

RECENT FBPA CASES 2002

Tenant filed FBPA action against former landlord. Court discusses requirements for the consumer's 30 day demand letter. Here the consumer's letter did not state that a claim would be brought under the FBPA if the landlord did not respond. Citing the *Lynas* case, the court held that a demand letter is sufficient as long as it informs the business of the underlying facts that give rise to the consumer's claim. The letter does not have to cite any O.C.G.A. sections. In this case, the letter claimed the landlord had acted in an unfair manner when it evicted her after agreeing not to do so. This letter satisfied the FBPA. The court reversed the trial court which had found the letter did not comply with the demand letter requirements of the FBPA. *Stringer v. Bugg*, 254 Ga. App. 745, 563 S.E.2d 447 (2002).

The consumer purchased a truck from a car dealer, and later sued under the FBPA alleging the seller misrepresented the condition of the vehicle. The seller claimed the FBPA did not apply because this was a private transaction outside the consumer marketplace. The court disagreed, finding that the dealer "opened its doors to sell vehicles to the general public." *Catrett v. Landmark Dodge, Inc.*, 253 Ga. App. 639, 560 S.E.2d 101 (2002).

The consumer sued under the FBPA, alleging the seller misrepresented the condition of the car he sold to the consumer. The seller had first accepted an offer to purchase made by another buyer, but then sold to the consumer when the consumer immediately paid with a cashier's check. The court ruled on five objections made by the seller. 1) The seller claimed he was not in the business of selling cars, but bought and sold cars merely as a hobby. The court rejected this claim, finding that he sold about three cars every year. 2) The seller claimed this was a private transaction, not injuring the public in general. The court pointed out that he had placed an ad in the newspaper and had offered to sell the car to one other person in addition to the consumer. The court distinguished *Burdakin* by pointing out that advertising to the general public was not involved in that case. 3) The seller next argued that *Zeeman* requires the consumer to exercise diligence, which this consumer had failed to do. The court ruled that diligence is a question for the jury, and the jury in this case found the consumer was sufficiently diligent. The court believed that although the jury could have concluded the consumer had not exercised sufficient diligence, there was enough evidence of diligence to uphold the jury's finding. The consumer asked the seller about the condition and the history of the car three times and test drove the car. Nothing in the circumstances put the consumer on notice that the seller might be lying. 4) The trial court charged the jury that the measure of damages was the difference between the fair market value of the car when the consumer purchased it and the fair market value when the consumer sold it. The court ruled that this was incorrect, because the correct measure is "actual injury suffered." The court found, however, that the error was harmless. 5) The court upheld the award of the consumer's attorney's fee even though the evidence consisted solely of the testimony of the consumer's attorney. *Campbell v. Beak*, 2002 WL 1477456 (Ga. Ct. App. July 11, 2002).