STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	
DERRICK MARTIN KING		C.A. No. 30293
Appellant		
v.		APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
BUDGET CAR MART, LLC		CASE No. CV 2021-07-2074
Appellee		

DECISION AND JOURNAL ENTRY

Dated: August 9, 2023

CARR, Judge.

{¶1} Plaintiff-Appellant Derrick Martin King appeals, pro se, the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On April 28, 2021, after a short test drive around the dealer parking lot, Mr. King purchased a used 2010 Chevy Malibu with 138,867 miles on it for $4,635.01 from Defendant-Appellee Budget Car Mart, LLC ("BCM").[1] The purchase agreement signed by Mr. King states that:

> ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER['S] AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES UNLESS DEALER FURNISHES PURCHASE[R] WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF.

[1] BCM asserts the correct entity is CTTT Enterprises, LLC, dba Budget Car Mart. However, Mr. King disputed this in the trial court and the trial court declined to resolve the issue. For ease of discussion, we will refer to Defendant-Appellee as "BCM."

> DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE VEHICLE AND ANY RELATED PRODUCTS AND SERVICES SOLD BY DEALER. DEALER NEITHER ASSUMERS NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF THE VEHICLE AND THE RELATED PRODUCTS AND SERVICES. IN THE EVENT THAT A WARRANTY IS PROVED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF, ANY IMPLIED WARRANTIES ARE LIMITED IND DURATION TO THE TERM OF THE WRITTEN WARRANTY IS PROVIDED BY DEALER OR A SERVICE CONTRACT IS SOLD BY DEALER ON ITS OWN BEHALF. ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE TERM OF THE WRITTEN WARRANTY/SERVICE CONTRACT.

{¶3} In addition, a document titled "BUYER['S] GUIDE" was attached to the window of the car Mr. King purchased. It states that the warranties for the vehicle are "AS IS – NO DEALER WARRANTY[.]" The document also indicates that "[s]poken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form." Mr. King was also provided an "as-is" disclosure form. That form provides that the "Company makes no express warranties or implied warranties about the conditions of the vehicle. It also means that you, as the buyer, take all risks as to the quality of the vehicle." It goes on to advise that "[a]ll customers are encouraged to have a mechanic of their choice inspect the vehicle before a decision is made to purchase it. Once it is sold, it is owned by the purchaser, and the sale is final. The Company will not repair the vehicle or offer a refund." Mr. King also initialed 5 statements, indicating that he acknowledged them and agreed to them. Those statements were: (1) "The Company has recommended that I/We inspect the vehicle or have an automobile service professional inspect the vehicle prior to purchase. If the vehicle was inspected, the party that inspected is the only party that described the condition of the vehicle, not an employee of The Company[;]" (2) "I, the customer buying the vehicle, understand I should not rely on any verbal representations about this

vehicle[,]" (3) "[i]f the vehicle was test driven, [n]o employee of the Company has attempted to diagnose any issue that was noticed concerning the vehicle. All vehicle inspections must be made by a professional of the customer's choice[;]" (4) "[o]nce the vehicle leaves the lot after the purchase is agreed to, any and all problems relating to the vehicle are my/our responsibility. For example, if the car will not start I/we must have it fixed at my[] own expense[;]" and (5) "I understand that I am buying a vehicle 'As Is[,]' and after I leave the dealership today, anything that goes wrong or needs repaired on the vehicle, I am buying will be at my expense."[5]

{¶4} Approximately 30 days after the purchase, Mr. King noticed a noise whenever he applied the brakes. TireChoice Auto Service Centers concluded that the car needed brake rotors and pads and provided an estimate of $685.95.

{¶5} In July 2021, Mr. King filed his initial complaint against BCM. He alleged violations of the Ohio Consumer Sales Practices Act, Breach of Express Warranty of Condition/Breach of Contract, Breach of Implied Warranties of Merchantability and Fitness for Ordinary Purpose/Warranty of Fitness for a Particular Purpose, Fraud and Misrepresentation/Concealment/Negligent Misrepresentation, Unconscionability, and Breach of Express or Implied Contract/Breach of Covenants of Good Faith and Fair Dealing.

{¶6} On September 15, 2021, Mr. King had the vehicle repaired at L.A. Motors. The repairs totaled $1,281.01 and included replacement of brake pads, rotors, hardware, calipers, hoses, and wheel bearings. Later that month, L.A. Motors replaced the air conditioner compressor and belt for $320.25.

{¶7} On November 8, 2021, Mr. King filed an amended complaint against BCM. Mr. King alleged violations of the Ohio Consumer Sales Practices Act, Fraud and Misrepresentation/Concealment/Negligent Misrepresentation, and Breach of Express or Implied

Contract/Breach of Covenants of Good Faith and Fair Dealing. In December 2021, BCM filed an answer.

