IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ALANA SINGLETON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 96 L 12072
	)	
RIVER OAKS TOYOTA, INC., *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER AND JUDGMENT

Plaintiff moves for (*i*) entry of judgment on the September 18, 2000 jury verdict, and (*ii*) judgment in plaintiff's favor on her claim under the Consumer Fraud Act ("CFA"), 815 ILCS 505/10a(a). Defendants oppose part (*ii*) of plaintiff's motion, and urge that "[t]he Court should only enter an Order consistent with the Jury's verdict."

Discussion

Defendants claim surprise with regard to plaintiff's motion for judgment on the CFA claim, arguing that "[a]t no time ... was there any discussion about any portion of the trial being conducted as a non-jury matter." No one doubts, however, that *Cplt.*, Count I asserts a claim under the CFA. It is settled that such claims are triable to the Court. *Martin v. Heinold Commodities, Inc.*, 163 Ill.2d 33, 75-76 (1994). Plaintiff's Trial Brief, at pages 1, 7, specifically referenced her CFA claim and the fact that it was to be decided by the Court. I do not believe defendants can fairly claim surprise.

-- Liability

I am to find the issues regarding the CFA by a preponderance of the evidence. *Cuculich v. Thompson Consumer Electronics, Inc.*, ___ Ill.App.3d ___ (No. 1-99-1672, 1st Dist., September 27, 2000). In this case, I find (and the parties do not dispute) that the vehicle Ms. Singleton purchased had previously been involved in a major accident, leading to over $15,000 in repair costs. Pl. Ex. 9. Admittedly, that was a material fact, required to be disclosed to a purchaser. *Deft's Ans.*, ¶25; *see Crowder v. Bob Oberling Enterprises, Inc.*, 148 Ill.App.3d 313, 316-17 (4th Dist. 1986). Defendant River Oaks admits, however, that it did not disclose that fact to Ms. Singleton. *Deft's Ans.*, ¶ 8. Rather, River Oaks told her that the vehicle was in good condition and mechanically fine, and was still within the new car warranty period. *Id.*, ¶¶ 34, 58.

River Oaks argues that its nondisclosure was unintentional. For two reasons, I reject that argument. First, River Oaks admittedly intended that plaintiff rely on its assertions. *Deft's Ans.*, ¶

34. No more is needed. Even an unintentional misrepresentation or material omission will support CFA liability, so long as the defendant intended that plaintiff rely on it. *See, e.g., Carl Sandburg Village Condominium Ass'n v. First Condominium Dev't Co.*, 197 Ill.App.3d 948, 952-53 (1st Dist. 1990), citing *Warren v. LeMay*, 142 Ill.App.3d 550, 566 (5th Dist. 1986). Second, based on all the evidence, and giving due regard to credibility, I find that, more probably than not, River Oaks knew the vehicle had been in an accident and extensively repaired before selling the vehicle to plaintiff. For both of these reasons, I find that River Oaks' conduct was deceptive within the meaning of the CFA. *See, e.g., Totz v. Continental DuPage Acura, Inc.*, 236 Ill.App.3d 891, 900-903 (2d Dist. 1992); *Crowder v. Bob Oberling Enterprises, Inc.*, 148 Ill.App.3d 313, 316-17 (4th Dist. 1986).

Effective January 1, 1996, 815 ILCS 505/10a(a) was amended to require proof of "public injury" as a prerequisite to imposing CFA liability on an automobile dealer. The parties have not addressed whether that amendment applies to this case. *See Royal Imperial Group, Inc. v. Joseph Blumberg & Assocs., Inc.*, 240 Ill.App.3d 360, 364-68 (1st Dist. 1992). Assuming that it does apply,[1] I find that this case involves a "potential for repetition" under 815 ILCS 505/10a(a)(3). thus satisfying the "public injury" requirement. First, the conduct at issue – misrepresenting the prior history of vehicles -- certainly has the potential for repetition on the part of River Oaks, which engages in many used-vehicle transactions. Second, that same conduct also appears to have more general applicability and potential for repetition, given the existence of other Illinois decisions involving similar conduct (*e.g., Crowder, supra*), and given the testimony of Mr. Timothy Pavlichek at trial with regard to the frequency with which previously-damaged vehicles appear at auto auctions.

