UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

BETTY LUNDQUIST, on behalf of herself and all other similarly situated
-Plaintiffs

VS. CIVIL NO. 5:91CV00754(TFGD)

SECURITY PACIFIC AUTOMOTIVE FINANCIAL SERVICES CORPORATION
-Defendant

MAGISTRATE'S OPINION

This proposed class action[1] has been brought by an automobile lessee against the defendant for allegedly violating provisions of the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667e and implementing regulations, 12 C.F.R. §§ 213.1-213.8 ("Regulation M") as well as applicable state law. The defendant has moved to dismiss plaintiff's claims under Fed. R. Civ. P. 12 (b)(6) and for lack of standing. For the foregoing reasons, defendant's motion should be granted in part and denied in part.

ALLEGATIONS OF THE COMPLAINT

On June 11, 1988, Betty Lundquist signed and entered into what was labeled "Vehicle Lease Agreement Closed End" with a New York automobile dealer for a 1988

[1] A class has not yet been certified; this issue will be addressed in a later opinion or endorsement to be filed in due course.

Peugeot automobile.[2] The lease terms provided that Ms. Lundquist was to make 60 monthly payments to the defendant for the lease of the vehicle with an option to purchase at the end of the term. The automobile was leased for personal use.[3]

The lease expressly provided that, as lessee, the plaintiff had "no right to terminate [the] lease prior to the scheduled end of its term." Nevertheless, during the lease period Ms. Lundquist inquired about terminating the lease early. The defendant informed her that she would be allowed to terminate prematurely in exchange for a certain sum.[4]

The plaintiff alleges that the defendant has a regular practice of allowing lessees to terminate lease agreements prior to their scheduled expiration. Plaintiff contends that this practice violates the disclosure requirements of 15 U.S.C. § 1667b(b). Further, plaintiff alleges that other portions of the lease agreement violate the disclosure and reasonableness requirements in the Consumer Leasing Act. Finally, plaintiff seeks declaratory judgments that the

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[2] A copy of the lease was attached to the complaint as Exhibit "A".

[3] Thus, the lease was a "consumer lease" as defined in the Act. 15 U.S.C. § 1667(1) (1982).

[4] The specifics that were allegedly discussed at this time are nowhere in the complaint.

violative lease provisions are unenforceable under state law and that defendant violated state consumer protection laws.

DISCUSSION

Defendant has moved to dismiss the plaintiff's complaint on several different grounds. Thus, the court will discuss each basis separately.

A. Claims for Consumer Leasing Act Violations

Defendant first contends that plaintiff's complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) on the grounds that the lease does not violate any part of the Consumer Leasing Act. In considering this argument in a motion to dismiss, the court must only review the allegations of the complaint to test their legal sufficiency. Scheuer v. Rhodes, 416 U.S. 232 (1974); National Union Fire Ins. Co. v. Mastroni, 754 F. Supp. 269, 272 (D. Conn. 1990).

The Consumer Leasing Act ("CLA") is part of a larger statutory scheme known as the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1693r (1982).

> The Truth-in-Lending Act was passed primarily to aid the unsophisticated consumer so that he would not be easily misled as to the total costs of financing. For when doing business as usual the figures on conditions randomly placed on the traditional form would reveal to the average businessman the true cost of the transaction, but for the inexperienced or uninformed there was the possibility of deception, misinformation, or at least an obliviousness to the true costs which some day they would have to pay.

Thomka v. A.Z. Chevrolet, Inc., 619 F.2d 246, 248 (3d Cir. 1980). One of the stated purposes for enacting TILA and CLA was to "assure a meaningful disclosure of the terms of leases . . . so as to enable the lessee to compare more readily the various lease terms available to him." 15 U.S.C. § 1601(b) (1982). Because TILA is a remedial statute, it is interpreted strictly in favor of the consumer. Frazee v. Seaview Toyota Pontiac, Inc., 695 F. Supp. 1406, 1408 (D. Conn. 1988). Technical violations of the disclosure provisions and penalty limitations of CLA support an award for statutory damages. 15 U.S.C. § 1667d (1982); cf. Fox, 695 F. Supp. at 1408.