{¶8} On January 31, 2022, BCM filed a motion for summary judgment as to all of Mr. King's claims. In support of the motion, BCM filed the transcript of Mr. King's deposition and the accompanying exhibits and an affidavit along with exhibits mentioned in the affidavit. Mr. King filed a motion to strike the filing of his deposition because the notary public did not appear in person, and instead appeared via Zoom. BCM opposed the motion, and the motion was ultimately denied. Mr. King filed a brief in opposition to BCM's motion for summary judgment and also a motion for summary judgment. BCM opposed the motion and also filed a motion to strike certain exhibits Mr. King filed in support of his brief in opposition to BCM's motion for summary judgment. BCM argued that the exhibits were hearsay and improper summary judgment evidence. Mr. King opposed the motion, but the trial court ultimately granted the motion to strike.

{¶9} In March 2022, Mr. King filed a motion seeking, inter alia, a protective order preventing BCM from questioning Mr. King about a prior criminal offense and preventing it from inquiring into areas Mr. King previously objected to. Mr. King also filed a motion to disqualify counsel for BCM based upon what Mr. King viewed as personal attacks against him by one of the attorneys representing BCM and the other attorney's failure to prevent the personal attacks. BCM opposed the motion to disqualify. It was subsequently denied.

{¶10} In April 2022, the trial court granted BCM's motion for summary judgment and denied Mr. King's motion for summary judgment.

{¶11} Mr. King has appealed, raising five assignments of error, some of which will be addressed out of sequence to facilitate our review. Mr. King has additionally filed a motion for this Court to take judicial notice of certain disciplinary filings related to one of BCM's attorneys.

Counsel for BCM does not oppose this Court doing so. Given the foregoing, the Court takes judicial notice of the filings. *See Davis v. Marcotte*, 10th Dist. Franklin No. 10AP-361, 2011-Ohio-1189, ¶ 33 (noting that "courts routinely take judicial notice of disciplinary proceedings and dispositions[]").

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN GRANTING BCM'S MOTION TO STRIKE THE DOCUMENTS FROM THE BBB OF AKRON AND THE OHIO ATTORNEY GENERAL.

{¶12} Mr. King argues in his first assignment of error that the trial court erred in granting BCM's motion to strike documents from the BBB and the attorney general.

{¶13} "This Court applies an abuse of discretion standard in reviewing a trial court's determination regarding a motion to strike." *Wicks v. Lover's Lane Market*, 9th Dist. Summit No. 30019, 2022-Ohio-2652, ¶ 7. An abuse of discretion implies that the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶14} On appeal, Mr. King argues that BCM waived any objection to the use of the documents because BCM did not timely file a motion to quash the subpoena for those documents as provided for by Civ.R. 45(C)(3). However, we fail to see how BCM's failure to file a motion to quash, assuming it was proper for it to do so, limited its ability to later object to the materials once Mr. King submitted them in support of his opposition to BCM's motion for summary judgment.

{¶15} Civ.R. 26(B)(1) establishes a broad scope for pretrial discovery; it provides that, "[u]nless otherwise limited by court order, * * * [p]arties may obtain discovery regarding any

nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Civ.R. 26(B)(1). Nonetheless, it also indicates that "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable." Civ.R. 26(B)(1). In other words, the documents that can be obtained under discovery are most often more extensive than the documents that are admissible. Thus, the fact that BCM did not object to Mr. King's discovery of the documents did not mean that it waived its right to object to Mr. King's subsequent attempt to introduce those documents as evidence.

{¶16} As Mr. King does not challenge the trial court's ruling on any other basis within this assignment of error, we overrule his assignment of error.

{¶17} Mr. King's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED IN DENYING KING'S MOTION TO STRIKE THE FILING OF THE JANUARY 12, 2022 DEPOSITION TRANSCRIPT.

{¶18} Mr. King asserts in his second assignment of error that the trial court erred in failing to strike the filing of his deposition transcript. Specifically, he argues that the deposition violated Civ.R. 28 as it did not take place in the physical presence of a notary public.

{¶19} As discussed above, "[t]his Court applies an abuse of discretion standard in reviewing a trial court's determination regarding a motion to strike." *Wicks,* 2022-Ohio-2652, at ¶ 7.

{¶20} Here, at the time of the deposition, Mr. King did not object to the fact that the notary public was appearing by Zoom and was not physically present in the room. While Mr. King did

later complete an errata sheet objecting to the deposition on the grounds that it did not take place in the physical presence of the notary, he did not raise any issue at the time of the deposition. Civ.R. 32(D)(3)(b) provides that "[e]rrors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition."

{¶21} While the trial court additionally cited to administrative actions of the Supreme Court of Ohio in response to the COVID-19 pandemic in support of its decision to deny Mr. King's motion, the fact that Mr. King failed to object to the absence of the notary in the room at the time of his deposition was a sufficient basis for the trial court to overrule his motion. Accordingly, this Court need not address any constitutional challenges Mr. King attempts to raise in this assignment of error related to those administrative actions and the pandemic. *See State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888, ¶ 9 ("It is well settled that this court will not reach constitutional issues unless absolutely necessary."). Mr. King has not demonstrated that the trial court abused its discretion.

{¶22} Mr. King's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN DENYING KING'S MOTION TO DISQUALIFY [BCM'S COUNSEL].

{¶23} Mr. King argues in his third assignment of error that the trial court erred in failing to disqualify BCM's counsel.

