

Roles:

Judge
Court Clerk
Bayer's Lawyer
Cellar's Lawyer
Blair Bayer
Skyler Cellar

COURT CLERK: Calling the case of Bayer vs. Cellar, Small Claims Case Number 19-3726.

JUDGE: Counsel, are you ready to proceed?

BAYER'S LAWYER: Yes, your honor.

CELLAR'S LAWYER: Ready for trial, your honor.

JUDGE: Very well. Counsel for the plaintiff, please proceed with your opening statement.

BAYER'S LAWYER [stands up and moves in front of the jury box]: Good morning, members of the jury. I represent Blair Bayer, a student at Civicus Community College. Blair worked hard to get into Civicus, and Blair worked hard to be able to afford all of the expenses that come with going to school, including transportation. In order to get to classes and back home again, Blair needed a car. So Blair went to a used car lot, the "Car Basement," owned by the defendant, Skyler Cellar. You will learn today that Blair wanted three things in a car: (1) one that was fuel-efficient; (2) one that ran well and wouldn't need much work; and (3) one that cost less than \$3,000. You will hear today that the defendant offered Blair a deal—for \$3,000, Blair could buy a car that met those criteria. The only catch was that Blair had to wait until August to pick it up. You will hear today that Blair accepted that deal, and that Skyler Cellar was therefore obligated to sell Blair that car in August. But when Blair went to pick up the car, the defendant breached their contract. Cellar had not acquired the car he was supposed to sell to Blair, and instead tried to sell her cars that were more expensive, or which didn't suit Blair's needs. Blair has suffered financial harm as a result of Cellar's failure to honor the contract, and Blair seeks compensation for those losses. Thank you.

JUDGE: Counsel for the defense, do you wish to make your opening statement at this time?

CELLAR'S LAWYER [stands up]: Yes, your Honor. [Moves in front of the jury box.] Members of the jury, my client, Skyler Cellar, runs a used car dealership. Cellar is in the business of helping out people like Blair Bayer—people who need to find quality cars that are within their budgets. You will hear today that Cellar went above and beyond to help Blair Bayer, that Cellar went out and found a car that wasn't even on the lot at the Car Basement because that was the car that Bayer wanted. You will hear that there was an agreement that Bayer would purchase that car, and you will hear that the purchase didn't take place. But you will learn that the reason the purchase didn't take place had nothing to do with Skyler Cellar, or anything that was within Cellar's control. When Cellar and Bayer entered into that contract, they both assumed that the car Cellar was going to buy from his friend, Harper Mendax, was in good working order. It turned out that assumption was wrong. And so it didn't make any sense for Cellar to buy the car from Mendax, and that meant Cellar didn't have a car to sell to Bayer. Cellar didn't keep any of Bayer's money, and Cellar tried to sell Bayer a different car, but Bayer wasn't interested. Now Bayer has filed this lawsuit, claiming that Cellar somehow harmed Bayer by not having Bayer's dream car for sale. There was no breach of contract here and, even if there was, Bayer wasn't actually harmed in any way by anything that Cellar did. Thank you.

JUDGE: Thank you. Members of the jury, please remember that nothing that the attorneys say in opening statements or closing arguments counts as evidence. Evidence consists of exhibits that have been admitted in the course of the trial, as well as the sworn testimony of the witnesses. Plaintiff, please call your first witness.

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BAYER'S LAWYER: Your honor, the plaintiff calls Blair Bayer to the stand.

TRIAL COURT SIMULATION Trial Script

Name: _____

COURT CLERK: Blair Bayer to the stand, please. [Bayer approaches the witness stand.] Please raise your right hand. Do you swear that the testimony you give in this matter will be the truth, the whole truth, and nothing but the truth?

BAYER: I do.

COURT CLERK: You may be seated.

JUDGE: Counsel, you may proceed.

BAYER'S LAWYER: Please introduce yourself to the jury.

BAYER: My name is Blair Bayer. I am 19 years old. I attend school at Civicus Community College for the moment, but I am hoping to transfer to State University next year.

BAYER'S LAWYER: Where do you live?

