



## AlaFile E-Notice

30-CV-2016-900022.00

Judge: J DAVID JORDAN

To: CRUMP JUDSON ERIC  
judson@judsonerump.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF ESCAMBIA COUNTY, ALABAMA

TAMIE SHUFFORD V. CHUCK STEVENS  
30-CV-2016-900022.00

The following matter was FILED on 4/21/2017 2:38:56 PM

**D001 CHUCK STEVENS**  
MOTION TO AMEND

[Filer: MCDOWELL MARCUS EDWARD]

Notice Date: 4/21/2017 2:38:56 PM

JOHN FOUNTAIN  
CIRCUIT COURT CLERK  
ESCAMBIA COUNTY, ALABAMA  
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ELECTRONICALLY FILED  
4/21/2017 2:39 PM  
30-CV-2016-900022.00  
CIRCUIT COURT OF  
ESCAMBIA COUNTY, ALABAMA  
JOHN FOUNTAIN, CLERK

**STATE OF ALABAMA**

Revised 3/5/08

**Cas**

Unified Judicial System

30-ESCAMBIA

 District Court
  Circuit Court

CV21

**CIVIL MOTION COVER SHEET**

TAMIE SHUFFORD V. CHUCK STEVENS

Name of Filing Party: D001 - CHUCK STEVENS

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

MARCUS E. MCDOWELL  
P. O. BOX 400  
BAY MINETTE, AL 36507  
Attorney Bar No.: MCD053

 Oral Arguments Requested
**TYPE OF MOTION****Motions Requiring Fee**

- Default Judgment (\$50.00)  
Joinder in Other Party's Dispositive Motion  
(i.e. Summary Judgment, Judgment on the Pleadings,  
or other Dispositive Motion not pursuant to Rule 12(b))  
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative  
Summary Judgment (\$50.00)
- Renewed Dispositive Motion (Summary  
Judgment, Judgment on the Pleadings, or other  
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other \_\_\_\_\_  
pursuant to Rule \_\_\_\_\_ (\$50.00)

\*Motion fees are enumerated in §12-19-71(a). Fees  
pursuant to Local Act are not included. Please contact the  
Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0 \_\_\_\_\_

**Motions Not Requiring Fee**

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other

pursuant to Rule

(Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously  
with this motion an Affidavit of Substantial Hardship or if you  
are filing on behalf of an agency or department of the State,  
county, or municipal government. (Pursuant to §6-5-1 Code  
of Alabama (1975), governmental entities are exempt from  
prepayment of filing fees)

Date:

4/21/2017 2:37:32 PM

Signature of Attorney or Party  
/s/ MARCUS E. MCDOWELL

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

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CIRCUIT COURT OF  
ESCAMBIA COUNTY, ALABAMA  
JOHN FOUNTAIN, CLERK



IN THE CIRCUIT COURT OF ESCAMBIA COUNTY, ALABAMA

AMIE SHUFFORD,  
Plaintiff,

s.

CHUCK STEVENS OF ATMORE,  
Defendant.

\*  
\*  
\*CASE NO.:CV-16-900022  
\*  
\*

MOTION TO AMEND AND/OR

MOTION TO ALTER, AMEND OR VACATE

Comes now Defendant Chuck Stevens Chevrolet of Atmore pursuant to Rule 71B of the Alabama Rules of Civil Procedure, respectfully requests this Honorable Court Alter, Amend or Vacate the arbitration finding based on Alabama Code § 6-6-14 and 9 U.S.C §10 as the arbitrator among other issues, exceeded his powers or so imperfectly executed them that a final, and definite award on the subject matter submitted was not made and the arbitrator failed to properly determine the matter or controversy submitted. As grounds, the Defendant Appeals from the Award noticed on March 22, 2017 and shows the following:

State of Facts:

1. Plaintiff, purchased a Chevrolet Malibu from Chuck Stevens Chevrolet of Atmore on February 1, 2014.
2. The salesperson was not an employee of Chuck Stevens and was selling cars under a manufacturer promotion on or around February 1, 2014.

DOCUMENT 25

3. The plaintiff inspected and test drove the car and was in a driver seat position to look at and inspect the odometer of the vehicle.

4. At the time of sale, the Plaintiff acknowledged and signed an electronically generated Odometer Disclosure statement that read approximately 69 miles on the Malibu. It is undisputed that the electronically generated document did not read the correct mileage and was not updated in error. See attached

5. It is also undisputed that the odometer was not rolled back in the Malibu and in fact the testimony was that the vehicle in question had an electronic odometer and it is impossible to “rollback”. In fact, there is no claim that the odometer in question was rolled back.

6. The vehicle in question actually had approximately 1000 miles on it at the time of sale and was sold to plaintiff with all new car warranties, free new car oil change agreements and approximately a \$2,250 new car incentive that was credited to her.

7. The car had previously been under contract to another individual who drove approximately 1000 miles and returned the car.

