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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1517**

Michael Gavigan,
Respondent,

vs.

Import Auto Sales LLC
d/b/a Import Auto Sales,
Appellant,

Quality Imports, Inc., et al.,
Defendants.

**Filed June 17, 2019
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CV-17-8503

Michael Gavigan, Minneapolis, Minnesota (pro se respondent)

Kirk M. Anderson, Anderson Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-seller argues that the district court clearly erred in awarding damages to respondent-buyer that were speculative, and therefore unrecoverable. We affirm.

FACTS

On May 25, 2011, respondent Michael Gavigan purchased a 2008 Honda Civic (the car) from appellant Import Auto Sales LLC (Import) for \$13,440.61. Gavigan also paid \$873.64 in sales tax, \$1,238 for a service contract, and \$327.75 in fees. Gavigan paid \$6,000 in cash and financed the remaining \$9,900, which added an additional \$2,006.40 in finance charges.

The Carfax vehicle history report provided to Gavigan at the time of purchase did not contain any record of the car being involved in an accident, but a Carfax report printed on May 23, 2017, indicates that the car was involved in a collision with another vehicle on December 4, 2010. Gavigan asked the salesperson at the time of purchase if there had ever been collision damage to the car, and the salesperson told him no.

On January 5, 2012, the credit union financing Gavigan's purchase sent him a letter informing him that they had not received the title to the car. Gavigan has yet to acquire title to the car. Gavigan testified that without the title, the car was essentially valueless because it could not be resold.

Based upon the statements of three mechanics performing separate repairs to the car, Gavigan came to suspect that it had been involved in a prior, undisclosed, front-end collision. On September 10, 2017, Gavigan sued Import and two other defendants, seeking

damages based on Import's misrepresentations and an order requiring Import to transfer title, among other causes of action. The matter was tried to the district court on May 14, 2018. Import did not present any evidence at trial.

Gavigan testified that had the 2010 accident been disclosed to him at the time of purchase, he would have paid substantially less for the car. Based upon work Gavigan had performed to repair body damage to the front of the car caused by two unrelated accidents subsequent to his purchase, he estimated the car was worth \$11,075.01 less than his total purchase price.

Based solely on the testimony of Gavigan and his supporting exhibits, the district court granted Gavigan judgment for breach of contract and negligent misrepresentation in the amount of \$12,133.65, plus additional costs necessary to obtain title. The district court dismissed his other causes of action, with the exception of his claim for transfer of title, which the district court addressed via a separate order. This appeal followed.

D E C I S I O N

Import argues that the district court committed clear error in awarding Gavigan damages, because Gavigan's asserted damages were speculative and thus unrecoverable. "[W]e review the district court's factual findings for clear error." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013). "[W]hen determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made." *Id.* (citation and quotations omitted).

Gavigan testified that if the prior collision had been disclosed to him at the time, he would have only paid \$6,000 for the car, or \$7,440.61¹ less than the purchase price. Gavigan attempted to substantiate his estimation of the diminution of value with invoices for repairs both related and unrelated to the undisclosed collision. The district court found that repairs to a loose engine mount, a plastic shield and oil pan, and the seatbelt tensioner and collision sensor, totaling \$1,351.40, were directly related to the undisclosed collision. The district court found that invoices for body repairs to the front end of the car from two unrelated collisions, totaling \$5,577.94, “provide some context for the cost of a portion of the repairs that would otherwise be required to bring the [v]ehicle up to the condition in which it was promised.” The district court also included an additional \$1,000 estimate to repair the hood in its calculations.

Based upon his estimation that the car was only worth \$6,000 at the time of purchase, Gavigan testified that he would have foregone the \$1,238 service contract, would have paid cash and thus avoided the \$2,006.40 in finance charges, and would have paid \$548.64 less in sales tax based upon the reduced purchase price. Gavigan also testified that he estimated it would cost \$1,000 to obtain title. Based upon this evidence, the district court awarded Gavigan \$12,133.65 in damages for breach of contract and negligent misrepresentation.

¹ The district court incorrectly calculated the difference between the original \$13,440.61 purchase price and the estimated \$6,000 value at time of purchase to be \$7,340.61, and included that amount in its final award of \$12,133.65.

Because Gavigan did not introduce any evidence of the fair market value of a 2008 Honda Civic with collision damage, other than his own opinion, Import asserts the district court's award was clearly erroneous because the damages were speculative. "[D]amages which are speculative, remote, or conjectural are not recoverable. The law does not require mathematical precision . . . but only proof to a reasonable, although not necessarily absolute, certainty." *Leoni v. Bemis Co.*, 255 N.W.2d 824, 826 (Minn. 1977) (quotations and citation omitted). Despite the speculative nature of Gavigan's assertions regarding the car's value at the time of purchase, two principles support the district court's damage award.

First, "the owner of [personal] property . . . is presumptively acquainted with its value and may testify as to its value." *Lehman v. Hansord Pontiac Co.*, 74 N.W.2d 305, 309 (Minn. 1955). This rule is not without qualification. "[I]f there is an apparent lack of knowledge on the part of the owner as to value of his property, the same goes to the weight of the testimony given but not to the competency of that testimony." *Id.* at 309-10. The facts of *Lehman* are directly analogous to the present matter.

In *Lehman*, the plaintiff purchased a vehicle that the salesperson represented to be a 1951 Pontiac, but in fact turned out to be a 1950 Pontiac. The plaintiff then sued to recover the difference in value between the car he purchased and the price he paid based upon the salesperson's misrepresentations. *Id.* at 308. The supreme court ordered a new trial based on the district court's erroneous exclusion of the owner's testimony regarding his estimation of the value of the car he purchased. *Id.* at 312. Here, Gavigan, as the owner of the car, was competent to testify to its value, and it was for the district court to weigh

the credibility of that testimony. See Minn. R. Civ. P. 52.01 (“due regard shall be given to the opportunity of the [district court] to judge the credibility of the witnesses.”).

Second, Import did not present any evidence in opposition to Gavigan’s estimation of the car’s value at the time of purchase. “[O]rdinarily, when a litigant is willing to gamble on the outcome of a lawsuit and sit silent when he had an opportunity to present evidence, he should be bound by the result. . . .” *Vreeman v. Davis*, 348 N.W.2d 756, 758 (Minn. 1984) (quoting *H.P. Droher & Sons v. Toushin*, 85 N.W.2d 273, 282 (Minn. 1957)). Here, Import took a gamble and lost.

In awarding Gavigan damages for breach of contract and negligent misrepresentation, the district court specifically found that a preponderance of the evidence supported Gavigan’s testimony of the diminution in value of his car, especially in light of Import’s failure to present any evidence in opposition to Gavigan’s testimony and supporting exhibits. Because Gavigan was competent to testify to his estimation of his own car’s value, and because Import failed to introduce any evidence in opposition to Gavigan’s valuation, the district court’s damage award was not clearly erroneous.

Affirmed.