BAYER: I live at home, with my parents.

BAYER'S LAWYER: How far is that from school?

BAYER: It's about 20 miles from my house.

BAYER'S LAWYER: So how do you get to class?

BAYER: I drive. Once I was admitted, I knew I would need a car, and I had some money saved up to buy one.

BAYER'S LAWYER: When did you start looking for a car?

BAYER: A few days after I graduated from high school. I knew I couldn't afford a new car, so I googled "good used cars cheap" and I saw an ad for the Car Basement. So I went there hoping to buy a car.

BAYER'S LAWYER: Were you looking for anything particular?

BAYER: Yes. I wanted a car that was fuel-efficient, that ran well, and that didn't cost too much.

BAYER'S LAWYER: Why were those things important to you?

BAYER: Well, I didn't have too much money to spend on the car or on gas, and because I was going to use it to get to school, I didn't want to have to miss classes to fix it.

BAYER'S LAWYER: When you got to the Car Basement, who helped you?

BAYER: The owner, Skyler Cellar.

BAYER'S LAWYER: Did you tell Cellar what you were looking for?

BAYER: Yes, I did. I explained the whole situation, and Cellar said it wouldn't be a problem, that I was exactly the kind of customer Cellar liked to help.

BAYER'S LAWYER: Did Cellar show you any cars that fit your needs?

BAYER: No. Everything there was either too old, too expensive, or too big. I started to think I would need to look somewhere else, and I said that to Cellar.

BAYER'S LAWYER: How did Cellar react when you said that?

BAYER: Cellar seemed worried that I might leave without buying something. Suddenly Cellar said, "Wait right here, I need to make a phone call." Then Cellar went to the office and didn't come back for like ten minutes.

BAYER'S LAWYER: When Cellar finally came back, what did Cellar say?

BAYER: Cellar said I was in luck, because Cellar had a friend who was selling an old Honda Accord hatchback. Cellar said it ran great, got good gas mileage, and was within my price range. Then Cellar said that there was a catch, that I couldn't buy the car until mid-August because the owner needed it until then.

BAYER'S LAWYER: You said that Cellar told you the car was within your price range. Had you told Cellar how much you could afford at that point?

BAYER: No, I hadn't. And when I asked how much the car was going to cost, that's when Cellar asked. Cellar said, "What's the largest amount you can possibly spend?" So I answered the question honestly. I said I had \$3,000 to spend, and not a penny more.

BAYER'S LAWYER: What happened then?

BAYER: Cellar left again for another ten minutes. I had been waiting a long time by this point. When Cellar came back, Cellar gave me a piece of paper with the make and model of the car and a price—\$3,000.

BAYER'S LAWYER: What was your reaction when you saw the price?

BAYER: Well, I was annoyed that I was going to have to spend my entire budget on the car, but I was glad that I would be able to afford something. But I didn't want to say yes without thinking it over, so I told Cellar I needed some time.

BAYER'S LAWYER: How did Cellar respond?

BAYER: Cellar said that was fine, but made sure to get my phone number. Then I left the Car Basement and went home.

BAYER'S LAWYER: When did you next hear from Cellar?

BAYER: That same day, just a few hours later. Cellar texted me and said that there were other buyers interested in the car, so I needed to decide soon.

BAYER'S LAWYER [handing a copy of Exhibit A to Bayer]: I'm showing you what has been marked as Exhibit A for identification—do you recognize it?

BAYER: Yes, this is a copy of a screenshot showing the text messages I exchanged with Cellar on that day.

BAYER'S LAWYER: Is it a fair and accurate copy?

BAYER: Yes, it is.

BAYER'S LAWYER: Your honor, I ask that Exhibit A be admitted in evidence.

JUDGE: Is there any objection?

CELLAR'S LAWYER: No objection, your honor.

JUDGE: Exhibit A is admitted in evidence as Exhibit 1.

BAYER'S LAWYER: Why did you agree to buy the car?

BAYER: I trusted what Cellar told me about it running well, and I felt pressured to agree before I lost the opportunity.

BAYER'S LAWYER: Did you deliver the \$300 deposit?

