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IN THE MUNICIPAL COURT OF THE CITY OF VANDALIA, OHIO

CREDIT ACCEPTANCE CORP.	:	CASE NO. 96CVF010666
Plaintiff,	:	
vs.	:	
JOHN D. SMITH, JR.	:	
Defendant.	:	<u>MAGISTRATE'S DECISION</u>

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 VANDALIA MUNICIPAL  
 COURT

In this case the Plaintiff filed a Complaint against the Defendant. Plaintiff is the Assignee on a certain retail installment sales contract executed by the Defendant, John D. Smith, Jr., dated September 8, 1995. Said retail installment sales contract having been entered into Defendant and Larry Lee's Auto Finance Center, Inc.

Plaintiff was not the seller of the automobile and is not in the automobile sales business but Plaintiff financed the purchase and took a Promissory Note from the Defendant. Plaintiff's Complaint seeks judgment for the balance owing on the installment payment agreement.

Defendant answered and asserted numerous defenses and, in addition, Defendant filed a Counterclaim asserting numerous claims for relief against the Plaintiff herein.

Subsequently, the Plaintiff filed a motion for partial summary judgment, not on its Complaint but as to the Defendant's Counterclaim. Specifically, the Plaintiff wishes a determination by the Court by this procedure that the maximum amount Defendant

can recover on its Counterclaim is Two Hundred Sixteen and 66/100 Dollars (\$216.66), being the one (1) payment that Defendant made on his note.

In support of its position the Plaintiff points out that it did not sell the car but merely purchased Defendant's retail installment payment agreement for value from the car dealership.

Plaintiff acknowledges that Ohio's Retail Installment Sales Act permits the Defendant to seek recovery from the Plaintiff in these circumstances but only in a limited amount.

The Ohio statute involved is O.R.C. 1317.032 which is quoted on page 6 of Plaintiff's Memorandum but the pertinent part reads as follows:

"(C) A buyer, who has a defense against a seller arising out of a consumer transaction that he is entitled to assert as a defense against a holder, assignee, or transferee of a purchase money loan installment note or retail installment contract and as a cause of action against that seller, may assert the cause of action to recover from the holder, assignee or transferee of the purchase money loan installment note or retail installment contract, the amount of any payments made to the holder, assignee, or transferee, if all of the following apply:...."

Reading this literally and if this were the only controlling

authority the Magistrate would agree that Defendant's Counterclaim would be limited to the recovery of the single payment above referred to.

What is also involved here, however, are certain federal regulations from the Federal Trade Commission, which imposes slightly different obligations under one in the position of the Plaintiff.

Summing it up the Magistrate would find that the Defendant is entitled to seek recovery on his Counterclaim on amounts paid by the Plaintiff and this could include the amount paid as a down payment to the dealer, the amount paid to the finance company, the value of the vehicle traded in to the dealer and possibly the amount paid to the Plaintiff by the disability insurance carrier if Defendant can prove an appropriate foundation to establish his obligation to repay said amount. Therefore, as stated, Plaintiff's summary judgment is granted in part and excepting for Defendant's expenditures as above-referred to the Magistrate would agree that Plaintiff is not responsible for other possible breaches of the law or of the contract by Larry Lee's Auto Finance Center.

Those breaches may be considered in defense of Plaintiff's claim but cannot be considered as grounds for affirmative relief on Defendant's Counterclaim.

The Magistrate is not making any affirmative finding that either party is entitled to summary judgment for any particular amount of money. These evidentiary matters will be gone into in the trial of the case. The purpose of this Decision is to limit

the matters that can be gone into on Trial of the case in relationship to Defendant's Counterclaim. It is not presumed at this time that there is any money at all owing on the Counterclaim as the evidence on the entire transaction is not yet before the Court.

Therefore, partial summary judgment is entered in limitation of Defendant's Counterclaim as above detailed.

This case is to be set for Trial for a one (1) day Trial at the first time available to the Court and counsel and the Clerk is to assign a Trial date.

APPROVED:

  
DOUGLAS CARTER, MAGISTRATE

cc: STEPHEN E. KLEIN  
DANIEL S. ZEGARSKI  
Attorneys for Plaintiff

GWENDOLYN D. COSEY  
Attorney for Defendant