{¶24} A trial court's ruling on a motion to disqualify counsel is reviewed for an abuse of discretion. *Ceccoli v. Budd*, 9th Dist. Medina No. 19CA0086-M, 2020-Ohio-4176, ¶ 10. An abuse

of discretion means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore*, 5 Ohio St.3d at 219.

{¶25} "[A] court has inherent authority to supervise members of the bar appearing before it; this necessarily includes the power to disqualify counsel in specific cases. However, disqualification of a party's attorney is a drastic measure [that] courts should hesitate to impose except when absolutely necessary because it deprives a party of the attorney of their choosing. The trial court should disqualify counsel if, and only if, the [c]ourt is satisfied that real harm is likely to result from failing to [disqualify]." (Internal quotations and citations omitted.) *Sherwood v. Eberhardt*, 9th Dist. Lorain No. 18CA011286, 2019-Ohio-4213, ¶17.

{¶26} On appeal, Mr. King argues that BCM's counsel's personal attacks against Mr. King warranted that counsel be disqualified. This Court does not condone personal attacks against other litigants or attorneys. Nonetheless, Mr. King has not demonstrated that the trial court abused its discretion in denying his motion as he has not shown that failing to disqualify BCM's counsel would likely result in real harm. *See id.* The trial court, in its ruling denying Mr. King's motion, noted that both Mr. King and BCM's counsel had inserted unnecessary commentary into the litigation. The trial court also directed all parties to conduct themselves with civility and to refrain from further unnecessary commentary. Mr. King has not demonstrated that the trial court's ruling was unreasonable under the circumstances. Moreover, the record does not demonstrate that Mr. King has been prejudiced by any failure of the trial court to disqualify BCM's counsel. *See* Civ.R. 61.

{¶27} Mr. King's third assignment of error is overruled.

ASSIGNMENT OF ERROR V

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF BCM AND DENYING THE MOTION FOR A SUMMARY JUDGMENT IN KING'S FAVOR.

{¶28} Mr. King argues in his fifth assignment of error that the trial court erred in granting summary judgment in favor of BCM and denying his motion for summary judgment.

{¶29} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). This Court applies the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12 (6th Dist.1983).

{¶30} Pursuant to Civ.R. 56(C), summary judgment is proper if:

> (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶31} The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293 (1996). Specifically, the moving party must support the motion by pointing to some evidence in the record of the type listed in Civ.R. 56(C). *Id.* Once a moving party satisfies its burden of supporting its motion for summary judgment with acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. *Id.* at 293. Rather, the non-moving party has a reciprocal burden of responding by

setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated at trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

{¶32} First, Mr. King asserts that the exhibits that were stricken were proper evidence as they were business records and thus admissible. While this argument is outside the stated scope of his assignment of error, we will nonetheless briefly address it.

{¶33} "To qualify for admission under Evid.R. 803(6), a business record must manifest four essential elements: (i) the record must be one regularly recorded in a regularly conducted activity; (ii) it must have been entered by a person with knowledge of the act, event or condition; (iii) it must have been recorded at or near the time of the transaction; and (iv) a foundation must be laid by the custodian of the record or by some other qualified witness." (Internal quotations and citations omitted.) *Fed. Natl. Mtge. Assn. v. McFerren*, 9th Dist. Summit No. 28814, 2018-Ohio-5319, ¶ 16. "In order to be admissible under this hearsay exception, the business records must be authenticated by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be[.]" (Internal quotations and citations omitted.) *Id.* at ¶ 17. "A witness authenticating a business record must be familiar with the operation of the business and with the circumstances of the preparation, maintenance, and retrieval of the record in order to reasonably testify on the basis of this knowledge that the record is what it purports to be, and was made in the ordinary course of business. Evid.R. 803(6) does not require personal knowledge of the exact circumstances of the preparation and production of the document or of the transaction giving rise to the record." (Internal quotations and citations omitted.) *Id.*

{¶34} Here, Mr. King has not demonstrated that the alleged business records were properly authenticated and thus he has not established that they were admissible under Evid.R. 803(6). Additionally, we note that some of these documents accompanied Mr. King's deposition

transcript as exhibits as well as his own motion for summary judgment. There was no motion to strike those documents; thus, some of them are part of the record.

{¶35} Mr. King's amended complaint contained three causes of action: (1) alleged violations of the Ohio Consumer Sales Practices Act; (2) fraud, misrepresentation, concealment, and/or negligent misrepresentation; and (3) breach of express or implied contract and/or breach of covenants of good faith and fair dealing. In the amended complaint, Mr. King asserted that the salesperson stated the vehicle was in excellent condition, while at his deposition, Mr. King maintained that the salesperson said the car was perfect. With respect to the Ohio Consumer Sales Practices Act claim, Mr. King asserted that misrepresentations were made that the vehicle had performance characteristics, uses or benefits it did not and that the vehicle was of a particular standard, quality, grade, or model when it was not. Additionally, he claimed that the vehicle was sold with knowledge that the consumer would be unable to receive a substantial benefit from it, that a misleading statement of opinion was made which the consumer was likely to rely upon to his detriment, and that the vehicle sold was known to be in an unsafe or unreliable condition. As to Mr. King's fraud claim, Mr. King maintained that BCM, through its employees, made statements indicating that the vehicle would provide Mr. King with reliable transportation. Mr. King further alleged that BCM failed to disclose that the vehicle was in need of major repair and that it had received information from Fred Martin Superstore, operated by Fred Martin Motor Company, about the condition of the vehicle. With respect to Mr. King's third cause of action, Mr. King asserted that BCM breached its duty to act in good faith by breaching the express and implied warranties and misrepresenting the condition of the vehicle.