BAYER: Yes, I did, the following morning.

BAYER'S LAWYER: What happened when you dropped it off?

BAYER: Well, Cellar wasn't there, but the receptionist took the money and asked me to sign the piece of paper that had the information about the car on it, so I did. I also made sure to write down what we had agreed to during the text exchange. The receptionist gave me a copy of the paper after I signed it.

BAYER'S LAWYER [handing a copy of Exhibit B to Bayer]: I'm showing you what has been marked as Exhibit B for identification—do you recognize it?

BAYER: Yes, this is a copy of the contract that I signed with Cellar.

BAYER'S LAWYER: Is it a fair and accurate copy?

BAYER: Yes.

BAYER'S LAWYER: At this time, I ask that what has been marked as Exhibit B be admitted in evidence.

JUDGE: Any objection?

CELLAR'S LAWYER: No objection, your honor.

JUDGE: Exhibit B is admitted as Exhibit 2.

BAYER'S LAWYER: Were you able to purchase the car that Cellar agreed to sell you in that contract?

BAYER: No, I wasn't.

BAYER'S LAWYER: What happened?

BAYER: When I went to pick it up, at first Cellar pretended not to remember me at all. Then Cellar told me that Cellar had never purchased it because it needed work. Then Cellar tried to sell me some other cars, which were either too expensive or not right for me. I was furious and I left.

TRIAL COURT SIMULATION Trial Script

Name: _____

BAYER'S LAWYER: Were you able to purchase a car before classes started?

BAYER: Just barely. I had to rush, so I found something online, but it cost me \$3,700 and it needed a \$500 brake repair a month after I bought it. When I was fixing the brakes, I had to miss a day of classes.

BAYER'S LAWYER: Why did you file this lawsuit?

BAYER: Because I don't think it's fair that Cellar tried to pull a bait-and-switch on me, making me desperate to buy something and then trying to sell me something I didn't want. I should have had time to buy the car I wanted for \$3,000. Instead, I had to spend much more. Cellar owes me the difference.

BAYER'S LAWYER: Thank you. [To the judge] Nothing further, your honor.

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JUDGE: Very well. Defense counsel, do you have any questions for this witness?

CELLAR'S LAWYER [standing up]: Yes, your honor. [Turning to Bayer] You needed a car so that you could drive to school, correct?

BAYER: Correct.

CELLAR'S LAWYER: And you tried to buy one at the Car Basement, yes?

BAYER: That's right.

CELLAR'S LAWYER: And there wasn't any car at the Car Basement that fit your criteria, correct?

BAYER: No, there wasn't.

CELLAR'S LAWYER: So Cellar tried to find you one that did meet your needs, isn't that right?

BAYER: I guess.

CELLAR'S LAWYER: Well, you know that Cellar made a phone call and found a car that might work for you, correct?

BAYER: That's what Cellar told me.

CELLAR'S LAWYER: Cellar didn't have to do that, right?

BAYER: If Cellar wanted to make a sale, Cellar needed to find a car I wanted to buy.

CELLAR'S LAWYER: And Cellar did find a car you wanted, isn't that right?

BAYER: That's what Cellar said.

CELLAR'S LAWYER: Now, you never saw this car, did you?

BAYER: No, I didn't.

CELLAR'S LAWYER: The car wasn't on the lot, was it?

BAYER: No, it wasn't.

CELLAR'S LAWYER: So you didn't know if it was in good shape or not, did you?

BAYER: No, I didn't. I trusted what Cellar was telling me.

CELLAR'S LAWYER: But Cellar couldn't look at the car either, isn't that right?

BAYER: No, it wasn't there.

CELLAR'S LAWYER: So both you and Cellar assumed that the person Cellar was buying it from was being honest when he said that the car was in good shape, isn't that right?

BAYER: Yes.

CELLAR'S LAWYER: And it turned out that both of you were wrong, didn't it?

BAYER: I guess so.

CELLAR'S LAWYER: You didn't want to buy a car that needed a lot of work, isn't that right?

BAYER: That's right.

