

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JULIE SHIPLET

APPELLANT-RESPONDENT,

v.

**LARRY L. COPELAND AND
JUDITH A. COPELAND, D/B/A
C & C CAR SALES,**

RESPONDENT-APPELLANT,

BOB LEES, D/B/A AUTO BODY PLUS,

RESPONDENT.

DOCKET NUMBER WD76740 Consolidated with WD76758

DATE: September 30, 2014

Appeal From:

Cass County Circuit Court
The Honorable J. Michael Rumley, Judge

Appellate Judges:

Division Four: Alok Ahuja, Chief Judge, Presiding, Cynthia L. Martin, Judge and David H. Miller, Special Judge

Attorneys:

Theodore R. Hoefle, Harrisonville, MO, for appellant-respondent.

Kenneth C. Hensley, Raymore, MO, for respondent-appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JULIE SHIPLET,

APPELLANT-RESPONDENT,

v.

**LARRY L. COPELAND AND JUDITH
A. COPELAND, D/B/A C & C CAR SALES,**

RESPONDENT-APPELLANT,

BOB LEES, D/B/A AUTO BODY PLUS,

RESPONDENT.

No. WD76740 Consolidated with WD76758

Cass County

Before Division Four: Alok Ahuja, Chief Judge, Presiding, Cynthia L. Martin, Judge and David H. Miller, Special Judge

Billy Shiplet sued Larry Copeland and Judith Copeland, d/b/a C&C Car Sales, and Bob Lees, d/b/a Auto Body Plus, alleging violations of the Missouri Merchandizing Practices Act in connection with the sale of two vehicles, a Volkswagen and a Pontiac. After suit was filed, Mr. Shiplet died, and his personal representative, Julie Shiplet, was substituted as plaintiff. Following a bench trial, the trial court entered judgment in favor of the plaintiff and against the Copelands and Lees, jointly and severally, in the amount of \$9,000 in connection with the sale of the Volkswagen. The trial court entered judgment in favor of the plaintiff and against Lees in the amount of \$5,705.73 in connection with the sale of the Pontiac. The trial court did not award the plaintiff attorney's fees. The plaintiff appeals, alleging error in the failure to award attorney's fees and in the calculation of the \$9,000 damage award. The Copelands cross-appeal, alleging they were not legally liable for Lee's sale of the Volkswagen to Mr. Shiplet.

AFFIRM.

Division Four holds:

(1) The plaintiff does not assert that the trial court abused its discretion in failing to award attorney's fees. Instead, the plaintiff's point on appeal regarding the trial court's failure to award attorney's fees is premised on the belief that the only reason her request was denied was because she failed to offer evidence of attorney's fees during trial. Though the trial court's docket entry denying the request for attorney's fees does observe that the plaintiff presented no evidence of attorney's fees at trial, the trial court did not operate under the misapprehension that it had no power to award attorney's fees. Instead, the trial court expressly noted that it was well aware that it possessed the authority and the discretion to award attorney's fees under section 407.025.

(2) The Missouri Merchandizing Practices Act allows a plaintiff who has suffered an ascertainable loss of money or property to recover actual damages, which are usually measured using the lost benefit of the bargain rule. Where, as here, property has been returned to the seller without objection, but under circumstances where the purchaser willingly used the property for a

considerable period of time aware of, and notwithstanding, its defect, calculation of the benefit of the bargain by "crediting" the price paid for the property by a reasonable value for its use is not error.

(3) The evidence presented at trial established that Lees had the authority to hold himself out as C&C Car Sales with the Copelands' consent and that Lees had the authority to use C&C Car Sales dealer tags. Moreover, the circumstances surrounding the sale of the Volkswagen would reasonably lead a third party to believe that Lees was acting on behalf of C&C Car Sales. Thus, the trial court did not err in assigning joint and several liability to the Copelands and Lees for the Missouri Merchandising Practices Act violation concerning the sale of the Volkswagen.

Opinion by Cynthia L. Martin, Judge

September 30, 2014

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