

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000155-MR

TROY COLE

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH BAMBERGER, JUDGE
ACTION NO. 00-CI-00887

THE HUNTINGTON NATIONAL BANK

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

BAKER, JUDGE: Troy Cole brings this appeal from a December 7, 2001, summary judgment of the Boone Circuit Court. For the following reasons, we affirm.

The facts of this case are straightforward and, for the most part, undisputed. Cole maintains that, on March 4, 2000, he negotiated to purchase a vehicle from the Toyota Towne dealership in Florence, Kentucky. He negotiated with a salesman for some time on this date and, ultimately, signed a personal

loan agreement with the Huntington National Bank in order to finance his purchase. Cole states that when he returned home that evening, he inspected the loan agreement and noticed that it required seventy-two payments, as opposed to the sixty payments to which he thought he had agreed.

The next morning, Cole returned the vehicle to Toyota Towne and asked that a new contract be drawn. Toyota Towne refused, and Cole informed the dealership of his intention to rescind, or revoke, the loan agreement; specifically, he indicated his refusal to go forward with the transaction. He subsequently refused to make payments as required under the written contract which he had signed, and the vehicle was ultimately repossessed.

The Huntington National Bank ("Huntington") brought suit in the Boone Circuit Court on August 1, 2000, claiming the balance due under the contract, plus interest and attorney fees. Huntington attached the "Personal Loan Agreement" that Cole had signed as Exhibit "A" to its complaint. Cole answered on November 2, 2000, and filed a counter-claim alleging that ". . . the terms of the Promissory Note were not those that he thought he had negotiated" He claims that the actions of Huntington constitute violations of Kentucky Revised Statute (KRS) 367.170 and that Huntington acted toward him ". . . with oppression, fraud, and malice" Cole sought, through his

counter-claim, compensatory damages, punitive damages, and attorney fees.

In discovery, Cole admitted the authenticity of the personal loan agreement, and he also admitted executing it. Huntington moved for summary judgment with an affidavit outlining Cole's default under the terms of the agreement, to include the amounts owing. Cole responded, by counsel, and verified by his signature on this response that ". . . the facts stated therein are true and correct to the best of [his] knowledge and belief." Again, within this response, Cole acknowledged his signature on the personal loan agreement which is in issue, and stated: "[w]hen said loan agreement was prepared, the number 72 was typed halfway out of the box provided for it in the boiler plate loan agreement and was not readily ascertainable."

This Court reviewed the entirety of the agreement which is in issue. It plainly sets forth the annual percentage rate agreed upon between the parties, the finance charges, the amount financed, and the total number of payments. While the number of payments that is typed in the blank provided is not centered perfectly, the number is clear and legible. There simply is no mistaking the number "72," the amount of the payments, or when the payments become due. These figures are not blurred, altered, obliterated, erased, or otherwise

indistinguishable. The Court further notes that there are several other words and figures that are typed into this form document which are also not perfectly centered but otherwise completely legible. Again, there is no question or argument that Cole executed this contract for the purchase of the vehicle which is in issue.

Finally, this Court specifically observes that this same contract also provides:

You also acknowledge that (i) no employee or agent of the seller, and none of our employees or agents, have told you anything that does not agree with the terms of this document; (ii) there are no side agreements or any other arrangements with Seller or anyone else that affect your obligations as set forth in this document; and (iii) you have read this entire agreement on both sides of the page, including but not limited to the "notice of limited agency" on the reverse side. This loan is subject to final acceptance of the agreement by us at our offices in Ohio.

There is simply nothing in the record which would even remotely indicate that either Huntington or Toyota Towne utilized some form of fraud, trickery, or deceit in obtaining Cole's signature. Thus, the case of Cline v. Allis-Chalmers Corp., Ky. App., 690 S.W.2d 764 (1985) is on all fours in its holding:

If the appellant intends to argue that fraud, despite his opportunity to read the contract, is a ground for rescission, then he misstates the law. In general, a person

who has the opportunity to read a contract, but does not do so and signs the agreement, is bound to the contract terms unless there was some fraud in the process of obtaining his signature. Thus, his negligence in failing to read the contract prevents any reliance on oral representations at the time of his signing. Therefore, the lease or the purchase order in the instant case may not be rescinded on the basis of fraud.

Cline at 766.

Based upon the foregoing, the summary judgment of the Boone Circuit Court is affirmed.

ALL CONCUR.

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