1. Lessee's Right to Terminate

The CLA requires that a lease contain "[a] statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term . . . ." 15 U.S.C. § 1667a(11) (1982); accord 12 C.F.R. § 213.4(g)(12) (1991). In part 7 of the lease, entitled "No Voluntary Early Termination," it stated that the lessee had "no right to terminate this lease prior to the scheduled end of its term." The plaintiff claims this does not adequately disclose the actual conditions under which the lessee may terminate early because the defendant routinely allows lessee's to terminate under certain conditions. The plain language

of section 1667a(11) reveals that the plaintiff has stated a valid claim.

Defendant contends the statement accurately discloses that the lessee has no "right" to voluntarily terminate. Defendant argues that while it may assent at some later time to a consumer's request to terminate early, that does not constitute a lessee's "right" under the lease. Instead, defendant argues that any subsequent release from the lease obligations should be considered a modification of the original contract. However, defendant's disclosure may still be inadequate. The plaintiff complains that the defendant customarily allows lessees to voluntarily terminate upon payment of money and simply because the lease discloses that the lessee has no "right" to terminate, defendant has not revealed the actual conditions for early termination as required by the CLA. This allegation states a claim upon which relief can be granted. See Candelaria v. Nissan Motor Acceptance Corp., 740 F. Supp. 806, 809-10 (D. N.Mex. 1990) (Court found similar disclosure violations where lease stated: "If lessee desires to terminate early, lessee should contact lessor.").

2. Amount or Method of Early Termination Charges

In the complaint, the plaintiff asserted that the lease provisions setting out the early termination

charges (in the event the lessor initiated termination) also violated the disclosure requirements of section 1667a. The statute requires that "the amount or method of determining any penalty or other charge for . . . early termination" be set out "accurately and in a clear and conspicuous manner." 15 U.S.C. § 1667a (1982); accord 12 C.F.R. § 213.4 (1991). According to the regulations, these disclosures must be made in a "meaningful sequence" and the accompanying official staff commentary states that they be written in a "reasonably understandable form." Id.; 12 C.F.R. § 213, Supp. 1 (1991). The broad policies of the act require that disclosures be "meaningful" in the eyes of the lessee. Accordingly, courts have consistently ruled that the CLA and TILA were designed to promote a well-informed consumer. Mourning v. Family Publs. Servs, Inc., 411 U.S. 356, 364 (1973); Candelaria v. Nissan Motor Acceptance Corp., 740 F. Supp. 806 (D.N.Mex. 1990); Kedziora v. Citicorp Nat'l Servs., Inc., 1991 U.S. Dist. LEXIS 17128.

The lease at issue provides that if the lessor terminates early (for certain stated reasons) charges will be imposed. One of the charges is for "[t]he amount, if any, by which the sum of the Adjusted Lease Balance as described in Item 8, plus on Base Payment, Item 3A, exceeds the Realized Value, as determined in

accordance with Item 15." Complaint, Ex. A, pt. 16. Standing alone, this provision is not reasonably understandable; looking at the cross-referenced portions fails to make it substantially clearer to a layman. Obviously, at least some degree of familiarity with technical accounting terms seems necessary to calculate charges of this type. While it is true that the Supreme Court has held that every technical element of agreements like this need not be fully explained, see Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 568 (1980) ("Meaningful disclosure does not mean more disclosure. . . . [but] a balance between 'competing considerations of complete disclosure . . . and the need to avoid . . . informational overload.'") (quoting legislative history); see also Gambardella v. G. Fox. & Co., 716 F.2d 104 (2d Cir. 1983), in the context of a 12(b)(6) motion, Milholin does not require dismissal. Indeed, looking at the claim in a light most favorable to the plaintiff, it is certainly arguable that this provision of the lease fails to strike the appropriate balance between meaningful disclosure and informational overload. Therefore, this aspect of defendant's motion also is denied.