8. The prior purchase contract was unwound and testimony from Mr. Stevens and the former general manager was that unwinding car purchase transactions was standard in the industry and allowed plaintiff to receive all the warranties and new car incentives not otherwise available to a used car purchaser.

9. Title work on the vehicle was administered incorrectly but was corrected with the State of Alabama as soon as the dealer was made aware of the error.

10. One or two months after the sale to the Plaintiff, she discovered the car was previously under contract and had been returned.

11. Plaintiff continued to drive the car for two years, use the free maintenance and oil

changes and ultimately exhausted almost all of the new car warranties available to her and placed well over 35,000 miles on the car before bringing this action.

12. Plaintiff brought several causes of action related to fraud, breach of warranty and claims under the Alabama Deceptive Trade Practices Act (ADTPA) and the Motor Vehicle Information and Cost Savings Act (MVICSA) referred to as the Odometer Rollback Statute.

13. The claims were submitted to arbitration pursuant to the contract of sale.

14. All state and common law claims were subsumed by the ADTPA and dismissed due the applicable statute of limitations.

15. The only issue that remained and decided by the arbitrator was related to the Odometer Rollback Statute (or MVICSA).

16. The arbitrator erroneously found that the Dealer failed to make an odometer disclosure despite the fact that she signed and acknowledged receipt of the disclosure statement.

17. The only issue is the discrepancy on the signed disclosure statement and the law applicable to the disclosure.

18. The Rollback Statute clearly states the purpose of the Statute in question:

49 U.S. Code § 32701:

(b) Purposes.—The purposes of this chapter are—

(1) to prohibit tampering with motor vehicle odometers; and

(2) to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers.

Additionally pursuant to 49 U.S. Code § 31703: A person may not—

(1) advertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;

(2) disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer;

(3) with intent to defraud, operate a motor vehicle on a street, road, or highway if the person knows that the odometer of the vehicle is disconnected or not operating; or

(4) conspire to violate this section or section 32704 or 32705 of this title.

20. However, despite the clear unambiguous language and clear stated Congressional intent of the rollback statute, the arbitrator found the dealer failed to make the required disclosure under a disclosure requirement provision that states:

49 U.S. Code § 31705:

(1) Disclosure Requirements.—Under regulations prescribed by the Secretary of Transportation that include the way in which information is disclosed and retained under this section, a person transferring ownership of a motor vehicle shall give the transferee the following written disclosure:

(A) Disclosure of the cumulative mileage registered on the odometer.

(B) Disclosure that the actual mileage is unknown, if the transferor knows that the odometer reading is different from the number of miles the vehicle has actually traveled.

(2) A person transferring ownership of a motor vehicle may not violate a regulation prescribed under this section or give a false statement to the transferee in making the disclosure required by such a regulation.

49 U.S. Code § 31710:

(a) Violation and Amount of Damages.

A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or \$10,000, whichever is greater.

21. To act with “intent to defraud” usually means to act willfully, and with the specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.

Cf. United States v. Lepowitch (1943), 318 U.S. 702, 704, 63 S.Ct. 914, 916, 87 L.Ed. 1091, 1093-1094.

22. The arbitrator found that the dealership “could have easily checked the cumulative mileage registered on the odometer” despite the fact that the prospective owner sitting in the driver’s seat, test driving and inspecting the car could have checked the mileage just as easily as a salesperson.

23. Given the fact that the plaintiff inspected and test drove the vehicle with the actual odometer reading in plain view, it is clear the Plaintiff can not show that the dealership “intended to defraud” her where she was in an equal or better position to look at the same odometer as the salesperson.

24. Additionally as the clear intent of the statute is to prevent tampering with odometers and selling cars with altered odometers, it is impossible the plaintiff, who bought a car with a tamperproof odometer suffered actual harm the statute is designed to prevent.

25. There is no showing was that the dealership acted with the requisite intent to defraud the plaintiff or that the odometer was in rolled back. The dealer clearly testified the electronic reading on the disclosure statement was an error. However, it was an error equally obvious to the plaintiff as it was to the defendant.

26. The plaintiff got the benefit of the bargain, all warranties, all dealer cash incentives, all free maintenance and used all of her benefits of the purchase.

Wherefore as the Arbitrator in this matter exceeded his powers or so imperfectly executed them that a mutual, final and definite award on the subject matter submitted was not made, the Defendant respectfully requests that the award be vacated and set aside and a ruling consistent with the facts and law of the case be entered in favor of the Defendant.

Respectfully submitted,

WILKINS, BANKESTER, BILES & WYNNE

/s/ MARCUS E. MCDOWELL (MCD057)

Attorney for Defendant

Post Office Box 400

Bay Minette, Alabama 36507

**CERTIFICATE OF SERVICE**

I, Marcus E. McDowell, do hereby certify that I have on this the 21<sup>st</sup> day of April, 2017, served a copy of the foregoing on all counsel of record by electronic filing.

/s/ MARCUS E. MCDOWELL