

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CHRISTIAN STRIKE,	:	APPEAL NO. C-070167
Plaintiff-Appellee,	:	TRIAL NO. 06CV-16256
vs.	:	<i>JUDGMENT ENTRY.</i>
GARY STRATTON, d.b.a. STRATTON MOTORSPORTS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a bench trial, defendant-appellant Gary Stratton, d.b.a., Stratton Motorsports, appeals from the trial court’s denial of his motion to dismiss for lack of personal jurisdiction and from the court’s judgment for plaintiff-appellee Christian Strike on his claims for breach of an implied warranty of fitness and merchantability.

Strike, an Ohio resident, had paid Stratton, a Florida resident, \$30,000 to rebuild a 1976 Porsche 912 automobile. Stratton spent one year rebuilding the car before traveling to Ohio and delivering it to Strike. After delivery, Strike discovered numerous defects that indicated that the car had been negligently reconstructed. Stratton promised to make repairs to remedy the defects, but did not follow through on his promise. Strike expended over \$6,000 to repair the automobile.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In his first assignment of error, Stratton asserts that the trial court erred in denying his motion to dismiss the complaint for lack of personal jurisdiction under Civ.R. 12(B)(2). Where a party moves for dismissal based upon lack of personal jurisdiction, the nonmoving party bears the burden of establishing the court's jurisdiction.² When, as here, the trial court does not hold an evidentiary hearing, the court is required to view allegations in the pleadings and any documentary evidence in a light most favorable to the nonmoving party, resolving all reasonable competing inferences in that party's favor.³ To defeat the motion to dismiss in this case, Strike was required only to make a prima facie case to demonstrate jurisdiction.⁴

We review the trial court's denial of the motion de novo⁵ and discern no error in the trial court's finding that it had personal jurisdiction to proceed. Stratton clearly transacted business in Ohio.⁶ He mailed a sales contract to Strike in Ohio, had frequent communications with Strike, and physically delivered the automobile to Strike in Ohio.⁷ The first assignment of error is overruled.

Stratton's final three assignments of error, challenging the trial court's finding that Stratton had breached the implied warranty of fitness and merchantability, are overruled. An appellate court will not reverse a judgment of the trial court if it is supported by some competent, credible evidence going to all the essential elements of the case or defense.⁸ In

² See *Giachetti v. Holmes* (1984), 14 Ohio App.3d 306, 307, 471 N.E.2d 165.

³ See *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 236, 1994-Ohio-229, 638 N.E.2d 541.

⁴ See *Giachetti v. Holmes*, 14 Ohio App.3d at 307, 471 N.E.2d 165.

⁵ See *Information Leasing Corp. v. Baxter*, 1st Dist. No. C-020029, 2002-Ohio-3930, at ¶4.

⁶ See R.C. 2307.382(A) and Civ.R. 4.3.

⁷ See *Goldstein v. Christiansen*, 70 Ohio St.3d at 236, 1994-Ohio-229, 638 N.E.2d 541; see, also, *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.* (1990), 53 Ohio St.3d 73, 75, 559 N.E.2d 477.

⁸ See *Myers v. Garson*, 66 Ohio St.3d 610, 1993-Ohio-9, 614 N.E.2d 742; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus; see, also, *Stand Energy Corp. v. Cinergy Serv.* (2001), 144 Ohio App.3d 410, 417, 760 N.E.2d 453.

reviewing the evidence adduced at trial, an appellate court is bound by the credibility determinations made by the trial court as the trier of fact.⁹

Here, there was competent, credible evidence, including the testimony of the parties, and letters and email messages between Strike and Stratton, admitted without objection, from which the trial court could establish that Stratton had been promptly notified of problems with the automobile, that Stratton had promised to remedy the defects and did not, and that Strike had incurred substantial damages to make repairs. The second, third, and fourth assignments of error are overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 19, 2008
per order of the Court _____.
Presiding Judge

⁹ See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.