3. Use of Wholesale Price for Valuation

The "Realized Value" mentioned above used to

compute early termination liability requires calculating the vehicle's value at the time the lease is terminated and the vehicle returned to the lessor. Item 15 of the lease explains that the "Realized Value" of the vehicle can be calculated using the wholesale value of the vehicle at the time of termination. Within the first 10 days after the vehicle is returned, the lessee can obtain a professional appraisal of the wholesale value. Otherwise, the lessor can attempt to sell it for wholesale "or may establish the Realized value in some other commercially reasonable manner." Complaint, Ex. A. Finally, even if the lessor chooses not to sell the vehicle, the highest bona fide bid will be used as the realized value.

The plaintiff alleges that the "use of the amount realized by selling the vehicle at wholesale is not a reasonable method of determining the consumer's liability . . ." as part of her broader claim that the early termination charges are unreasonable. However, the regulations and commentary make it clear that wholesale pricing is an appropriate method to estimate the realized value.

The regulations express that unknown information may be estimated "provided the estimate . . . is reasonable." 12 C.F.R. § 213.4(d). The Official Staff Commentary accompanying this provision states:

> The lessor may chose either a retail or a wholesale value in estimating the value of the leased property at termination, provided that choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term.

12 C.F.R. § 213.4(d)(4), Supp. 1 (1991). While the plaintiff alleges that the use of wholesale pricing is unreasonable, the staff commentary specifically states that wholesale valuation is appropriate.[5] Id.; see also Kedziora, 1991 U.S. Dist. LEXIS 17128. The Supreme Court has held that these staff commentaries are entitled to substantial deference. Ford Motor Credit Co., 444 U.S. at 567-68; see also Candelaria, 740 F.Supp. at 807. In view of all of the foregoing, that portion of the complaint alleging that the use of wholesale pricing for this purpose is unreasonable should be dismissed. 28 U.S.C. §636(b).

4. Initial Purchase Price

The complaint alleges that the depreciation figures in the lease are inflated because the actual purchase price of the vehicle was substantially lower than the purchase price used in the depreciation calculations. According to the complaint, using this inflated purchase price to calculate depreciation upon early termination results in unreasonable early termination

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[5] There is no claim that the defendant's use of wholesale pricing is inconsistent with its general practice.

charges in violation of 15 U.S.C. § 1667b(b). On the face of the complaint, this states a claim which requires further factual development concerning, among other things, the origin and accuracy of these figures.

5. Excess Mileage Charge

Part 9 of the lease provides:

> I [Lessee] understand that you [lessor] have based the Total Monthly Lease Payment on normal wear and tear and, . . . on the assumption that I will drive the vehicle an average of 15,000 miles (standard mileage) or less each year, I agree that, if I drive the vehicle in excess of the standard . . . and if I do not purchase the vehicle at the scheduled end of the term of this lease, I will pay an excess mileage charge of ten (10) cents per mile for each mile the vehicle is driven in excess of the standard . . . .

Complaint, Ex. A. Plaintiff alleges that this ten cent charge violates the requirement that standards for wear and use be reasonable. 12 C.F.R. § 213.4(g)(8) (1991). Complaint, ¶¶ 31-33. Again, it is too early in the litigation to determine the reasonableness of the "excess mileage charge". The defendant does not point to any statutory authority specifically supporting the ten cent per mile charge. The plaintiff must be afforded the opportunity to adduce factual evidence to substantiate her claim that the charges are unreasonable.[6]

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[6] The standing issue cursorily raised by defendant in this part of its brief is addressed in part B of this opinion.

6. Disclosure of Warranties

The plaintiff alleges violations of 15 U.S.C. § 1667a(6) which requires "a statement identifying all express warranties and guaranties made by the manufacturer or lessor with respect to the leased property." Accord 12 C.F.R. § 213.4(g)(7) (1991). The lease's warranty provision states:

> To the extent they are assignable, you [lessor] agree to assign to me [lessee] all of your rights and remedies under any warranties applicable to the vehicle which have been made by its manufacturers. I acknowledge that you makes no express warranties regarding the vehicle that I am leasing it from you "as is" and that the entire risk as to the quality and performance of the vehicle is with me.

