

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dornyehn Woyee,
Plaintiff,

Civil No.: 99-109 JRT/FLN

vs.

**REPORT AND
RECOMMENDATION**

Richfield Motors, Inc., d/b/a,
Metro Mitsubishi, a Minnesota
corporation,

Defendant.

Thomas Lyons, Jr., for Plaintiff.
Gregory L. Johnson for Defendant.

This matter came before the undersigned United States Magistrate Judge on September 10, 1999, on the parties' cross-Motions for Summary Judgment. Plaintiff alleges that, in selling him a car, Defendant violated the federal Truth in Lending Act ("TILA") and numerous Minnesota laws.

I. BACKGROUND

Dornyehn Woyee ("Plaintiff" or "Mr. Woyee") received an advertising flyer addressed to him from Defendant Metro Mitsubishi ("Metro") offering him both a cash prize and the opportunity to upgrade or refinance his current vehicle. (Lyons Aff., ¶ 2, Ex. 1, p. 23-24, 58). Mr. Woyee drove to Metro on July 16, 1998, and learned that his cash prize totaled five dollars. (Id. at 58). After claiming his prize, Mr. Woyee test drove a 1993 Mitsubishi Diamante and agreed to exchange his 1992 Diamante for the 1993 model. (Johnson Aff., Ex. C). Tracy

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Debruzzi, a Metro salesperson, completed a "Customer Statement" which recorded the agreement between the parties including: sale price, trade-in allowance, down payment, trade-in payoff, monthly payments, and term of the loan. (Id.). Portions of the pre-printed Customer Statement were obscured by the Magic Marker used to inscribe the details of Mr. Woyee's purchase. (Id.).

After signing the Customer Statement, Mr. Woyee met with Metro's finance manager, Brent Wade (hereinafter "Mr. Wade"). (Lyons Aff. ¶ 2, Ex. 1, p. 75). Mr. Wade was responsible for concluding the retail installment contract between the parties. (Id.; Johnson Aff. Ex. E). Mr. Woyee and Metro signed other documents as well, including: a Purchase Agreement, a Conditional Delivery Agreement, an Agreement to Provide Insurance, a State of Minnesota Title Application, a Carefree Car Protection Service Contract, and odometer statements. (Lyons Aff. ¶¶ 7-9, Ex. 6-8; Johnson Aff. Exs. D and F).

Mr. Woyee then left Metro driving the 1993 Diamante, leaving his 1992 Diamante behind. Defendant's Memorandum at 8.

Proper title transfer procedures were not followed during the purchase. (Woyee Aff. ¶ 4). Mr. Woyee did not have the title for the 1992 Diamante with him when he met with Mr. Wade, and only delivered the title after he took possession of the newer car. (Woyee Aff. ¶ 2, 4). At no point did Mr. Woyee sign-off on the title. (Woyee Aff. ¶ 4).

On July 17, 1998, the day after Mr. Woyee traded cars, the anticipated assignee of Mr. Woyee's retail assignment contract, Arcadia Financial Ltd. ("Arcadia") notified Metro twice that it would not accept assignment of the contract. (Lyons Aff. ¶ 10, Ex. 9; Johnson Aff. Ex. G). These notices notwithstanding, on Saturday, July 18, 1998, Metro sold the 1992 Diamante.

(Johnson Aff. Ex. B).

On Monday, July 20, 1998, Metro attempted to enlist two additional loan assignees, Community Credit Co. and USbank. (Johnson Aff. Ex. H; Lyons Aff. ¶ 5, Ex. 4). Both of these organizations rejected Metro's offer. (Id.). TCF also notified Metro around this time that it would not accept assignment of the contract. (Lyons Aff. ¶11, Ex. 10).

On Wednesday, July 22, 1998, six days after Mr. Woyee drove away in what he thought was his new car, Metro used the credit application that Mr. Woyee completed for the '93 Diamante purchase to attempt to obtain credit for his purchase of a 1993 Cadillac. (Lyons Aff. ¶ 6, Ex. 5). Metro did not obtain Mr. Woyee's approval for this alternative use of his credit application. (Woyee Aff. ¶ 10). In fact, Mr. Woyee had at this point never seen or test-driven the Cadillac. (Lyons Aff. ¶ 2, Woyee Aff. ¶ 10, Ex. 1, p. 95). Arcadia notified Metro that same day that it would approve and accept assignment of a retail installment contract for the purchase of the Cadillac with a principal loan balance of \$15,000 plus service contract. (Lyons Aff. ¶ 12, Ex. 11).

Metro contacted Mr. Woyee and instructed him to return the '93 Diamante to the dealership on Thursday, July 23, 1998. (Lyons Aff. ¶ 2; Woyee Aff. ¶ 10, Ex. 1, p. 95). Mr. Woyee met with Metro that day and expressed his marked lack of interest in the Cadillac. (Id. at 97-100). Instead, Mr. Woyee requested the return of his '92 Diamante, unaware that it had been sold. (Id. at 100, 112, 114). Upon learning of the sale, Mr. Woyee requested the money that Metro received for the sale of the car. (Id. at 100, 112, 114, 127, 129-30). Mr. Wade allegedly informed Mr. Woyee that giving him the funds from the sale of the '92 Diamante was not a possibility and that his only option was to purchase the Cadillac. (Id. at 127). Dissatisfied with

this state of affairs, Mr. Woyee remained at Metro for three hours, but was unable to alter the course of events and ultimately signed an installment agreement to purchase the Cadillac. (Id. at 114-166).

