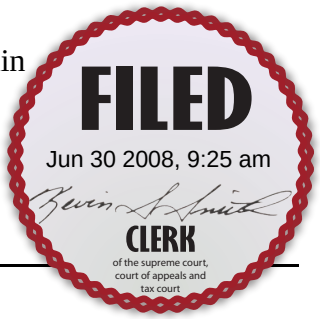
ATTORNEY FOR APPELLANT:

MATTHEW D. LATULIP
Hagberg LaTulip
Schererville, Indiana

ATTORNEY FOR APPELLEE:

DAVID A. SIRUGO
Sallwasser and McCain
LaPorte, Indiana



IN THE
COURT OF APPEALS OF INDIANA

HOOSIER MOTOR CO., INC., d/b/a/ HARBOR CHEVY CADILLAC OLDSMOBILE,	)	
Appellant-Defendant,	)	
vs.	)	No. 46A03-0802-CV-33
THE LAPORTE SAVINGS BANK,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Paul J. Baldoni, Judge
Cause No. 46D03-0603-CC-95

June 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Hoosier Motor Co., Inc., d/b/a Harbor Chevy Cadillac Oldsmobile ("Harbor") contends that the trial court erred in entering judgment in favor of LaPorte Savings Bank ("the Bank"). We reverse.

The facts most favorable to the trial court's judgment indicate that Harbor is a new and used automobile dealer. The Bank and Harbor operated under a retail dealer agreement ("the Agreement"), which governs the Bank's purchasing of retail sales contracts from Harbor. Pursuant to the Agreement, the Bank is permitted to purchase from Harbor "such retail sales contracts . . . as may be acceptable to the Bank." Appellant's App. at 39. The Agreement further provides that the "purchase of each contract shall be at the Bank's option." *Id*. The agreement also reads in pertinent part:

> In consideration of any such purchase, Dealer agrees to the following terms and conditions: ….
>
> 5. Dealer Rights and Responsibilities: …. Dealer agrees to indemnify and hold Bank harmless from all expense … including reasonable attorney fees … as a result of any breach of any representation or warranty concerning such goods or services.
>
> ….
>
> 6. Remedies: Dealer agrees that if any representation herein was falsely made or is untrue … Dealer will, on demand of Bank, accept assignment of the loan documents and pay Bank therefore the full amount then remaining due on such Loan Documents plus all costs associated with, including but not limited to, out of pocket expenses … attorney's fees and costs of litigation.

Id at 39-40.

On April 29, 2004, Mandy Smalley visited Harbor, seeking to purchase a used Chevy Impala. The following day, Smalley executed a credit application, which Harbor forwarded

to the Bank for approval. The Bank approved the credit application for the purchase of a used 2004 Chevy Impala.

Subsequently, Smalley changed her mind and sought a less expensive vehicle. Harbor's finance manager faxed a letter to the Bank explaining Smalley's decision to purchase a 2004 Malibu LS, along with the invoice for the vehicle. The Bank approved the financing of the Malibu LS. In actuality, Smalley wanted and purchased a 2004 Malibu Classic, also referred to as a Chevrolet Classic. On May 1, 2004, Smalley signed a retail installment contract with Harbor for the Chevrolet Classic and drove the vehicle off the lot.

The terms of the installment contract were for the purchase of a used 2004 Chevrolet Classic, with a financed amount of $20,113.40. The installment contract was completely accurate regarding the vehicle Smalley actually purchased from Harbor. Harbor sent the contract and odometer statement, proof of insurance, vehicle identification number, and title to the Bank. The Bank's indirect lending coordinator, who was not the same person who approved the loan for the Chevy Impala or the Malibu LS, received these documents. The Bank reviewed and purchased the contract from Harbor.

