



What Makes a Contract?

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As every law school student learns, a contract is more than a signed piece of paper. A contract is an agreement, and the piece of paper that we call the contract is just evidence of that agreement.

Sometimes the piece of paper doesn't exist or it's missing something. But the piece of paper isn't always the end of the story. A court can look at evidence other than the written memorandum of a contract to decide whether a legally enforceable agreement exists. If the court can tell that the parties agreed to something and what that something is, the court may enforce the parties' agreement. A recent case from New York illustrates this point.

Mir Islam visited Lee's Motors, Inc., to buy a new Toyota Tundra. He applied for financing and made a down payment. At Lee's direction, Islam signed a blank electronic signature pad several times during the visit. Michael Pellet, Islam's friend, completed a credit application to act as a guarantor for Islam. Lee's put Islam's electronic signature on a retail installment contract without telling him. The contract included a \$2,500 charge for "optional mechanical breakdown protection," of which Islam was unaware. Lee's did not give Islam a copy of the contract. The contract listed Pellet as the buyer and Islam's son (who had leased a vehicle from Lee's earlier in the year but had nothing to do with his father's transaction) as the co-signer. Lee's assigned the contract to Toyota Motor Credit Corporation.

TMCC sent monthly invoices to Pellet. Pellet told TMCC that he was not the owner and had only filled out an application to be a co-signer for Islam. TMCC then sent monthly invoices to Islam that showed his son as the buyer. Islam made the monthly payments. Islam asked Lee's and TMCC to correct the contract so that it showed him as the buyer and demanded that they remove the charge for mechanical breakdown protection. Lee's promised to correct the contract but never did, and TMCC refused to correct the contract.

Islam sued Lee's and TMCC in the U.S. District Court for the Eastern District of New York for violations of the federal Truth in Lending Act and the New York Motor Vehicle Retail Instalment Sales Act and for fraud. Lee's and TMCC moved to dismiss.

The court denied the defendants' motion to dismiss. The defendants argued that TILA did not apply because Lee's and Islam did not consummate a contract subject to TILA. The court disagreed.

Under TILA's Regulation Z, consummation occurs when a consumer becomes contractually obligated on a credit transaction under state law. As the court explained, Islam applied for credit,

made a down payment, accepted the Tundra, made monthly payments, and asked Lee's and TMCC to correct rather than rescind the contract. Lee's assigned the contract to TMCC and agreed to correct the contract. As a result, the court found that Lee's had consummated a credit contract with Islam, rendering TILA applicable.

The court also found that Islam was a "buyer" under the MVRISA and could sue to enforce the contract. Finally, the court found that Islam stated a claim for fraud. Under New York law, a person commits fraud by knowingly misstating or omitting a material fact with intent to induce reliance, the misstatement or omission induces reliance, and the person who relies on the misstatement or omission suffers harm as a result. As the court explained, Lee's had Islam sign a blank electronic signature pad without telling him that it planned to charge him for optional mechanical breakdown protection. Neither Lee's nor TMCC corrected the contract, and Islam's monthly payments were more expensive because of the additional charge.

Lee's and TMCC tried to argue that they didn't have a contract with Islam because they wanted Islam's claims under TILA and the MVRISA to go away. But Islam, Lee's, and TMCC behaved for months as if there was a contract. The only evidence that Lee's and TMCC offered to support their argument was the fact that Islam did not sign a piece of paper with the contract terms on it. With the other evidence before it, the court found that the piece of paper didn't matter.

Islam v. Lee's Motors, Inc., 2018 U.S. Dist. LEXIS 170998 (E.D.N.Y. September 30, 2018).

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