{¶36} Essentially, Mr. King contended below that representations by the salesperson that the vehicle was excellent or perfect were actionable as the vehicle developed problems beginning

30 days after purchase. The vehicle ultimately had repairs made to the braking system and air conditioning system. Additionally, Mr. King argued that BCM failed to share with him inspection records from Fred Martin Superstore concerning the vehicle and that conduct was also actionable. Mr. King asserted that Fred Martin Superstore performed an inspection on the vehicle prior to selling it to BCM and that BCM would have access to those inspection records from Fred Martin Superstore because Fred Martin Superstore and BCM are related entities. A representative from BCM averred that BCM acquired the vehicle from Fred Martin Motor Company, and it received no service records or inspection reports from Fred Martin Motor Company regarding the vehicle.

{¶37} On appeal, Mr. King has made a very general argument that there remains a genuine dispute of fact precluding summary judgment, while also asserting that he is entitled to summary judgment. The only claim that Mr. King expressly discusses is his claim related to fraud/misrepresentation. Thus, Mr. King has not demonstrated on appeal that the trial court erred in granting summary judgment to BCM as to his Ohio Consumer Sales Practices Act or contract-related claim.

Fraud/Misrepresentation/Concealment/Negligent Misrepresentation Claim

{¶38} Mr. King asserted in this claim that BCM represented the vehicle to be dependable, knew the vehicle needed major repairs at the time of the sale, and failed to disclose the information it received from Fred Martin Superstore regarding the condition of the vehicle.

{¶39} "Fraud consists of (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury

proximately caused by the reliance." (Internal quotations and citation omitted.) *Groob v. KeyBank*, 108 Ohio St.3d 348, 2006-Ohio-1189, ¶ 47. "The elements of negligent misrepresentation are as follows: One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." (Internal quotations and citations omitted.) *Delman v. Cleveland Heights*, 41 Ohio St.3d 1, 4 (1989).

{¶40} BCM presented Mr. King's deposition, accompanying exhibits, and an affidavit along with exhibits in support of its motion for summary judgment. In his deposition, Mr. King acknowledged that he did not expect the brakes to be new on a car that was over 10 years old with over 130,000 miles on it. Mr. King also agreed that repairing and checking the brakes is a common part of vehicle maintenance. He also indicated that, to his knowledge, there was nothing wrong with the brakes at the time the car was sold to him by BCM and agreed that, at no point, did the brakes ever fail to stop the vehicle. Mr. King testified that when he test drove the vehicle there were no issues that he noticed and that "everything that [he] saw worked." The car also stopped and started and was in operating order at the time of purchase. Further, despite the problems with the brakes and air conditioning that required repairs, Mr. King was able to drive the vehicle to the deposition and acknowledged that it was capable of getting him there safely.

{¶41} There is no evidence in the record that BCM knew the vehicle needed any major repairs at the time of the sale; in fact, Mr. King did not notice any issues with the vehicle until approximately 30 days later and those issues involved the brakes, a system that Mr. King himself acknowledged commonly required maintenance.

{¶42} BCM also set forth evidence that it purchased the vehicle it sold to Mr. King from Fred Martin Motor Company, and it did not receive any service records or inspection records from Fred Martin Motor Company. Mr. King did not present any evidence which contradicts that fact; instead, Mr. King has conjectured that BCM had the documents due to its affiliation with Fred Martin Superstore. Moreover, Mr. King has not detailed how the service records relate to any of the problems that he later experienced. Thus, Mr. King has not shown that he was damaged by any failure to disclose records, assuming that BCM possessed any. Overall, Mr. King has not shown on appeal that the trial court erred in granting summary judgment to BCM on his fraud claim and in denying his motion for summary judgment.

{¶43} Mr. King's fifth assignment of error is overruled.

ASSIGNMENT OF ERROR IV

THE TRIAL COURT ERRED IN DENYING KING'S MOTION FOR A PROTECTIVE ORDER.

{¶44} Mr. King argues in his fourth assignment of error that the trial court erred in denying his motion for a protective order. Given this Court's resolution of Mr. King's fifth assignment of error, this assignment of error has been rendered moot. *See* App.R. 12(A)(1)(c). We therefore decline to further address it.

III.

{¶45} Mr. King's first, second, third, and fifth assignments of error are overruled. His fourth assignment of error is moot. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

SUTTON, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

DERRICK MARTIN KING, pro se, Appellant.

LAWRENCE R. BACH, Attorney at Law, for Appellee.

KRISTOPHER IMMEL, Attorney at Law, for Appellee.

