

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

WILLIAMS PONTIAC COMPANY AND BRUCE L. SANFT	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
Appellant	:	
	:	
v.	:	
	:	
PATRIOT BUICK PONTIAC GMC, INC.	:	No. 1459 EDA 2017
	:	
	:	
BRUCE L. SANFT	:	
	:	
v.	:	
	:	
PATRIOT BUICK PONTIAC GMC, INC.	:	

Appeal from the Judgment Entered April 3, 2017
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): No. 06-17613,
No. 06-18948

WILLIAMS PONTIAC COMPANY AND BRUCE L. SANFT	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
v.	:	
	:	
PATRIOT BUICK PONTIAC GMC, INC.	:	
	:	
Appellant	:	No. 1964 EDA 2017
	:	
	:	
BRUCE L. SANFT	:	
	:	
v.	:	

PATRIOT BUICK PONTIAC GMC, INC. :
:
:

Appeal from the Judgment Entered April 3, 2017
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 06-17613,
06-18948

BEFORE: GANTMAN, P.J., PANELLA, J., and DUBOW, J.

MEMORANDUM BY PANELLA, J.

FILED JULY 03, 2018

In these consolidated cross-appeals, the parties appeal the judgment entered in the Court of Common Pleas of Montgomery County, which awarded Appellee/Cross-Appellant, Patriot Buick Pontiac GMC, Inc. (hereafter "Patriot"), judgment of \$21,219.09, plus interest. We affirm the judgment in favor of Patriot. But we remand for the limited purpose of calculating and awarding prejudgment interest in favor of Patriot.

The relevant facts and procedural history of this case are as follows. Appellants/Cross-Appellees, Williams Pontiac Company and Bruce L. Sanft (collectively, "Appellants"), signed a contract with Jason Owens and Chad Helmer to act as executive managers of the Williams Pontiac Company's car dealership. Under the terms of the contract, Owens and Helmer were given control over the day-to-day operations of the business, including procurement of new vehicles and financing. The contract reflected the parties' intention for Owens and Helmer to eventually purchase the dealership. Completion of certain prerequisites, including the purchase of an associated Nissan

dealership by a separate entity, were to be concluded prior to the execution of a sale agreement.

Owens and Helmer formed Patriot, a Pennsylvania corporation, in anticipation of the sale. The parties extensively negotiated and signed the Asset Purchase Agreement, which included, among other things, Patriot's purchase of customer lists, new cars, certain used cars, accessories, shop equipment, and assignable leases. The agreement specifically excluded from the sale any Nissan assets, and money in Williams Pontiac Company's bank accounts. The parties also signed a non-compete agreement, and Patriot issued a promissory note to pay Appellant Sanft an additional \$200,000.00 on top of the sale price, disbursed in 60 monthly installments.

One week before closing, Owens and Helmer provided Appellants with a trial balance sheet reflecting the value of Williams Pontiac Company's vehicles and parts. That balance sheet showed, among other things, trade-in vehicles valued at \$1,021,289.00, accounts receivable at \$689,329.08, and the company bank balance at \$165,233.00. On March 7, 2006, the day of closing, Owens and Helmer provided an updated balance sheet, which all parties agreed to use to determine the relevant asset values. The updated balance sheet reflected trade-ins valued at \$982,671.51, accounts receivable at \$434,405.78, and a bank balance of \$459,493.77. The parties settled on an amount owed by Patriot to Appellants at closing as \$1,647,247.20, which included \$401,363.25 to be paid by the General Motors Acceptance Corporation ("GMAC"), a vehicle financing company, as part of a financing

arrangement agreed to by all parties. The parties also agreed to offset the total by \$8,720.68. Thus, Patriot paid Appellants \$1,237,163.27 in cash and bank notes at closing.

Following closing, Appellants claimed they had not received the GMAC payment, and requested counsel for Patriot make inquiries as to its whereabouts. After doing so, counsel for Patriot determined the payment had already been deposited in Appellants' corporate bank account at the time of closing, and was thus part of the \$459,493.77 bank balance Appellants retained.

In response, Appellants challenged counsel's representation that the GMAC deposit was part of the previously delivered bank balance. Unable to resolve the dispute, Appellants filed a complaint, arguing Patriot breached its contract by failing to pay the \$401,363.25 still owed as part of the final cost. The complaint also averred fraudulent misrepresentation, negligent misrepresentation, conversion, and unjust enrichment, and requested judgment for \$501,347.77, comprised of the remaining contract costs, plus alleged discrepancies in operating expenses, inventory valuation, and corporate stock tax. Appellant Sanft also filed a separate complaint for confession of judgment, claiming Patriot defaulted on its separate promissory note to pay him a total of \$200,000.00 divided into monthly installments after the sale. Judgment by confession was entered for \$208,500.30 on Appellant Sanft's complaint.

Patriot filed preliminary objections, which the court denied. Patriot then filed an answer, responding to Appellants' claims, asserting its own counterclaims, and asking for partial summary judgment. Patriot also filed a motion to strike or reopen the judgment entered in Appellant Sanft's favor, and requesting consolidation of the two complaints filed against it. The court granted the motion for consolidation, denied the motion for partial summary judgment, and ordered the judgment previously entered in favor of Appellant Sanft stricken without prejudice.

The parties proceeded to a five-day bench trial. At the conclusion of trial, the court ordered the parties to submit a post-trial statement and proposed findings of fact and conclusions of law, in lieu of presenting closing arguments to the court. On January 4, 2017, the court set forth its findings of fact and conclusions of law, ultimately finding in favor of Patriot. Afterward, the parties filed post-trial motions. The court denied and granted these in part, and entered judgment in favor of Patriot for \$21,219.09. Appellants filed a notice of appeal, and Patriot filed a notice of cross-appeal.

Preliminarily, we note Appellants raise *eleven* issues in their appellate brief. Issue selection is a key hallmark of appellate advocacy. Justice Robert H. Jackson warned of the dangers of this shotgun approach many years ago:

Legal contentions, like the currency, depreciate through overissue. The mind of an appellate judge is habitually receptive to the suggestion that a lower court committed an error. But receptiveness declines as the number of assigned errors increases. Multiplicity hints at a lack of confidence in any one. Of course, I have not forgotten the reluctance with which a lawyer

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