‘Everything but the Kitchen Sink’ Complaints

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Some plaintiffs’ lawyers operate on the theory that if you fling enough bovine byproduct against the barn wall, some of it will stick. They include in their complaints every possible claim, regardless of how tenuously those claims are supported by the facts, hoping that at least one claim will survive defense motions. Sometimes that tactic works. Here’s an example from a recent case where it didn’t.

Christopher Brogan bought a car from Fred Beans Motors of Doylestown, Inc. The dealership pulled Brogan’s credit report on March 20, 2017. Brogan signed a credit application, and the dealership submitted it to several financial institutions, including Fifth Third Bank and Ally Financial.

Fifth Third conditionally approved Brogan’s application. The dealership and Brogan entered into a retail installment contract in which Brogan agreed to pay $683 per month for 75 months, beginning on May 4, 2017, and a $138 dealer fee. Brogan left the dealership with the car.

When Fifth Third found out that Brogan decided to obtain GAP coverage, a service warranty, and a tire program, it decided not to finance the purchase. Thereafter, the dealership secured financing for Brogan through Ally, reduced the annual percentage rate to compensate him for any trouble caused by the change in financing, and sent him a second contract reflecting the reduced rate and a lower monthly payment.

When Brogan did not timely return the second contract, the dealership prepared a third contract, which provided the same financial disclosures as the second contract but changed the first payment date to July 3, 2017. Brogan returned the third contract, along with the Ally credit application, to the dealership, and Ally pulled Brogan’s credit report on June 26 and July 6.

Because Ally had not accepted the assignment of the third contract as of the date the first payment was due and Brogan refused to make that payment to the dealership, the dealership covered the loss. On July 20, Ally paid the dealership for the contract.

Brogan sued the dealership for breach of contract, breach of the implied warranty of good faith and fair dealing, and violations of the Pennsylvania Motor Vehicle Sales Finance Act, the federal Truth in Lending Act, the Pennsylvania Unfair Trade Practices and Consumer Protection Law, and the federal Fair Credit Reporting Act. The U.S. District Court for the Eastern District of Pennsylvania granted the dealership’s motion for summary judgment on all counts.

Brogan claimed that the dealership breached their contract by miscalculating the finance charge. The court concluded that Brogan did not sufficiently establish this claim; the calculations were

accurate, Ally bought the contract, Brogan continued to pay Ally without objection, and Ally never raised any issues about the calculations with the dealership.

Brogan also claimed that the dealership breached the contract by issuing multiple contracts with different terms and without cancelling the prior contracts. The court found that the parties intended that each subsequent contract served as a novation (a $10 legal word that simply means "substitution") that cancelled the prior contract.

Brogan claimed that the dealership violated the covenant of good faith and fair dealing by not timely paying off the debt on the car he traded in as part of his purchase. Even though the dealership's original payoff of the debt was returned, the creditor received a second payment, and the court determined that there was no evidence that the delay caused Brogan any harm, including negative credit reporting, from the alleged breach.

Brogan claimed that the dealership violated the MVSFA by miscalculating the finance charge. The court found that the MVSFA permits several different methods of calculating the finance charge so long as the method is disclosed in the contract. The court found that the calculations were proper and the method was properly disclosed.

Brogan claimed that the dealership violated TILA because, among other things, the financing terms in the first contract were subject to change and, therefore, illusory. The court rejected this claim, noting that the terms of the third contract, which replaced the prior contracts, were not illusory because Brogan continued to perform on that contract.

Brogan claimed that the dealership violated the UTPCPL by, among other things, charging a dealer fee without showing that the fee bore a rational relationship to the costs of preparing transaction documents. The court found that Pennsylvania law caps the document preparation fee a dealer may charge but does not require a dealership to charge only its actual cost for document preparation services.

Finally, Brogan claimed that the dealership violated the FCRA by causing unauthorized and excessive credit inquiries. The court found that the dealership pulled Brogan's credit report only once. As for Ally's multiple credit inquiries, the court concluded that they were obtained with a permissible purpose and with Brogan's consent, as set forth in his credit application in which he agreed to having his credit report obtained "in connection with the proposed transaction and any update, renewal, refinancing, modification or extension of that transaction."

Sometimes it sticks, and sometimes it doesn't. This time, the barn wall ended up perfectly clean.

Brogan v. Fred Beans Motors of Doylestown, Inc., 2020 U.S. Dist. LEXIS 58863 (E.D. Pa. April 3, 2020).