Circuit Court for Prince George's County
Case No. CAL-18-50107

UNREPORTED*

IN THE APPELLATE COURT**

OF MARYLAND

No. 0303

September Term, 2022

JOYCE MADDEN

v.

SHEEHY FORD OF MARLOW HEIGHTS, INC.

Leahy,
Reed,
Tang,

JJ.

Opinion by Leahy, J.

Filed: August 15, 2023

* This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

**During the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This appeal arises from the December 2017 purchase of a 2014 Ford F-150 automobile (the "truck" or "Ford F-150") by the appellant, Joyce Madden ("Ms. Madden") from the appellee, Sheehy Ford of Marlow Heights, Inc. ("Sheehy Ford"). Ms. Madden alleges Sheehy Ford knowingly sold her the truck with undisclosed damage and a defective title. Several weeks after taking possession, Ms. Madden inspected the truck and discovered what she described as "corrosive rust and mud" on the undercarriage of the vehicle. Ms. Madden also claims that the certificate of title was invalid due an outstanding lien on the title by the state of Michigan, and her purchase of automobile insurance was impeded due to an alleged mistake by Sheehy Ford in reporting the vehicle's vehicle identification number ("VIN").

Ms. Madden filed a complaint against Sheehy Ford in December of 2018 in the Circuit Court for Prince George's County, Maryland, in which she alleged breach of contract and violation of the Maryland Consumer Protection Act ("MCPA"), Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL"), § 13-101 *et seq*.[1]

Ms. Madden presented her case before a jury on March 30, 2022. The evidence showed, among other things, that although the Maryland Vehicle Administration ("MVA") issued Ms. Madden a Certificate of Title and Registration with the correct VIN less than a month after the sale, Ms. Madden demanded that Sheehy Ford provide her with either a full refund or an "even exchange" of vehicles. The parties entered into negotiations toward

[1] Ms. Madden's pleadings included a third complaint for rescission of contract, which she renounced, and which the circuit court dismissed prior to trial.

an agreement by which Ms. Madden would exchange the Ford F-150 for another truck of the same model then on the lot. Ms. Madden alleged, and Sheehy Ford denied, that they reached verbal agreement to exchange the trucks for no additional consideration. Before any written agreement was formed, Sheehy Ford offered to exchange the vehicles for consideration of $3,900. Ms. Madden "rejected the offer," terminated the negotiations, gave the keys to the Ford F-150 to Sheehy Ford, and left the truck behind her on the premises. Thereafter, Ms. Madden and Sheehy Ford resolutely insisted that the other party owned the Ford F-150. The truck remained on Sheehy Ford's premises for the next two years.

At the close of Ms. Madden's case-in-chief, Sheehy Ford moved for judgment upon the legal insufficiency of the evidence under Maryland Rule 2-519. The trial court granted Sheehy Ford's motion for judgment, and Ms. Madden noted a timely appeal. She presents two questions for our review, which we rephrase as follows: [2]

[2] In her brief, Ms. Madden presents the following questions:

I. Did the trial court err in dismissing Count One of the Plaintiff's Complaint (Breach of Contract) at the close of Plaintiff's case, when Plaintiff presented evidence of defective condition of the vehicle, evidence of the parties entering into a new or modified agreement through evidence of the new agreement, and evidence of subsequent conduct of the parties consistent with having reached a new agreement, and when Plaintiff presented evidence of defective title to the vehicle?

II. Did the trial court err in dismissing Count Three of the Plaintiff's Complaint (Consumer Protection Act violation) when Plaintiff presented evidence of concealed vehicle defect and damage which was known or should have been known by the Defendant, plus evidence of improper dealing with Plaintiff once she complained about the condition?

I. Did the circuit court err in granting appellee's motion for judgment on Ms. Madden's breach of contract?

II. Did the circuit court err in granting appellee's motion for judgment on Ms. Madden's claim for violation of the Maryland Consumer Protection Act?

For the reasons set forth below, we find no error in the circuit court's grant of Sheehy Ford's motion for judgment on Ms. Ms. Madden's claims for breach of contract and violation of the MCPA because she failed to present substantive evidence supporting her allegations. Accordingly, we affirm.

BACKGROUND

Events Leading to the Underlying Complaint[3]

On December 30 or 31, 2017, Ms. Madden visited Sheehy Ford to purchase a used black 2014 Ford F-150 pickup truck. Jonathan Slaughter, the sales representative who attended Ms. Madden that day, represented that the "truck had just arrived" and "need[ed] to be cleaned up" but otherwise "was in excellent condition." He disclosed damage to "[t]he bed liner and the rear camera." Ms. Madden agreed to purchase the truck after test-driving it. They agreed upon a purchase price of $32,995, of which Ms. Madden financed $29,000 through her bank, Pentagon Federal Credit Union ("Pen-Fed"), and Ms. Madden paid the remaining balance of $3,995 by personal check. Mr. Slaughter prepared a purchase agreement, containing a statement of limited warranty and a disclosure of its vehicle history. Notwithstanding Mr. Slaughter's verbal disclosures, Sheehy Ford listed "N/A" under the section entitled "Damage Disclosure Acknowledgment" in the purchase

[3] The following facts are adduced from Ms. Madden's testimony at the jury trial and the exhibits presented during her case-in-chief.

agreement, which provided that "Buyer has agreed to purchase the vehicle described below with respect to which Dealer and employees have no knowledge of any damage through accident or other causes or of any mechanical damage resulting in the replacement of a major part or parts[.]"

During this transaction, Mr. Slaughter—with Ms. Madden present—spoke with Ms. Madden's insurance company and lender to provide the information required to insure and finance the vehicle. Ms. Madden alleges that during these conversations, Mr. Slaughter made a clerical error in reporting the VIN. Mr. Slaughter and Ms. Madden arranged for her to bring the Ford F-150 back for repairs to the bed liner and the rear camera in two weeks. Upon obtaining temporary insurance from Allstate, Ms. Madden drove the Ford F-150 home that evening.

Alleged Undisclosed Damage to Vehicle

Ms. Madden returned to Sheehy Ford on January 15 for her scheduled service and repairs. The technician who greeted her stated that he could not service her at this time because Ms. Madden's appointment "was not in the system," and noted that the VIN on the Ford F-150 "had been moved." Ms. Madden testified that the keys to the Ford F-150 dropped to the ground when she attempted to hand them to the technician. Ms. Madden alleges that when she bent down to pick up the keys, she "noticed mud along the tires, the frame of the whole entire truck," and saw "[s]and was inside, granules on the back seat of the truck." While on the ground, Ms. Madden says she saw that "the [truck's] undercarriage had globs of mud from the front to the end," and "rust" along the frame and

the rear the truck. Ms. Madden photographed the truck's undercarriage, but she took no steps to have the truck washed to better assess its condition.[4]

Ms. Madden's Claim of an "Even Exchange"

On January 15, 2018, at approximately 9:00 a.m., Ms. Madden met with Mr. Slaughter and expressed frustration about the condition of the undercarriage and the "misrepresentation in regards to the vehicle VIN number." Ms. Madden explained that the information provided to Pen-Fed and Allstate "did not match" and she "could not insure the vehicle to drive it." Ms. Madden requested that Sheehy Ford "take the vehicle back" and refund her in full because she "did not feel safe" driving the truck.