Complaint, Ex. A (Capital letters omitted). This clause contains sufficient ambiguity as to the identity of warranties available to the lessee to deny defendant's motion to dismiss this portion of the complaint. Further factual development is necessary to adduce what, if any, warranties were expressly made by the manufacturer and whether this clause adequately disclosed them.

The defendant also contends that the plaintiff lacks standing to litigate the portion of the complaint concerning extended warranties on the grounds that

there was no extended warranty sold to the plaintiff.[7] Ultimately, the defendant may prove correct. The lease contains a provision for a service contract; however, the parties allegedly wrote "n/a" in the blank spaces and failed to initial it. See Complaint, Ex. A. The plaintiff, however, is not necessarily alleging that extended warranties are part of her agreement. Thus, the accuracy of the warranty provision in leases where an extended warranty is sold is not necessarily before the court. Therefore, on the record it is not appropriate to pronounce that the plaintiff has no "standing" to argue this issue. Cf. Kedziora v. Citicorp Nat'l Servs., Inc., 1991 U.S. Dist. LEXIS 17128.

In another sentence of the warranty provision the lessee initially agrees to resolve disputes over the manufacturer's warranty through the manufacturer's dispute resolution system. The complaint alleges, under the heading "Classwide Disclosure Violations," that this clause unfairly limits the lessee's rights. This portion of the plaintiff's complaint also may eventually be dismissed, for at present there seems to be a paucity of authority to support plaintiff's proposition that this sentence violates any disclosure

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[7] The complaint states: "Moreover, the disclosure is inaccurate and incomplete in any case where an extended warranty is sold." Complaint, ¶ 34(f).

requirements of the CLA. For now however, the magistrate notes that a more fully developed record is desirable before deciding this question.

7. Option to Purchase

Part 11 of the lease allows the plaintiff to purchase the vehicle at the end of the lease term under certain conditions. The provision mentions the "adjusted lease balance" as one figure used to calculate the purchase price, but does not cross reference part 8--the part illustrating how to calculate the adjusted lease balance. The complaint alleges that because the provision uses the term without a cross reference to part 8, the purchase price is inadequately disclosed. See 15 U.S.C. § 1667a(5) (1982). This claim is without merit.

Disclosures do not have to be perfect to be in compliance with CLA and TILA. See Gambardella v. G. Fox & Co., 716 F.2d 104 (2d Cir. 1983); Sanders v. Auto Assoc., Inc., 450 F. Supp. 900, 904 (D. S.C. 1978). The CLA requires that the lease clearly and conspicuously disclose the price of leased property if the lessee has the option to purchase it. 12 C.F.R. 213.4(g)(7) ("[a] statement . . . whether or not the lessee has the option to purchase the lease property and at what price and time"). The plaintiff argues that the failure to cross-reference part 8 makes the

provision violative of the CLA. However, the statute does not specifically require cross-referencing and part 8 is on the same page with the term "Adjusted Lease Balance" conspicuously printed. It is fully explained only three paragraphs earlier so that a consumer reading the entire document could easily recall its location. Furthermore, part 8 separates the clause containing the "Adjusted Lease Balance" and capitalizes the first letter of each word so that it is easy to locate. Therefore, the plaintiff cannot show that this missing cross reference violates the "clear and conspicuous" requirement for disclosures. This portion of plaintiff's claim should be dismissed.

B. Standing to Determine Reasonableness of Termination Charges

The defendant has also moved to dismiss Count I of the complaint on the grounds that the plaintiff lacks standing to litigate the reasonableness of the early termination charges. Defendant contends that because the plaintiff's lease has not been terminated, she has not suffered any injury and is not entitled to declaratory relief. For the reasons that follow, the court disagrees.

