

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
SCIOTO COUNTY

A.B., Inc., : Case No. \_\_\_\_\_  
Plaintiff-Appellee, :  
v. : On Appeal from the  
C.D., : Scioto County Court of  
Defendant-Appellant. : Common Pleas,  
Case No. \_\_\_\_\_

---

BRIEF OF APPELLANT C.D.

---

Jill Jones, Esq.  
111 E. Main St.  
Portsmouth, Ohio 45662  
740-882-2222  
740-882-1111 (Fax)

Counsel for Appellee A.B., Inc.

C.D.  
222 W. 1st St.  
Portsmouth, Ohio 45662  
740-987-6543

*Pro se* Appellant

## Table of Contents

	<u>Page No.</u>
Table of Authorities.....	ii
Assignments of Error and Issues Presented for Review.....	iii
Statement of the Case and the Facts.....	1
Argument.....	2
Assignment of Error No. 1.....	2
Issue Presented for Review.....	2
Assignment of Error No. 2.....	3
Issue Presented for Review.....	3
Conclusion.....	4
Certificate of Service.....	4

## Table of Authorities

### Page No.

#### **Cases:**

*Harper v. Lee*, 100 Ohio St.3d 676, 2009-Ohio-321.....2

*Jack v. Jill*, 4th Dist. Ross No. 14CA3954, 2014-Ohio-210.....3

#### **Rules:**

Civ.Pro.R. 56.....2

#### **Statutes:**

R.C. 2547.97.....3

## **Assignments of Error and Issues Presented for Review**

### **Assignment of Error No. 1:**

The trial court erred in granting summary judgment to Appellee A.B., Inc.

### **Issue presented for review:**

Did the deposition testimony of Joan Jett establish a genuine issue of material fact such that the trial court should have denied Appellee's motion for summary judgment?

### **Assignment of Error No. 2:**

The trial court abused its discretion when it failed to allow Appellant C.D. additional time to complete discovery.

### **Issue presented for review:**

Should the trial court have granted Appellant C.D.'s motion for an extension of time so he could submit additional evidence in opposition to the motion for summary judgment?

## **STATEMENT OF THE CASE**

Appellee A.B., Inc. filed a complaint against Appellant C.D. in the Scioto County Court of Common Pleas on May 1, 2013 and C.D. filed a timely answer. The deadline for the completion of discovery was November 2, 2013. (Scheduling Order p. 2.) On November 13, 2013, A.B., Inc. filed a motion for summary judgment. C.D. asked the trial court for additional time to obtain further discovery but the court denied the motion. C.D. filed a memorandum in opposition to the motion for summary judgment, but the trial court granted the motion for summary judgment on January 15, 2014. The trial court awarded A.B., Inc. a total judgment of \$18,500 plus interest.

## **FACTS**

On January 5, 2012, C.D. purchased a vehicle from A.B., Inc. for his daughter, Joan Jett. (Complaint p. 1.) To fund the purchase price of the vehicle, A.B., Inc. loaned C.D. \$15,000 to be re-paid in monthly installments over three years with an annual interest rate of 9%. (Id. p. 2.) Joan Jett drove the vehicle until April 2012 without incident. (Answer p. 6.) However, in mid-April 2012, the vehicle stopped working. (Id.) Joan Jett had the vehicle towed to Stan's Garage and the owner, Stan Mechanic, informed her that the car engine had been improperly re-built. (Jett Depo. p. 25.) Mr. Mechanic informed Ms. Jett that the engine needed to be replaced at a cost of \$10,000. (Id. p. 26.) Thereafter, C.D. contacted A.B., Inc. and informed it that he no longer wanted the car because it had been sold to him in a defective condition and he refused to make further payments. (Complaint p. 5.) A.B., Inc. told C.D. he had purchased the car "as is," did not accept the return of the car, and instead filed a lawsuit for breach of contract when C.D. refused to make any more car loan payments. (Complaint p. 7.)

## ARGUMENT

### Assignment of Error No. 1:

**The trial court erred in granting summary judgment to Appellee A.B.**

### Issue presented for review:

**Did the deposition testimony of Joan Jett demonstrate a genuine issue of material fact such that the trial court should have denied Appellee's motion for summary judgment?**

An appellate court reviews the grant of summary judgment under a de novo standard of review. *Harper v. Lee*, 100 Ohio St.3d 676, 2009-Ohio-321, at ¶ 3.

Accordingly, under Civ.R. 56(C), this Court should only uphold summary judgment when it is clear that: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.

Here, Joan Jett testified at her deposition that she had not replaced the engine originally in the vehicle at the time of purchase. She also testified that the car stopped working when she was driving down the road in mid-April and that she immediately had the vehicle towed to Stan's Garage. Finally, Ms. Jett testified that Stan Mechanic informed her that the original car engine had been replaced with an improperly re-built engine and that is why the car was not running properly. (Jett Depo. pp. 25-30).

Because there is a genuine issue as to whether A.B., Inc. knowingly sold C.D. a defective vehicle and, therefore, fraudulently induced him into signing the contract, the trial court should not have granted summary judgment in A.B., Inc.'s favor.

**Assignment of Error No. 2:**

**The trial court abused its discretion when it failed to allow Appellant C.D. additional time to complete discovery.**

**Issue presented for review:**

**Should the trial court have granted Appellant C.D.'s motion for an extension of time to submit evidence in opposition to the motion for summary judgment?**

The decision to grant or deny a motion for an extension of time for additional discovery lies within the trial court's discretion. However, a trial court abuses that discretion when its actions are unreasonable, arbitrary or unconscionable. *Jack v. Jill*, 4th Dist. Ross No. 14CA3964-2014-Ohio-210. See, also, R.C. 2547.97.

C.D. attempted to depose Stan Mechanic during the discovery period scheduled by the trial court. However, C.D. learned that Stan Mechanic had sold Stan's Garage and retired to Florida. (Motion for Extension p. 2.) Although C.D. made several efforts to locate and depose Mr. Mechanic, he was unable to do so as of the discovery deadline. (Id.) Therefore, C.D. filed a motion for additional time to conduct discovery so he could hire a private investigator to locate Mr. Mechanic. Since this was C.D.'s first request for additional time to conduct discovery and he set forth a good reason for seeking the additional time, the trial court's decision to deny the motion was unreasonable and arbitrary.

## CONCLUSION

This Court should reverse the trial court's grant of summary judgment in A.B., Inc.'s favor. First, the trial court did not properly consider evidence submitted in opposition to the motion. Second, the trial court abused its discretion by denying C.D.'s request for additional time to provide evidence that would further support his opposition to the motion.

Respectfully submitted,

---

C.D  
222 W. 1st St.  
Portsmouth, Ohio 45662  
740-987-6543

*Pro se* Appellant

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's brief was sent by regular U.S. mail, postage pre-paid to Jill Jones, Esq., 111 E. Main St., Portsmouth, Ohio 45662 on this 7th day of June, 2014.

---

C.D.  
*Pro se* Appellant