Ms. Madden testified that after subsequent conversations with Mr. Slaughter, Brandon Johnson, the local branch manager for Sheehy Ford, and representatives of Allstate and Pen-Fed, Sheehy Ford and Ms. Madden reached an agreement for "an even exchange of the vehicle." Ms. Madden claimed that Sheehy Ford agreed to give her a comparable vehicle for the price she paid for the truck or issue her a full refund.

On or about January 23, 2018, Ms. Madden returned to Sheehy Ford's lot, believing that she "would get the white Ford F-150" in exchange for the black Ford F-150. After

[4] At trial, Ms. Madden produced these photographs, but presented no other evidence or witnesses to testify as to the alleged damage to the vehicle. Ms. Madden also introduced into evidence photographs that she took on February 6, 2020—two years after she purchased the Ford F-150—alleging that the photographs depicted corrosive rust, a "broken license plate holder[,]" "loose" wires that "connect[ed] to the battery," and damage to the back of the truck from being "hit" while the vehicle remained on Sheehy Ford's premises between January 23, 2018, to February 6, 2020. Ms. Madden claimed that the additional damage depicted in the photographs was not present when she left the Ford F-150 on Sheehy Ford's lot on January 23, 2018.

Ms. Madden test drove the white Ford F-150 and "the VIN number was verified and submitted to both Pen-Fed and Allstate," Ms. Madden testified that "Mr. Slaughter had [her] sign some documents" and then directed her to the "finance office" to complete "the final paperwork[.]" When she met with the financial officer, however, Ms. Madden "was shocked to see that the vehicle [she] had purchased, the F-150 that was black, was depreciated [by] $2,600." Ms. Madden stated that the finance officer asked her for an additional $6,000 to compensate for the depreciation in value of the black Ford F-150 to complete the transaction.[5] In response, Ms. Madden testified that the following occurred:

> [MADDEN]: **So I said, no, and would not accept.** And at that point, the finance officer . . . brought Mr. Slaughter in and he said -- well, **he offered me -- asked me to present a check for $3,000 -- $3,900**.
>
> [MADDEN'S COUNSEL]: What was your response to that?
>
> [MADDEN]: **I rejected the offer.**
>
> [MADDEN'S COUNSEL]: Okay. Okay. Could you tell us what you did next?
>
> [MADDEN]: My next step was, I spoke to Mr. Johnson, the finance officer and Mr. Slaughter and said, well, this deal was not honored and I'm going to return the vehicle back to you as I was instructed.
>
> [MADDEN'S COUNSEL]: Okay. So what precisely happened next?
>
> [MADDEN]: I go out and get the last key, the one key that I had, and gave it to Mr. Slaughter, and Mr. Johnson was present as well.
>
> * * *
>
> [MADDEN'S COUNSEL]: Well, what did you do with the key?
>
> [MADDEN]: I gave it to [Mr. Slaughter] in his hands and I said, you can get back with [me] tomorrow after you make a decision, and I will contact Pen-Fed and Allstate and let them know.

[5] Between January 3 to January 15, 2018, Ms. Madden had put approximately 82 miles on the black Ford F-150.

(Emphasis added).

Following this exchange, Sheehy Ford provided a "courtesy vehicle" for Ms. Madden to get home while the Ford F-150 was left on Sheehy Ford's lot where it remained for the next two years. In the meantime, Ms. Madden continued to make monthly payments on the Ford F-150 "to protect [her] security clearance" for her job and testified that as of the date of trial, Ms. Madden had remaining balance of only $2,400.13 on the Ford F-150. Ms. Madden also testified that she paid $995 in "insurance premiums for the vehicle with Allstate" in addition to $4,123 for "collateral protection insurance" that Ped-Fed purchased on Ms. Madden's behalf due to its inability to verify the correct VIN.

Alleged Defective Title

Ms. Madden received a notice from Pen-Fed dated January 16, 2018, explaining:

> In the processing of your loan, we have been unable to obtain the correct Vehicle Identification Number or VIN of your **2014 Ford**. As a financing institution, we must ensure that the information regarding your vehicle is correct so Pentagon Federal Credit Union can be placed as the lien holder on the original title. Please send one of the following items in order to verify the VIN:
>
> - Copy of Vehicle Registration
> - Copy of Vehicle Title
> - Copy of Insurance Policy

(Emphasis in original). Enclosed with Ped-Fed's letter was an Authorization for Payoff and Demand for Certificate of Title form, to be completed by Ms. Madden, that listed an incorrect VIN. Ms. Madden conceded during cross-examination, however, that when Ms. Madden received Pen-Fed's letter on January 23, 2018, she had in her possession (1) the sticker on the inside of the truck, (2) the temporary proof of insurance from Allstate, (3)

and some of the purchase agreement documents—all but one of which contained the correct VIN.[6] Ms. Madden also admitted that when she received the Certificate of Title on January 28, 2018, which contained the correct VIN printed on the document, she did not provide the document to Ped-Fed.

Among the evidence presented during Ms. Madden's case in chief, the following documents contained the correct vehicle identification number ("VIN") number that were legible by the reader:

- **Contract of Sale/Deal Recap Document.** On the front of the contract of sale, the VIN was listed correctly as "1F-TFW-1ETB-EFA-96112" and described the car as "Black 2014 Ford Truck F-150 Supercrew 4X4" with an odometer mileage of 18,821.

- **Dealer's Bill of Sale.** The VIN listed on the "Dealer's Bill of Sale" for "Used Vehicles" was correct, "1FTFW1ET8EFA96112."

- **Odometer Disclosure Statement.** The odometer disclosure statement listed the correct VIN as "1FTFW1ET8EFA96112" and recorded the Ford F-150 as having 18,821 miles on it as of December 30, 2017.

- **Power of Attorney.** Directly underneath the Odometer Disclosure Statement was the "Power of Attorney" acknowledgment form that listed the correct VIN as "1FTFW1ET8EFA96112."

- **Lemon Law Rights Acknowledgment.** Below the Power of Attorney acknowledgment form was the Lemon Law Rights Acknowledgement with the following correct VIN: "1FTFW1ET8EFA96112."

- **Limited Warranty.** The limited warranty statement provided the correct VIN at the bottom of the document as follows: 1FTFW1ET8EFA96112.

[6] Among the documents Ms. Madden received when she purchased the Ford F-150, the only document on which the VIN could have been misread, was on the Vehicle Delivery Checklist. The upper left corner of the checklist listed the correct VIN; however, it is plausible that one could misread the handwritten "W" as an "N."

- **Allstate Temporary Proof of Insurance.** Before driving off the lot, Ms. Madden testified that she received temporary proof of insurance from Allstate, which contained the following correct VIN: "1ftfw1et8efa96112."

- **Ped-Fed Check.** Ms. Madden acknowledged that the Ped-Fed check she used to pay $29,000 towards the truck, which had the VIN handwritten on it by Ms. Madden, was correct.