APPENDIX B

King v. Budget Car Mart LLC.
Supreme Court of Ohio
Case No. 2023-1038
October 10, 2023 Order declining jurisdiction

The Supreme Court of Ohio

Derrick Martin King

v.

Budget Car Mart, LLC

Case No. 2023-1038

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Summit County Court of Appeals; No. 30293)

Sharon L. Kennedy
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/

APPENDIX C

King v. Budget Car Mart LLC
Ohio Court of Common Pleas (Summit County)
Case No. CV-2021-07-2074
April 20, 2022 Order granting Budget Car Mart LLC's motion for summary judgment

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

DERRICK MARTIN KING	)	CASE NO. CV-2021-07-2074
	)	
Plaintiff	)	JUDGE MARY MARGARET
-vs-	)	ROWLANDS
	)	
BUDGET CAR MART LLC	)	
	)	**ORDER**
Defendant	)	

- - -

This matter is before the Court on Plaintiff Derrick Martin King's (Plaintiff) motion for summary judgment, filed on March 9, 2022, and Defendant Budget Car Mart's[1] (Defendant) motion for summary judgment, filed on January 31, 2022. Defendant's opposition to Plaintiff's motion for summary judgment was filed on March 14, 2022. Plaintiff's opposition to Defendant's motion for summary judgment was filed on February 28, 2022.

On February 1, 2022, Plaintiff filed a motion strike his deposition because the court reporter appeared via video conference, is not licensed as an online notary in Ohio, and because Defendant failed to provide an errata sheet. On February 14, 2022, Defendant filed the errata

[1] Defendant Budget Car Mart, LLC asserts the correct entity is CTTT Enterprises, DBA Budget Car Mart, however, Plaintiff contends the correct entity is Budget Car Mart, LLC. For ease of discussion, the Court will refer to the entity as each party claims.

sheet and opposed Plaintiff's motion to strike his deposition. On February 14, 2022, Plaintiff opposed Defendant's opposition to his motion to strike Plaintiff's deposition. On review, the Court finds Plaintiff's motion to strike his deposition not well taken and is DENIED. Plaintiff was aware the court reporter was appearing via video conference at the time of his deposition and he did not object on the record; *7/30/2020 Administrative Actions,* 2020-Ohio-3861(D) alters the Ohio Civil Rules and authorizes remote administration of oaths due to the public health threat caused by COVID-19, and; Plaintiff has not argued any prejudice as a result of the court reporter appearing via video conference. Defendant's motion to enlarge discovery to re-take Plaintiff's deposition is MOOT.

On March 2, 2022, Defendant filed a motion to strike hearsay, to wit: complaints regarding Defendant filed with the Ohio Attorney General and Akron Better Business Bureau. Defendant asserts the hearsay materials are not Civ. R. 56(C) evidence. Plaintiff filed a response on March 3, 2022 asserting Defendant knew about the documents and failed to object when Plaintiff subpoenaed them. On review, Defendant's motion to strike is well taken and the complaints regarding Defendant submitted to the Ohio Attorney General and Akron Better Business Bureau are stricken. The Court will not strike Plaintiff's invoice from L.A. Motors but limits its purpose to establish that Plaintiff had the work stated in the invoice performed. Plaintiff's motion for a protective order, filed on March 3, 2022, is not well taken and DENIED.

On March 2, 2022, Defendant filed a reply in support of its motion for summary judgment. On March 3, 2022, Plaintiff moved to strike Defendant's reply as it was filed without leave of Court pursuant to the Court's case management order. On review, Plaintiff's motion to strike is well taken and Defendant's reply brief is STRICKEN.

On April 28, 2021, Plaintiff purchased a 2010 Chevy Malibu LT with 138,867 miles from Defendant for $4,635.01 in "AS-IS" condition with no warranties. The salesman stated the vehicle was in "excellent" or "perfect" condition. Plaintiff test drove the vehicle in the dealership parking lot before purchasing the vehicle. At the time of purchase, Plaintiff stated that everything worked. On September 15, 2021, Plaintiff took the car to L.A. Motors and replaced the front and rear brake pads, rotors, hardware, front calipers, hoses, and front wheel bearings ("Brake Job") for $1,281.01 after driving the car for 1,312 miles. Plaintiff then had the fan belt and air conditioner compressor replaced for $320.25. Defendant obtained the vehicle from another dealer and had no knowledge of the vehicle's repair history.

Plaintiff initiated this lawsuit against Defendant for violating the Ohio Consumer Sales Practices Act (CSPA) for representing the car had performance characteristics it did not have; the vehicle was of a particular standard, quality, grade, or model, and it was not; Defendant sold the vehicle knowing Plaintiff would be unable to receive a substantial benefit from it; knowingly made a misleading statement of opinion to Plaintiff's detriment, and; Defendant sold a car to Plaintiff that was known to be in an unsafe and unreliable condition (Count One); (Count Two) Fraud, Concealment, and Negligent Misrepresentation, and; (Count Three) Breach of Express or Implied Contract/Breach of Covenants of Good Faith and Fair Dealing.

