

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

JOHN J. DOUGHERTY & SONS, INC., and	:	JANUARY TERM, 2004
DEANNA DOUGHERTY	:	
	:	No. 00560
Plaintiffs,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control No. 010121
HARLEYSVILLE INS. CO., and HOLMAN	:	
ENTERPRISES,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 7TH day of March, 2005, upon consideration of defendant Holman Enterprise's Motion for Summary Judgment, plaintiffs' response thereto, the memoranda in support and opposition, and all other matters of record, and in accord with the Memorandum Opinion filed contemporaneously herewith, it is hereby **ORDERED** that said Motion is **GRANTED** and all of plaintiffs' claims against Holman Enterprises are **DISMISSED** with prejudice.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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MEMORANDUM OPINION

Plaintiff Deanna Dougherty claims that, on or about October 8, 2001, she purchased a Year 2000 Jaguar automobile (the “2000 Jaguar”) for \$45,000 from a non-party, Philly Motor Sport, which was owned and operated by Melvin Shaw. *See* Amended Complaint, ¶ 7. Apparently, the 2000 Jaguar did not work well, so in or about August 2001, plaintiff returned it to Shaw, who promised to refund her money once he resold it to someone else. *See id.*, ¶¶15-17. In or about September, 2002, Shaw offered to help plaintiff procure a Year 2003 Jaguar automobile (the 2003 Jaguar”) from defendant Holman Enterprises (“Holman”), and plaintiff paid Shaw \$70,000 to do so. *See id.*, ¶¶ 21-23.

The documents issued by Holman in connection with plaintiff’s purchase of the 2003 Jaguar indicate that the 2000 Jaguar was traded in for a credit of \$45,000 towards the purchase price of the 2003 Jaguar. *See* Plaintiffs’ Response to Motions for Summary Judgment (“PRMSJ”), Ex. H. Shaw paid Holman for the 2003 Jaguar with two checks, one for \$45,000 by which Shaw allegedly purchased the 2000 Jaguar back from Holman, and one for \$27,073.10 which represented the balance of the purchase price owed on the 2003 Jaguar. *See id.* Plaintiff

admits that she received the 2003 Jaguar for which she had paid \$70,000 to Shaw, but she alleges that she never received a refund from Shaw of the \$45,000 she paid for the 2000 Jaguar. *See* Amended Complaint, ¶¶ 23-24, 66-71. Holman apparently never physically possessed the 2000 Jaguar that it took as a trade-in, although it did receive the title for it, which it then sent to a third party, Brooke Jordan, at Shaw's request. *See* PRMSJ, Ex. K. Shaw was subsequently indicted for fraud and is apparently judgment proof.

In lieu of bringing an action against Shaw for return of the \$45,000 he allegedly owes to plaintiff, plaintiff has brought suit against Holman for fraud/fraudulent misrepresentation, negligent misrepresentation, violation of the New Jersey Consumer Fraud Act, and breach of the implied duty of good faith and fair dealing. Holman has moved for summary judgment¹ on the basis that it provided plaintiff with the 2003 Jaguar at fair market value, which included a trade-in credit of \$45,000.

Plaintiff's claims against Holman must be dismissed because plaintiff has failed to show that Holman committed any wrong that harmed her or that she suffered any compensable damages as a result of Holman's conduct.² Firstly, plaintiff claims that "as a result of Holman's misrepresentations and concealments of material facts concerning the alleged trade-in of [Mrs. Dougherty's 2000 Jaguar, defendant Harleysville Mutual Insurance Company ("Harleysville")]

¹ Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether to grant summary judgment, a trial court must resolve all doubts against the moving party and examine the record in a light most favorable to the non-moving party. Summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law.

Horne v. Haladay, 728 A.2d 954, 955 (Pa. Super. 1999).

² Proof of a wrongful act by defendant that caused plaintiff damages is required with respect to each of plaintiff's claims against Holman. *See* N.J.S. §§ 56:8-6 & 56:8-2 (New Jersey Consumer Fraud Act); Kaufman v. I-Stat Corp., 754 A.2d 1188, 1195 (N.J. 2000) (negligent misrepresentation); Gennari v. Weichert Co. Realtors, 691 A.2d 350, 367 (N.J. 1997) (fraud/fraudulent misrepresentation); Sons of Thunder, Inc. v. Borden, Inc., 690 A.2d 575 (N.J. 1997) (breach of the duty of good faith and fair dealing).

has failed to afford coverage to [Mrs. Dougherty] under its policy of insurance for the theft of the 2000 Jaguar motor vehicle.” Amended Complaint, ¶ 64. However, the reason Harleysville disclaimed coverage was because corporate plaintiff, John J. Dougherty & Sons, Inc., did not provide sufficient information to Harleysville with respect to the 2000 Jaguar. *See* Order Granting Harleysville’s Motion for Summary Judgment, filed contemporaneously herewith. Therefore, Holman’s alleged misrepresentation regarding the trade-in did not cause Mrs. Dougherty to be unable to recover from her insurer for the theft of the 2000 Jaguar.

Secondly, plaintiff claims that “Holman wrongfully and carelessly represented that [Mrs. Dougherty’s 2000 Jaguar] was used as a trade-in towards the purchase of a 2003 Jaguar and that [Mrs.] Dougherty received a \$45,000 value for the 2000 Jaguar, thereby breaching [Holman’s] duty.” Amended Complaint, ¶ 67. However, Holman did give Mrs. Dougherty a \$45,000 credit for the 2000 Jaguar, and, as a result, it received only an additional \$29,073.10 for the vehicle paid on her behalf by Shaw. Holman in no way caused plaintiff to give an additional \$70,000 to Shaw when he still owed her \$45,000. The fact that Shaw apparently used plaintiff’s money to purchase the 2000 Jaguar back from Holman does not mean that Holman is guilty of defrauding plaintiff of \$45,000.³ If anybody engaged in fraud on plaintiff, it was Shaw.

³ Mrs Dougherty may have even received a benefit from the paper trade-in of the 2000 Jaguar, in that sales tax apparently was not charged on the trade-in amount. *See* Harleysville’s Motion for Summary Judgment, ¶ 14.

CONCLUSION

Since no disputed issues of material fact exist as to Holman's lack of liability to plaintiffs, Holman is entitled to judgment as a matter of law on plaintiffs' claims.

BY THE COURT,

HOWLAND W. ABRAMSON, J.