By January 24, 2018, Ms. Madden received a Certificate of Registration from the MVA that listed the correct VIN, and by January 28, 2018, she had a Certificate of Title from the MVA—also with the correct VIN. Nonetheless, Ms. Madden alleged that her Maryland title was defective because she had obtained documentation from the State of Michigan that indicated a prior lien on the vehicle for unpaid taxes. Ms. Madden mailed two letters to Sheehy Ford dated June 6, 2018, and July 20, 2018, respectively, wherein she requested a "replacement vehicle" in the first letter and "a full refund" in the second letter.[7]

The Complaint

Between December 26, 2018, and April 2, 2020, Ms. Madden filed, and then amended, a complaint against Sheehy Ford in the Circuit Court for Prince George's County, Maryland. Her final amended complaint filed on April 2, 2020, alleged three counts against Sheehy Ford. In Count I, Ms. Madden asserted that Sheehy Ford breached their contract for the sale the Ford F-150 to her in two ways. First, Ms. Madden alleged that Sheehy Ford failed to disclose "serious corrosion damage" to the undercarriage of the

[7] The record does not indicate whether Sheehy Ford responded to Ms. Madden's letters. We note, however, that before filing her initial complaint in the circuit court, Ms. Madden filed a complaint with the Maryland Attorney General's Office, Consumer Protection Division ("AG"). It is unclear from the record what followed from Ms. Madden's complaint as it did not "lead to a resolution[.]"

2014 Ford F-150 before the sale. Second, Ms. Madden claimed that Sheehy Ford refused to fulfill its promise for an "even exchange" for a replacement vehicle upon being notified of damage to the undercarriage and the incorrect VIN which contributed to "the problem with obtaining valid title to an insurance for the vehicle." Instead of an even exchange of vehicles, Ms. Madden alleged that Sheehy Ford demanded an additional $6,000 due to the depreciation in value of the truck. Additionally, while not pled as a separate claim, Ms. Madden insisted that Sheehy Ford did not legitimately own the Ford F-150 and was unable to convey clear title to the truck due to an unpaid tax lien by the State of Michigan. Ms. Madden requested "damages in the sum in excess of $75,000 together with attorneys' fees and costs[.]"

In Count II, Ms. Madden alleged that "the parties [] reached a mutual agreement of recission" because the vehicle "could not at that point be registered, insured, or lawfully driven," and requested "incidental and consequential damages . . . including but not limited to a refund of the payment[.]" In Count III, Ms. Madden asserted that Sheehy Ford violated the MCPA by engaging in "unfair and deceptive trade practices" by (1) failing to disclose to Ms. Madden that it "did not have clear title in this case" and "that the VIN number had been removed to another location [on the vehicle;]" (2) "failing to refund the money" for the F-150 and instead demanding an additional $3,000 for a substitute vehicle[;]" and (3) absent disclosure, "selling the vehicle with severe corrosion damages, mud damage, and replacement parts, which had to have been in a flood." Ms. Madden requested $75,000 in compensatory damages, "substantial punitive damages," and attorneys' fees.

Sheehy Ford filed a motion for summary judgment, which was denied by an order dated March 10, 2020. On March 30, 2022, the case proceeded to a jury trial before the Circuit Court for Prince George's County, Maryland.

Discovery

During the course of litigation, Ms. Madden initiated two inspections of the Ford F-150, both of which she aborted. On February 6, 2020, Ms. Madden "contacted AAA towing" who, at Ms. Madden's request, "took the vehicle" from Sheehy Ford's lot, "put it on a flatbed, hauled it over to Free State [Inspection] for the technician to do an inspection." Ms. Madden testified that the inspection never took place because Sheehy Ford stipulated that she "c[ould] no longer take the vehicle off [Sheehy Ford's] premises;" and she therefore returned the vehicle to Sheehy Ford's lot. Ms. Madden stated that in May 2020, "[t]here were several attempts made to schedule [another] inspection," but she was told that if she did an inspection off premises, she "couldn't bring the truck back[.]" Then, in April 2021, Sheehy Ford sent a tow truck to take the Ford F-150 to Ms. Madden's house, but she refused to "let the driver leave that truck."

Jury Trial

On March 30, 2022—the morning of trial—the circuit court asked Ms. Madden to choose between proceeding on her breach of contract action before a jury, or proceeding on her recession of contract action under equity. Ms. Madden elected to proceed on the breach of contract claim and the court dismissed Count II (rescission of contract) of Ms. Madden's amended complaint. During the one-day trial, Ms. Madden submitted twenty-

six exhibits for the record, including photographs taken by Ms. Madden purporting to show the alleged damage to the undercarriage of the truck, Maryland certificate of title documents, documents from the State of Michigan, documents from the purchase of the vehicle, and letters Ms. Madden sent to Sheehy Ford requesting a refund. Ms. Madden called one witness—herself—to testify to the alleged damage to the Ford F-150, the difficulty she experienced obtaining the correct VIN, and the steps she took to have the vehicle inspected.

Regarding to her claim that Sheehy Ford failed to disclose damage, Ms. Madden conceded that "no mechanic has ever given [her] any documentation that there was any damage to the undercarriage of the truck. Ms. Madden admitted that on February 6, 2020, she took the truck off Sheehy Ford's property to have it inspected and that "nobody called the police or said that [she] had stolen something that wasn't [hers] or chased after [her] because [she had] taken the truck[.]" With respect to the May 2020 inspection attempt, Ms. Madden also conceded that she knew she could "do an inspection off [of Sheehy Ford's] premises, but [she] couldn't bring the truck back" to Sheehy Ford's lot afterwards, which was the reason why no inspection took place.

Ms. Madden introduced into evidence a Michigan Certificate of Title, issued on September 8, 2017, with the correct VIN, that read "Not eligible for plates, no tax paid" at the top of the document in support of her claim that she had received defective title. However, during cross-examination, Ms. Madden conceded that the Michigan documents

did not prevent her from obtaining clear title to the truck in Maryland by January 28, 2018, and she had no evidence from the MVA proving the Certificate of Title was invalid.

Sheehy Ford's Motion for Judgment

At the close of Ms. Madden's case-in-chief, Sheehy Ford moved for judgment under Maryland Rule 2-519. With regard to Count I for breach of contract, Sheehy Ford argued that Ms. Madden presented "no competent evidence" or "competent testimony" that the Certificate of Title was invalid or that the Ford F-150 contained any actual rust or corrosion. Sheehy Ford also argued that Ms. Madden failed to present "competent evidence" of her damages such as the actual value of the truck with and without the alleged damage to the truck or any costs of repairs. As for Ms. Madden's contention that the parties reached a new agreement for an "even exchange," Sheehy Ford posited that the evidence adduced at trial showed only that the parties failed to reach an agreement at all, as reflected by Ms. Madden's own testimony that she "rejected the offer."

In regard to Count III for violation of the MCPA, Sheehy Ford argued that the alleged invalid title and Ms. Madden's allegation that Sheehy Ford "removed [the VIN] to another location" on the truck did not "bear any relevance to whether the title was good or not" and that Ms. Madden presented no "testimony about replacement parts" to remedy the alleged corrosion and mud on the undercarriage. Finally, as in regard to the breach of contract action, Sheehy Ford contended that Ms. Madden failed to "sustain[] her burden to prove that [Sheehy Ford] made a material misrepresentation of fact with regard to the

condition of the vehicle" or that there was "any corrosion damage or mud damage because there's [been] no evidence of damage."

Ms. Madden responded that she "would not have . . . purchase[d]" the truck had the "corrosion [and] mud . . . been disclosed" to her and pointed the court's attention to the pictures that she took of the truck as evidence of damage. Ms. Madden argued that the "conduct of the parties"—such as Ms. Madden leaving the truck on Sheehy Ford's premises for two years demonstrated—"a prima facie case of breach of the contract." She argued that Sheehy Ford indicated that they were going to exchange vehicles and then Sheehy Ford "tried to change the deal" by requesting additional compensation, which was what Ms. Madden "rejected." She contended that "it was Sheehy Ford's action[s] that prevented her from performing her usual inspection." Finally, Ms. Madden argued that she "qualified at the very least under the" MCPA to submit the issue to the jury because "the condition of the vehicle should have been disclosed to her" and because Sheehy Ford failed to resolve Ms. Madden's concern about the validity of the title when she presented evidence from the State of Michigan indicating that tags should not be issued on the truck.

