

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

**MARK PADFIELD, JENNIFER HOWARD,
JOHN E. STEPHENS, BRIAN MCINTYRE,
AND JASON E. TYLER, individuals**

Plaintiffs,

v.

**DICK EDWARDS AUTO PLAZA, INC.,
a Kansas corporation,
RICHARD L. EDWARDS, an
individual, and LLOYD RICHARD
ROBERTS, an individual,**

Defendants

Case No. 09-CV-2388 EFM/KMH

COMPLAINT

Come now the Plaintiffs, by and through their undersigned attorneys, and for their Complaint against the Defendants, they allege as follows:

1. This case raises a claim for relief under the federal Truth in Lending Act (“TILA”), 15 U.S.C. § 1601, et seq. The court has jurisdiction under 28 U.S.C. § 1331, and 15 U.S.C. § 1640(e). The Plaintiffs’ individual claims under TILA do not exceed \$25,000. The court has jurisdiction over the Plaintiffs’ state law claims under 28 U.S.C. § 1367. Venue is proper in this court under 28 U.S.C. § 1391 since the events giving rise to this action occurred in this judicial district.

2. Mark Padfield, Jennifer Howard, John E. Stephen, Brian McIntyre and Jason E. Tyler

(collectively referred to as “the Plaintiffs”) are or have been members of the United States Army. The Plaintiffs are or have been stationed at Fort Riley in Geary County, Kansas.

3. Some of the Plaintiffs have been or are currently deployed overseas in the service of their Country.

4. Dick Edwards Auto Plaza, Inc. (“the Auto Plaza”) is an automobile dealership with its principal place of business in Junction City, Kansas. The principal business activity of the dealership is the sale of used cars. Approximately 75-80 percent of the customers at the Auto Plaza are military personnel.

5. Richard L. Edwards (“Edwards”) is the President of the Auto Plaza and owns 70 percent of the stock of the Auto Plaza. Lloyd Richard Roberts (“Roberts”) was at all times relevant to this lawsuit the sales manager at the Auto Plaza. Collectively the Auto Plaza, Edwards and Roberts will be referred to as “the Defendants.”

Facts Common to All Counts

6. The Plaintiffs incorporate paragraphs 1 through 5 above as if set forth fully here.

7. Each of the Plaintiffs purchased a used car from the Auto Plaza in or around January 1, 2007, through April 23, 2007.

8. The purchase price that each plaintiff paid for their car included the price of optional equipment that was not on the car (“phantom options”). The phantom options included, but are not limited to, high end stereo systems, power sun roofs, power seats, anti-theft systems, leather seats and upgraded wheels.

9. The Defendants did not tell the Plaintiffs that the purchase price of their cars included the price of options that were not on the cars. The Defendants also did not tell the Plaintiffs that

the amount of credit extended to them was based upon the phantom options.

10. The practice of charging purchasers for options that are not actually on cars that are sold by dealerships is referred to as “over booking” or “power booking.” The term “over booking” or “power booking” also includes the practice of representing to a lender or potential lender that an automobile has options on it that do not in fact exist in order to increase the loan value of the automobile.

11. The Defendants purposefully concealed from the Plaintiffs the fact that the purchase price of their cars, and the amount of credit extended, was based, in part, upon the price of options that were not on the cars.

12. All of the Plaintiffs purchased their cars through a program known as MILES, which stands for Military Installment Loan and Educational Services. Dealers’ Financial Services, L.L.C. (“DFS”), a private company located in Lexington, Kentucky, operates the MILES program.

13. DFS states that military personnel face serious issues when purchasing an automobile. According to DFS, “[in] obtaining transportation, junior enlisted personnel face a myriad of obstacles. Just beginning life's journey, these young service men and women possess virtually no credit history, a limited income and worldwide mobility. This combination limits their ability to obtain financing from many local banks or credit unions.”

“In many cases, the newest members of our nation's defense are therefore preyed upon by dealers who charge exorbitant interest rates and price for vehicles of questionable quality. These factors result in high monthly payments. In addition, unexpected costs for breakdowns may result in financial difficulty for them. The ultimate costs include ruined credit, Quality of Life

concerns, and a deteriorating morale - all the while, defending our country.”

