IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGE C. NIX and SABRINA NIX,

Plaintiffs,

v.

ADVANCE LEASING AND RENT-A-CAR, INC.,

Defendants.

CIVIL ACTION
NO. 1:92-CV-2612-JEC

49,946
A
7p.
1095173
(9 yrs)

REPORT AND RECOMMENDATION

Before the court is a consumer lease case brought pursuant to 15 U.S.C. § 1667 and 12 CFR § 213 et seq. (Regulation M). The plaintiffs leased a 1988 Mercury Sable automobile from the defendant and the plaintiffs contend that the lease fails to comply with 15 U.S.C. § 1667 et seq. in that the mandatory lease disclosure requirements were violated in nine particulars. Both parties move for summary judgment.

1. Place for Lessee's Signature.

The lease which is written on the front and back of the page has a place for the signature of the lessee which appears on only the bottom of the front page. The back page contains certain disclosures which plaintiffs contend are required by 15 U.S.C. § 1667(a) (12 CFR 213.4). The back page of the lease contains the provisions for early termination and for default. These provisions on the back side of the lease follow the lessee's signature and therefore plaintiffs contend the lease is in violation of the 15 U.S.C. § 1667(a) which requires that these provisions be disclosed to the lessee and that the disclosures, when made on the lease

itself, be made "on the same page and above the place for the lessee's signature; ... ." 12 CFR 213.4(a)(2). The defendant argues that the plaintiffs were not misled by this in that it was indicated in depositions that they had read the lease over. Nevertheless, it is not necessary that a party actually be misled in order for there to be a violation of the Truth-in-Lending Acts. See e.g. Smith v. Chapman, 614 F.2d 968, 971 (5th Cir. 1980).

The placing of the signature line before the required disclosures is found to be a violation of the provisions of Regulation M. (See Rakestraw v. Trust Company Bank, Case No. 1:90-CV-941 MHS, NDGa, April 8, 1991 attached as addendum of Plaintiff's motion).

2. Express warranty disclosure.

The plaintiffs also contend that the lease does not contain a clear and conspicuous disclosure regarding warranties available to the lessee by the lessor or manufacturer. Regulation M of the Consumer Leasing provisions of the Act requires the following:

> A statement identifying any express warranties or guarantees available to the lessee made by the Lessor or Manufacturer with respect to the leased property.

12 CFR § 213.4(g)(7).

It is clear from review of the lease and the "buyer's guide" that there was no warranty applicable to the vehicle. Under the heading "Warranty" the lease states:

> The Lessee may receive a separate written warranty on the Vehicle. Under this Lease, however, there is no promise as

> to merchantability, suitability, or fitness for purpose of the Vehicle. This means that there is no promise that the Vehicle will be fit for normal purpose for which a vehicle is used.

(Ex. A of Plaintiff's brief in support of summary judgment). On the Buyer's Guide the checked block adjacent to the following language in large print: "As is - No Warranty." It is clear from this language that, while a written warranty could be obtained, no warranty was made by the manufacturer or the lessor as a part of the lease. This is sufficient to meet the requirements of the regulations.

3. **Reasonable Use.**

Plaintiffs contend that the requirement for excess mileage of ten cents a mile for miles of use in excess of twelve hundred and fifty (1250) miles per month is not reasonable. The plaintiffs contend that the excess mileage is already covered by the fact that under the default formula in paragraph 18 of the lease the car is sold and the proceeds of the sale are applied toward the amount due for the future lease payments. Plaintiffs argue that this takes care of any excess mileage since a high mileage car will bring less at a sale.

The plaintiff offers no evidence that twelve hundred and fifty (1250) miles per month plus ten cents per mile for any additional mileage is excessive while the defendant offers the affidavit of Steve Johnson to the effect that the requirement is in compliance with the local leasing industry and is a reasonable standard of

use. This seems correct to this magistrate judge and the plaintiff's contention that this provision violates the terms of the Consumer Leasing act must fail.

4 & 5. Early Termination.

