

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RUSSELL N. WOROBEK and ELSIE P. WOROBEK,	:	NO. 03 – 01,827
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
RICHARD W. JONES and JOY E. JONES,	:	
Defendants	:	
	:	
vs.	:	
	:	
EUGENE LANDON,	:	
Additional Defendant	:	Non-jury Trial

OPINION AND VERDICT

Before the Court are three counts filed by Plaintiffs against Defendants: breach of contract, fraud, and violation of the Unfair Trade Practices and Consumer Protection Law (UTPCPL), with respect to two antiques purchased by Plaintiffs from Defendants.¹ Plaintiffs seek either rescission of the contracts and return of their purchase prices, or damages consisting of the difference between the price of the items and their actual value, plus interest, costs and attorneys’ fees. A non-jury trial was held September 29, 2008, at the conclusion of which counsel requested additional time in which to file briefs. Those briefs have been received and the matter is now ripe for decision. Accordingly, the Court enters the following:

FINDINGS OF FACT

1. Plaintiff Russell Worobec (hereinafter “Worobec”)² has been interested in antiques for over fifty years and has purchased items (including the two antiques

¹ The claim by Defendants against Additional Defendant that he acted as their agent in the sales to Plaintiffs and thus is liable to Plaintiffs, either solely or jointly with them, was dismissed by the Court following trial, in response to Additional Defendant’s motion for compulsory non-suit.

² Although Elsie Worobec, the wife of Russell Worobec, is also a named Plaintiff, as the evidence showed she was not an active participant in the transactions at issue, the Court has not included her in its findings or discussion.

at issue here) for both their aesthetic appeal as well as their potential for increase in value.

2. Defendant Richard Jones (hereinafter “Jones”)³ has also been interested in antiques for about fifty years and has engaged in the buying and selling of antiques for a significant period of time.
3. Additional Defendant Eugene Landon (hereinafter “Landon”) has an interest in woodworking and replicating antiques, and has been friends with Jones for at least thirty years, during which time the two men have pursued their interest in antiques together. Landon has assisted in the sale of antiques by Jones to others in the past, including the sale of the two antiques at issue here.
4. Sometime prior to 1996, Jones purchased a mahogany pie-crust table. Shortly thereafter, Landon took the table and showed it to Worobec, who purchased the table for \$75,000. Landon kept \$5,000 of the purchase price as a commission and gave the remaining \$70,000 to Jones. Landon did not tell Jones who had purchased the table.
5. On or about November 1, 2000, Landon learned from Jones that he planned to sell an Ellicott tall case clock, which had been in Jones’ wife’s family⁴ since it had been crafted by Joseph Ellicott in approximately 1761, and was at the time owned by Richard and Joy Jones, they having received it as a gift from Joy Jones’ father. Landon asked Jones if he would let him find a buyer, and then told Worobec about the clock.
6. The clock had been an exhibit in a showing of “American Masterpieces, The Tall Case Clocks of the Eighteenth Century”, put on by the National Watch and Clock Museum in 1995-96.
7. Before Jones and his wife received the clock from Joy Jones’ father, Jones was asked by his wife’s father to arrange for restoration work to be done to the clock as the cartouche was missing, among other needed repairs. Jones arranged for

³ Although Joy Jones, wife of Richard Jones, is also a named Defendant, she, like Elsie Worobec, was also not involved in the transactions at issue and therefore the Court has not included her in its findings or discussion.

⁴ Joy Jones is a direct descendant of Joseph Ellicott.

Alan Miller, a renowned expert in the restoration of antiques, to perform the work and such work was completed, in approximately 1970.

8. Landon was not aware that the Ellicott clock had been restored.
9. Landon took Worobec to see the Ellicott clock at the Jones' home. While looking at the clock, Worobec asked Jones why the finish on the top of the clock looked different from the rest of the finish, and Jones gave a "mumbled" answer that Worobec could not understand.
10. While looking at the clock, Worobec stated that he had heard that Alan Miller had done extensive repairs on an Ellicott clock, and asked Jones if this clock was the subject of those repairs. Jones denied that Alan Miller had done any work on the clock, and told Worobec that the clock had been in his wife's family from the time it was made.
11. Based on Jones' representations that the Ellicott clock was in its original condition, and believing such would constitute a valuable investment, Worobec purchased the clock from Jones for \$250,000. Landon received \$25,000 as a commission and Jones received the remaining \$225,000.
12. The monies received by Jones were placed in a joint (with his wife) bank account, as were the proceeds of other sales of antiques.
13. In 2001, Worobec learned from one or more reputable sources that the Ellicott clock was not in original condition as the cartouche had been replaced. He contacted Alan Miller, who confirmed that he had done the work on the clock.
14. Worobec also learned at about that time that the pie-crust table was a "married" piece, meaning that the top and base had come from two different pieces of furniture.
15. The Ellicott clock is worth significantly less than it would be if it were in original condition.
16. The pie-crust table is worth significantly less than it would be if it were in original condition.
17. Worobec's expert witness, Richard Roan, values the clock at \$50,000.

