

## **Guiding Case No. 17: Zhang Li v. Beijing Heli Huatong Auto Service Co., Ltd.(Sales contract dispute)**

(Issued on November 8, 2013, as adopted by the Judicial Committee of the Supreme People's Court after deliberation)

Guiding Case No. 17

### **Keywords:**

Civil; sales contract; fraud; household automobile

### **Judgment's Key Points**

1. A fraud dispute arising from the purchase of an automobile in household consumption may be settled in accordance with the Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers.

2. Where an automobile seller promises the sale of a new automobile that has never been used or repaired to a consumer, and the consumer finds after the purchase that the automobile is a used or a repaired one, if the seller cannot prove that it has fulfilled the obligation of notifying the consumer of the fact and the consumer has recognized the fact, the seller commits a sales fraud. If the consumer claims damages against the seller in accordance with the Law on the Protection of the Rights and Interests of Consumers, the people's court should support such a claim.

### **Relevant Legal Provisions**

指导案例 17 号：张莉诉北京合力华通汽车服务有限公司买卖合同纠纷案

( 最高人民法院审判委员会讨论通过 2013 年 11 月 8 日发布 )

指导案例 17 号

### 关键词

民事 买卖合同 欺诈 家用汽车

### 裁判要点

1.为家庭生活消费需要购买汽车，发生欺诈纠纷的，可以按照《[中华人民共和国消费者权益保护法](#)》处理。

2.汽车销售者承诺向消费者出售没有使用或维修过的新车，消费者购买后发现系使用或维修过的汽车，销售者不能证明已履行告知义务且得到消费者认可的，构成销售欺诈，消费者要求销售者按照[消费者权益保护法](#)赔偿损失的，人民法院应予支持。

### 相关法条

Article 2 and paragraph 1 of Article 55 (Article 49 before amendment on October 25, 2013) of the Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers.

### Basic Facts

On February 28, 2007, plaintiff Zhang Li purchased a Chevrolet Epica car from defendant Beijing Heli Huatong Auto Service Co., Ltd. (hereinafter referred to as "Heli Huatong") at the price of 138,000 yuan. They entered into an Automobile Sales Contract, Article 7 of which provided that: "the Seller undertakes that the car to be purchased by the Buyer is new, all necessary inspection and cleaning have been completed before delivery, the mileage indicated on the vehicle's odometer is 18 km, and the car complies with all specifications and indicators as listed in the accompanying documents delivered with the car by the Seller to the Buyer ..." On the signing date of this Contract, Zhang Li paid Heli Huatong the purchase price of 138,000 yuan for the automobile, as well as the vehicle purchase tax of 12,400 yuan, one-stop service fee of 500 yuan, and insurance premium of 6,060 yuan. On the same day, Heli Huatong delivered one Chevrolet Epica car to Zhang Li, and Zhang Li underwent the motor vehicle registration formalities for the car. When this car was at Heli Huatong for maintenance on May 13, 2007, Zhang Li discovered that this car was once repaired on January 17, 2007.

At trial, Heli Huatong admitted that the car purchased by Zhang Li once sustained scratches during transportation and was repaired on January 17, 2007, and the repair items included the right front fender paint spraying, right front door paint spraying, and right rear fender paint spraying, and the metal plates of the right front door, right rear

《[中华人民共和国消费者权益保护法](#)》[第二条](#)、[第五十五条](#)第一款 (该款系 2013 年 10 月 25 日修改, 修改前为[第四十九条](#))

### 基本案情

2007 年 2 月 28 日, 原告张莉从被告北京合力华通汽车服务有限公司 (简称合力华通公司) 购买上海通用雪佛兰景程轿车一辆, 价格 138000 元, 双方签有《汽车销售合同》。该合同第七条约定: ".....卖方保证买方所购车辆为新车, 在交付之前已作了必要的检验和清洁, 车辆路程表的公里数为 18 公里且符合卖方提供给买方的随车交付文件中所列的各项规格和指标....." 合同签订当日, 张莉向合力华通公司交付了购车款 138000 元, 同时支付了车辆购置税 12400 元、一条龙服务费 500 元、保险费 6060 元。同日, 合力华通公司将雪佛兰景程轿车一辆交付张莉, 张莉为该车办理了机动车登记手续。2007 年 5 月 13 日, 张莉在将车辆送合力华通公司保养时, 发现该车曾于 2007 年 1 月 17 日进行过维修。

