



CASE LAW UPDATE – DIMINISHED VALUE

Paul Oliver brought suit against James Henry for diminution in value of his 2008 Jeep Wrangler. In December, 2008, the parties were involved in a motor vehicle collision and Henry's insurance company paid approximately \$15,535.00 to repair the 2008 Jeep Wrangler, Oliver was driving. Oliver hired an appraisal expert who estimated that, even though repaired, the Wrangler had suffered a loss of value of \$8,975.00, as a result of the damage from the collision. Oliver admittedly did not plan to trade, sell, or otherwise dispose of the vehicle anytime soon. Indeed, he admitted he continued to use it in the same manner as he had previously done.

In September, 2009, Oliver filed a lawsuit against Henry seeking damages for the Jeep Wrangler's diminished value. In his answer Henry admitted negligence but claimed the lawsuit failed to state a claim upon which relief may be granted because the claim for diminished value is not actual improvable. Henry moved for summary judgment arguing that as a matter of law, Oliver could not establish an actual improvable law of diminished value because Oliver never tried to sell or trade in the Jeep Wrangler and continued to use and drive it exactly as he had since he bought it. Henry claimed that, although the fact of the accident could potentially result in a reduction in the vehicle's market value, without selling or trading the vehicle, any attempt to establish its post repair value was speculative.

The Trial Court, in denying Henry's motion for summary judgment, held that Plaintiff offered a sufficient proof of diminution of value to withstand a motion for summary judgment. Henry then appealed the Court's denial of the summary judgment motion.

The Appellate Court held "we agree with Oliver that public policy does not support the idea that a victim should be required to sell his vehicle in order to establish a claim for diminished value and to prove the amount of the loss." *Oliver v. Henry*, 1 CA-CV10-0701, July, 2011. The Appellate Court went on to note, a victim may encounter difficulty in selling the vehicle due to its accident history, which may occasion a delay in the sale and eventually cause natural depreciation to affect sale price, especially if the damage was extensive.

In summary, the Oliver Court concluded that **Arizona Law does not require the sale or transfer of a damaged vehicle to establish a claim for diminution in value or to prove the amount of the loss in value.** In the case at hand, Plaintiff's loss occurred because the vehicle is damaged and even though it was repaired to industry standards, it could still have diminished value. So long as the owner can establish through competent evidence such as an expert appraisal of the pre-loss and post-repair values it is not necessary to prove an actual loss.