

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL CIVIL DIVISION
CASE NO.: 03-10876 CA 20

MARY K. BROWN,

Plaintiff,

vs.

BULL MOTORS, LLC,
D/B/A MAROONE FORD OF MIAMI,

Defendant.

THIRD AMENDED COMPLAINT
{Jury Trial Demanded}

COMES NOW the Plaintiff, MARY K. BROWN (hereinafter "BROWN") and sues BULL MOTORS, LLC (hereinafter "BULL"), by and through undersigned counsel and files this action and states as follows:

GENERAL ALLEGATIONS

- 1) This is an action for damages in amount greater than \$15,000.00 and injunctive relief and all events giving rise to this lawsuit took place in MIAMI-DADE County, Florida.
- 2) BULL is a domestic for-profit corporation licensed to transact business in the State of Florida and maintains its principal place of business in MIAMI-DADE County, Florida and conducts business under the fictitious name of Maroone Ford Of Miami.
- 3) At all times material hereto BROWN was over the eighteen years of age and was otherwise sui juris and was a consumer within the meaning of Chapter 501 of the Florida Statutes.
- 4) At all times material hereto, BULL was a dealer of new and used vehicles.
- 5) BROWN has performed all conditions precedent prior to bringing this action.

ALLEGATIONS COMMON TO ALL COUNTS

- 6) On November 16, 2002, BROWN visited Defendant-BULL'S automobile dealership to purchase a new motor vehicle.
- 7) On November 16, 2002, while at BULL's dealership, BROWN selected a new 2002 Ford Escort bearing vehicle identification number (VIN) 3FAFP11322R138863 and entered into a Motor Vehicle Retail Installment Sales Contract (Exhibit "A").
- 8) Pursuant to said Contract, BROWN agreed to finance through AmeriCredit Financial Services, Inc. ("AmeriCredit") the cost of the vehicle. Additionally and via the same Contract, BROWN agreed to purchase and finance Credit Life and Credit Disability insurance coverage.
- 9) On or about February, 2003, BROWN called AmeriCredit for the purpose of inquiring about her insurance coverages, and was told by agents of AmeriCredit that her contract included no such insurance.
- 10) By contacting AmeriCredit, BROWN learned by happenstance that the sales contract submitted by BULL to AmeriCredit omitted the Credit Life and Credit Disability insurance coverage that is present in BROWN'S copy of the contract.
- 11) Plaintiff requested and obtained a copy of the sales contract from AmeriCredit and noticed that her signature on the sales contract was forged and was affixed to a document which: a) omitted the Credit Life and Credit Disability insurance coverages; b) omitted the accompanying signatures by which Plaintiff elected to purchase said coverages; and c) contained altered numbers with respect to the financed amounts indicated in the section entitled "Federal Truth-In-Lending Disclosures" as well as the section entitled "Itemization Of Amount Financed." (Exhibit "B")

- 12) Brown contacted agents of BULL concerning the discrepancy, but said agents were not responsive.
- 13) Subsequent to the purchase of the subject vehicle and related credit life/disability insurance coverage, Plaintiff did in fact regrettably succumb to health problems and became disabled and lost time from work; but for Defendant's misconduct, Plaintiff thus should have had and thus would have been covered by the credit disability insurance coverage that she believed she had but which Defendant-BULL knowingly, deliberately and in reckless indifference to her rights/interests deprived her of.
- 14) Moreover, as a result of Defendant's outrageous acts as described above and the financial hardship created to Plaintiff as a result of not having credit disability insurance, Plaintiff was deprived of the ability to take additional time off from work and tend to her health condition.
- 15) Defendant-BULL exhibited deliberate, intentional, willful or wanton misconduct under the circumstances and/or acted with great indifference for Plaintiff's rights.

COUNT I
UNFAIR AND DECEPTIVE PRACTICES

Plaintiff, BROWN, sues defendant, BULL and alleges:

- 16) Plaintiff realleges by reference paragraphs 1-15 of this complaint.
- 17) Defendant's acts, practices and representations, as stated above, are generally and *per se* deceptive, unfair and unconscionable, and unlawful under Chapter 501, Part II., Deceptive and Unfair Trade Practices, § 501.204, Florida Statutes.
- 18) Specifically, this Count arises as a result of Defendant BULL doing the following:
 - a) Misrepresenting to/misleading BROWN as to the nature of the agreement entered into by her;
 - b) Forging a legal document and then submitting the forged sale agreement

to the finance company which contained terms different from those agreed to by the parties.

- c) Violating the various provisions of Chapter 520 of the Florida Statutes and the Truth in Lending Act.
- d) Depriving Plaintiff of insurance coverage which should have been available to cover her disability/pay for her motor vehicle finance obligations while she was disabled.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant, as follows:

- a. For all damages and losses as described above and pursuant to § 501.211, Florida Statutes;
- b. Declaratory Judgment and Injunctive Relief;
- c. For interest;
- d. For costs and attorney's fees pursuant to § 501.2105, Florida Statute;
- e. For such other and further legal and/or equitable relief as the Court may deem just and proper.