DISCUSSION

As noted above, Worobec seeks either the return of his purchase price or the difference in value from purchase price, plus interest, costs and attorneys' fees, on either of three theories: breach of contract, fraud, or a violation of the UTPCPL. With respect to the table, however, it appears all three theories of recovery are unavailable to Worobec as they are barred by the respective statutes of limitations: four years for breach of contract,⁵ two years for fraud,⁶ and six years for violation of the UTPCPL,⁷ the table having been purchased no later than 1996 and suit having been brought on October 31, 2003. Further, as the clock was purchased on or about November 1, 2000, Worobec's fraud claim with respect thereto is also barred. The Court will therefore restrict its discussion to the claims of breach of contract and violation of the UTPCPL with respect to the clock.

Resolution of Worobec's breach of contract claim is rather simple: Worobec agreed to purchase, and paid \$250,000 for, what he was led by Jones to believe to be an original Ellicott tall case clock, but the clock Jones sold to him was not original, and was worth significantly less than an original. He thus did not receive the benefit of his bargain, and is entitled to either rescission of the contract or damages based on the difference in value. As Worobec also seeks costs and attorney's fees,⁸ which are available under the UTPCPL but not for breach of contract, the Court will also address the UTPCPL claim.

Section 201-9.2 of the UTPCPL provides, in pertinent part, as follows:

§ 201-9.2. Private actions

- (a) Any person who purchases ... goods ... primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages The Court may award to the plaintiff ... costs and reasonable attorney fees.

⁵ 42 Pa.C.S. Section 5525.

⁶ 42 Pa.C.S. Section 5524.

⁷ 42 Pa.C.S. Section 5537.

⁸ While Worobec asserts a claim for treble damages under the UTPCPL in his trial memorandum, he did not make such a claim in his Amended Complaint, and the Court will not consider such. In any event, an award of treble damages is within the discretion of the Court, 73 P.S. Section 201-9.2(a), and upon the circumstances herein presented, the Court would decline to make such an award.

73 P.S. Section 201-9.2(a). Section 3 of the act, in combination with Section 2 of the act, declares “unlawful” “[r]epresenting that goods ... have ... characteristics ... that they do not have”, and “[r]epresenting that goods ... are of a particular ... quality or grade, ... if they are of another”. 73 P.S. Section 201-3 and 201-2(4)(v) and (vii). Clearly, Jones’ statements to Worobec at the time of the clock purchase, that Alan Miller never worked on the clock when indeed he had, constituted a representation that the clock had characteristics that it did not have, or that it was of a quality that it was not, and was thus an unlawful act under the UTPCPL.

With respect to Jones’ argument that Worobec cannot recover under the UTPCPL because he purchased the clock for investment purposes, the Court notes the language of the UTPCPL is “*primarily* for personal, family or household purposes”. 73 P.S. Section 201-9.2(a) (emphasis added). The Court believes that a purchase can have investment reasons and still be considered primarily personal, and that Worobec’s purchase of the clock was of such a nature. Worobec is thus entitled to bring the action and is entitled to an award of damages.

The Court believes an award of attorney’s fees is also appropriate in this instance, as Jones’ misrepresentations went beyond a failure to inform; indeed, Jones’ statement was an outright falsehood. A separate hearing will therefore be scheduled to address the claim for attorney’s fees.

Finally, with respect to the issue of whether Joy Jones is also liable to Worobec, the Court notes Mrs. Jones’ testimony that she owned the clock, that it was her “personal clock”, and that Mr. Jones sold it “for [her]”. As was noted in Bolus v. United Penn Bank, 525 A.2d 1215, 1223 (Pa. Super. 1987):

A principal is subject to liability for loss caused to another by the other's reliance upon a tortious representation of a servant or other agent, if the representation is: (a) authorized; (b) apparently authorized; or (c) within the power of the agent to make for the principal. Restatement (Second) Agency § 257 (1958).

Inasmuch as Mrs. Jones testified that Mr. Jones sold the clock “for [her]” and that she “left all the negotiation to him”, the Court finds that Mr. Jones was acting as Mrs. Jones’ agent and further, that his representations to Worobec were within his power to make, if not apparently

authorized. Therefore, the Court finds Mrs. Jones is also liable to Plaintiffs for either the return of the purchase price or damages, as well as attorney's fees.

VERDICT

AND NOW, this 1st day of December 2008, for the foregoing reasons, the Court finds in favor of Plaintiffs and against Defendants. Mr. and Mrs. Jones may either receive back the Ellicott clock and return to the Worobecs the purchase price of \$250,000, or pay to the Worobecs the sum of \$200,000. Further, interest on either amount at the rate of 6% per annum, compounded quarterly, shall be paid from the date of the Complaint through the date of payment. A further hearing to determine the appropriate amount of attorney's fees shall be scheduled by separate notice.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Christopher Williams, Esq.
J. David Smith, Esq.
Fred Holland, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson