

D.5 TIL Disclosure Case—Hidden Finance Charge in Car Sale (Willis)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)
CHRISTINE WILLIS, on behalf)
of herself and all others)
<u>similarly situated,</u>)
Plaintiff,)
)
v.)
)
HARVEY CYCLE & CAMPER,)
INC., doing business as)
WATSON MOTORSPORT, LTD.;)
and WONDERLIC &)
ASSOCIATES, INC., doing)
business as WONDERLIC)
FINANCE,)
Defendants.)
)

COMPLAINT MATTERS COMMON TO ALL COUNTS

INTRODUCTION

1. This action seeks redress for unlawful practices relating to an automobile transaction. Count I, brought on behalf of a class, alleges that defendants systematically understate the amount financed and annual percentage rate on automobile financing transactions. Count II alleges that the same conduct complained of in Count I violates the Illinois Sales Finance Agency Act. Counts III and IV allege that plaintiff was sold a defective and unmerchantable car, in violation of the Magnuson Moss Consumer Warranty Act and Illinois law.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1367 and 15 U.S.C. §1640. Venue in this District is proper because all of the events complained of took place in this District.

PARTIES

3. Christine Willis (“Ms. Willis”) is an individual who resides at [address], Chicago, Illinois.

4. Defendant Harvey Cycle & Camper, Inc., doing business as Watson Motorsport, Ltd. (“Watson”), is an Illinois corporation which operates a used car dealership located at [address], Midlothian, Illinois. Its registered agent and office are R & S Agents, Inc., [address], Chicago, Illinois.

5. Defendant Wonderlic & Associates, Inc., doing business as Wonderlic Finance (“Wonderlic”) is a Delaware Corporation with its principal place of business located at [address], Libertyville, Illinois.

PLAINTIFF'S TRANSACTION

6. In early February 1994, Ms. Willis purchased a used 1985 Buick Century from Watson. Exhibit A, attached, [*not attached herein*] is a copy of the purchase contract.

7. Ms. Willis financed the purchase by means of a motor vehicle retail installment sales contract which Watson immediately assigned to Wonderlic. Exhibit B, attached, [*not attached herein*] is a copy of the retail installment contract. The contract was prepared on a printed form which Wonderlic devised and distributed to auto dealers such as Watson.

8. The Buick was worth not more than \$2,400. However, Watson charged Ms. Willis \$4,135.28 for the vehicle.

9. As part of the transaction, Watson also sold Ms. Willis an extended warranty or service contract for \$595. As a result, Watson was prohibited from disclaiming implied warranties under the Magnuson Moss Consumer Warranty Act, 15 U.S.C. §2308 (“MMCWA”).

10. The retail installment contract financed a purported “amount financed” of \$4,245.28 at a purported annual percentage rate of not less than 43.0%. In addition, it provided for a down payment of \$600.

11. Watson, with the knowledge and at the instance of Wonderlic, included in the “amount financed” on the retail installment contract a charge for \$50 to “V.S.I.” for “insurance.”

12. The charge was a standard \$50 charge that Wonderlic had car dealers such as Watson insert in all retail installment contracts which were intended for sale to Wonderlic.

13. The \$50 charge was for insurance protecting Wonderlic and/or Watson in the event that the customer, Ms. Willis, failed to obtain and maintain insurance covering the car against loss or damage.

14. It was the standard policy and practice of Wonderlic and car dealers with which Wonderlic did business, such as Watson, to include the \$50 charge in the “amount financed” and to exclude it from the “finance charge” and the “annual percentage rate.”

15. The charge was inserted in the manner stated above by means of a computer.

16. The engine of the Buick sold to Ms. Willis was seriously defective at the time of the sale. Within a few days after the sale, the engine completely broke down and needed to be replaced. As a result, the vehicle was unfit for ordinary driving purposes.

17. Because of this serious defect, Ms. Willis lost confidence in the vehicle and revoked her acceptance. *Exhibit C*, attached [*not attached herein*].

COUNT I—TRUTH IN LENDING

18. Plaintiff incorporates paragraphs 1–17.

19. Plaintiff's transaction and the transactions of each member of the class described below were consumer credit transactions within the meaning of the Truth in Lending Act, 15 U.S.C. §§1601 et seq. (“*TILA*”), and Federal Reserve Board Regulation Z, 12 C.F.R. part 226.

20. The auto dealers through which the transactions of the plaintiff and class members were originated, including Watson, are creditors within the meaning of the Truth in Lending Act, in that each has originated more than 25 consumer credit contracts per annum.

21. The premiums for the “V.S.I. Insurance” were imposed by Watson and Wonderlic only in connection with credit transactions

and were an incident to the extension of credit. The premiums for this insurance accordingly are covered by the general definition of “finance charge” in 12 C.F.R. §226.4.

