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TOLEDO MUNICIPAL COURT



555 NORTH ERIE STREET
TOLEDO, OHIO 43624

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HARRY KESSLER,
Clerk of Court

SMALL CLAIMS DIVISION
(419)-247-6362

REFEREE'S REPORT

CHARLENE C. BRUNER
(Plaintiff)
vs
CREDIT MOTORS, INC.
(Defendant)

CASE NO. CVI 89-04637
HEARING DATE: 4-28-89
AMOUNT OF CLAIM \$ 1,000.00

APPEARANCES

For Plaintiff:
 Self Attorney Witness(es)

For Defendant:
 Self Attorney Witness(es)

FINDINGS OF FACT AND CONCLUSION OF LAW

FINDINGS OF FACT:

1. CASE WAS CALLED FOR HEARING. ALL PARTIES AND WITNESSES WERE SWORN AND TESTIFIED.
2. PLAINTIFF SEEKS TO REVOKE THE PURCHASE OF AN AUTOMOBILE AND TO BE REIMBURSED THE PURCHASE PRICE.
3. PLAINTIFF PURCHASED A 1975 PLYMOUTH VALIANT AUTOMOBILE ON OR ABOUT 9/16/88. SEE COPY OF TITLE - DEFT'S EX. 1. DEFENDANT SOLD AND FINANCED THE PURCHASE.
4. PLAINTIFF MAINTAINS THE AUTO CONTAINED NUMEROUS DEFECTS AND NOW SEEKS TO RESCIND ACCEPTANCE OF THE AUTO.

BOTH PLAINTIFF AND WITNESS RALPH KELSEY TESTIFIED THAT THE AUTO HAD A HOLE IN THE FLOOR, THE STARTER WAS DEFECTIVE, THE TRUNK LOCK DID NOT OPERATE, THE TORTION BAR WAS REPLACED, THE FIRE WALL FELL AWAY FROM THE FRONT OF THE AUTO AND THE GAS AND ODOMETER CABLE(S) WERE DISCONNECTED. PLAINTIFF SUBMITTED PHOTOS OF THE AUTO - PLTF'S EX. C.

5. WITNESS RALPH KELSEY TEST DROVE THE AUTO. MR. KELSEY MAINTAINS DEFENDANT CONCEALED THE EXTENT OF DEFECTIVE FLOOR BOARD.

6. PLAINTIFF SUBMITTED THE PAYMENT BOOK AND PAYMENT RECEIPTS. EX. B. PLAINTIFF PAID \$860.70 TOWARD THE PURCHASE PRICE OF \$973.70. PLAINTIFF ALSO SUBMITTED THE APPLICATION FOR OHIO TEMPORARY PLATE. EX. A.

7. PLAINTIFF MAINTAINS FURTHER THAT SHE DETRIMENTALLY RELIED UPON DEFENDANT'S STATEMENT THAT THE AUTO COULD BE TRADED IN AT FULL VALUE TOWARD THE PURCHASE OF ANOTHER AUTO. UPON DOING SO, PLAINTIFF WAS INFORMED THAT THE AUTO WAS WORTH ONLY \$50.00.

8. PRESENT ON BEHALF OF DEFENDANT WAS BRUCE SIELER, MANAGER. DEFENDANT DENIES LIABILITY. DEFENDANT MAINTAINS THE AUTO WAS SOLD "AS IS". SEE DEFT'S EX. 2 - BUYERS GUIDE. DEFENDANT ALSO INDICATES THAT PLAINTIFF'S WITNESS KELSEY TEST DROVE THE AUTO PRIOR TO PURCHASE.

9. DEFENDANT INDICATES THE PRICE OF THE AUTO WAS \$500.00 BUT WITH FINANCING ROSE TO \$973.70.

10. DEFENDANT ADMITS IT OFFERED \$50.00 FOR THE TRADE-IN VALUE.

11. THE COURT ON ITS OWN MOTION, ORDERED DEFENDANT TO SUBMIT A COPY OF THE SECURITY AGREEMENT. SUCH WAS SUBMITTED. SUCH FAILS TO DISCLOSE THE FINANCE CHARGE AND ANNUAL PERCENTAGE RATE.