Unhappy with his purchase, Mr. Woyee attempted to return the Cadillac the next day, but was informed that such an action was impossible because he had "bought" the Cadillac and "signed the papers." (Id.).

II. ANALYSIS

Lured by a five-dollar reward, Mr. Woyee exchanged his vehicle for a more agreeable vehicle. Through no fault of his own, he ended up with a vehicle so displeasing that he sought to return it, even though such an action meant that he would be unable to get to work. Depicted by Defendant as a straightforward commercial action befouled by the innocent decisions of third-parties, Plaintiff contends that he was in reality the victim of a sophisticated bait and switch scheme. Plaintiff claims that, by inducing him to exchange the '92 Diamante for a '93 model, Metro was able to achieve its true goal of selling Plaintiff a Cadillac, a car in which he had no interest.

A. Standard of Review

Summary judgment will be granted if the record presents no genuine issues of material fact when the facts are viewed in the light most favorable to the non-moving party. Rabushka, ex rel. United States v. Crane Co., 122 F.3d 559 (8th Cir. 1997). The court must decide "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). Federal Rule of Civil Procedure 56(c) provides, in relevant part, that

summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

B. The TILA Claim

Plaintiff argues that defendant's bait and switch violates the federal Truth in Lending Act, 15 U.S.C. § 1031 *et seq.* Plaintiff alleges that Defendant's actions violate TILA because Metro did not make credit available to Mr. Woyee under the terms disclosed. Plaintiff's Memorandum at 20. That is not the case. TILA § 1634 states that:

If information disclosed in accordance with this part is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this part.

15 U.S.C. § 1634. Although the documents signed by Metro and Mr. Woyee made affirmative statements about the terms of the loan that would be extended to Mr. Woyee, these statements were subsequently rendered inaccurate by the declinations of Arcadia, USbank, Community Credit Co., and TCF. § 1634 clearly states that information subsequently rendered inaccurate in this manner does not constitute a TILA violation. Although the Court is confident that, if the facts alleged by Plaintiff are true, Defendant's conduct here cannot possibly be lawful,¹ it

¹Under Kadlec Motors, Inc., v. Knudson, 383 N.W.2d 342 (Minn. Ct. App. 1986), it appears that the conduct here may well violate the Minnesota Motor Vehicle Retail Installment Sales Act, Minn. Stat. § 168.72 (1982) ("MMVRISA"). Moreover, there is at least a genuine issue of material fact regarding whether Defendant committed the tort of conversion when it sold the 1992 Diamante the plaintiff had offered in trade. With respect to the tort of conversion, Minnesota follows Section 222(A) of the Restatement (Second) of Torts, which provides that: "Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." See generally, Herrmann v. Fossum, 270 N.W.2d 18, (Minn.

nevertheless does not constitute a TILA violation. Accordingly, this Court is obliged to grant summary judgment to Defendant on the TILA claim.

C. Plaintiff's Other Claims

As the TILA claim is the only federal claim brought by Plaintiff, this Court should decline to retain jurisdiction over this matter and remand it to state court. See 28 U.S.C. § 1367; Hansen v. Lamontagne, 808 F. Supp. 89 (D. N.H. 1992) ("When the district court dismisses all federal claims before trial, it has broad discretion to refuse to exercise jurisdiction over remaining pendent state claims"); Hotel Syracuse, Inc. v. Young, 805 F.Supp. 1073 (N.D. N.Y. 1992) ("District court is conferred broad discretion in deciding whether to continue hearing state claims following dismissal of federal claims").

III. RECOMMENDATION

Based upon the files, records, and proceedings herein, **IT IS HEREBY**

RECOMMENDED that:

1. Defendant's Motion for Summary Judgment [#10] be **GRANTED IN PART**,

1978). Among the factors to consider in deciding whether a defendant's conduct constitutes the tort of conversion are: the actor's intent to assert a right in fact inconsistent with the other's right of control, and the extent and duration of the resulting interference with the other's right of control. Restatement (Second) of Torts § 222(A) (1965). Here, the only operable contract whose terms are not alleged to have been breached is the Conditional Delivery Agreement, signed by the parties on Thursday, July 16, 1998. By the terms of that contract, the Purchase Agreement became null and void when the financing for the 1993 Diamante was not approved, including Paragraph 4, upon which Defendant relies for its authority to sell Plaintiff's 1992 Diamante. Based upon the instant facts, a fact finder might well conclude that after Plaintiff's financing of the 1993 Diamante was twice rejected, Defendant, in deciding to sell the 1992 Diamante, intended to assert a right inconsistent with Plaintiff's right of control. As the sale of Plaintiff's car resulted in a permanent interference with Plaintiff's right, a fact finder could conclude that Defendant was guilty of conversion at the time the 1992 Diamante was sold.

such that Plaintiff's TILA claim be dismissed; in all other respects the Defendant's Motion for Summary Judgment should be denied.

2. Plaintiff's Motion for Summary Judgment [#14] be **DENIED**;
3. The remainder of this case be remanded to state court.

DATED: October 1, 1999.


FRANKLIN L. NOEL
Chief Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, within ten days of this Report and Recommendation, written objections which specifically identify the portions of the proposed findings, recommendations or report to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under this rule shall be limited to ten pages. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Circuit Court of Appeals.