The plaintiff contends that the lease violates the provisions of Regulation M, 12 CFR 213.4(g)(12) in that the provision relative to early termination of the lease is not a clear disclosure of the conditions under which the lessee may terminate the lease prior to the end of the lease term. Paragraph 17 of the lease reads as follows:

> **Voluntary Early Termination:** This lease may possibly be terminated before the end of the term by agreement of the Lessee and the Lessor. If the Lessee wishes to terminate this Lease early he should contact the Lessor. Except by written agreement with the Lessor the Lessee may terminate this Lease early only if he returns the Vehicle to the Lessor and he pays all amounts that he owes under this Lease. This agreement must be in writing.

This magistrate judge feels that this provision is not ambiguous as it does state the method of calculating the amounts owed under the lease on early termination. The affidavit by Steve Johnson (attached to the defendant's response) indicates that the amounts due on early termination are "the monthly payments due up through the time the vehicle is returned" and that this is a practice routinely followed by the defendant. (See Johnson affidavit, p.4). The lease is for a term of nine (9) months, but the "Term" provision provides for early termination and the monthly

payments are to be made only during the term of the lease. It is not reasonable to interpret the language to require payment of future payments as the plaintiffs argue.

6. Amount of any penalty or other charge for delinquency, default on late payments.

Plaintiff contends that the Lease fails to properly disclose the amount or method of determining any penalty for default. 12 CFR 213.4(g)(10) requires disclosure of the "amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments." Paragraph 18 of the Lease provides in part that in the event of default the

> ... Lessor will subtract from the amount owed sums received from the sale of the Vehicle in excess of what the Lessor would have invested in the Vehicle at the end of the Lease term. ... .

(Paragraph 18 of Lease Agreement). Plaintiff argues and this court agrees that it is not clear what a "Lessor would have invested in the vehicle at the end of the Lease term." The affidavit of Steve Johnson indicates that this amount is equal to the "assigned Lease residual value specified in Paragraph 7 of the Lease." However, it is not clear from the terms of the Lease that the amount specified in Paragraph 7 is the amount to be used in the calculation of the provisions of paragraph 18 as to "what the Lessor would have invested in the vehicle at the end of the lease term." This would be necessary in order for there to be a disclosure as to the total amount the lessee would owe.

The defendants' argument that the plaintiffs lack standing is not correct. The plaintiffs here are challenging the disclosure requirement of 12 CFR 213.4(g)(10). The magistrate judge agrees that the disclosure is not adequate as required by the CFR.

7 & 8. Early Termination Provisions Unreasonable.

The plaintiffs further contend that the early termination formula is unreasonable in light of the actual or anticipated harm to the Lessor in violation of 15 U.S.C. § 1667(b). The Lessee may terminate the Lease "only if he returns the Vehicle to the Lessor and he pays all amounts that he owes under this Lease." As stated above, the undersigned concluded that this language means the Lessee pays the monthly payments to date of termination rather than all the future unpaid payments under the Lease as argued by the plaintiffs. The argument that the formula is unreasonable must fail.

CONCLUSION

18 U.S.C. § 1640(a)(2)(A)(ii) provides for damages of twenty-five (25) per cent of the totaled payments under the lease. This would amount to $822.15 in this case (25% x 9 x $365.40). Although plaintiffs urge the court to award twice this amount because there were violations of disclosure and nondisclosure provisions, the court finds that the damages are limited in this case regardless of the number of infractions. There are only disclosure matters in question here and this court agrees that the reasonableness claims are not properly before the court. See Kedziora v. Citicorp Nat'l Services, Inc., 780 F. Supp. 516 at 523 (ND Ill. 1991). Since

plaintiffs were successful, they are also entitled to reasonable costs and attorney's fees to be determined by the Court. Application for attorney's fees should be ordered filed within fifteen (15) days of any favorable order of the District Judge, with defendant being allowed ten (10) days from receipt of plaintiff's claim for attorney's fees in which to object.

AND IT IS SO ORDERED this 19 day of October, 1993.

JOHN R. STROTHER, JR.
UNITED STATES MAGISTRATE JUDGE