审理中, 合力华通公司表示张莉所购车辆确曾在运输途中造成划伤, 于 2007 年 1 月 17 日进行过维修, 维修项目包括右前叶子板喷漆、右前门喷漆、右后叶子板喷漆、右前门钣金、右后叶子板

fender, and right front fender. The bottom edge buckle, fuel tank flap, and front fender lamp assembly were replaced in the repair. The person who sent the vehicle for repair was a salesman of this company. Heli Huatong argued that it clearly informed Zhang Li of the previous repair of the vehicle at the time of purchase and offered her a substantial discount because of it. The sales price of this car should be 151,900 yuan, but upon negotiation, the actual sales price was 138,000 yuan, with some free decorations. To support these facts, Heli Huatong provided the vehicle repair record and a copy of the vehicle delivery inspection certificate with the signature of Zhang Li dated February 28, 2007. In the remarks column of the certificate, it was noted that "Filled with 1/4 tank of gasoline, plate spraying repair on the right side, and sold at an agreed price." Heli Huatong indicated that the inspection certificate was retained by this company and Zhang Li did not have a copy of it. As for the above two pieces of evidence provided by Heli Huatong, Zhang Li raised no objection to the vehicle repair record, and confirmed her signature in the vehicle delivery inspection certificate, but insisted that Heli Huatong never informed her in the sale of the car of the previous repair and there were no such words, "plate spraying repair on the right side, and sold at an agreed price," in the remarks column when she signed the certificate.

## Judgment

In October 2007, the People's Court of Chaoyang District, Beijing Municipality issued a civil judgment (No. 18230 [2007], First, Civil Division, Chaoyang): (1) The Automobile Sales Contract signed by and between Zhang Li and Heli Huatong on February 28, 2007, should be revoked. (2) Zhang Li should return the Chevrolet Epica car purchased to Heli Huatong within seven days from the effective date of this judgment. (3) Heli Huatong should refund the vehicle purchase price of 124,200 yuan to Zhang Li within seven days

钣金、右前叶子板钣金,维修中更换底大边卡扣、油箱门及前叶子板灯总成。送修人系该公司业务员。合力华通公司称,对于车辆曾进行维修之事已在销售时明确告知张莉,并据此予以较大幅度优惠,该车销售定价应为 151900 元,经协商后该车实际销售价格为 138000 元,还赠送了部分装饰。为证明上述事实,合力华通公司提供了车辆维修记录及有张莉签字的日期为 2007 年 2 月 28 日的车辆交接验收单一份,在车辆交接验收单备注一栏中注有“加 1/4 油,此车右侧有钣喷修复,按约定价格销售”。合力华通公司表示该验收单系该公司保存,张莉手中并无此单。对于合力华通公司提供的上述两份证据,张莉表示对于车辆维修记录没有异议,车辆交接验收单中的签字确系其所签,但合力华通公司在销售时并未告知车辆曾有维修,其在签字时备注一栏中没有“此车右侧有钣喷修复,按约定价格销售”字样。

