[Cite as *Fleisher v. Ford Motor Co.*, 2009-Ohio-4847.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Robert Fleisher et al.,	:	
Appellants-Appellants,	:	No. 09AP-139 (C.P.C. No. 08CVF08-12330)
v.	:	(REGULAR CALENDAR)
Ford Motor Company et al.,	:	
Appellees-Appellees.	:	

D E C I S I O N

Rendered on September 15, 2009

Morganstern, MacAdams & DeVito Co., LPA, *Christopher M. DeVito* and *Alexander J. Kipp*, for appellants.

Whann & Assocs., LLC, and *Jay F. McKirahan*, for appellee Brondes Ford Maumee, Ltd.

Thompson Hine LLP, *Scott A. Campbell*, and *Samir B. Dahman*; *Dickinson Wright, PLLC*, *Frank A. Hamidi* and *Courtney S. Law*, for appellee Ford Motor Company.

ON MOTIONS

TYACK, J.

{¶1} Appellants Robert Fleisher and Franklin Park Lincoln-Mercury, Inc., filed a motion for reconsideration of our August 4, 2009 decision affirming the judgment of the Franklin County Court of Common Pleas. In a separate filing, appellants assert that our

decision is in conflict with other decisions from this district, and request that we convene en banc to resolve the alleged conflict. We will address both arguments in order.

{¶2} Applications for reconsideration are governed by App.R. 26. The test we generally apply to applications for reconsideration is whether the motion calls our attention to an obvious error in our decision, or raises an issue that we did not properly consider in the first instance. *Garfield Hts. City Sch. Dist. v. State Bd. of Edn.* (1992), 85 Ohio App.3d 117, 127; *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 143.

{¶3} Appellants base their application for reconsideration on an allegation that we did not properly consider all six assigned errors in our prior decision:

> * * * [T]he August 4, 2009, decision * * * only partially addressed Assignment of Error No. II and failed to address the remaining five (5) assignments of error. Additionally, the * * * panel failed to fully address all the legal and factual arguments presented * * * [in the second assigned error].

(Appellants' Application for Reconsideration, 1–2.)

{¶4} We disagree. Our decision acknowledged all six of appellants' assigned errors, however, we determined that the second assigned error was itself dispositive, and our ruling thereon rendered the remaining assignments of error as moot. Specifically, we found that appellees did not violate the Ohio Motor Vehicle Dealers' Act because they were exempt from the notice requirement.

{¶5} Despite appellants' contention that we did not consider all of the issues in this case, our decision speaks for itself. Appellants have not called our attention to any obvious error in our decision, nor have they presented a compelling argument that we failed to consider any of the issues herein. As such, we overrule the application for reconsideration.

{¶6} Turning to appellants' request for a hearing en banc, the Ohio Supreme Court recently held that if two or more appellate court decisions are in conflict, they must convene en banc to resolve that conflict. *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, ¶19.

{¶7} Appellants contend that our August 4, 2009 decision is in conflict with three of our previous decisions: *Chrysler Corp. v. Bowshier*, 10th Dist. No. 01AP-921, 2002-Ohio-1443; *General Motors Corp. v. Joe O'Brien Chevrolet, Inc.* (1997), 118 Ohio App.3d 470; *Bob Daniels Buick v. General Motors Corp.* (Oct. 13, 1998), 10th Dist. No. 97APE12-1701.

{¶8} Each of the cases appellants cite are inapposite to this case. For example, in *Chrysler Corp.*:

> In the case at bar, the notice of intention to transfer/sell, as required under R.C. 4517.56(A), was received on July 7, 1998. Hence, appellee had thirty days from this date to provide a written notice, as required under R.C. 4517.56(B), of any refusal to approve such transfer/sale. Such notice of refusal to approve was not made by appellee within the required thirty days. * * *

{¶9} This case is inapposite because the issue(s) are not the same. In the cited case, the notice provision applied, and that the obligor failed to comply with the statutory requirements for the timing of the notice. Here, we determined that the notice provision did *not* apply.

{¶10} Similarly, in *General Motors*, we held that "[i]t is evident upon a review of the language of R.C. 4517.50(A) that the notice requirement found therein is not merely directory but mandatory." Id. at 480. Again, this case is inapposite because it assumes that the notice provision is applicable.

{¶11} In *Bob Daniels Buick*, the issue was whether the Motor Vehicle Dealers' Board acted improperly by adopting the hearing examiner's report without a majority vote. See *Bob Daniels Buick.* This was not the issue here; thus, the case is also inapposite.

{¶12} Having found that appellants have failed to demonstrate that our decision is in conflict with any prior decisions by this court, no justice would be served by convening en banc. Accordingly, we overrule appellants' request for hearing en banc.

Motions denied.

BRYANT, J., and FRENCH, P.J., concur.

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