(OVER)

RECOMMENDATIONS: Finding in favor of Plaintiff Defendant
Amount of Recommended Judgment \$ 860.70 plus court costs.
Date 7/27/89 Referee Ken P. Buckley

**** NOTICE TO ALL PARTIES ****

A PARTY MAY, WITHIN FOURTEEN DAYS OF THE FILING OF THIS REPORT. FILE WRITTEN OBJECTIONS TO THE REPORT. WRITTEN OBJECTIONS ARE TO BE FILED IN THE CLERK'S OFFICE, SMALL CLAIMS DIVISION.

CONCLUSIONS OF LAW:

THIS REFEREE CONCLUDES THAT PLAINTIFF HAS SUSTAINED HER BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE THAT DEFENDANT HAS COMMITTED UNCONSCIONABLE ACTS IN THE SALE OF THE AUTO HEREIN.

DEFENDANT KNOWINGLY SOLD A MOTOR VEHICLE AT A PRICE THAT IS SUBSTANTIALLY IN EXCESS OF THE PRICE AT WHICH SIMILAR MOTOR VEHICLES ARE READILY OBTAINABLE IN SIMILAR CONSUMER TRANSACTIONS BY LIKE CONSUMERS. (R.C. SECTION 1345.03 (B)(2)). THE AUTO WAS SOLD FOR \$895.00 IN OCTOBER, 1988. IN JANUARY, 1989, THE VALUE ACCORDING TO DEFENDANT WAS \$50.00.

THE DEFENDANT FAILED TO PROVIDE A TRUE AND COMPLETE ODOMETER DISCLOSURE AS REQUIRED BY SECTION 4505.06 OF THE REVISED CODE. (R.C. SECTION 4549.46).

THE DEFENDANT FAILED TO DISCLOSE THE FINANCE CHARGE AND THE ANNUAL PERCENTAGE RATE IN THE SECURITY AGREEMENT. SUCH VIOLATES THE TRUTH IN LENDING ACT, 15 USC 1638(A)(3); 12 CFR 226.18(D) AND 15 USC 1638 (A)(4); 12 CFR 226.18(E).

ACCORDINGLY, THE SALE IS ORDERED RESCINDED AND PLAINTIFF IS AWARDED \$860.70, THE AMOUNT TENDERED TOWARD THE PURCHASE OF THE AUTO PLUS COURT COSTS.

FOR THE COURT
HONORABLE COURT CLERK
FRANK NESETER

89 JUL 27 PM 2:59

FILED

IN THE TOLEDO MUNICIPAL COURT, LUCAS COUNTY, OHIO
Small Claims

Charlene Bruner

v.

Credit Motors Inc.

1084
1185

JUDGMENT ENTRY

CV 1 89-04637

JUDGE Roger Weiher

Pursuant to Finding/Entry of _____ 19 ____ Judgment entered for Plaintiff
_____ for \$ _____ together with interest at ____% per annum
effective _____ 19 ____ and court costs.

Pursuant to Finding/Entry of _____ 19 ____ Judgment entered for
Defendant _____ on Counterclaim for \$ _____ together with interest
at ____% per annum effective _____ 19 ____ and court costs.

Pursuant to Finding/Entry of _____ 19 ____ Judgment entered for
Defendant _____ and case dismissed

Judgment entered for Plaintiff/Defendant _____ on Complaint/Counterclaim
for \$ _____ together with interest at ____% per annum and court costs.

Case called. Plaintiff present. Defendant _____ in default for
answer. Judgment for Plaintiff on Complaint for \$ _____ and court costs.

IT IS ORDERED AND ADJUDGED

8-14-89

Motion #SC89-192 Denied, Referee's Report approved.

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MAR 22 1991
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Roger Weiher

JUDGE