## 裁判结果

北京市朝阳区人民法院于 2007 年 10 月作出 (2007) 朝民初字第 18230 号民事判决:一、撤销张莉与合力华通公司于 2007 年 2 月 28 日签订的《汽车销售合同》;二、张莉于判决生效后七日内将其所购的雪佛兰景程轿车退还合力华通公司;三、合力华通公司于判决生效后七日内退还

from the effective date of this judgment. (4) Heli Huatong should compensate Zhang Li for the purchase tax of 12,400 yuan, service fee of 500 yuan, and insurance premium of 6,060 yuan within seven days from the effective date of this judgment. (5) Heli Huatong should additionally compensate Zhang Li in an amount equal to the vehicle purchase price of 138,000 yuan within seven days from the effective date of this judgment. (6) The other claims of Zhang Li should be dismissed. After the pronouncement of this judgment, Heli Huatong filed an appeal. On March 13, 2008, the No. 2 Intermediate People's Court of Beijing Municipality issued a civil judgment (No. 00453 [2008], Final, Civil Division, No. 2 Intermediate, Beijing) to dismiss the appeal and uphold the original judgment.

### Judgment's Reasoning

In the effective judgment, the court held that: Plaintiff Zhang Li purchased an automobile for her own use in everyday life, and defendant Heli Huatong had no evidence that her purchase of the automobile was for business or any other non-household consumption. Therefore, Zhang Li's purchase of the automobile was household consumption, to which the Law of the People's Republic of China on the Protection of the Rights and Interests of Consumers should apply.

In accordance with the Automobile Sales Contract signed by both parties, the vehicle delivered by Heli Huatong to Zhang Li should be a new car without any repair record. The vehicle sold in the case was once repaired before delivery, as a fact recognized by both parties. The focal dispute in this case was whether Heli Huatong had fulfilled its obligation of prior notification.

The reduced or discounted sales price of the vehicle and the free decorations were

张莉购车款十二万四千二百元；四、合力华通公司于判决生效后七日内赔偿张莉购置税一万二千四百元、服务费五百元、保险费六千零六十元；五、合力华通公司于判决生效后七日内加倍赔偿张莉购车款十三万八千元；六、驳回张莉其他诉讼请求。宣判后，合力华通公司提出上诉。北京市第二中级人民法院于2008年3月13日作出（2008）二中民终字第00453号民事判决：驳回上诉，维持原判。

### 裁判理由

法院生效裁判认为：原告张莉购买汽车系因生活需要自用，被告合力华通公司没有证据证明张莉购买该车用于经营或其他非生活消费，故张莉购买汽车的行为属于生活消费需要，应当适用《[中华人民共和国消费者权益保护法](#)》。

根据双方签订的《汽车销售合同》约定，合力华通公司交付张莉的车辆应为无维修记录的新车，现所售车辆在交付前实际上经过维修，这是双方共同认可的事实，故本案争议的焦点为合力华通公司是否事先履行了告知义务。

车辆销售价格的降低或优惠以及赠送车饰是销售

common sales strategies adopted by car dealers and were also the results of negotiation between both parties. It could not be inferred therefrom that Heli Huatong had offered a reduced or discounted price to Zhang Li on the basis of informing her of the defects in the car. The vehicle delivery inspection certificate with the signature of Zhang Li submitted by Heli Huatong was retained by Heli Huatong only, and the words in the remarks column were handwritten by different persons of the company. This inspection certificate was not recognized by Zhang Li. It was insufficient to prove that Zhang Li was informed of the previous repair of the car. Heli Huatong's defense that it had fulfilled its obligation of informing Zhang Li of the defects in the car should not be supported. It should be determined that Heli Huatong committed a fraud by concealing the defects in the car when selling it and should refund the vehicle purchase price and compensate Zhang Li in an additional amount.

商常用的销售策略,也是双方当事人协商的结果,不能由此推断出合力华通公司在告知张莉汽车存在瑕疵的基础上对其进行了降价和优惠。合力华通公司提交的有张莉签名的车辆交接验收单,因系合力华通公司单方保存,且备注一栏内容由该公司不同人员书写,加之张莉对此不予认可,该验收单不足以证明张莉对车辆以前维修过有所了解。故对合力华通公司抗辩称其向张莉履行了瑕疵告知义务,不予采信,应认定合力华通公司在售车时隐瞒了车辆存在的瑕疵,有欺诈行为,应退车还款并增加赔偿张莉的损失。