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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Frank J. GIRON

v.

MILFORD GATEWAY, INC., d/b/a
ACURA OF MILFORD, AMERICAN
HONDA FINANCE CORP., and
AMERICAN HONDA MOTOR CO., INC.

CIVIL No. 3:93CV4511

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U.S. DISTRICT COURT
(AVC) ✓
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RULING ON DEFENDANTS' MOTION TO DISMISS

This is a class action under the federal Truth in Leasing Act, 15 U.S.C. § 1667 et seq., ("CLA") and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq. ("CUTPA"). The defendants removed the case to this court in July 1993. The defendants now move pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss the case for lack of subject matter jurisdiction. The issue presented is what was the "total contractual obligation" undertaken by the plaintiff under a certain lease agreement. The court concludes that the "total contractual obligation" was greater than \$25,000, so the CLA's jurisdictional limit is exceeded. The court grants, therefore, the defendants' motion to dismiss with respect to the CLA claims. The CUTPA claims are remanded to state court.

FACTS

On June 22, 1993 the plaintiff filed in Connecticut superior court a class action lawsuit challenging certain automobile leasing practices of the defendants. The complaint alleged violations of the federal Truth in Leasing Act (the "Consumer Leasing Act" or "CLA"), 15 U.S.C. § 1667 et seq., its

implementing regulation, 12 C.F.R. pt. 213 ("Regulation M"), and CUTPA, Conn. Gen. Stat. § 42-110a et seq..¹ The defendants removed this action to this court based upon the plaintiff's alleged CLA claims. Jurisdiction over the subject matter was founded upon 15 U.S.C. § 1667d(c), which authorizes actions under the CLA and 15 U.S.C. § 1331 in a United States district court.² The defendants now argue that the plaintiff's "total contractual obligation" under the lease in question exceeds the CLA's \$25,000 jurisdictional limit, and seek dismissal of this action.

STANDARD

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(1) must be granted if the plaintiff fails to establish jurisdiction. "Federal courts are empowered to hear only those cases that 1) are within the judicial power of the United States, as defined by the Constitution, and 2) that have been entrusted to them by a jurisdictional grant by Congress." 13 C. Wright & A. Miller, Federal Practice and Procedure § 3522

¹ The first amended complaint lists the following counts: 1) class claim for disclosure violations under the Truth in Leasing Act; 2) class claim for unfair and deceptive acts and practices; 3) class claim alleging a dealer conveyance fee as an unfair or deceptive act or practice; 4) individual claim for disclosure violations under the Truth in Leasing Act; 5) individual claim for disclosure violations under CUTPA; 6) individual claim for breach of warranty; and 7) individual "lemon law" claim.

² "Notwithstanding section 1640(e) of this title, any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this part shall be brought within one year of the termination of the lease agreement." 15 U.S.C. § 1667d(c).

(1984). See Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978).

DISCUSSION

The defendants argue that the court lacks subject matter jurisdiction because the lease in question is not subject to the CLA. The CLA applies only to "consumer leases." Such a lease is "for a total contractual obligation not exceeding \$25,000." 15 U.S.C. § 1667(1); 12 C.F.R. § 213.2(a)(6).³ Neither the statute nor the regulation defines "total contractual obligation." The defendants contend, however, that the plaintiff's "total contractual obligation" amounts to \$26,137.10, which represents the total of his monthly payments (\$23,630.40) and at least his estimated personal property taxes (\$2,506.70). The defendants cite the plaintiff's deposition testimony, in which he "admitted," four times, that he understood his "total contractual obligation" to be \$26,137.10. As such, the total contractual obligation exceeds the CLA's \$25,000 jurisdictional limit. The defendants also argue that the court lacks supplemental jurisdiction over the plaintiff's state law claims. See 28 U.S.C. § 1367(a).

The plaintiff responds that the court has subject matter

³ "Consumer lease" means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family or household purposes, for a period of time exceeding four months, for a total contractual obligation not exceeding \$25,000, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. 15 U.S.C. § 1667(1); 12 C.F.R. § 213.2(a)(6).

contractual obligation." *Id.* at 308. The official comments are also relevant. *Id.* at 308-310 (citing 12 C.F.R. § 213, Official Staff Commentary to Reg. M, Supp. I).

The plaintiff relies on sections 213.2(a)(17) and 213.4(g)(15)3 of the comments for the proposition that taxes are excluded from the total monthly obligation unless the lessor chooses to include them.⁵ The plaintiff notes that item (3e) on the face of the lease document, which provides a space to enter the estimated personal property taxes, was specifically left blank. Thus, the plaintiff argues that the defendant deliberately chose to not include these taxes in the monthly calculation, and therefore that amount is not part of the plaintiff's "total contractual obligation."

"The Consumer Leasing Act was intended to provide consumers with comprehensive information about the actual costs of leasing thus enabling them to compare alternatives." Easterwood, 825 F. Supp. at 310 (citing S. Rep. No. 94-590, 94th Cong., 2d Sess. 1-4 reprinted in 1976 U.S.C.C.A.N. 431, 431-34). Under sections 5 and 18 of the lease document, the plaintiff expressly agreed to pay when due all official fees and taxes. Under section 5, the

⁵ Taxes are included in periodic payments only "in some cases." 12 C.F.R. § 213, Commentary, Supp I, at 359, 2(a)(17)3, periodic payments: inclusions and exclusions. "Taxes included in the value at consummation are included in the total lease obligation. Taxes not included in the value at consummation may, but need not, be included in the total lease obligation at the lessor's option." Commentary, Supp I, at 364, 4(g)(15)3 (emphasis added). "The value at consummation includes taxes paid by the lessor in connection with the acquisition of leased property and amortized over the leased term." Commentary, Supp I, at 359, 2(a)(18)2.

total estimated fees and taxes were \$4,164.46. These taxes included the estimated personal property taxes of \$2,506.70. On its face, the lease agreement creates a total contractual obligation that is greater than \$25,000. Accordingly, the plaintiff's CLA claims are dismissed for lack of jurisdiction. The plaintiff's state law claims are remanded.

CONCLUSION

For the foregoing reasons, the defendants' motion to dismiss (document no. 71) is granted. The court remands this case to the Superior Court, Judicial District of New Haven.

SO ORDERED this the 15th day of August, 1994 at Hartford, Connecticut.



Alfred V. Covello, U.S.D.J.