Pursuant to Civ. R. 56(C), summary judgment is appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can reach only one conclusion, and that conclusion is adverse to the non-moving party. *Temple v. Wean United Inc.*, 50 Ohio St.2d 317, 327 (1997). When seeking summary judgment, the movant bears the initial burden of demonstrating the absence of genuine issues of material fact concerning the essential elements of the non-moving party's

case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292. Specifically, the moving party must support the motion by pointing to some evidence in the record of the type listed in Civ. R. 56(C). *Id.* at 292-293. Once the moving party satisfies that burden, the non-moving party has a reciprocal burden" to "set forth specific facts showing that there is a genuine issue for trial." *Id.* at 293, quoting Civ. R. 56(E).

The contract for sale executed by Plaintiff states:

> All warranties, if any, by manufacturer or supplier other than dealer are theirs, not dealers and only such manufacturer or other supplier shall be liable for performance under such warranties. Unless dealer furnishes purchased with a separate written warranty or service contract made by dealer on its own behalf, dealer hereby disclaims all warranties, express or implied, including any implied warranties of merchantability or fitness for a particular purpose in connection with the vehicle and any related products and services sold by dealer.

The "Buyer's Guide" disclosed the vehicle was sold "AS IS – NO DEALER WARRANTY. THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE." Plaintiff also signed an "As-Is" Disclosure Form, which states, in summary, that once the vehicle leaves the lot, any problems or repairs needed are at the customer's expense and the customer takes all risk as to the quality of the vehicle, there are no warranties, and the customer should not rely on any verbal representations about the vehicle. Plaintiff is not in possession of the old replaced brake pads, rotors, calipers, brake hardware, air conditioner compressor, or fan belt. Defendant did not obtain any repair records or vehicle history from Fred Martin Motor Company although Fred Martin Collision Center performed an inspection of the vehicle before Defendant obtained it.

Plaintiff's opposition and motion for summary judgment recites a list of services performed on the vehicle prior to Defendant's acquisition of it. Many parts were replaced, and an inspection was performed by Fred Martin Collision Center on April 13, 2021. The vehicle

was acquired by Defendant shortly thereafter. Even if Defendant was aware of the service records and the inspection, Plaintiff failed to articulate how the services or the inspection should have made Defendant aware there was a brake, fan belt, or air conditioning issue at the time Plaintiff purchased the vehicle, or that the vehicle would have brake issues thirty days later, and a fan belt and air conditioner problem one hundred and twenty days later.

When the evidence is viewed in the light most favorable to Plaintiff, reasonable minds can only reach one conclusion, which is adverse to Plaintiff. There is no genuine issue of material fact remaining to be litigated regarding whether Defendant violated the CSPA, engaged in an unfair or deceptive act or practice, engaged in fraud, concealment or negligent misrepresentation, and breached an express or implied contract or the covenants of good faith and fair dealing. Plaintiff is entitled to judgment as a matter of law. A review of the record reveals Plaintiff was aware of the "as-is" condition of the vehicle when he purchased it. He test drove the vehicle in a small circle around the parking lot before deciding to buy it. The brakes and air conditioner were working. Statements by the salesperson that the eleven year old car with 138,867 miles on it was recently acquired from Fred Martin was a true statement. The salesperson's statement that the car was in "excellent" or "perfect" condition are mere expressions of opinion. The service records do not reveal any issues with the brakes or air conditioner which Defendant could have concealed from Plaintiff. Plaintiff benefitted from his purchase of the car as he continued driving the vehicle. It is not an unfair or deceptive act or practice for a used car dealer to be unable to foresee brake issues that may arise with a vehicle thirty days after it is purchased, or a fan belt and air conditioner problem one hundred and twenty days later. The written documents constitute the final written agreement of the parties and precludes Plaintiff's contract claims. Plaintiff has not articulated what contract term,

whether express or implied, Defendant is alleged to have breached, or is not performing in good faith.

On review, Defendant's motion for summary judgment on Plaintiff's first amended complaint is well taken and GRANTED. Plaintiff's motion for summary judgment is DENIED.

IT IS SO ORDERED.

JUDGE MARY MARGARET ROWLANDS

CC: DERRICK MARTIN KING, *PRO SE*
ATTORNEY LAWRENCE R. BACH
ATTORNEY KRISTOPHER IMMEL

APPENDIX D

In re Tolling of Time Requirements Imposed by Rules Promulgated by the Supreme Court & Use of Technology
2020-Ohio-1166, 158 Ohio St.3d 1447, 141 N.E.3d 974
March 27, 2020 Ohio Supreme Court Administrative Order

The Supreme Court of Ohio

ADMINISTRATIVE ACTIONS

March 27, 2020

[Cite as *03/27/2020 Administrative Actions*, 2020-Ohio-1166.]