CELLAR'S LAWYER: So if Cellar had bought the Honda Civic from Harper Mendax, and it had been in bad shape, you wouldn't have agreed to buy it from Cellar, would you?

BAYER: If it needed a lot of work? No, of course not.

CELLAR'S LAWYER: Let's talk about after you learned that the Civic wasn't available from the Car Basement. Cellar offered you other cars that you could buy, correct?

BAYER: Yes, but they weren't right.

TRIAL COURT  **Trial Script**

Name: _____

CELLAR'S LAWYER: And one of them cost less than \$3,000, isn't that right?

BAYER: The SUV.

CELLAR'S LAWYER: But you chose not to buy it, isn't that right?

BAYER: It was an SUV. It probably got terrible gas mileage.

CELLAR'S LAWYER: You never asked Cellar what kind of gas mileage the SUV got, did you?

BAYER: It's an SUV. Everyone knows they get terrible gas mileage.

CELLAR'S LAWYER: So that's correct, you never asked?

BAYER: No, I didn't.

CELLAR'S LAWYER: And eventually you chose to buy a more expensive car, didn't you?

BAYER: I was running out of time.

CELLAR'S LAWYER: My question is, did you choose to buy a more expensive car?

BAYER: Yes, I had to.

CELLAR'S LAWYER: And that car required a repair sometime after you bought it, correct?

BAYER: Yes. \$500 for brakes.

CELLAR'S LAWYER: Did you have someone check the brakes before you bought it?

BAYER: No.

CELLAR'S LAWYER: Thank you. [To the judge] No further questions for this witness.

JUDGE: The witness may step down. Plaintiff, do you have any further witnesses?

BAYER'S LAWYER: No, your honor, the plaintiff rests.

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JUDGE: Very well. Defense, do you intend to call any witnesses?

CELLAR'S LAWYER: Yes, your honor. The defense calls Skyler Cellar to the stand.

COURT CLERK: Skyler Cellar to the stand, please. [Cellar approaches the witness stand.] Please raise your right hand. Do you swear that the testimony you give in this matter will be the truth, the whole truth, and nothing but the truth?

CELLAR: I do.

COURT CLERK: You may be seated.

JUDGE: Counsel, you may proceed.

CELLAR'S LAWYER: Please introduce yourself to the jury.

CELLAR: My name is Skyler Cellar. I own a used car dealership called the Car Basement. "Only our prices are in the basement." I've owned the business for about ten years, since I took it over from the previous owner.

CELLAR'S LAWYER: Are you familiar with the plaintiff, Blair Bayer?

CELLAR: Yes. I tried to help Bayer find a car last summer, but it didn't work out. Next thing I know, Bayer filed this lawsuit, claiming I owe money because Bayer wasn't able to buy a particular car from me.

CELLAR'S LAWYER: Do you remember what kind of car Bayer was looking for?

CELLAR: Sure. Bayer wanted what everyone wants when they are looking at used cars—something inexpensive that runs well. Bayer also wanted it to get good gas mileage, so no pickup trucks or anything like that.

CELLAR'S LAWYER: Did you have anything like that in your inventory?

CELLAR: Not at the time, no. When that happens, I usually call around to other used car dealers to see if they have something that the customer might want. If they are willing to sell it for less than the customer is willing to pay, I can still make a profit on the deal.

TRIAL COURT SIMULATION Trial Script

Name: _____

CELLAR'S LAWYER: And did you call around looking for a car for Bayer?

CELLAR: Yeah, Bayer seemed like a nice kid, so I wanted to help out. So I called a few other dealerships. Finally I got a good answer from my friend Harper Mendax.

CELLAR'S LAWYER: What did Mr. Mendax tell you?

CELLAR: Harper said that he had a mechanic who was moving away at the end of the summer, and that I could have his Honda Civic when he left. I told Harper to find out what the mechanic wanted for it, and then I went out to discuss the situation with Bayer.

CELLAR'S LAWYER: What did Bayer say when you described the opportunity?

CELLAR: Well, I can tell you what Bayer didn't say, and that's "thank you." Instead, Bayer immediately asked how much it was going to cost. It was apparent that Bayer really wanted to get the deal done, so I asked what the maximum amount was that Bayer was willing to pay.