Smalley passed away in July 2005. Thereafter, Smalley's daughter made several payments and returned the car to the Bank in good condition. At that time, the Bank discovered that the car was a Chevrolet Classic and not a Malibu LS. The Bank then demanded that Harbor accept assignment of the loan documents and pay the full amount then remaining due on the loan pursuant to the Agreement. Harbor refused. On March 22, 2006, the Bank filed a complaint against Harbor seeking the outstanding balance on the loan plus interest and reasonable attorney's fees. On November 14, 2007, at the conclusion of a bench

trial, the court found that the Bank was entitled to relief pursuant to the Agreement because Harbor "misidentified the vehicle to be financed," and entered judgment in its favor in the amount of $21,508.23. *Id* at 8.

On appeal, Harbor asserts that the remedies provision of the Agreement pertains only to misrepresentations within the installment contract. Conversely, the Bank contends that the Agreement serves "to protect the Bank from *any* misrepresentations" made by Harbor. Appellee's Br. at 9 (emphasis added). We agree with Harbor.

It is not within the province of an appellate court to reweigh the evidence or to reassess the credibility of the witnesses. *Wilfong v. Cessna Corp*, 838 N.E.2d 403, 407 (Ind. 2005). While we review findings of fact under a clearly erroneous standard, we review de novo a trial court's conclusions of law. *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002). Interpretation of a contract is a pure question of law that we review de novo. *Dunn v. Meridian Mut. Ins. Co.*, 836 N.E.2d 249, 251 (Ind. 2005).

The Agreement governs the Bank's purchasing of installment contracts from Harbor, and it is presumed to have embodied the parties' entire agreement. *See Keystone Square Shopping Ctr. Co. v. Marsh Supermarkets*, 459 N.E.2d 420, 422 (Ind. Ct. App. 1984) (holding that a written contract is presumed to embody the parties' entire agreement); *see also* Appellant's App. at 40 (Agreement) (stating, "this agreement contains all terms, conditions and provisions agreed upon by the parties with respect thereto, and no modification or waivers shall be made therein unless in writing."). Nothing within the Agreement suggests that the vehicle described in an installment contract must match the vehicle described in a previously submitted loan application. Additionally, to the extent that

the Bank needed protection from possible misrepresentations Harbor made outside the scope of the installment contract, the Agreement provides the Bank the option of purchasing only those contracts that, once reviewed, were deemed acceptable by the Bank.

In light of these considerations, we cannot find that the parties intended for the Agreement to apply to misrepresentations outside of the installment contract. While there was a misidentification of Smalley's car during the loan approval process, there was no misrepresentation within the actual installment contract. The installment contract accurately represented the vehicle that was purchased by Smalley, as well as the amount being financed. As such, the Bank is not entitled to relief under the Agreement.

To the extent the Bank asserts that Harbor's misidentification of Smalley's car during the loan approval process was fraudulent, the evidence is insufficient to support such a claim. There is no evidence that Harbor's misidentification was done with knowledge or reckless ignorance as to its falsity, nor was it shown that the error was made with intent to deceive the Bank. *See Bilimoria Computer Sys., LLC v. America Online*, 829 N.E.2d 150, 155 (Ind. Ct. App. 2005) (listing elements of actual fraud).

Even if the evidence were sufficient to support a claim of fraud, it would be insufficient to support a claim of fraudulent inducement. To establish a claim of fraudulent inducement, the complaining party must have had a reasonable right to rely upon the representations. *Westfield Ins. v. Yaste, Zent & Rye Agency*, 806 N.E.2d 25, 31 (Ind. Ct. App. 2004), *trans. denied*. This Court has previously held that where parties stand mentally on equal footing, and in no fiduciary relation, the law will not protect the one who fails to exercise common sense and judgment. *Ruff v. Charter Behavioral Sys. of N.W. Ind., Inc*.,

669 N.E.2d 1171, 1175 (Ind. Ct. App. 1998), *trans. denied* (1999). Here, we cannot find that the Bank's reliance on Harbor's misidentification was reasonable where the Bank, a sophisticated business entity, had ample opportunity to review the terms of the contract, and a cursory inspection would have easily detected the discrepancy between the contract and the loan approval documents.

In sum, we conclude that the trial court erred in entering judgment in favor of the Bank.

Reversed.

BARNES, J., and BRADFORD, J., concur.