Sheehy Ford replied that the MVA issued Ms. Madden a title to the Ford F-150 within thirty days, that Ms. Madden presented "absolutely no evidence that the title transferred to her was not good and valid," and that "[s]eeing mud and what one thinks might be corrosion under a truck does not create property damage to that truck."

The circuit court granted Sheehy Ford's motion for judgment and entered a corresponding order on April 14, 2022. In issuing its oral ruling from the bench, the court

told Ms. Madden, "[t]he Michigan title is a red herring. You got a Maryland title." The court then ruled:

> I do not have any competent evidence that shows that anybody was the owner of the vehicle other than Ms. Madden from the time she drove it off the lot in early January, and proof of that comes in 2020 when you come back to get it. The fact that [Sheehy Ford] did move the truck shows that they know. You know why they didn't move the truck? Because they know you're the owner. And for them to have moved it would have been a conversion.

On April 21, 2022, Ms. Madden noted a timely appeal.

DISCUSSION

Standard of Review

Maryland Rule 2-519 permits a party in a trial to "move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party[.]" Md. Rule 2-519(a). The Rule further instructs that, when a motion is made at the close of plaintiff's case in an action not tried by the court, but rather, for example, during a jury trial, then "the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made." Md. Rule 2-519(b). "[T]he case must be submitted to the jury for decision if there is any legally sufficient evidence to support the claim." *Elste v. ISG Sparrows Point, LLC*, 188 Md. App. 634, 647 (2009) (citing *Cavacos v. Sarwar*, 313 Md. 248, 258 (1988)). "Legally sufficient evidence" means "that a party who has the burden of [proof] … cannot sustain this burden by offering a mere scintilla of evidence, amounting to no more than surmise, possibility, or conjecture…." *Id.* (quoting *Cavacos*, 313 Md. at 259). We review a trial court's judgment under Rule 2-519 *de novo*,

and we defer to the trial court's factual findings unless they are clearly erroneous. *Cattail Assocs., Inc. v. Sass*, 170 Md. App. 474, 486 (2006) (citations omitted).

I.

Breach of Contract

A. Parties' Contentions

Ms. Madden alleges that Sheehy Ford breached the contract for the sale the Ford F-150 in three ways. *First*, Ms. Madden claims that Sheehy Ford provided Ms. Madden a vehicle with undisclosed mud and rust on the undercarriage. Ms. Madden points to the fact that the Ford F-150 had been represented to her as being in "excellent" condition and argues that "[a]n individual would not be expected to crawl under the vehicle to inspect" the condition of the vehicle. *Second*, Ms. Madden avers that Sheehy Ford failed to convey clear title due to an incorrect VIN and documents from the State of Michigan "indicating that the vehicle . . . had an outstanding lien and the tags should not be issued." *Third*, she contends that Sheehy Ford failed to honor the subsequent agreement reached for an "even exchange" of the black Ford F-150 for the white Ford F-150 by demanding an additional payment of $6,000, which was reduced to $3,000.[8] Citing to *Taylor v. Univ. Nat'l Bank*, 263 Md. 59 (1971), and *Hoffman v. Glock*, 20 Md. App. 284 (1974), Ms. Madden argues for the first time on appeal that the conduct of the parties was sufficient to show an "oral modification" of the original underlying agreement, even though the modification was not

[8] We note that, although Ms. Madden's brief states that Sheehy Ford demanded an additional $3,000 to exchange vehicles, Ms. Madden testified at trial that Sheehy Ford asked for $3,900.

in writing as required by the parties' agreement. Finally, Ms. Madden asserts that her evidence of damages consists of the purchase price of the Ford F-150 in the amount of $32,295 for which she has continued to make monthly payments on her loan.

Sheehy Ford counters that Ms. Madden failed to meet her burden to demonstrate a breach of contract under any of the three grounds she raises. *First*, although Sheehy Ford concedes that Ms. "Madden's contract was to purchase a truck that did not have undisclosed damage," Sheehy Ford disputes that Ms. Madden's photographs purporting to show mud and rust on the undercarriage amounts to "damage" to the truck. Citing to *Hardy v. Winnebago Indus., Inc.*, 120 Md. App. 261 (1998), which concerned the purchase of a motor home with alleged mechanical defects, Sheehy Ford points to the *Hardy* Court's reasoning that evidence that a drive shaft problem was "noisy and inconvenient" and that "minor things kept breaking" did not prevent the buyers from using the motor home nor did it meet the standard of substantial impairment to the value of the vehicle.

Second, Sheehy Ford avers that Ms. Madden received a valid certificate of title with the correct VIN within thirty days of purchasing the Ford F-150 as evidenced by the documents Ms. Madden signed at the time of sale which included (1) the insurance confirmation, (2) the Registration Certificate, and (3) the Certificate of Title. Sheehy underscores that the correct VIN was also clearly displayed on the Ford F-150 itself. Sheehy Ford contends that, "[r]egardless of the source of [the] error or when it was corrected, "[t]he only evidence is that PenFed recorded an inaccurate VIN"—none of which "affected [Ms. Madden's] legal ownership of and title to the truck." *Third*, Sheehy

Ford claims that there was no evidence that they "entered into a new agreement with Madden" because she unequivocally "rejected the offer" that Sheehy Ford made to trade the F-150 for a different truck at a different price. As such, according to Sheehy Ford, they "could not have breached a contract that was never made."

With respect to damages, Sheehy Ford contends that Ms. Madden failed to present any evidence of actual damages required to succeed on a breach of contract action. According to Sheehy Ford, there was "no evidence that the mud or rust was there when she took possession of the truck" or that it "substantially impaired the value of the truck." Moreover, Sheehy Ford emphasizes that Ms. Madden presented no expert testimony or factual evidence that the mud and rust was unusual for a used vehicle or even that it impaired its operation, nor any evidence of the difference in value of the Ford with the mud and rust and without. Finally, Sheehy Ford contends that Ms. Madden's argument pertaining to any oral modification of the original contract is irrelevant because Ms. Madden never claimed "that she and Sheehy [Ford] orally agreed to modify a written contract[;] [instead] [h]er claim was that she and Sheehy [Ford] reached an agreement that she would get an 'even exchange' of the Ford F-150 for a different truck."

In reply, Ms. Madden admits that "[w]hile [she] ultimately received title to the vehicle," she argues that she presented evidence of a defective title such as the outstanding Michigan tax lien and Mr. Slaughter's erroneous entries into the database. Ms. Madden also claims that she presented sufficient evidence, by virtue of her own testimony, that Sheehy Ford failed to provide a truck without undisclosed damage because the

undercarriage of the car "was not visible unless she had crawled under the vehicle itself." Finally, Ms. Madden avers that the subsequent conduct of the parties was sufficient to show that a new contract for an even exchange of vehicles had been formed—and breached—by Sheehy Ford. She urges that, the fact that the truck remained on Sheehy Ford's lot for two years "was totally inconsistent" with her ownership of the vehicle.