14. Upon information and belief, Roberts has been sales manager at the Auto Plaza since in or around 1995.

15. In 2002, the Auto Plaza began to work with the MILES program and obtained a certificate from MILES that it was a dealership that military personnel could trust when doing business with the Auto Plaza.

16. In order to make the purchase of a car easier for servicemen and women, MILES currently puts together lending through US BANK, warranty services through GE Money Warranty Services and insurance through Great American Insurance Group. Any dealership that uses the MILES program to sell cars attempts to sell the warranty services and liability insurance to the purchasers.

17. DFS also enters into contracts with the dealerships that it certifies. For each car that a certified dealership sells through MILES, MILES pays certain fees back to the dealership. DFS entered into such a contract or contracts with one of more of the defendants.

18. From January 1, 2007, through April 23, 2007, the Auto Plaza sold approximately 91 cars through the MILES program.

19. MILES subsequently did an audit of these 91 car sales. MILES was able to obtain information on 48 of the cars through contacts that it made. Of the 48 cars, MILES determined that 46 of the cars were sold at prices that were based, in part, upon the price of options that were not actually on the cars. In other words, 46 of 48 cars for which MILES obtained information were over booked. The amount of the over booking ranged from several hundred dollars to more than two thousand dollars. The Plaintiffs allege upon information and belief that the 43 cars for

which MILES was not able to make a contact were also over booked and sold to soldiers from Ft. Riley at prices that included the price of phantom options.

20. As a result of the over booking practice that occurred during the four (4) month period in 2007, the Auto Plaza took in over \$56,000 based upon the sales of optional equipment that was not actually on the cars that were sold. Upon information and belief, the Plaintiff alleges that the over booking began in 2002 when the Auto Plaza became affiliated with the MILES program. Further, upon information and belief, the Plaintiffs allege that the Defendants have caused soldiers from Fort Riley collectively to pay hundreds of thousands of dollars for options that were not on the cars sold to the soldiers. Salesmen at the Auto Plaza falsely told buyers from Ft. Riley that only the Auto Plaza was certified by MILES and that only the Auto Plaza could get them financed to purchase a car. As a result, the Auto Plaza sold cars at prices that were substantially higher than comparable cars sold by other car dealerships in the Junction City-Manhattan area.

21. The Plaintiffs all financed their cars through US BANK, and the amount of credit extended to them included the price of the phantom options.

22. The Plaintiffs paid interest on their car loans that averaged 17.95 per cent APR.

21. Roberts was directly responsible for over booking the cars sold to the Plaintiffs.

22. Roberts engaged in over booking within the scope and course of his employment with the Auto Plaza.

23. Roberts had a personal financial interest in over booking because his compensation included commissions that were a percentage of the sales price of the cars he sold.

24. The Auto Plaza had a financial interest in over booking cars that it sold because the

practice resulted in increased income to the Auto Plaza.

25. Edwards has a personal financial interest in permitting, encouraging and ratifying over booking at the Auto Plaza because he is a 70 per cent shareholder in the Auto Plaza. Edwards' wife is a 30 per cent shareholder in the Auto Plaza.

26. Following the audit by DFS, DFS terminated MILES relationship with the Auto Plaza.

27. DFS disclosed the results of its audit to Edwards.

28. After learning of the over booking by Roberts at the Auto Plaza, Edwards continued to employ Roberts. Edwards was aware of the over booking when it occurred. Edwards ratified the over booking in which Roberts engaged.

29. The Plaintiffs did not discover the over booking on the cars they purchased from the Auto Plaza until late 2008 or early 2009. The Plaintiffs had no reason to ask about whether they had been subject to over booking and no reasonable way of knowing that they had been charged for options that were not actually on the cars that they purchased.

30. The Plaintiffs have suffered economic loss as a result of being the victims of over booking. The Defendants' conduct was willful, wanton, fraudulent, and malicious.

