UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

BETTY LUNDQUIST,
-Plaintiff

DW

- v -

CIV. NO. 5:91-754(TFGD)

SECURITY PACIFIC AUTOMOTIVE
FINANCIAL SERVICES CORPORATION,
-Defendant

MAGISTRATE'S OPINION

On or about June 11, 1988, plaintiff Betty Lundquist, as lessee, entered into a certain Vehicle Lease Agreement Closed End (the "lease"), with Hyde Park Motor Co., Inc., an automobile dealer in Rhinebeck, New York, as lessor, for the lease of a 1988 Peugeot 505DL. Hyde Park Motor Co., Inc., assigned its interest in the lease to Security Pacific Automotive Financial Services Corporation ("Security Automotive") the same day. Pursuant to the terms of the lease, Ms. Lundquist agreed to make monthly lease payments to Security Automotive for a term of sixty months. At the end of the lease term, the plaintiff had an option to purchase the automobile outright. Ms. Lundquist took possession of the Vehicle on or about June 11, 1988.

By Complaint filed November 14, 1991, the plaintiff

brought this action against Security Automotive alleging various state law claims cognizable under diversity jurisdiction, 28 U.S.C. §1332, and multiple violations of the Consumer Leasing Act, 15 U.S.C. §1667 et seq.

By this motion for partial summary judgment, plaintiff seeks a judgment on three of her federal statutory claims: (i) that Security Automotive did not adequately disclose under what conditions the lessee may voluntarily terminate the lease; (ii) that Security Automotive did not adequately disclose its method of calculating termination charges; and (iii) that Security Automotive did not adequately disclose express warranties. This opinion addresses only item (ii) above.

Security Automotive does not contest plaintiff's Statement of Material Facts, ¶¶1 through 5 and 7. That statement establishes that:

1. Security Automotive was regularly engaged in the business of leasing and offering to lease vehicles to natural persons for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family or household purposes.

2. On June 10, 1988, plaintiff Betty Lundquist signed a "Vehicle Lease Agreement Closed End" with Security Automotive, covering a 1988 Peugeot. A true

and accurate copy of this document is attached as Exhibit 1 to the complaint and Exhibit F to plaintiff's motion.

3. Security Automotive's lease form has three boxes at the end of the lease labelled "corporation," "partnership" and "sole proprietor." It was the policy and practice of Security Automotive to have one of these three boxes checked if the lease were for business purposes, depending on the form of organization of the business. It was the policy and practice of Security Automotive to have none of the boxes checked if the lease were with an individual for personal, family or household purposes.

4. Betty Lundquist leased the 1988 Peugeot for personal, family or household purposes.

5. Exhibit F to the pending motion is a "contract in the form of a lease . . . for the use of personal property by a natural person."

6. [7.] Exhibit I, attached to plaintiff's response to Security Automotive's motion to dismiss, is an accurate copy of Statement of Financial Accounting Standards No. 13.

The magistrate assumes familiarity with, and incorporates by reference herein, his 18 page opinion of June 9, 1992. Section 1667a of the Consumer Leasing Act requires that the lessor provide the lessee with a

written statement "setting out accurately and <u>in a clear</u> and conspicuous <u>manner</u>. . .

> (11) . . . <u>the</u> amount or <u>method of determining any penalty or other charge</u> for delinquency, default, late payment, or early termination."

(Emphasis added). In addition to the requirement that a disclosure be "clear", according to the regulations, the disclosures required by section 1667a also must be made in a "meaningful sequence". 12 C.F.R. §213 (1991). Further, according to the Official Commentary, they must be written in a "reasonably understandable form." 12 C.F.R. 203, Supp 1 (1991).

The lease at issue here provides in pertinent part that if the lessor terminates (for certain stated reasons) charges will be imposed. One of the charges is for "the amount, if any, by which the sum of the Adjusted Lease Balance as described in Item 8, plus one Base Payment, Item 3A, exceeds the Realized Value, as determined in accordance with Item 15." Complaint Ex. 1, Item 16. Item 8 deals with the allocation of monthly lease payments and, in turn, refers to the Statement of Financial Accounting Standards No. 13.

Congress obviously felt that it was important for consumers to have a certain level of understanding with respect to termination charges. 15 U.S.C. §1667a(11). It wanted consumers to know either the <u>amount</u> of such charges or the <u>method</u> of determining those charges.

Accordingly, the statute provides that there must be disclosure of either a sum certain amount or the method of arriving at one. No matter which disclosure option is chosen by the lessor, however, it must be reasonably understandable to the consumer. Congress did not intend to give lessors an option to substitute an abstruse verbal formula for disclosure of a reasonably understandable sum certain.

Defendant is correct that §1667a (11) allows it the option of disclosing either the amount, or the method by which the amount of early termination charges may be determined. In its papers in opposition to this motion, the defendant is also correct that resort to cross-referencing is not necessarily impermissible. Indeed, the official Commentary notes that lessors may cross-reference rather than repeat items which are disclosed elsewhere. However, the defendant is incorrect that its disclosure in Item 16 of the "method" for determining early termination charges is"reasonably understandable".

The magistrate has no doubt that defendant Security Automotive, and its accountants and lawyers, have always understood the method they would use to determine plaintiff's charges in event of termination. But, it is not enough that the lessor (the normal profferer of lease documentation) finds the lease's disclosures to be "reasonably understandable," for the law was not written

to protect lessors. The law was written to protect consumers, people who are generally less sophisticated than the lessors with whom they deal, and who ordinarily would be expected to lack the same financial resources that are at the lessor's disposal. For a disclosure to pass muster, therefore, it must be "reasonably understandable" from the perspective of the average consumer. Whether a particular provision of a lease is sustainable as a matter of law, fails as a matter of law, or presents a genuinely disputed issue of material fact is a threshold question for the court.

That question must be resolved in plaintiff's favor in this case. The disclosure at issue here is not "reasonably understandable." Moreover, the disclosure in Item 16(c) is not "clear", but is confusing, unduly complicated, and unnecessarily convoluted. Therefore, the plaintiff's motion for partial summary judgment should be granted with respect to her claim that the lease fails to make an adequate disclosure of the method of determining charges for termination by default, delinquency, or late payment.

Since a single violation of the Act suffices, there is no need to address the two other Consumer Leasing Act claims which are the subject of the pending motion. Any party is free to timely seek the district judge's review of this report and recommendation as provided by 28

U.S.C. §636(b) and Rule 72, F.R.Civ.P., bearing in mind that the failure to do so may preclude further review.

Dated at Hartford, Connecticut, this 13th day of August, 1992.

Thomas P. Smith

THOMAS P. SMITH
U. S. MAGISTRATE JUDGE