COUNT II
FRAUDULENT INDUCEMENT/MISREPRESENTATION

Plaintiff, BROWN, sues defendant, BULL and alleges:

- 19) Plaintiff realleges by reference paragraphs 1-15 of this complaint.
- 20) BULL's representations to BROWN were material and false in that BULL made representations to BROWN so as to induce her into consummating the purchase of the subject vehicle when in fact BULL had no intention on proceeding forward with the deal on the terms and conditions as agreed to.

- 21) BULL under the circumstances, knew of the misrepresentation, made the representations without knowledge of its truth or falsity, or in the exercise of reasonable care under the circumstances should have known that the representations were false and proceeded forward to forge and substitute an unauthorized retail sales installment contract.
- 22) BROWN was induced and did rely to her detriment on the representations of BULL.
- 23) As a direct and proximate result of the misrepresentations of the Defendant, BULL, BROWN has been damaged as described above.

WHEREFORE Plaintiff demands judgment for damages against defendant, BULL for compensatory and punitive damages, cost of suit, interest and pre-judgment interest, and such relief as the Court deems just and appropriate.

COUNT III

VIOLATION OF TRUTH IN LENDING

Plaintiff, BROWN, sues defendant, BULL and alleges:

- 24) Plaintiff realleges by reference paragraphs 1-9, 13 and 14 of this complaint.
- 25) The above transaction was a consumer credit transaction within the meaning of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (Hereinafter "TILA"), and Federal Reserve Board Regulation Z, 12 C.F.R. § 226, promulgated pursuant thereto.
- 26) BULL in bad faith violated TILA, including but not limited to: failing to make the required disclosures before the transaction occurred, deliberately offering terms of financing that it had no intention of honoring as provided in Exhibit "A," making material disclosures that did not reflect the actual terms of the legal obligation

between the parties and instead submitting/providing different terms, failing to adequately disclose the terms of the sale as provided for in Exhibit "A" and improperly failing to disclose to Plaintiff such items as the correct installment payment amount, correct amount to be financed, correct amount of finance charges, correct total of payments and the actual products that would be financed as part of the transaction.

27) By reason of the aforesaid violations of TILA and Regulation Z, the Defendant is liable for each transaction in the amount of twice the finance charge, actual damages, and attorney's fees and costs in accordance with 15 U.S.C. § 1640.

WHEREFORE, the Plaintiff respectfully prays for judgment against Defendant pursuant to 15 U.S.C. § 1640, as follows:

- a. For all actual damages including compensatory damages and losses;
- b. For statutory damages in the amount of twice the finance charges;
- c. For costs and reasonable attorney's fees; and
- d. For such other and further legal and/or equitable and/or injunctive relief as the Court may deem just and proper.

COUNT IV
VIOLATION OF MOTOR VEHICLES SALES FINANCE ACT

Plaintiff, BROWN, sues defendant, BULL and alleges:

- 28) Plaintiff realleges by reference paragraphs 1-15 of this complaint.
- 29) The above finance transactions constituted a retail installment contract and thus covered under Florida Statute § 520.01 *et seq.*, "Motor Vehicle Sales Finance."
- 30) BULL willfully violated the provisions of the Motor Vehicle Sales Finance Act, including but not limited to:

- a. falsifying an installment sales contract;
- b. failing to honor its lawful terms;
- c. submitting a fraudulent/forged sales contract as described above;
- d. failing to provide Plaintiff with a copy of a retail sales installment contract signed by BULL;
- e. failing to re-calculate the finance charge on the original transaction with the premium for the purportedly canceled or deleted insurance coverage and further including in the amount financed the premium for non-existent or canceled insurance or the amount of the premium adjustment that should have been excluded from the amount financed; and
- f. failing to provide a proper or separate written itemization of the amount financed, the correct cash price, the amounts included for insurance and other benefits, specifying the types of coverages and benefits.

WHEREFORE, the Plaintiff respectfully prays for judgment against Defendant pursuant to Fla. Stat. § 520.12(2), as follows:

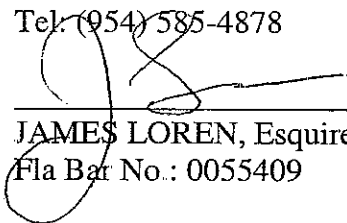
- a. For all finance charges;
- b. For any fees charged the Plaintiff not contemplated by the agreement;
- c. For costs and reasonable attorney's fees; and
- d. For such other and further legal and/or equitable relief as the as the law allows and that Court may deem just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. mail and hand-delivery on August 18, 2004 to: Richard A. Ivers, Esquire, Navon, Kopelman & Lavin, P.A., 2699 Stirling Road, Suite B-100, Fort Lauderdale, FL 33312.

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