CELLAR'S LAWYER: How much was that?

CELLAR: Three thousand dollars.

CELLAR'S LAWYER: What did you do then?

CELLAR: I called Harper back. By then, Harper had found out that the owner of the Civic was willing to sell it for \$2,000. I asked Harper to confirm that the vehicle ran well, and Harper assured me that it did. So I told Harper I wanted the car. I figured that even if Bayer didn't want it, it was too good a deal to pass up.

CELLAR'S LAWYER: What happened next?

CELLAR: I wrote down the make of the car and price on a piece of paper and brought the paper out to Bayer.

CELLAR'S LAWYER [handing Cellar a copy of Exhibit B]: I'm showing you a document that has been entered in evidence as Exhibit 2. Have you seen this before?

CELLAR: Yes, except for the handwriting at the bottom that Blair Bayer added.

CELLAR'S LAWYER: The model of the car, the price, and date are your writing?

CELLAR: Yes.

CELLAR'S LAWYER: And the writing in the lower right, you've never seen that before?

CELLAR: Correct. I didn't write that, and I never saw it.

CELLAR'S LAWYER: Did you eventually go to Harper Mendax's lot to buy the Civic?

CELLAR: I did, but once I saw the car, I backed out of the deal.

CELLAR'S LAWYER: What was wrong with the car?

CELLAR: It wasn't as Harper had described it at all. It had dents, a cracked taillight, two bad tires, and it sounded like the exhaust had a leak. I told Harper to forget about it.

CELLAR'S LAWYER: When did you next hear from Blair Bayer?

CELLAR: Later that summer. Bayer showed up at the lot. I didn't remember Bayer at first, but when I saw the piece of paper Bayer showed me, I remembered about the Civic. I explained to Bayer that things hadn't worked out with that car and I offered to sell Bayer a different car.

CELLAR'S LAWYER: What was Bayer's reaction?

CELLAR: Bayer just stormed off again, muttering threats about negative reviews and such.

CELLAR'S LAWYER: Did you believe that you had a contract with Bayer?

CELLAR: Absolutely not.

CELLAR'S LAWYER: Thank you. [To the judge] No further questions for this witness.

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JUDGE: Any cross-examination?

BAYER'S LAWYER [standing up]: Yes, your honor. [Turning to Cellar] When Blair Bayer visited the Car Basement, Bayer told you what kind of car Bayer was looking for, correct?

CELLAR: Yes.

TRIAL COURT SIMULATION Trial Script

Name: _____

BAYER'S LAWYER: And you offered to sell Bayer a car that fit those criteria, didn't you?

CELLAR: I did.

BAYER'S LAWYER: You even wrote your offer on a piece of paper, isn't that right?

CELLAR: Well, I wrote down the type of car and the price.

BAYER'S LAWYER: That was the car you were offering to sell to Bayer, wasn't it?

CELLAR: Yes.

BAYER'S LAWYER: Now, at the time that you made that offer, you had discussed with Harper Mendax the condition of the Honda Civic, hadn't you?

CELLAR: I asked about it during our phone call, yes.

BAYER'S LAWYER: And you had the opportunity to ask Harper whatever you wanted to about the car, didn't you?

CELLAR: Well, it was a quick call.

BAYER'S LAWYER: But it was your decision not to ask any more, isn't that right?

CELLAR: I suppose so.

BAYER'S LAWYER: And this wasn't your first conversation with Harper Mendax, was it?

CELLAR: No, of course not. We're friends.

BAYER'S LAWYER: So you had some ability to tell whether Harper Mendax was telling you the truth about the condition of the car?

CELLAR: Well, obviously I was wrong about that.

BAYER'S LAWYER: The owner of the Civic was going to sell it to you for \$2,000, isn't that right?

CELLAR: Yes.

BAYER'S LAWYER: And you were going to sell it to Bayer for \$3,000, correct?

CELLAR: Correct.

BAYER'S LAWYER: You never told Bayer what you were paying for the car, did you?