22. Under *TILA* and Regulation Z, premiums for insurance covering property against loss or damage must be included in the finance charge unless the consumer has the option to obtain the insurance from his own company and this fact is disclosed to the consumer. 12 C.F.R. §226.4(d)(2), provides:

Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, may be excluded from the finance charge if the following conditions are met:

(i)The insurance coverage may be obtained from a person of the consumer's choice, and this fact is disclosed. . . .

23. Wonderlic and the dealers that originated contracts for Wonderlic, including Watson, did not allow a consumer to obtain “V.S.I. Insurance” from an insurer of the consumer's choice, and did not so advise the consumer.

24. Accordingly, the premiums were required to be included in the “finance charge” and the “annual percentage rate.”

25. Watson and Wonderlic did not so include them, resulting in an understatement of the finance charge and annual percentage rate in the transactions of plaintiff and each class member.

26. The violation is apparent on the face of each class member's retail installment contract.

27. The retail installment contract assigned to Wonderlic provides by its terms that any holder is subject to claims and defenses which the buyer, Ms. Willis, has against the seller, Watson.

28. Watson and Wonderlic are accordingly liable as provided under 15 U.S.C. §§1640 and 1641 to each consumer they charged for the “V.S.I. Insurance.”

CLASS ALLEGATIONS

29. Ms. Willis brings Count I of this action on behalf of a class of all other persons similarly situated. The class consists of all persons who satisfy the following criteria:

- a. They signed a retail installment contract on Wonderlic's printed form within one year prior to the filing of this action.
- b. The retail installment contract included a charge for V.S.I. insurance.
- c. The charge was included in the “amount financed” and excluded from the “finance charge” and the “annual percentage rate.”
- d. The transaction was documented as one for personal, family or household purposes (*i.e.*, Truth in Lending disclosures were given).

30. On information and belief, based on the fact that a computer was used to insert the V.S.I. insurance charge on a standard printed form, the class is sufficiently numerous that joinder of all members is impractical.

31. There are questions of law and fact common to the class, which questions predominate over any questions peculiar to individual class members. The principal common question is whether the V.S.I. insurance was required to be included in the finance

charge and annual percentage rate.

32. Ms. Willis has the same claims as the members of the class. All of the claims are based on the same factual and legal theories.

33. Ms. Willis will fairly and adequately represent the interest of the class members. Ms. Willis have retained counsel experienced in prosecuting class actions and in consumer protection matters. There is no reason why Ms. Willis and their counsel will not vigorously pursue this matter.

34. A class action is the only appropriate means of resolving this controversy. Most of the customers of Wonderlic and Watson are unsophisticated individuals of modest means, who are not aware of their rights. In the absence of a class action, a failure of justice will result.

WHEREFORE, plaintiff requests that the Court grant the following relief on her behalf and that of the class and against Watson and Wonderlic:

- a. Statutory damages, as provided for in 15 U.S.C. §1640.
- b. Actual damages equal to all charges for the “V.S.I. Insurance” and finance charges thereon.
- c. Attorney’s fees, litigation expenses and costs.
- d. Such other or further relief as the Court deems appropriate.

COUNT II—SALES FINANCE AGENCY ACT

35. Plaintiff incorporates paragraphs 1–28. This claim is brought against Wonderlic, only.

36. Wonderlic is a sales finance agency within the meaning of the Sales Finance Agency Act, Ill.Rev.Stats., ch. 17, ¶5201 et seq. (“SFAA”), in that it is engaged in Illinois in the business of purchasing retail installment contracts.

37. SFAA §8.5, Ill.Rev.Stats., ch. 17, ¶5213, defines as a violation of the SFAA the “Purchase of any retail contract . . . after actual knowledge that the contract . . . violates . . . the Motor Vehicle Retail Installment Sales Act.” The Motor Vehicle Retail Installment Sales Act (“MVRISA”) requires disclosures similar to those required under TILA, and then provides that disclosures which satisfy TILA also satisfy MVRISA.

38. Wonderlic purchased contracts from car dealers with actual knowledge that they violated MVRISA, in that the annual percentage rate and finance charge were understated.

39. SFAA §8.9, Ill.Rev.Stats., ch. 17, ¶5217, defines as a violation of the SFAA the “Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge of device of any of the material particulars or the nature thereof required to be furnished to a retail buyer under . . . the Motor Vehicle Retail Installment Sales Act.”

40. Wonderlic violated §8.9 in that it caused auto dealers to furnish buyers with retail installment contracts which understated the annual percentage rate and finance charge.

