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J. Clingerman
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

COPY NOV 4 1994

CLERK OF THE COURT

November 1, 1994

HON. LOUIS A. ARANETA

S. Bailey
Deputy

№ CV 93-25386

JUDITH A. CLINGERMAN

Helen Perry Grimwood

50,427

v.

FORD MOTOR CREDIT COMPANY

Mark A. Chavez
Farrow, Bramson, et al.
2125 Oak Grove Road #120
Walnut Creek, CA 94598

Ronald Lovitt
Lovitt & Hannon, Inc.
900 Front Street #300
San Francisco, CA 94111

George H. Lyons

Peter S. Hecker
Heller, Ehrman, et al.
333 Bush Street
San Francisco, CA 94104

The Court has reviewed the pleadings, argument and case and statutory law relating to the Defendant's Motion to Dismiss the First Amended Complaint and Motion for More Definite Statement.

This case involves Plaintiff Judith A. Clingerman filing a class action against Defendant Ford Motor Credit Company alleging

Office Distribution

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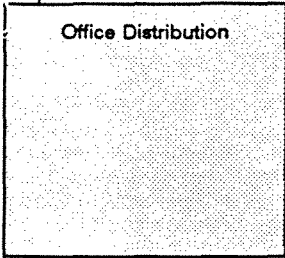
CLINGERMAN v. FMCC

Continued

claims for breach of contract (First Cause of Action), insurance fraud (Second Cause of Action), consumer fraud (Third Cause of Action), negligent misrepresentation (Fourth Cause of Action), declaratory judgment (Fifth Cause of Action), and unjust enrichment (Sixth Cause of Action).

For the purposes of review and ruling upon a Motion to Dismiss, the standard is that a Motion to Dismiss should be denied unless it appears beyond doubt that the Plaintiff can prove "no set of facts in support of his claim which would entitle him to relief." Newman v. Maricopa County, 167 Ariz. 501, 808 P.2d 1253 (App. 1991). Motions to Dismiss are not favored under Arizona law and should not be granted "unless it appears certain that the Plaintiff would not be entitled to relief under any set of facts susceptible of proof under the claim stated", State, ex rel., Corbin v. Pickrell, 136 Ariz. 589, 667 P.2d 1304 (1983).

This case involves claims against Defendant arising from the practices of Defendant in operating its collateral protection insurance (CPI) program. Under the CPI program, Defendant is alleged to have systematically force-placed insurance on its loan



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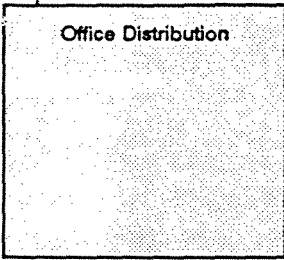
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CLINGERMAN v. FMCC

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customers' motor vehicles. Plaintiff alleges that when her insurance and that of other loan customers similarly situated lapsed, Defendant proceeded to obtain insurance coverage which exceeded the coverage required for the motor vehicles. Plaintiff's theory is that if additional coverages were obtained by Defendant, then additional costs were incurred and passed on to her and other similarly situated loan customers and that such additional costs, at least in part, constitute injury suffered by Plaintiff and other similarly situated loan customers.

Regarding the breach of contract, Defendant argues that Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff has alleged that Defendant, at a minimum, breached its contractual duty of good faith and fair dealing in the performance and enforcement of the agreement, which allowed Defendant to purchase contractually required insurance. Plaintiff alleges that Defendant breached said duty: (1) by not communicating honestly with loan customers concerning force-placed insurance, (2) by not limiting reimbursement to itself (Defendant) for only the actual costs of appropriate and reasonable premiums



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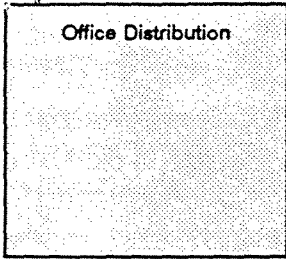
CLINGERMAN v. FMCC

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for contractually required insurance, and (3) by receiving secret profits, commissions, or kick-backs. Plaintiff has adequately stated a claim for relief. The Motion to Dismiss the breach of contract claim is denied.

Regarding the statutory consumer fraud and insurance fraud claims, this Court finds that Plaintiff has alleged sufficient facts claiming fraudulent concealment which, if proven, would toll the applicable statute of limitations. Anson v. American Motors Corp., 155 Ariz. 420, 747 P.2d 581 (App. 1987). See also London v. Green Acres Trust, 159 Ariz. 136, 143-144, 765 P.2d 538, 545-546 (App. 1988).

Regarding the applicability of consumer fraud under the Arizona Consumer Fraud Act, ARS § 44-1521, et seq., Plaintiff has stated a claim where the placement of insurance in connection with the extension of credit to finance the premiums comes within the sale of merchandise. A consumer loan equates to the sale of present use of money for the promise to repay and money constitutes merchandise within the Arizona Consumer Fraud Act. Villegas v. TransAmerica Financial Services, 147 Ariz. 100, 708 P.2d 781 (App.



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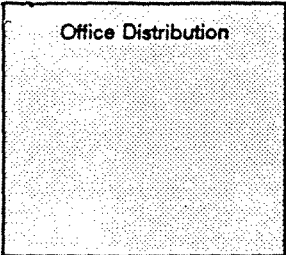
1985). Therefore, the Motion to Dismiss the consumer fraud and insurance fraud claims is denied.

Regarding negligent misrepresentation, Plaintiff has adequately alleged false representations and material omissions regarding the force-placed insurance policies. Defendant's argument of acting properly within its contractual rights does not, at this juncture in the case, apply to a Motion to Dismiss.

Regarding the claim for unjust enrichment, Plaintiff acknowledges that said claim is an alternative claim and that Plaintiff will be required to make an election at a later stage in this action.

Regarding the prayer for punitive damages, Plaintiff has alleged that punitive damages can be recognized for insurance and consumer fraud if a "special relationship" for tort recovery for the breach of implied covenant of good faith and fair dealing is established, Rawlings v. Apodaca, 151 Ariz. 1498, 726 P.2d 565 (1986).

The Court further finds that Plaintiff's prayer for "all monies paid" refers to those monies paid in connection with the



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alleged improper loan balances and do not relate to monies paid for a vehicle or the reasonable price of contractually required insurance.

Based on the foregoing,

IT IS ORDERED denying the Defendant's Motion to Dismiss.

IT IS FURTHER ORDERED that Defendant shall file an Answer to the Complaint within 20 days of receipt of this ruling.