IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ARMSTRONG MOTORS, Plaintiff, vs. PROSPERO LEWIS, Defendant.	CIVIL NO. 803/1989 ACTION FOR DEBT

LEE J. ROHN, ESQUIRE
1131 King Street
Suite 306
Christiansted, St. Croix
Virgin Islands 00820
Attorney for Plaintiff

PROSPERO LEWIS, Pro Se
No. 34-35G Estate Whim
Frederiksted, St. Croix
Virgin Islands 00840

FINCH, Judge

MEMORANDUM OPINION
(Filed November 19, 1990)

This is an action in which the plaintiff Armstrong Motors seeks a $1,000.00 debt from the defendant Prospero Lewis in connection with the sale of a pickup truck. Armstrong Motors has moved for summary judgment on the ground that the parol evidence rule prohibits the use of oral negotiations or representations to undermine a final written contract between the parties.

Because the court finds the agreement signed by both parties was intended to be a final, integrated agreement, evidence of terms contrary to that included in the written contract is inadmissible.

FACTS

Defendant Prospero Lewis entered into a contract with Armstrong Motors for the purchase of a 1989 Mazda Truck. A price was negotiated, and the agreement was subsequently reduced to writing and signed by both parties on March 31, 1990. The written contract indicated the total purchase price to be $10,145.00. According to the written contract, Lewis paid $1,000.00 cash and was given an $800.00 net trade-in allowance on his used vehicle, a 1975 Toyota Corolla. This constituted a down payment of $1,800.00. Lewis made a subsequent payment of $7,345.00 which brought the balance owed on the sale to $1,000.00.

Lewis contends that Lloyd Daniel, Armstrong Motors' car salesman, accepted Lewis' car for a $1,800.00 trade-in which was to be used as the down payment. The balance due would then be $8,345.00. Lewis thereafter gave Lloyd Daniel a personal check in the amount of $1,000.00. This would bring the balance to $7,345.00. The balance was subsequently paid to Armstrong Motors by a check from the Bank of Nova Scotia. This, according to Lewis, was the contract, and was made pursuant to an oral agreement between Lewis and Lloyd Daniel.

DISCUSSION

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment may only be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c), 5 V.I.C. App. I, R. 56. The court, in examining a summary judgment motion, "must recognize that it is a drastic remedy" and "must resolve all inferences drawn from the facts in the light most favorable to the party opposing the motion." Continental Insurance Co. v. Bodie, 682 F.2d 436 (3d Cir. 1982); Hollinger v. Wagner Mining Equipment Co., 667 F.2d 402, 405 (3d Cir. 1981); Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038 (1977).

Inadmissibility of Parol Evidence

The parol evidence rule, or the rule of integrated contracts, states that "the parties are conclusively presumed to have incorporated their entire agreement in the written instrument which they have signed . . . the contractual terms of which cannot be varied by evidence of prior oral understandings of a different character." Richards v. Boyds, 344 F.2d 754, 756 (3d Cir. 1965). See United States v. Clementon Sewerage Authority, 365 F. 2d 609 (3d Cir. 1966). The trier of fact is prohibited from considering extrinsic evidence offered to contradict or vary the terms of a final written agreement.

The application of the parol evidence rule here is controlled by Article 2 of the Uniform Commercial Code as this case involves the sale of goods, a motor vehicle. 11A V.I.C. §2. See Armstrong Ford, Inc. v. Government of the Virgin Islands, 21 V.I. 212 (Terr. Ct. Div. St. C. 1984).

Section 2-202 provides:

> Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented
>
> (a) by course of dealing or usage of trade (§1-205) or by course of performance (§2-208); and
>
> (b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

The "rule" essentially says that to the extent the writing incorporates terms the parties agreed upon, the writing controls as to those terms and anything contradictory or inconsistent is of no force or effect. If the court finds that the writing is a "complete and exclusive" statement of the contract terms, then evidence even of terms that do not contradict terms in the writing may not be admitted.

Section 2-202 obviously operates to favor written evidence of contractual terms over oral representations. However, course of dealing, usages of trade, or course of performance may be introduced to explain or supplement the agreement even where the writing is a "complete and exclusive" statement of the terms of the agreement.[1] This is so even where the language of the contract is unambiguous on its face. But if the proffered evidence is inconsistent to the terms of the writing, it does not explain or supplement. It contradicts.

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[1] Comment 2 section 2-202 states:

> Paragraph (a) makes admissible evidence of course of dealing, usage of trade and course of performance to explain or supplement the terms of any writing stating the agreement of the parties in order that the true understanding of the parties as to the agreement may be reached. Such writings are to be read on the assumption that the course of prior dealings between the parties and the usages of trade were taken for granted when the document was phrased. Unless carefully negated they have become an element of the meaning of the words used. Similarly, the course of actual performance by the parties is considered the best indication what they intended the writing to mean.

Thus, course of dealing, usages of trade, or course of performance may not be admitted.

Because the testimony proffered by Lewis is terribly at odds with the terms of the written contract, that testimony will be precluded from the court's consideration. Lewis' position is that the used car was accepted as a trade-in for $1,800.00, and, in addition, he gave Armstrong Motors a check in the amount of $1,000.00. This would bring the actual down payment to $2,800.00. However, a reading of the contract reveals that the down payment consisted of $1,000.00 in cash plus $800.00 net trade-in allowance on the used car.

Applying the fundamental precept of §2-202 here, the Court finds the written contract was fully integrated and expressed the agreement of the parties regarding the amount disputed as down payment and what constituted the net trade-in allowance on the used car. The proffered testimony of Lewis is therefore inadmissible under 2-202. Evidence which contradicts or is inconsistent with the express terms of the contract is irrelevant and therefore inadmissible because of the principle that a contract will not be given an interpretation that is inconsistent with its express language. Tigg Corp. v. Dow Corning Corp., 822 F.2d 358, 363 (3d Cir. 1987).

Lewis is not an illiterate. He is an educated man, and has admitted that he voluntarily signed the contract. Whatever the agreement was between Lewis and Lloyd Daniel prior to signing the agreement is of no moment. "[A]bsent an allegation of fraud or incompetence a person has a duty to read a contract before signing it and his failure to do so will not excuse his ignorance of its contents. <u>Stanley A. Klopp, Inc. v. John Deere Co.</u>, 510 F. Supp. 807, 811 (E.D. Pa. 1981), <u>aff'd</u>, 676 F.2d 688 (3d Cir. 1982). The only competent evidence before the court as to what constituted the down payment and trade-in allowance on the vehicle is be to found in the written agreement between the parties. This cannot be refuted by parol evidence.

CONCLUSION

Consequently, summary judgment will be granted in favor of Armstrong Motors.[2]

DATED: 11/19/90

Raymond L. Finch, JUDGE

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[2] The Court is mindful that counsel for Armstrong Motors has indicated in open court that judgment will not be enforced against Mr.Lewis in the event Armstrong Motors is successful in this matter.