LENWAYNE, LLP d/b/a FORD OF THE MAIN LINE and ROBERTS AUTOMOBILES, LP	:	**COURT OF COMMON PLEAS PHILADELPHIA COUNTY**
vs.	:	**COMMERCE PROGRAM**
THRIFTY CAR SALES, INC., et al.	:	**FEBRUARY TERM, 2003**
	:	**NO. 00129**
		Control # 091991

ORDER and MEMORANDUM

AND NOW, to wit, this 23rd day of December 2004, upon consideration of the Motion filed by plaintiffs Lenwayne, LLP d/b/a Ford of the Main Line, and Roberts Automobiles, LP, for Summary Judgment for breach of warranty of title against defendant A & B Adventures, Inc., and all responses thereto, it is hereby ORDERED and DECREED that said motion is **GRANTED.**

BY THE COURT:

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GENE D. COHEN, J.

LENWAYNE, LLP d/b/a FORD OF THE MAIN LINE and ROBERTS AUTOMOBILES, LP	:	**COURT OF COMMON PLEAS PHILADELPHIA COUNTY**
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THRIFTY CAR SALES, INC., et al.	:	**FEBRUARY TERM, 2003 NO. 00129** Control # 091991

MEMORANDUM

COHEN, GENE D., J.

The matter before the Court concerns a group of vehicles sold to the plaintiffs by defendant A & B Adventures, Inc. ("A & B"). At all times relevant to the circumstances outlined in the Complaint, A & B was a franchisee of Thrifty Car Sales, Inc. ("Thrifty").

By means of the within motion for summary judgment, the plaintiff contends that defendant A & B is strictly liable over to it on the count it has raised alleging breach of warranty of title.

The matter is straightforward: When A & B reassigned title for each of the six questioned vehicles that later turned out to have been stolen, it specifically certified that "The vehicle is free of any encumbrance and that the ownership is hereby transferred". This turned out not to be so and the plaintiff had to refund all monies collected from customers to whom it had sold the questioned vehicles.

A & B's principal defense to the plaintiffs' motion is that it was a consignee and not a seller within the terms of the Uniform Commercial Code. The plaintiff relies upon 13 Pa.C.S.A. §2312(a), the relevant Commercial Code provision to impose upon A & B the obligation to have warranted title in this case. In support of this argument, A & B attempts to parse through the components of each individual transaction to show that at any given time A & B did not bear the obligations of a seller. This argument is made of whole cloth. The record as a whole clearly demonstrates that, while there was not written contract between the parties, an enforceable verbal contract came into being because

the parties manifested an intent to be bound by the terms they exchanged. *See* Johnston the Florist, Inc. vs. Tedco Construction Corp., 657 A.2d 511, 516 (Pa. Super. 1995). The plaintiffs discussed all the terms of the sale with A & B and with no other person. While A & B's argument is creative, it flies in the face of the facts: A & B did indeed hold title to the suspect vehicles. There was, as the plaintiff Lenwayne, LLP points out in its memorandum, no specific language between the parties that relieved A & B from warranting title. *See* Subdivision B of 13 Pa.C.S.A. §2312.

Finally, A & B's claims that plaintiff Ford of the Main Line knew or had reason to know that A & B was not claiming that it held title to the cars is a distortion of the record.

Therefore, for the reasons cited above, the plaintiffs' motion for summary judgment is hereby GRANTED. This matter shall proceed to trial only as to the issue of damages.

BY THE COURT:

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GENE D. COHEN, J.