In re Tolling of Time Requirements Imposed by Rules Promulgated by the Supreme Court and Use of Technology

WHEREAS, on March 9, 2020, the Governor of Ohio issued Executive Order 2020-01D and declared a state of emergency in Ohio in response to COVID-19;

WHEREAS, on March 11, 2020, the World Health Organization publicly characterized COVID-19 as a global "pandemic" requiring "urgent and aggressive action" to control the spread of COVID-19;

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency;

WHEREAS, on March 27, 2020, the Governor of Ohio signed into law Am.Sub.H.B. No. 197, which immediately tolled, retroactive to March 9, 2020, all statutes of limitation, time limitations, and deadlines in the Ohio Revised Code and the Ohio Administrative Code until the expiration of Executive Order 2020-01D or July 30, 2020, whichever is sooner;

WHEREAS, social distancing must be observed during the emergency period in all court proceedings and in each court in order to mitigate the spread of COVID-19;

WHEREAS, it is necessary for the Court to establish a temporary measure promoting uniformity and continuity amongst the courts of Ohio and ensuring the

continued and effective operation of the judicial system during the emergency period;

NOW THEREFORE, the Court hereby orders the following:

(A) This order shall apply retroactively to the date of the emergency declared by Executive Order 2020-01D and shall expire on the date the period of emergency ends or July 30, 2020, whichever is sooner.

(B) As used in this order:

(1) "Rules of the Court" means the following rules promulgated by the Court:

(a) The Ohio Code of Judicial Conduct;

(b) The Ohio Rules of Appellate Procedure;

(c) The Ohio Rules of Civil Procedure;

(d) The Ohio Rules of Criminal Procedure;

(e) The Ohio Rules of Evidence;

(f) The Ohio Rules of Juvenile Procedure;

(g) The Ohio Rules of Professional Conduct;

(h) The Ohio Traffic Rules;

(i) The Rules for Appointment of Counsel in Capital Cases;

(j) The Rules for the Government of the Bar of Ohio;

(k) The Rules for the Government of the Judiciary of Ohio;

(l) The Rules of Practice of the Supreme Court of Ohio;

(m) The Rules of Superintendence for the Courts of Ohio;

(n) The Supreme Court Rules for the Reporting of Opinions;

(o) Mayor's Courts Forms, Instructions, and Education & Procedure Rules.

(2) "Time requirements" means the time for filing all pleadings, appeals, and all other filings; time limitations; deadlines; and other directives related to time, including non-constitutional jurisdictional deadlines.

(C) Any requirement in a rule of the Court that a party appear in person or requiring in-person service may be waived by the Court, local court, hearing panel, board, or commission, as applicable. Appearance or service by use of technology may be allowed if it sufficiently guarantees the integrity of the proceedings and protects the parties' interests and rights.

(D) The time requirements imposed by the rules of the Court and set to expire during the term of this order shall be tolled.

(E) Upon the expiration of this order, all time requirements tolled by this order shall resume.

(F) Nothing in this order precludes filings during the duration of the order if the Court, local court, hearing panel, board, commission, or clerk is able to receive filings due to local accommodations and the matter is related to a situation that requires immediate attention.

(G) Notwithstanding the tolling of time requirements imposed by this order, the Court, local court, hearing panel, board, or commission, as applicable, may still require filing in accordance with existing rules and issue orders setting a specific schedule in a case or requiring parties to file documents by a specific due date if pertaining to a situation that requires immediate attention. A specific order in a case issued on or after March 9, 2020, shall supersede the tolling provisions of this order, unless otherwise noted in that specific order. All courts shall in every case strive to be in uniform conformance with the language and intention of this order, as well as complying with all directives from the Director of the Ohio Department of Health, until the specified expiration date.

APPENDIX E

In re Remote Administration of Oaths and Affirmations
2020-Ohio-3195, 159 Ohio St.3d 1402, 146 N.E.3d 578
June 3, 2020 Ohio Supreme Court Administrative Order

The Supreme Court of Ohio

ADMINISTRATIVE ACTIONS

June 3, 2020

[Cite as *06/03/2020 Administrative Actions*, 2020-Ohio-3155.]

In re Remote Administration of Oaths and Affirmations

WHEREAS, on March 9, 2020, the Governor of Ohio issued Executive Order 2020-01D and declared a state of emergency in Ohio in response to COVID-19;

WHEREAS, on March 11, 2020, the World Health Organization publicly characterized COVID-19 as a global "pandemic" requiring "urgent and aggressive action" to control the spread of COVID-19;

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency;

WHEREAS, social distancing must be observed during the emergency period in all court proceedings and in each court in order to mitigate the spread of COVID-19;

WHEREAS, it is imperative that courts remain operational during the emergency period and are strongly encouraged to use technology to conduct trials and proceedings remotely;

WHEREAS, Civ.R. 30(B)(6) allows a deposition to be taken by telephone or other remote means upon stipulation of the parties or order of the court;

WHEREAS, the Court's May 15, 2020 Nunc Pro Tunc Order provides that any requirement in a rule of the Court that a party appear in person may be waived and that the party may appear remotely by use of technology;

WHEREAS, the Court has released over $6,000,000 in emergency grant funding to help local courts purchase technology equipment to deal with the impact of the COVID-19 emergency and the necessary measures to mitigate the spread of virus;

NOW THEREFORE, the Court hereby orders the following:

(A) This order shall apply retroactively to the date of the emergency declared by Executive Order 2020-01D and shall expire on the date the period of emergency ends or July 30, 2020, whichever is sooner.

