

IN THE DISTRICT COURT OF MOBILE COUNTY, ALABAMA

AUTOVEST, LLC)
)
vs.) CASE No. DV-2014-900XXXX
)
A NICE HARD-WORKING AMERICAN)

ANSWER & COUNTERCLAIM

COMES NOW the Defendant, by and through her honest and ethical, yet still zealous and clever, champion-of-the-downtrodden attorney to answer the Complaint:

1. Defendant denies that Plaintiff has standing to bring this action.
2. Defendant avers that this suit is barred by the statute of limitations.
Ala. Code §7-2-725.
3. Defendant avers that this alleged debt has been fully satisfied by insurance proceeds.
4. Defendant would ask the Court to note that none of the allegations in the Complaint state that Plaintiff was validly assigned the contract alleged to exist. As such an allegation is a prerequisite for any of the requested relief, the Complaint is due to be dismissed.
5. Defendant pleads the affirmative defense of accord & satisfaction.
6. Defendant pleads the affirmative defense of laches.
7. Defendant pleads the affirmative defense of waiver.

8. Defendant denies all other material allegations and demands a trial of this matter.

RECOUPMENT COUNTERCLAIM: TRUTH IN LENDING ACT

As a Counterclaim for recoupment against the Plaintiff, Your Defendant alleges the following:

1. Plaintiff is a “consumer” within the meaning of 15 U.S.C. §1602(i).
2. The basis for this alleged claim is a retail installment sales contract, a purported copy of which the Plaintiff attached to the Complaint.
3. Plaintiff claims to be an assignee of the alleged contract.
4. If the Plaintiff is an “assignee” of the alleged contract, it is subject to liability for violations of the Truth in Lending Act. *15 U.S.C. §1641.*
5. The terms of the loan, as described in the purported contract, include a Finance Charge of \$5,092.60, an Amount Financed of \$12,500, and an Annual Percentage Rate of 14.1%.
6. In the itemization of the Amount Financed, the contract lists a “Service Contract Paid to: _____: \$1,000.”
7. The Defendant did not agree to pay for any service contract.
8. The Defendant's signature does not appear on the “SERVICE CONTRACT” addendum on the loan documents.
9. Regulation Z, 15 C.F.R. 226.17(a) requires the creditor to “make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep,” and that the required disclosures shall reflect the legal obligations of the parties.

10. The itemization of the Amount Financed was false because it omitted the name of the party that allegedly received payment for the "Service Contract."
11. Whatever portion of the charges for the "Service Contract" which were retained by the Dealer were charges incident to the extension of credit and therefore constitute finance charges.
12. Upon information and belief, the Dealer charges customers who buy on credit higher fees for service contracts, "doc fees," and other amorphous, dealer-imposed fees than customers who pay cash.
13. The difference between the prices paid for such services by cash customers and credit customers, respectively, is a finance charge, as defined by 15 U.S.C. §1605(a) and Reg. Z § 226.4
14. In contravention of the requirements of the Truth in Lending Act and the common law, those finance charges were not labeled as such, but were instead included in the "Amount Financed."
15. This caused the Finance Charge to be understated, to the Defendant's detriment.
16. Understatement of the finance charge subjects the Plaintiff to liability for actual damages, statutory damages of up to \$1,000 per violation, and costs and attorney's fees. *15 U.S.C. §1640.*
17. The understatement of the Finance Charge also caused the Annual Percentage Rate to be understated, to the Defendant's detriment.
18. The Defendant relied upon these false disclosures to his detriment and did not get the benefit of the bargain.

19. These violations of the Truth in Lending Act are objectively apparent on the face of the document, and therefore subject all subsequent assignees of the contract to liability for such violations. *15 U.S.C. §1641(a)*.
20. The Defendant exercised reasonable consumer diligence during the loan transaction and during all dealings with the Dealer and any subsequent assignees. In reviewing the loan documents, she could not have, nor reasonably been expected to have uncovered the true facts. The fact that the charges at issue exceeded the actual charges was unknown and unknowable to the Defendant. The fact that the charges were marked up, illegal, and excessive was unknown and unknowable by the Defendant because the information necessary to discern the true facts was entirely in the control of the Dealer and the Plaintiff, and they actively deceived the Defendant about the true costs in the TILA disclosures.
21. The unknown and unknowable nature of the false disclosures did not give the Defendant any reason to inquire, investigate, or discover the wrongdoing. As a practical reality, it was impossible for an unsophisticated layperson such as the Defendant to detect the TILA violations.
22. The Defendant has acted with due diligence with respect to her rights. The facts supporting the present action was not knowable to her until shortly before the filing of this Complaint.
23. Defendant has suffered actual economic, emotional, and consequential damages as a result of Plaintiff's illegal conduct.

WHEREFORE, PREMISES CONSIDERED, Your Defendant respectfully prays this Honorable Court deny any of the relief requested by the Plaintiff, and

enter an order awarding the Defendant actual damages, statutory damages of up to \$1,000, and reasonable attorney's fees, and for such other relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 25th Day of March, 2014

/s/ Judson E. Crump
Judson E. Crump, Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Answer by First Class U.S. Mail on the Plaintiff's Attorney, J. Matthew Parnell, at 7125 University Court, Montgomery, Alabama 36617.

/s/ Judson E. Crump

OF COUNSEL:

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