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NEW SERVER

FIRST NATIONAL BANK OF LITCHFIELD v. MILLER—DISSENT

BISHOP, J., dissenting. In this contract matter, the trial court determined that the defendants Bruce V. Miller and Linda M. Miller accepted the boat in question and that their acceptance had not been revoked by their later refusal to take possession of the boat. Because the question of acceptance is fact bound and because I believe that the court's determination in this regard was not clearly erroneous, I respectfully dissent.

On appeal, the Millers challenge the court's finding that they accepted the boat. While I agree with the majority's recitation of the facts leading to the parties' dispute, I depart from the majority's analysis of the facts and, in particular, its failure to give appropriate deference to the court's factual findings.

To be sure, the question of whether the Millers accepted the boat is a factual finding for the trial court's determination. See *Contoura Business Products, Inc. v. TLD, Inc.*, 1 Conn. App. 690, 692, 474 A.2d 1265 (1984). “[W]e will upset a factual determination of the trial court only if it is clearly erroneous. The trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . We cannot retry the facts or pass on the credibility of the witnesses. A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” (Internal quotation marks omitted.) *Forastiere v. Higbie*, 95 Conn. App. 652, 655–56, 897 A.2d 722 (2006). “In making this determination, every reasonable presumption must be given in favor of the trial court's ruling.” (Internal quotation marks omitted.) *Wesley v. Schaller Subaru, Inc.*, 277 Conn. 526, 544, 893 A.2d 389 (2006). Rather than employing the deferential standard of review applicable to a trial court's factual findings, the majority claims an entitlement to plenary review and concludes that the record contains no facts consistent with the court's findings. I believe, to the contrary, that the record provides ample support for the court's finding of acceptance.

General Statutes § 42a-2-606 (1) provides: “Acceptance of goods occurs when the buyer (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or (b) fails to make an effective rejection as provided by subsection (1) of section 42a-2-602, but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or (c) does any act inconsistent with the seller's ownership; but if such act is

wrongful as against the seller it is an acceptance only if ratified by him.”

In this case, the Millers signed a purchase agreement on May 12, 2000. Subsequently, the Millers requested that the seller, the defendant Norwest Marine, Inc. (Norwest), install a depth finder and a radio on the boat. Additionally, they had the bottom of the boat primed and painted. Finally, the Millers filed an application for a registration with the department of motor vehicles on which they listed themselves as the owners of the boat. All of these actions were inconsistent with Norwest’s ownership of the boat and consistent with the court’s finding that the Millers had accepted the boat.¹ Indeed, these actions were consistent with the Millers’ ownership of the boat.² Therefore, in accordance with § 42a-2-602 (c) and the highly deferential standard we are required to employ, I would find that the court’s conclusion that the Millers accepted the boat was not clearly erroneous.

Because acceptance of goods precludes rejection,³ and the Millers have not challenged the court’s finding that they failed to revoke their acceptance of the boat, I would affirm the judgment of the court.⁴

The majority also concludes that the court improperly determined that the plaintiff, First National Bank of Litchfield, had not violated General Statutes § 42-100c.⁵ This statute, entitled “Errors in the statement of a retail credit account,” refers to notification by a debtor of an error in the statement of a retail credit account sent by a creditor to a debtor and requires a creditor to investigate whether there was such an error. The Millers did not claim that there was an error in the statement of their account, but rather they were notifying the plaintiff that there was a dispute between them and Norwest, and that they were canceling the transaction and refusing to make any payments at all. As noted by the trial court, the Millers’ contention that § 42-100c required the plaintiff to investigate the underlying controversy between them and Norwest as to acceptance or revocation of acceptance, or both, does not find support in the statute or in any other legal authority. I further note that the statute is part of chapter 733a of the General Statutes, entitled “Retail Credit Transaction Statement Errors.” I read this chapter as pertaining exclusively to the documentation of retail credit transactions and not to disputes underlying the transaction. Therefore, I would affirm the judgment of the court in this respect as well.

Accordingly, I respectfully dissent.⁶

¹ Acts that courts have found inconsistent with the seller’s ownership include “making payments, taking possession of the goods, use of the goods, repairing, working on them, attempts to resell them, and dealing with them in other ways.” 1 J. White & R. Summers, Uniform Commercial Code (4th Ed. 1995) § 8-2, p. 437.

² Although, arguably, the acts of a buyer in justifiable ignorance of the defective nature of the goods should not be held inconsistent with the seller’s

ownership, in this instance, because the Millers could have undertaken a sea trial to discover any latent defects prior to customizing the boat and having it registered in their names, I would not find the Millers' ignorance of the claimed defect in this case justifiable. Additionally, I believe that the record supports the court's conclusion that the Millers did not properly revoke their acceptance because the claimed defect was not a major problem and did not substantially impair the value of the boat because the defect was seasonably cured by Norwest.

³ General Statutes § 42a-2-607 (2) provides in relevant part: "Acceptance of goods by the buyer precludes rejection of the goods accepted"

⁴ Because I agree with the trial court's determination that there was acceptance, I would also affirm the court's judgment in favor of the plaintiff and Norwest as to the Millers' counterclaim and cross claim.

⁵ General Statutes § 42-100c (a) provides: "If a debtor, upon receipt of a statement of his account under a retail credit transaction, believes that there is an error in such statement as to the whole or any part of the amount shown as owing to the creditor, he may, in writing, not later than sixty days from the date of mailing of such statement, so notify the creditor, stating the basis or reasons for his belief that the statement is in error. The creditor shall within thirty days after receipt of such notification send a written acknowledgment to the debtor, and no later than two complete billing cycles of the creditor but in no event more than ninety days after receipt of the notification, investigate the debtor's complaint and make the necessary corrections in such account and submit a corrected statement or send a written explanation to the debtor setting forth the reasons why the creditor believes the account is correct as shown in the statement. Prior to completing such investigation, the creditor shall take no action to collect the amount in dispute or to in any way affect the debtor's credit rating."

⁶ I agree with the majority's analysis of the remaining issues on appeal.
