

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 2, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3486

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

ANTHONY J. KAUFMANN,

PLAINTIFF-RESPONDENT,

V.

JASON BAUMANN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: JOHN W. MICKIEWICZ, Judge. *Affirmed.*

BROWN, J. Jason Baumann claims that the evidence was insufficient to support the trial court's finding that he knew that the V-8 engine in the pickup he sold to Anthony J. Kaufmann was improperly installed. Given his alleged lack of knowledge, Baumann argues that the trial court erred when it further found that he intentionally deceived Kaufmann. Baumann also argues that

the trial court erred when it failed to apply the doctrine of caveat emptor and instead awarded Kaufmann damages under the benefit of the bargain rule.

The controversy arose from the sale of a 1985 Ford Ranger pickup. Prior to the sale, Baumann had installed a V-8 engine in the pickup and informed Kaufmann of the engine change.

But shortly after Kaufmann purchased the pickup, it became undriveable as a result of the V-8 engine's improper installation. In this suit for damages, the trial court found that Baumann knew of the engine's improper installation and that Baumann intentionally deceived Kaufmann on this matter. The court awarded Kaufmann \$5000 in damages—the cost of properly installing a V-8 engine in the pickup.

Baumann now contends the trial court erred in its finding that he had knowledge of the engine's improper installation and that he intentionally deceived Kaufmann. Our analysis of these claims is limited when reviewing findings of fact. We may only reverse if they are “clearly erroneous.” *See* § 805.17(2), STATS.

The trial court's findings of fact are not clearly erroneous. The record contains ample evidence to support the finding that Baumann knew the pickup's engine was improperly installed. Baumann installed the engine, and during installation, several irregularities occurred which would have alerted Baumann that the engine was improperly installed. The engine sat at a steep, upward angle and was too high in the engine compartment. Moreover, the exhaust manifold did not clear the frame and the engine did not line up properly with the transmission.

The finding that Baumann knew the engine was improperly installed also supports the trial court's additional finding that Baumann intentionally deceived Kaufmann. When Kaufmann inquired if the truck was in good condition, Baumann acknowledged the original V-6 engine had been replaced with a V-8 engine but assured Kaufmann the pickup was in good working condition.

Next, we turn to Baumann's claims that the trial court should have applied the doctrine of caveat emptor and that the court erred in its decision to apply the benefit of the bargain rule when calculating damages. These challenges require that we analyze the trial court's application of law to its findings of fact. We review such claims de novo. *See First Nat'l Leasing Corp. v. City of Madison*, 81 Wis.2d 205, 208, 260 N.W.2d 251, 253 (1977).

The trial court did not specifically address Baumann's caveat emptor argument. This is unsurprising in light of its finding that Baumann intentionally deceived Kaufmann. The doctrine of caveat emptor does not apply in situations where the seller intentionally deceived the buyer. *See Lone Star Immigration Co. v. Johnson*, 278 F. 515, 516-17 (7th Cir. 1922). The trial court did not err when it failed to consider Baumann's caveat emptor argument.

Baumann also asserts that the trial court erred when it applied the benefit of the bargain rule when awarding damages to Kaufmann. However, this argument rests on the proposition that the trial court erred in its determination that Baumann intentionally deceived Kaufmann. Because the trial court found that Baumann made an intentional misrepresentation, the trial court did not err when it applied the benefit of the bargain rule to calculate Kaufmann's damages. *See Anderson v. Tri-State Home Improvement Co.*, 268 Wis. 455, 464, 67 N.W.2d

853, 859 (1955) (noting that in cases of intentional misrepresentation, damages are measured under the benefit of the bargain rule); *see also* WIS. J I—CIVIL 2405.

In a related argument, Baumann contends that because Kaufmann knew he was purchasing a used pickup, Kaufman is not entitled to damages which reflect the price of new parts. Although Baumann seems to suggest that this claim involves a legal challenge to the trial court’s damages analysis, Baumann is making a factual claim. *See Gyldenvand v. Schroeder*, 90 Wis.2d 690, 697, 280 N.W.2d 235, 238-39 (1979) (“The general rule for appellate review of damage awards, as for other factual questions, is that any credible evidence of the damage claimed is sufficient to sustain the jury’s award.”).

When, as here, the plaintiff is entitled to the benefit of the bargain, one method of measuring damages is the reasonable cost of placing the property received in the condition in which it was represented to be. *See Ollerman v. O’Rourke Co., Inc.*, 94 Wis.2d 17, 53, 288 N.W.2d 95, 112-13 (1980). Kaufmann bargained to buy a 1985, V-8 equipped, Ford Ranger pickup in working condition. Kaufmann’s expert explained that giving Kaufmann the benefit of his bargain and properly installing a V-8 engine in the pickup would require installing new parts and a different transmission. Baumann entered no evidence showing otherwise. We therefore affirm the trial court’s calculation of damages.

By the Court.—Judgment affirmed

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