41. SFAA §8.2, Ill.Rev.Stats., ch. 17, ¶5210, defines as a violation of the SFAA the “Willful violation or aiding any person in the willful violation of this Act or of any rule or regulation promulgated by the Director [of the Department of Financial Institutions].”

42. The Regulations of the Department of Financial Institutions require sales finance agencies to comply with TILA.

43. SFAA §16, Ill.Rev.Stats., ch. 17, ¶5234, provides:

An individual who sustains loss as a result of a sales finance agency’s violation of this Act may, in

a civil action against the sales finance agency, recover damages, or may, in an action brought by the sales agency to collect an indebtedness arising out of a retail sales transaction, raise such damages by way of a counterclaim or offset. In either such action, the court may allow as an additional part of the recovery, offset or counterclaim, penal damages in an amount not more than 25% of the principal amount of the retail contract . . . which is the subject of the action. In addition, the court may allow that aggrieved individual his reasonable attorney’s fees.

44. Plaintiff and each member of the class defined below sustained loss as a result of Wonderlic’s violation of the Sales Finance Agency Act, in that they signed retail installment contracts on which the finance charge and annual percentage rate were understated.

CLASS ALLEGATIONS

45. Ms. Willis brings Count II of this action on behalf of a class of all other persons similarly situated. The class consists of all persons who satisfy the following criteria:

- a. They signed, in Illinois, a retail installment contract on Wonderlic’s printed form within five years prior to the filing of this action.
- b. The retail installment contract included a charge for V.S.I. insurance.
- c. The charge was included in the “amount financed” and excluded from the “finance charge” and the “annual percentage rate.”
- d. The transaction was documented as one for personal, family or household purposes (*i.e.*, Truth in Lending disclosures were given).

46. On information and belief, based on the fact that a computer was used to insert the V.S.I. insurance charge on a standard printed form, the class is sufficiently numerous that joinder of all members is impractical.

47. There are questions of law and fact common to the class, which questions predominate over any questions peculiar to individual class members. The principal common question is whether the V.S.I. insurance was required to be included in the finance charge and annual percentage rate.

48. Ms. Willis has the same claims as the members of the class. All of the claims are based on the same factual and legal theories.

49. Ms. Willis will fairly and adequately represent the interest of the class members. Ms. Willis has retained counsel experienced in prosecuting class actions and in consumer protection matters. There is no reason why Ms. Willis and her counsel will not vigorously pursue this matter.

50. A class action is the only appropriate means of resolving this controversy. Most of the customers of Wonderlic and Watson are unsophisticated individuals of modest means, who are not aware of their rights. In the absence of a class action, a failure of justice will result.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of herself and the class and against Wonderlic for the following relief:

- a. Appropriate compensatory and statutory damages.

- b. Attorney's fees, litigation expenses, and costs.
- c. Such other or further relief as the Court deems appropriate.

COUNT III—MAGNUSON MOSS ACT

51. Plaintiff incorporates paragraphs 1–17.

52. Watson is a “supplier” within the meaning of the MMCWA.

53. The car sold to plaintiff was a “consumer product” within the meaning of the MMCWA.

54. The car sold to plaintiff by Watson was defective and unmerchantable, in violation of §2-314 of the Uniform Commercial Code, for the reasons stated above.

55. Because plaintiff was sold a service contract, Watson's attempted disclaimer of implied warranties is ineffective.

56. Plaintiff is entitled to bring suit for breach of the implied warranty under 15 U.S.C. §2310.

57. The retail installment contract assigned to Wonderlic provides by its terms that any holder is subject to claims and defenses which the buyer, Ms. Willis, has against the seller, Watson.

WHEREFORE, plaintiff requests that the Court enter judgment in her favor and against Watson and Wonderlic:

- a. For compensatory damages.
- b. For attorney's fees, litigation expenses and costs of suit.
- c. For such other or further relief as the Court deems appropriate.

COUNT IV—UNIFORM COMMERCIAL CODE

58. Plaintiff incorporates paragraphs 1–17.

59. The car sold to plaintiff by Watson was defective and unmerchantable, in violation of §2-314 of the Uniform Commercial Code, for the reasons stated above.

60. Because plaintiff was sold a service contract, Watson's attempted disclaimer of implied warranties is ineffective.

61. The retail installment contract assigned to Wonderlic provides by its terms that any holder is subject to claims and defenses which the buyer, Ms. Willis, has against the seller, Watson.

WHEREFORE, plaintiff requests that the Court enter judgment in her favor and against Watson and Wonderlic:

- a. For compensatory damages.
- b. For costs of suit.
- c. For such other or further relief as the Court deems appropriate.

[Attorney]

JURY DEMAND

Plaintiff demands trial by jury.

[Attorney]