The plaintiff is a party to the lease and bound by its terms. If the plaintiff decides to default on the lease, she will be subject to the early termination

charges. There is an immediate threat of injury to her because if she returns the car she would be subject to these allegedly unreasonable charges. See Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 472 (1982); Warth v. Seldin, 422 U.S. 490, 499 (1975). Article III is not violated where there is "a real and substantial controversy admitting of specific relief through a decree of conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 241 (1937).[8]

Actions for declaratory relief are routinely upheld where one party to an agreement seeks a determination of the respective rights and liabilities under the contract terms. In those cases, declaratory relief is appropriate without requiring the parties to commit a breach or sustain damages. E.g., Keener Oil & Gas Co. v. Consolidated Gas Utilities Corp., 190 F.2d 985, 989

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[8] This is the principle difference between the relief sought here and in Kedziora, relied on by the defendant. In that case the plaintiff lacked standing to litigate the reasonableness of pre-12-month early termination charges brought after the 12 month period expired. The court would not decide this issue "just on the basis that it would have been unreasonable as to some hypothetical other lessee." Kedziora v. Citicorp Nat'l Servs., Inc., 1991 U.S. Dist. LEXIS 17128. Here, the terms are clearly applicable to this plaintiff since she would in fact be bound by the provision if she chooses to terminate early. Thus, Kedziora is easily distinguished.

(10th Cir. 1951) ("[A] party to the contract is not compelled to wait until he has committed an act which . . . will constitute a breach, but may seek relief by declaratory judgment, and have the controversy adjudicated in order that he may avoid the risk of damages or other untoward consequences."); Fine v. Property Damage Appraisers, Inc., 393 F. Supp. 1304, 1310 (E.D. Lous. 1975) ("The use of declaratory judgment is particularly compelling where the validity of an anti-competitive clause is questioned because otherwise plaintiff is left to test it only by his breach of contract, subjecting himself to the risk that the clause be held enforceable . . . ."); Dworman v. Mayor and Bd. of Aldermen, etc, Morristown, 370 F. Supp. 1056, 1059 (D. N.J. 1974). Accordingly, the plaintiff has a sufficient stake in the outcome of this issue to satisfy the standing requirements of Article III.

The defendant also argues that because there has been no actual early termination it is impossible to accurately determine the reasonableness of the charges. This argument ignores the plain language of section 1667b(b): ". . . early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the . . . early termination . . . and the inconvenience

or nonfeasibility of otherwise obtaining an adequate remedy." 15 U.S.C. § 1667b (1982) (emphasis added). The parties certainly need not actually terminate the lease early to accurately prove the reasonableness of the "anticipated harm" because these words imply that actual harm is unknown. Furthermore, the actual harm that would stem from early termination is readily ascertainable in a common consumer automobile lease of this type. Presumably, the defendant is a leasing company with many similar leases and can adequately defend these charges using previous agreements. Therefore, the plaintiff does not have to violate the agreement before the reasonableness of these charges can be determined.

C. Unfair and Deceptive Trade Practices

Count IV of the complaint seeks relief under applicable state consumer protection statutes. Complaint, ¶¶ 50-54. To clarify, the complaint mentions the Connecticut statute, 42-110a et. seq. Conn. Gen. Stat., as an example of such a statute. Id., ¶ 51. The defendant has moved to dismiss any claim under Connecticut law because the transaction between the defendant and the named plaintiff took place entirely in New York. Additionally, defendant contends that this count should be dismissed for failing to specify the applicable consumer protection

statutes.

Defendant's first reading of the complaint is too narrow. The plaintiff has not specifically stated that Connecticut law necessarily applies. Further, it is too early to dispose of this claim because subsequent discovery should flush out which state laws are implicated. Requiring the plaintiff to know all the applicable state laws for this type of class claim would be unrealistic. The defendant has sufficient notice of the substance of plaintiff's claims in Count IV. Therefore, this aspect of defendant's motion should be denied.

CONCLUSION

Defendant's motion should be granted as to 1) the claim that the use of wholesale pricing to calculate realized value is unreasonable; 2) the claim alleging that the agreement to resort to the dispute resolution system violates the CLA; and 3) the claim that alleges disclosure violations under part 11 of the lease. The remainder of defendant's motion should be denied.

Dated at Hartford, Connecticut, this 9th day of June 1992.

Thomas P. Smith
THOMAS P. SMITH
U.S. MAGISTRATE JUDGE