and then accept as accurate any advice or opinion made based on that inaccurate or missing information. Under these circumstances, it would be unreasonable for Ms. Harman to have relied on Eagle Ridge’s representation which was based on her own inaccurate information.

55. As I have found that Eagle Ridge was not negligent in making its representation and it was unreasonable for Ms. Harman to rely on the representation, I find that Eagle Ridge did not commit a deceptive act or practice contrary to section 4(3)(b)(iv) of the BPCPA; applying the principles in *Cognos and BG Checo International*.


***(d) Refunds on purchased motor vehicles***

56. I would make the following observation for the benefit of Ms. Harman. Ms. Harman believed that a person may return a purchased motor vehicle within a few days of the purchase date for a refund. Absent wrong doing on the part of the dealer, this is generally incorrect. Under section 49 of the *Business Practices and Consumer Protection Act*, a person has seven days to cancel a contract and return goods where it is a “distance sales” contract. A distance sale is one where goods are contracted for over a distance and a consumer does not have an opportunity to inspect the goods prior to delivery. The *Sale of Goods Act* provides similar protection. The sale between Ms. Harman and both Eagle Ridge and Maple Ridge Chrysler was not a distance sale. On the evidence before me, once Ms. Harman took possession and registered ownership of either the silver G5 or the blue G5 in her name, she is deemed to have accepted them. Her ability to return either vehicle for a refund was only if the dealers agreed to take them back.

**DISPOSITION**

57. As I have found no evidence of a deceptive or unconscionable act or practice, the complaint against Eagle Ridge is dismissed. As no compliance order or administrative penalty have been ordered, there is no right to a reconsideration pursuant to sections 180 and 181 of the BPCPA.

Date: March 17, 2009

  
Ian Christman B.A., LL.B.