How to Catch Disclosure Errors Through Numbers

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A lot of lawyers are afraid of numbers, but I'm one of the strange ones who enjoys handling the mathematical aspects of financial services law. To a lawyer like me, the beauty of a credit or lease contract is that if you've done it right, everything adds up. There's nothing extra and nothing missing. If there is something extra or something missing, then something's wrong with the contract. A recent motor vehicle leasing case from Texas illustrates this principle.

Quentin Holloway leased a Ford Fusion from Automotive Promotion Consultants, LLC. Even though the Consumer Leasing Act disclosure stated that Holloway paid $3,710 at lease signing or delivery, he alleged that he paid only $1,500 at lease inception and agreed to a payment plan for the remaining $2,210. Holloway claimed that the overstatement of the amount due at lease signing or delivery caused him to be confused about his payments and the true cost of the lease, and he sued Automotive Promotion for violating the CLA and Regulation M. After Automotive Promotion failed to answer the complaint, Holloway moved for a default judgment, and the U.S. District Court for the Western District of Texas denied the motion.

Although the court recognized that the Truth in Lending Act and Regulation Z specifically contemplate the use of deferred down payments, but the CLA and Reg. M do not, it found that "there is no basis in the CLA, Regulation M, or caselaw to conclude that a lessee cannot finance all or a portion of the CCR [capitalized cost reduction] through a credit transaction." In fact, the court noted that the Reg. M official staff commentary states that the amount due at lease signing can include "non-currency payments" as long as that form of payment is included in the CLA disclosure. The court determined that a CCR financed through a deferred payment plan should qualify as a non-currency payment that must be included as a separate line item under the column indicating how the amount due will be paid. In this case, the "Amount Due at Lease Signing or Delivery" disclosure included two line items: $1,500 paid in cash and $2,210 to be paid in the form of a payment plan. Therefore, the court concluded that Automotive Promotion did not fail to accurately disclose the amount due at lease signing or delivery. The court, however, noted that Automotive Promotion may have violated the CLA and Reg. M by failing to include the periodic payments toward the $2,210 loan in the payment schedule and suggested that Holloway may want to amend his complaint to allege a violation of 15 U.S.C. § 1667a(9) for failing to disclose repayment of the lessor-financed portion of the CCR.

The court may have denied Holloway's default judgment motion, but Automotive Promotion's victory is likely only temporary. Holloway can amend his complaint to cite Automotive Promotion's failure to disclose how Holloway would repay the $2,210 loan. A more thorough

review of the lease contract would have revealed the problem. Depending on how you look at it, there was either something extra (the $2,210 deferred CCR) or something missing (the lack of accounting for the $2,210 in the payment disclosures). Either way, the numbers didn't add up, which is a dead giveaway that something about the contract wasn't right.

Holloway v. Auto Promotion Consultants, LLC, 2021 U.S. Dist. LEXIS 84920 (W.D. Tex. May 3, 2021)