(B) As used in this order:

(1) "Rules of the Court" means the following rules promulgated by the Court:

(a) The Ohio Code of Judicial Conduct;

(b) The Ohio Rules of Appellate Procedure;

(c) The Ohio Rules of Civil Procedure;

(d) The Ohio Rules of Criminal Procedure;

(e) The Ohio Rules of Evidence;

(f) The Ohio Rules of Juvenile Procedure;

(g) The Ohio Rules of Professional Conduct;

(h) The Ohio Traffic Rules;

(i) The Rules for Appointment of Counsel in Capital Cases;

(j) The Rules for the Government of the Bar of Ohio;

(k) The Rules for the Government of the Judiciary of Ohio;

(l) The Rules of Practice of the Supreme Court of Ohio;

(m) The Rules of Superintendence for the Courts of Ohio;

(n) The Supreme Court Rules for the Reporting of Opinions;

(o) Mayor's Courts Forms, Instructions, and Education & Procedure Rules.

(C) Any oath or an affirmation required by a rule of the Court may be administered remotely by use of audio- or video-communication technology, provided the technology shall allow the person administering the oath or affirmation to positively identify the person taking the oath or making the affirmation.

APPENDIX F

In re Use of Technology and Remote Administration of Oaths and Affirmations
2020-Ohio-3861, 159 Ohio St.3d 1461, 150 N.E.3d 107
July 31, 2020 Ohio Supreme Court Administrative Order

The Supreme Court of Ohio

ADMINISTRATIVE ACTIONS

July 31, 2020

[Cite as *07/31/2020 Administrative Actions*, 2020-Ohio-3861.]

In re Use of Technology and Remote Administration of Oaths and Affirmations

WHEREAS, on March 9, 2020, the Governor of Ohio issued Executive Order 2020-01D and declared a state of emergency in Ohio in response to COVID-19;

WHEREAS, on March 11, 2020, the World Health Organization publicly characterized COVID-19 as a global "pandemic" requiring "urgent and aggressive action" to control the spread of COVID-19;

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency;

WHEREAS, social distancing must be observed during the emergency period in all court proceedings and in each court in order to mitigate the spread of COVID-19;

WHEREAS, it is imperative that courts remain operational during the emergency period and are strongly encouraged to use technology to conduct trials and proceedings remotely;

WHEREAS, Civ.R. 30(B)(6) allows a deposition to be taken by telephone or other remote means upon stipulation of the parties or order of the court;

WHEREAS, the Court's May 15, 2020 Nunc Pro Tunc Order providing that any requirement in a rule of the Court that a party appear in person may be waived and that the party may appear remotely by use of technology expired on July 30, 2020;

WHEREAS, the Court's June 3, 2020 Order providing that an oath or an affirmation required by a rule of the Court may be administered remotely by use of audio or video communication technology expired on July 30, 2020;

WHEREAS, the Court has released over $6,000,000 in emergency-grant funding to help local courts purchase technology equipment to deal with the impact of the COVID-19 emergency and the necessary measures to mitigate the spread of virus;

NOW THEREFORE, the Court hereby orders the following:

(A) This order shall apply retroactively to the date of the emergency declared by Executive Order 2020-01D and shall remain in effect until further order of the Court.

(B) As used in this order:

(1) "Rules of the Court" means the following rules promulgated by the Court:

(a) The Ohio Code of Judicial Conduct;

(b) The Ohio Rules of Appellate Procedure;

(c) The Ohio Rules of Civil Procedure;

(d) The Ohio Rules of Criminal Procedure;

(e) The Ohio Rules of Evidence;

(f) The Ohio Rules of Juvenile Procedure;

(g) The Ohio Rules of Professional Conduct;

(h) The Ohio Traffic Rules;

(i) The Rules for Appointment of Counsel in Capital Cases;

(j) The Rules for the Government of the Bar of Ohio;

(k) The Rules for the Government of the Judiciary of Ohio;

(l) The Rules of Practice of the Supreme Court of Ohio;

(m) The Rules of Superintendence for the Courts of Ohio;

(n) The Supreme Court Rules for the Reporting of Opinions;

(o) Mayor's Courts Forms, Instructions, and Education & Procedure Rules.

(C)(1)Any requirement in a rule of the Court that a party appear in person or requiring in-person service may be waived by the Court, local court, hearing panel, board, or commission, as applicable. Appearance, service, or oral argument by use of technology shall be allowed if it sufficiently guarantees the integrity of the proceedings and protects the parties' interests and rights.

(2) Proceedings for which the personal appearance of a party may be waived include, but are not limited to, the following:

(a) Arraignments pursuant to Crim.R. 10;

(b) Pleas pursuant to Crim.R. 11;

(c) The issuance of a warrant pursuant to Crim.R 41;

(d) Oral arguments pursuant to App.R. 21, provided nothing in this order shall deny a party oral argument when properly requested;

(e) Arraignments pursuant to Traf.R. 8.

(D) Any oath or an affirmation required by a rule of the Court may be administered remotely by use of audio or video communication technology, provided the technology shall allow the person administering the oath or affirmation to positively identify the person taking the oath or making the affirmation.