B. Preservation

Ordinarily, we will not address an issue on appeal "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). The primary purpose of Rule 8-131 is "'to ensure fairness for all parties in a case and to promote the orderly administration of law.'" *State v. Bell*, 334 Md. 178, 189 (1994) (quoting *Brice v. State*, 203 Md. 488, 495 (1969)). The interests of fairness are furthered by "requir[ing] counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings[.]" *Clayman v. Prince George's Cnty.*, 266 Md. 409, 416 (1972). At trial, Ms. Madden argued only that (1) the parties had reached a "new agreement" for an "even exchange" of the black 2014 Ford F-150 for the white Ford F-150 and that (2) Sheehy Ford breached this new agreement by demanding an additional $3,000 in compensation. Our review of the record shows that Ms. Madden failed to raise the issue of an oral modification at trial, which is a separate issue from whether Sheehy Ford breached a separate agreement for an "even exchange." Therefore, we decline to address Ms. Madden's new claim for breach of an oral agreement.

Briefly, however, we note that under the Statute of Frauds, unless one of the exceptions applies,[9] "a contract for the sale of goods for the price of $500 or more **is not enforceable by way of action or defense *unless*** there is **some writing** sufficient to indicate that a contract for sale has been made between the parties **and signed by the party against whom enforcement is sought** or by his authorized agent or broker." CL § 2-201(1) (emphasis added). *See also* CL § 2-209(3) ("The requirements of the statute of frauds of this title (§ 2-201) must be satisfied if the contract as modified is within its provisions."). In this case, even assuming *arguendo* that Ms. Madden preserved the issue of oral modification for our review, her argument fails because there is no writing to indicate that the parties agreed to an oral modification of the original contract for the sale of the black Ford F-150, and none of the exceptions to the Statute of Frauds applies to the facts of this case.

[9] A contract which does not satisfy the Statute of Frauds requirement of "some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought" may still be enforceable if: (1) the items are specially manufactured goods that "are not suitable for sale to others in the ordinary course of the seller's business, and the seller, before notice of repudiation is received . . . has made either a substantial beginning of their manufacture or commitments for their procurement"; (2) the "party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made"; or (3) "goods for which payment has been made and accepted or which have been received and accepted[.]" CL § 2-201(3).

C. Applicable Law

Maryland Uniform Commercial Code

All "transactions in goods" are subject to the Maryland Uniform Commercial Code ("MUCC"), CL § 2-101 *et seq*. "Goods" are defined as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Title 8) and things in action." CL § 2-105(1). The Ford F-150 is a thing that was "movable at the time of identification to the contract for sale" and therefore, the terms of its sale are subject to the MUCC.

i. Formation (and Breach) of Contract

A contract is "an agreement which creates an obligation" that is created by "the concurrence of two or more persons in a common intent to affect their legal relations." *Canaras v. Lift Truck Servs., Inc.*, 272 Md. 337, 346 (1974) (internal quotation marks omitted) (quoting *Buffalo Pressed Steel Co. v. Kirwan*, 138 Md. 60, 64 (1921)); *see also Safeway Stores, Inc. v. Altman*, 296 Md. 486, 489 (1983) ("'to establish a contract the minds of the parties must be in agreement as to its terms.'") (quoting *Klein v. Weiss*, 284 Md. 36, 63 (1978))). In general, "[a] contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract" and "[a]n agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined." CL § 2-204(1),

(2). This agreement is enforceable only when "an offer made by one party" is accepted "by the other party to that contract." *Canaras*, 272 Md. at 346 (citation omitted).

An "offer,"[10] which must contain certain and definite terms, is "a proposal to enter into a contract, and an acceptance is the assent of the party to whom the offer is addressed to its terms." *Buffalo Pressed Steel*, 138 Md. at 64 (internal quotations and citations omitted); *Canaras*, 272 Md. at 346. "Unless otherwise unambiguously indicated by the language or circumstances, [] [a]n offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances[.]" CL § 2-206(1)(a). Thus, the offer "must be made under circumstances evidencing an express or implied intention that its acceptance shall constitute a binding contract." *Md. Supreme Corp. v. Blake Co.*, 279 Md. 531, 539 (1977). Thus, "**a mere expression of intention to do an act is not an offer to do it**, and **a general willingness to do something on the happening of a particular event or in return for something to be received does not amount to an offer**." *Id.* (emphasis added).

Once an offer has been accepted, "[t]he buyer must pay at the contract rate for any goods accepted." CL § 2-607(1). Acceptance of *goods* occurs when the buyer, "[a]fter a reasonable opportunity to inspect the goods[,] signifies to the seller that the goods are

[10] When the MUCC does not define a term, we look to the common law. *See* CL § 1-103(c) ("Unless displaced by the particular provisions of [the Maryland Uniform Commercial Code], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause shall supplement its provisions.").

conforming or that he will take or retain them in spite of their nonconformity," "fails to make an effective rejection," or "[d]oes any act inconsistent with the seller's ownership[.]" CL § 2-606(1). Once the goods have been accepted, the buyer is precluded from rejecting the goods; and if acceptance is made "with knowledge of a nonconformity," the buyer cannot revoke acceptance of a nonconforming good unless "the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured[.]" CL § 2-607(2). However, a buyer cannot revoke her acceptance if she "did not know of the nonconformity **because of h[er] own failure to make a reasonable investigation which was readily available**[.]" *Lynx, Inc. v. Ordnance Prods., Inc.*, 273 Md. 1, 15 (1974) (emphasis added) (citations omitted).

To prevail in an action for breach of contract, a plaintiff must prove (1) that the defendant owed her a contractual obligation, and (2) that the defendant breached that obligation. *Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001) (citation omitted). A breach of a contract is material when it "is such that further performance of the contract would be different in substance from that which was contracted for." *Barufaldi v. Ocean Cty. Chamber of Commerce*, 196 Md. App. 1, 23 (2010) (internal quotations and citations omitted). Whether a breach is material is a question of fact unless the question is "so clear that a decision can properly be given only one way, and in such a case the court may properly decide the matter as if it were a question of law." *Publish Am., LLP v. Stern*, 216 Md. App. 82, 102 (2014) (quoting *Speed v. Bailey*, 153 Md. 655, 661-62 (1927)). The buyer bears the burden to establish any breach with respect to the goods accepted. CL §

2-607(4). The buyer's damages for a breach of warranty in regard to accepted goods are limited to "the difference at the time and place of acceptance between **the value of the goods accepted and the value they would have had if they had been as warranted**, unless special circumstances show proximate damages of a different amount." CL § 2-714 (emphasis added).

Sheehy Ford cites to, and Ms. Madden attempts to distinguish, *Hardy v. Winnebago Indus., Inc.*, 120 Md. App. 261 (1998). There, the buyers of a motor home sued the seller, among others, for various breach of warranty claims, breach of contract, and unfair trade practices. *Id.* at 264-65. The buyers—the only witnesses to testify at trial—purchased a motor home to embark on a cross-country trip with their two children. *Id.* at 265. Before leaving, however, the buyers noticed a crack in the windshield, but declined the seller's offer to repair it, accepting the seller's assurance that the windshield would be repaired upon the buyers' return. *Id.* at 266. During the road trip, however, the buyers testified that they heard "a loud 'metal clanking' noise in the drive line" and, after taking the motor home to a nearby Ford dealership, it was determined that the vehicle needed a new drive shaft, which would take a week to obtain. *Id*. Instead of waiting, the buyers decided to continue with the trip upon the sale manager's assurance that the motor home was safe to drive. *Id.* A few days later, however, the buyers "noticed a burning smell coming from the back of the motor home" and observed that the drive shaft "was glowing red hot" and proceeded to the nearest Ford dealership where the drive shaft was readjusted, thereby eliminating the smoke issue. *Hardy*, 120 Md. App. at 266. Apart from the noise from the

drive shaft, the buyers completed their cross-country road trip and returned home without issue, after having put 7,500 miles on the motor home. *Id.* at 266-67.