CELLAR: Of course not.

BAYER'S LAWYER: But that low price that you were paying made you concerned about the condition of the car, didn't it?

CELLAR: I don't know what you mean.

BAYER'S LAWYER: You gave a statement in connection with this case, didn't you?

CELLAR: Yes.

BAYER'S LAWYER: And in that statement, you wrote that when Harper told you the kid would sell the car for \$2,000, you responded, "What's the catch? Does the thing run?" Isn't that right?

CELLAR: Yes.

BAYER'S LAWYER: As part of your used car business, you have an auto repair shop, correct?

CELLAR: Yes, it's a big part of the business these days.

BAYER'S LAWYER: So if you had purchased the Civic, you could have fixed everything that was wrong with it, isn't that right?

CELLAR: Well, I still would have had to pay for the parts.

BAYER'S LAWYER: And your estimate for how much the parts would have cost was \$700, correct?

CELLAR: Correct.

BAYER'S LAWYER: Which still would have left you with a \$300 profit on the sale, isn't that right?

CELLAR: It would have taken time away from my mechanic's other work.

BAYER'S LAWYER: So the reason you didn't deliver a working Honda Civic to Bayer is that you wanted your mechanic working on other things, do I have that right?

CELLAR: Well, that's part of it.

BAYER'S LAWYER: Thank you. [To judge] No further questions, your honor.

JUDGE: The witness is excused. Defense, do you have any further witnesses?

CELLAR'S LAWYER: No, your honor. The defense rests.



Name: _____

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JUDGE: Very well, we will proceed to closing arguments, beginning with the defense.

CELLAR'S LAWYER [stands up and moves in front of the jury box]: "No good deed goes unpunished." That's the expression that springs to mind as I reflect on this evidence in this case. Cellar tried to help Bayer find a car, went to great lengths to do so, but ultimately it turned out that the car Bayer wanted just wasn't available. It didn't exist. Is that Cellar's fault? No. Did Cellar know that when Cellar offered to buy the Honda Civic? Obviously not. Is Cellar responsible for the fact that Bayer then needed to buy a different car? No. There was no enforceable contract between Cellar and Bayer, and even if there had been, Cellar's performance was frustrated by the fact that the Honda Civic was not in good shape. You heard Bayer's own testimony that Bayer would not have wanted to buy the Civic if it was not going to run well. Cellar understood that perfectly well. There was no Honda Civic that ran well and was within Bayer's budget. That car simply didn't exist. Cellar would have had an easier time selling Bayer a unicorn. And Cellar can't be held liable for failing to do so. Thank you.

JUDGE: Closing for the plaintiff.

BAKER'S LAWYER [stands up and moves in front of the jury box]: Cellar made an offer, Bayer accepted it. That's a contract. Cellar was obligated to sell Bayer a working Honda Civic for \$3,000. Cellar failed to do so. That's breach of contract. Bayer was harmed by Cellar's failure to sell a working Honda Civic for \$3,000, because Bayer had to spend more on a car that required repairs. If Cellar had not breached the contract, Bayer would have a working Honda Civic within Bayer's budget. It's that simple. Now Cellar argues that Cellar was unable to provide a working Honda Civic, and that Cellar could not have foreseen that situation. Both of those assertions are false. You heard Cellar admit that Cellar could have had the mechanic at the Car Basement fix the Civic. And you heard Cellar acknowledge that Cellar could have asked more questions about the condition of the Civic, but chose not to. This was not an unforeseen "Act of God" that made the Honda Civic unavailable, it was Cellar's own greed. That is not a defense to a contract claim. Cellar owes Bayer \$700 to cover the additional cost of the car Bayer purchased, plus \$500 to cover the brake repair that car required, plus whatever amount you feel is appropriate for the time that Bayer missed from class, and the cost of the additional gas that Bayer will have to buy over the life of the car. Thank you.

JUDGE: Thank you. Members of the jury, this concludes the trial presentation. I will now instruct you on the law and then you will retire to deliberate until you reach your verdict. For now, we will take a short recess.

CLERK: All rise. Court is in recess.