31. On information and belief, the Plaintiffs allege that Edwards conspired with Roberts to engage in over booking at the Auto Plaza and that Edwards had personal knowledge that over booking was taking place at the Auto Plaza. Edwards, Roberts and the Auto Plaza are jointly and severally liable for the injuries to the Plaintiffs described in this Petition.

COUNT I: VIOLATION OF TILA

32. The Plaintiffs' incorporate paragraphs 1 through 31 as if set forth fully here.

33. The amount of credit that was extended to the Plaintiffs was based, in part, on the price of options that were not on the cars that they purchased.

34. The Defendants failed to disclose to the Plaintiffs all of the items for which they were being charged and all of the items for which credit was being extended.

35. It is a violation of TILA for the Defendants to include the price of the phantom options in the amount financed.

36. Upon information and belief, the Plaintiffs allege that they were charged for additional items that were not disclosed to them and that the price of these items was included in the amount financed on their cars, all in violation of TILA.

Wherefore, the Plaintiffs pray that the Court find that the Defendants violated the TILA and award the Plaintiffs damages and civil penalties, costs and attorneys fees.

COUNT II: VIOLATION OF KANSAS CONSUMER PROTECTION ACT (“KCPA”)

37. The Plaintiffs incorporate paragraphs 1 through 31 as if set forth fully here.

38. The Defendants conduct constitutes a deceptive practice under the KCPA and violates K.S.A. 50-626.

39. The Defendants conduct constitutes unconscionable acts under the KCPA and violates K.S.A. 50-627.

40. The Plaintiffs suffered economic loss as the result of the Defendants wrongful acts.

Wherefore, the Plaintiffs pray that the Court find that the Defendants violated the KCPA and award the Plaintiffs damages or civil penalties, costs and attorneys fees.

COUNT III: COMMON LAW FRAUD

41. The Plaintiffs incorporate paragraphs 1 through 31 as if set forth fully.

42. The Defendants' representations to the Plaintiffs that the purchase price of their cars was based upon the value of the cars themselves, the actual optional equipment on the cars and optional items knowingly purchased by the Plaintiffs were knowingly false and intended to and did mislead the Plaintiffs. The representations to potential buyers that only the Auto Plaza was certified by MILES and that only the Auto Plaza could arrange financing for the buyers was knowingly false, intended to mislead potential buyers and did, in fact, mislead buyers to their detriment.

43. The Defendants' failure to disclose to the Plaintiffs that the purchase price of their cars included the price of options that were not actually on the cars was knowingly done with the intent to mislead the Plaintiffs and did mislead the Plaintiffs. The Defendants' failure to disclose to the Plaintiffs that the amount being financed included the price of options that were not actually on the cars was knowingly done with the intent to mislead the Plaintiffs and did mislead the Plaintiffs.

44. The Defendants' conduct constituted fraud against the Plaintiffs.

45. The Plaintiffs suffered economic loss as a result of the Defendants' tortious conduct.

Wherefore, the Plaintiffs pray that the court find that the Defendants violated the Plaintiffs' rights and award them damages, including punitive damages, costs and attorneys fees.

COUNT IV: UNJUST ENRICHMENT

46. The Plaintiffs incorporate paragraphs 1 through 31 as if set forth fully.

47. As a result of the Defendants' wrongful acts toward the Plaintiffs, the Plaintiffs suffered economic loss and the Defendants were unjustly enriched. Under the circumstances, it would be unjust to allow the Defendants to profit at the Plaintiffs' expense.

48. The Defendants should be required to disgorge all economic benefits that they made from the sale of over booked cars to the Plaintiffs.

Wherefore, the Plaintiffs pray that the court find that the Defendants have been unjustly enriched and order them to pay over to the Plaintiffs all economic benefits gained from the sale of cars to the Plaintiffs.

REQUEST FOR JURY TRIAL

The Plaintiffs request a jury trial on all matters triable to a jury.

DESIGNATION OF PLACE OF TRIAL

The Plaintiffs designate Kansas City, Kansas, as the place of trial.

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