Once home, the buyers gave the seller a list of problems that still needed repairs, in addition to the drive shaft. *Id.* at 267. After the repairs were complete, the buyers returned to test the drive vehicle, but complained that it still made noise and demanded a full refund along with a list of 17 problems that the buyers believed still needed to be fixed. *Id.* at 268. The seller declined to refund the purchase price, but agreed to make the necessary repairs. *Id.* When the repairs were completed, the buyers returned, but protested that some of the problems listed were not repaired and complained that drive shaft still made noise. *Id.* They requested that the seller buy back the motor home; the seller refused, and the buyers left the shop without the motor home. *Hardy*, 120 Md. App. at 268. At the close of the buyers' case-in-chief, the court granted the defendants' motions for judgment on all counts. *Id.* at 269.

On appeal, we explained that under CL § 2-608 a buyer may revoke her acceptance if "there is a nonconformity that substantially impairs the value of the goods"; nevertheless:

> [t]he substantiality requirement bars revocation for defects which **are trivial or easily corrected** … or for those which merely make the tender somewhat less than perfect…. Whether a nonconformity substantially impairs the product's value to the buyer necessarily involves consideration of subjective factors, i.e., the particular needs and circumstances of the individual buyer, **yet proof of substantial impairment requires more than the buyer's subjective assertion that the value of the product to him was impaired; it requires evidence from which the trier of fact, applying objective standards, can infer that the needs of the buyer were not met because of the nonconformity**.

Id. at 272 (emphasis added) (quoting *Champion Ford Sales, Inc. v. Levine*, 49 Md. App. 547, 553-54 (1981)) (citations omitted in original). We observed that "[t]he alleged problems with the drive shaft did not prevent the [buyers] from making the trip" and "did not cause them to alter their travel plans significantly." *Id.* at 273. Furthermore, we noted that there was no evidence at trial from any expert that something significant was wrong with the drive shaft other than the noise. *Id.* Nor was any expert evidence presented as to the value of the vehicle. *Id.* Indeed, we emphasized that, with the exception of the cracked windshield, the buyer "did not specify which of the problems were present when the motor home was delivered and which developed during the trip." *Hardy*, 120 Md. App. at 273. Accordingly, we held that "the trial court properly concluded that the evidence was legally insufficient to establish that the value of the motor home to the [buyers] was substantially impaired." *Id.* at 274.

ii. Express Warranties

Ms. Madden avers that Sheehy Ford misrepresented the condition of the Ford F-150 by failing to disclose the condition of the undercarriage in the purchase agreement and by Mr. Slaughter's statement that the truck was in "excellent condition." Sheehy Ford, for its part, admits that Ms. "Madden's contract was to purchase a truck that did not have undisclosed damage[.]" Although Ms. Madden does not invoke the doctrine of express warranty by name, her contention that the Ford F-150's allegedly damaged condition violated her contract equates to an argument that these representations created an express warranty that there was no undisclosed damage to the vehicle.

Express warranties are statements that a seller makes about the product being sold, whether orally or in writing and are created in the following ways:

> (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
>
> (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
>
> (c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

CL § 2-313(1). The seller need not "use formal words such as 'warrant' or 'guarantee' or . . . have a specific intention to make a warranty, **but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty**." CL § 2-313(2) (emphasis added).

The case of *McGraw v. Loyola Ford, Inc.*, illustrates the point that not all statements by the seller about the product being sold amount to an express warranty. 124 Md. App. 560, 582 (1999). There, we affirmed the circuit court's conclusion that a car dealership's statement that a vehicle was "the most outstanding value on the lot" amounted to an "indefinite generality" and was, at best, "puffery of no legal consequence." *Id.* at 584 (citations omitted). We said explicitly that, "this is the sort of speech that is 'offered and understood as an expression of the seller's opinion only, which is to be discounted as such by the buyer, and on which no reasonable [person] would rely.'" *Id.* at 582 (quoting W. PAGE KEETON, ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 109 (5th ed. 1984)).

See also Wolin v. Zenith Homes, Inc., 219 Md. 242, 246 (1959) (noting that the claims by the home builder that the home would be built "according to a plan and specifications in structurally sound condition and free of substantial defects" were insufficiently misleading to allow the buyer to rescind the contract); *Milkton v. French*, 159 Md. 126, 132 (1930) (holding, in the context of recission of contract claim, that "the use of the term 'perfectly safe' in connection with every detail of construction was so extravagant in scope and measure, and so indefinite and elusive in meaning that the statement would fall within the category of a puff instead of a representation[.] . . . Everyone knows a new house, as an old one, is never perfect in construction, but has anticipated defects inherent to its period.").

iii. Warranty of Title

Ms. Madden further alleges that Sheehy Ford breached their contract by failing to deliver clear title to the Ford F-150 because of a mistake in recording the VIN submitted to her lender and a purported Michigan lien on the truck for unpaid taxes. In a contract for the sale of a vehicle, there is an implied warranty by the seller that the title to the vehicle conveyed shall be good, its transfer rightful, and that the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge. *See* Maryland Code (1977, 2020 Repl. Vol.), Transportation Article ("Trans."), § 13-113(e)(1)-(3); CL § 2-312. In Maryland, a car dealership must deliver the title and any other documentation required to register the vehicle to the buyer within thirty days of purchase. Trans. § 13-113(e)(2)(ii). "[A] breach of the warranty of title occurs whenever a seller of a motor vehicle fails to provide his

purchaser with adequate proof of ownership because of the reasonable doubts which faulty documentation raise as to the validity of the buyer's title." *Jefferson v. Jones*, 286 Md. 544, 554 (1979).

D. Analysis

i. Ms. Madden Presented No Evidence that the Truck Contained Undisclosed Damage Sufficient to Constitute a Breach of Contract

We find no merit to Ms. Madden's claim that the Ford F-150 had undisclosed damage to its undercarriage when she purchased it. The buyer bears the burden to "establish any breach with respect to the goods accepted." CL § 2-607(4). Ms. Madden's testimony and her photographs purporting to show mud and rust on the undercarriage were insufficient to establish either that the truck had damage from rust that substantially reduced its value, or that the alleged damage to the undercarriage occurred *before* Ms. Madden drove the vehicle off the lot. Ms. Madden failed to establish that rust actually ever formed on the undercarriage of the Ford F-150, either before or after she purchased the truck. The only evidence that she presented, in addition to her testimony, were photos that she took of the undercarriage of the truck—two weeks and again two years after she purchased it—which are not clear enough to identify whether what is depicted is mud or rust, and Ms. Madden did not present testimony by anyone who had the expertise to identify rust on the photographs. Like the buyers in *Hardy*, therefore, Ms. Madden failed to present any other evidence, apart from her subjective assertion, that the value of the truck was substantially impaired due the alleged mud and rust. *See* CL § 2-714(2) (providing that the buyer's damages for a breach in regard to accepted goods are limited to "the difference at

the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted[.]").

Notably, at no point did any of the alleged damage to the undercarriage prevent Ms. Madden from using the truck for its intended purpose; indeed, Ms. Madden drove the truck for approximately two weeks, putting 82 miles on it, before she noted the alleged damage to the undercarriage. Further, Ms. Madden cannot claim breach of contract if she "did not know of the nonconformity because of h[er] own failure to make a reasonable investigation which was readily available." *Lynx*, 273 Md. at 15. Looking underneath the truck to see the state of the undercarriage was "a reasonable investigation that was readily available" *before* Ms. Madden purchased the truck.

We also are not persuaded that the sales representative's statement that the truck was "in excellent condition" amounts to an express warranty of the condition of the vehicle. Rather, we conclude that such a statement about a used vehicle, is, at best, "so indefinite and elusive in meaning," *Milkton*, 159 Md. at 132, that it constitutes or "a statement purporting to be merely the seller's opinion or commendation of the goods [which] does not create a warranty[,]" CL § 2-313(2), *i.e.,* "puffery of no legal consequence." *McGraw*, 124 Md. App. at 582. Undeniably, Ms. Madden was aware that she was buying a used truck that already had 18,821 miles on it as of December 30, 2017. A reasonable consumer would know that the condition of a used car, as opposed to a new car, includes some wear and tear. In fact, at the same time Mr. Slaughter praised the F-150's "excellent condition," he had admitted that it required repairs to the bed liner and the rear camera. Therefore, the

trial court did not err in finding Ms. Madden's evidence legally insufficient to show that Sheehy Ford had materially misrepresented the condition of the vehicle.

ii. Ms. Madden Received A Valid Certificate of Title with the Correct VIN

Ms. Madden next claims that Sheehy Ford breached the contract by failing to provide her a valid certificate of title, due to an alleged error in recording the VIN and a purported Michigan tax lien. We find no merit to this argument. Ms. Madden received a valid certificate of title from Maryland within 30 days of the purchase of the vehicle, as required under sections 13-113(e)(1)-(3) of the Transportation Article, and section 2-312 of the Commercial Law Article. The documents from the State of Michigan purporting to show an unpaid tax lien are irrelevant because, as Ms. Madden conceded in her brief and at trial, she received a valid registration from the MVA by January 24, 2018, and certificate of title by January 28, 2018—less than thirty days after the sale.

Moreover, the correct VIN was listed on eight separate documents Ms. Madden was provided when she purchased the truck, including the: (1) Contract of Sale/Deal Recap Document, (2) Dealer's Bill of Sale, (3) Odometer Disclosure Statement, (4) Power of Attorney acknowledgment form, (5) Lemon Law Rights Acknowledgment; (6) Limited Warranty Statement; (7) Allstate Temporary Proof of Insurance, and (8) Ped-Fed Check. Therefore, we discern no error in the trial court's dismissal of Ms. Madden's claim with respect to an invalid title.

iii. Ms. Madden Unequivocally Rejected Sheehy Ford's Offer for a Vehicle Exchange

Finally, Ms. Madden argues that Sheehy Ford breached an agreement for an "even exchange" of vehicles after Ms. Madden expressed dissatisfaction with the Ford F-150 she had purchased. This claim fails as well. As noted, a contract requires "an offer made by one party" to be accepted "by the other party to that contract." *Canaras*, 272 Md. at 346. Although, "[a] contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract[,]" *see* CL § 2-204(1), "a contract for the sale of goods for the price of $500 or more **is not enforceable by way of action or defense *unless*** there is **some writing** sufficient to indicate that a contract for sale has been made between the parties **and signed by the party against whom enforcement is sought** or by his authorized agent or broker." CL § 2-201(1) (emphasis added). *See also* CL § 2-209(3) ("The requirements of the statute of frauds of this title (§ 2-201) must be satisfied if [a] contract as modified is within its provisions.").

Here, the negotiations between the parties were never reduced to a writing signed by Sheehy Ford—therefore Sheehy Ford's *proposal* to exchange the black Ford F-150 for the white Ford F-150 was "a mere expression of intention to do an act" that did not constitute an offer. Sheehy Ford's financial officer made an *offer* to exchange the vehicles, that was contingent upon Ms. Madden paying an additional $3,900. *Md. Supreme Corp.*, 279 Md. at 539. At that point, as she testified at trial, Ms. Madden unequivocally "***rejected***

the offer." (Emphasis added). Therefore, no contract or enforceable agreement was formed because there was no writing "signed by the party against whom enforcement is sought[.]" CL § 2-201(1). *See Buffalo Pressed Steel*, 138 Md. at 64 ("an acceptance **is the assent of the party to whom the offer is addressed to its terms**") (internal quotations and citations omitted) (emphasis added); *see also Safeway Stores*, 296 Md. at 489 ("to establish a contract the minds of the parties **must be in agreement as to its terms**.") (emphasis added).

In sum, Ms. Madden presented no legally sufficient evidence at trial to show that she had not continuously owned the Ford F-150 since the date of purchase, that she had received an invalid title or incorrect VIN, that Sheehy Ford had promised to exchange the vehicles for no additional consideration, or that she had sustained any damages. Accordingly, we affirm.

II.

The Maryland Consumer Protection Act

We next address Ms. Madden's contention that Sheehy Ford's alleged representations and omissions were actionable under the MCPA. Our discussion is informed by our analysis above because Ms. Madden's breach of contract claim is based on precisely the same alleged facts that she claims constitute unfair and deceptive trade practices under the MCPA.

A. Parties' Contentions

Ms. Madden reiterates the same arguments she raised in her breach of contract action and avers that she presented sufficient evidence at trial to submit her CPA claim to the jury. Citing to *Sonnenberg v. Sec. Mgmt. Corp.*, 325 Md. 117 (1992), and *Mercedes-Benz of N. Am. v. Garten*, 94 Md. App. 547 (1993), Ms. Madden argues that Sheehy Ford violated the MCPA by misrepresenting and/or concealing the condition of the truck's undercarriage by stating that it was "in excellent condition" when Sheehy Ford "knew or should've known of the corrosive undercut coating condition[.]" She insists that it is "inconceivable" that any "inspection" performed by Sheehy Ford would have failed to discover the condition of the undercarriage when Ms. Madden inadvertently discovered it by merely looking underneath the vehicle. However, Ms. Madden emphasizes that, under the MCPA, she is not required to prove the scienter element of common law fraud. Ms. Madden contends that Sheehy Ford "imposed unreasonable conditions on the inspection of the vehicle" which could have led to discovery of other undisclosed defects of the truck and by "fail[ing] to clean up the title concerns" that manifested when Ms. Madden sought to obtain insurance. Finally, Ms. Madden cites to *Lloyd v. General Motors Corp.*, 397 Md. 108 (2007) for its holding that the injury to the plaintiff was "measured by the amount it would cost to repair" the damaged vehicle component, and argues that "[h]er damages are payments made for the vehicle."

Sheehy Ford responds that any representation to Ms. Madden that the Ford F-150 was in "excellent condition" was exactly the kind of puffing and sales talk language that consumers expect from car dealers. With respect to the truck's undercarriage, Sheehy Ford

contends that Ms. Madden: (1) cannot prove that the alleged mud and rust were present at the time of purchase; (2) that Sheehy Ford was aware of its existence or that its existence was material to the transaction; or (3) that Sheehy Ford deliberately failed to disclose this fact to Ms. Madden to induce her to buy the truck. Sheehy Ford repeats that Ms. Madden failed to demonstrate any actual damages or loss sustained because there was no evidence presented, apart from Ms. Madden's testimony, that the alleged mud or rust affected the value of the truck, rendered the truck unusable, or that the truck did not belong to Ms. Madden. Finally, Sheehy Ford points out that Ms. Madden's sole claim for damages "are her contractual obligation to pay the auto loan she secured to purchase the truck, which she had regardless of the condition of the truck."

In reply, Ms. Madden insists that the condition of the undercarriage was a "material fact" such that she would not have purchased the truck had she known about it, and argues that she is not required to prove that Sheehy Ford had actual knowledge of the truck's undercarriage. Finally, Ms. Madden "vigorously maintains that all the payments made" towards the Ford F-150 are her damages because Ms. Madden "did not have use of the vehicle" for over two years and Sheehy Ford "imposed unreasonable conditions on inspection of the vehicle."

B. Analysis

Section 13-408(a) of the MCPA creates a private right of action "to recover for injury or loss sustained . . . as the result of a practice prohibited" by the MCPA. CL § 13-408(a). Unfair and deceptive trade practices are defined in section 13-301 of the

Commercial Law Article and include "any [f]alse, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers" and "any . . . [f]ailure to state a material fact if the failure deceives or tends to deceive" consumers. CL § 13-301(1), (3). We have explained that "[a]n omission is considered material if a significant number of unsophisticated consumers would attach importance to the information in determining a choice of action." *Golt v. Phillips*, 308 Md. 1, 10 (1986) . As noted above, Sheehy Ford's statement that the truck was in "excellent condition" was, at best, "the kind of 'puffing' and 'sales talk' language that many people have come to expect from car dealers" because that "sort of speech that is 'offered and understood as an expression of the seller's opinion only, which is to be discounted as such by the buyer, and on which no reasonable [person] would rely.'" *McGraw v. Loyola Ford, Inc.*, 124 Md. App. 560, 582 (1999) (quoting W. PAGE KEETON, ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 109 (5th ed. 1984)).

Regardless of whether Sheehy Ford knew or should have known about the condition of the undercarriage, however, Ms. Madden's MCPA claim fails because she cannot prove loss by any legally accepted measure of damages. In an action brought by a private party, the plaintiff may only recover damages for an *actual* injury or loss. As our Supreme Court explained in *CitaraManis v. Hallowell*:

> In a public enforcement proceeding '[a]ny practice prohibited by this title is a violation ... whether or not any consumer in fact has been misled, deceived, or damaged as a result of that practice.' [CL] § 13-302. In contrast, a private enforcement proceeding pursuant to [CL] § 13-408(a) expressly only permits

> a consumer 'to recover for injury or loss sustained by him as a result of a practice prohibited by this title." [CL] § 13-408(a). Section 13-408(a), therefore, **requires an aggrieved consumer to establish the nature of the actual injury or loss that he or she has allegedly sustained as a result of the prohibited practice.**

328 Md. 142, 152 (1992) (emphasis added). *See also Golt*, 308 Md. at 12 ("in determining the damages due to the consumer, **we must look *only* to his actual loss or injury** caused by the unfair or deceptive trade practices.") (emphasis added). The Court clarified that the damages for actual "injury and loss" include those expenses that "will compensate the injured party for the injury sustained due to the defendant's acts and for indirect consequences of such acts." *CitaraManis*, 328 Md. at 153-54.

Damages must be "objectively identifiable" and "measured by the amount the consumer **spent or lost** as a result of his or her reliance on the sellers' misrepresentation." *Lloyd v. General Motors Corp.*, 397 Md. 108, 143 (2007). In order to establish evidence of injury or loss, the plaintiff must point to some "amount that it would take to remedy the loss [the plaintiff] incurred as a result of the respondents' alleged deceptive trade practices." *Id.* at 150. In *Lloyd*, for example, the plaintiffs brought a class action against the car dealership, alleging that the seats in a class of cars were unsafe because they "collapse rearward in moderate and severe rear-impact collisions." *Id.* at 117-18. On appeal we held that the petitioners alleged sufficient facts that constituted a loss as a result of the respondents' misrepresentation or omission "measured by the amount it will cost them to repair the defective seatbacks." *Id.* at 149.

We reject Ms. Madden's claim that her damages are the payments she made towards the loan on her truck. To support a private right of action under the MCPA, she was required to submit proof that she had sustained actual injury or loss. *See, e.g., Hall v. Lovell Regency Homes Ltd. P'ship*, 121 Md. App. 1, 9 (1998) (affirming the trial court's dismissal of the plaintiffs' MCPA claim because "the homeowners had not presented cost of repair evidence" nor had they "submitted evidence competent to show the difference between the fair market values of their properties with and without defects at a given point in time.").

Ms. Madden failed to present any evidence to show that the condition of the undercarriage (1) affected the operation of the truck, (2) substantially reduced the truck's value, (3) or in any way prevented Ms. Madden's from using the truck. *See, e.g., Jones v. Koons Automotive, Inc.*, 752 F. Supp.2d 670, 684 (D. Md. 2010) ("[a] hypothetical price concession [that the plaintiff was overcharged or would have demanded significant price concessions in the purchase of a vehicle] is simply not the type of tangible injury appropriately recognized in a private [Maryland] CPA action, as virtually any misrepresentation could support such a claim of 'injury.'"). Nor did Ms. Madden allege that she incurred any additional repair costs due to the condition of the truck's undercarriage. *See, e.g., id.* at 684 ("The complainant does not point to any 'cost of remedy' or any other actual harm with respect to [the defendants'] alleged concealment of the car's prior use as a rental car. . . She does not allege that she incurred additional repair costs, for instance, because of the car's prior use. Nor does she allege that the concealed

fact caused any diminution in value of the car."). Moreover, as we explained above, Ms. Madden cannot prove that alleged the mud and rust was present on the vehicle *before* she purchased the truck, drove it off the Sheehy Ford's property, and put 82 miles on it. Apart from her subjective assertion, Ms. Madden produced no expert testimony to testify as to the extent of the damage, and the photographs Ms. Madden took *after* she purchased the truck do not establish any damage at the time of sale. *See Hardy*, 120 Md. App. at 272-73.

We also find no merit to Ms. Madden's allegation Sheehy Ford imposed unreasonable conditions on any inspections. The testimony at trial revealed that Sheehy Ford's conditions for the inspections were (1) that any inspection could not be conducted by someone else on Sheehy Ford's property using Sheehy Ford's equipment; and (2) that Ms. Madden was free to take the truck to an outside inspection, but she would not be permitted bring the truck back onto Sheehy Ford's premises. Ms. Madden cannot claim loss of use of the truck when she voluntarily refused to retrieve the Ford F-150 from Sheehy Ford's premises and rejected Sheehy Ford's attempt to tow the truck to Ms. Madden's home.

Finally, as we already explained above, Ms. Madden received a valid certificate of title and registration with the correct VIN from the MVA within thirty days of the purchase. Ms. Madden presented no evidence of any expense or loss whatsoever related to any trouble obtaining valid certificate of title. Accordingly, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.