-- Damages

Plaintiff asks the Court, in entering judgment on the CFA claim, to "modify the jury award of actual damages" on the other claims. The jury awarded $12,200 in compensatory damages. Plaintiff, however, seeks judgment for "all amounts spent out of pocket by the plaintiff," totalling $17,642. Plaintiff also asks that the Court "declar[e] that no remaining balance is due on [plaintiff's] retail installment contract," and "requir[e] Toyota Motor Credit Corporation to delete any and all negative credit reports or credit bureau references." Defendants argue that plaintiff improperly "seeks to increase the Jury's award," and seeks "relief that is contrary to the Jury's award."

Though I do not believe the jury award binds me in assessing CFA damages, defendants do have a point. Sensibly, the jury's $12,200 compensatory damage award seems to have discounted plaintiff's damage claims somewhat to reflect the fact that plaintiff did have the use of the vehicle for two years. On that approach, damages are not "liquidated," and an *additur* would not be appropriate. *See Fraher v. Inocencio*, 121 Ill.App.3d 12, 16 (4th Dist. 1984) (*additur* can only

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1. *Blumberg* held that the 1990 amendment to the CFA, providing that proof of public injury was *not* required, was retroactive because it "merely clarified rather than changed the Act." 240 Ill.App.3d at 368. That cannot be said of the 1996 amendment. On the other hand, conceivably the 1996 amendment was "procedural" rather than "substantive." *See Id.* at 364. For the reason stated in the text, I do not think I need decide that question here.

"rectify[] the omission of a liquidated ... item"); *Bernesak v. Catholic Bishop of Chicago*, 87 Ill.App.3d 681, 691-92 (1st Dist. 1980) (same; cannot be used where amounts are unliquidated). I also agree with defendants that it is not appropriate sweepingly to insist that Toyota Motor Credit Corporation delete *all* "negative credit ... references." Plaintiff's credit history prior to the events at issue did include some late payments. *See* Pl. Ex. 26. To the extent her credit record is inaccurate, plaintiff herself can correct it under the Fair Credit Reporting Act. *See* 15 U.S.C. § 1681*i*.

On the other hand, plaintiff's request for a declaration that no remaining balance is due on her retail installment contract for the car at issue is well taken. The jury found, and I agree, that defendants materially misled plaintiff with regard to the vehicle. In addition, defendants have already received substantial monies for the vehicle -- $15,247 from plaintiff, plus $10,700 from defendants' ultimate resale of the vehicle. That total, $25,947, almost exactly equals the entire $26,420.20 amount financed under the retail installment contract (Pl. Ex. 2). To require plaintiff to pay defendants over $10,000 more (*see* Pl.Ex. 30) would reward defendants' misconduct, and -- contrary to defendants' own asserted position that "[t]he Court should only enter an Order consistent with the Jury's verdict" -- would virtually annul the jury's compensatory damage award.

With regard to exemplary damages, I find, in accordance with current 815 ILCS 505/10a(a),[2] that the conduct of defendant River Oaks was wilful, intentional, and undertaken with reckless indifference to plaintiff's rights. Plaintiff does not request that I add to the jury's $75,000 exemplary damage award, however, and I am not inclined to do so. It is sufficient to state that that award now has the CFA claim, as well as the common-law fraud claim, as a basis.

ORDER

For the foregoing reasons, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Judgment is entered on the jury verdict in favor of plaintiff on her claims for breach of warranty and common-law fraud. Judgment is also entered in favor of plaintiff, and against both defendants, on her Consumer Fraud and Deceptive Business Practices Act claim.

2. Plaintiff shall recover $12,200 in compensatory damages from defendants River Oaks Toyota, Inc. and Toyota Motor Credit Corporation, and $75,000 in exemplary damages from defendant River Oaks Toyota, Inc.

3. The Court further declares that no remaining balance is due from plaintiff on the retail installment contract which was the subject of this action.

4. Plaintiff may file and serve a petition for attorney's fees, under 815 ILCS 505/10a(c) and 15 U.S.C. § 2310(d)(2), on or before November 8, 2000. Defendants may respond on or before December 8, 2000. Plaintiff may reply on or before December 22, 2000.

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2. *See* the discussion at page 2 and n.1 *supra*.

5. Plaintiff's petition for attorney's fees is set for hearing on January 12, 2001 at 9:30 a.m. Plaintiff shall deliver courtesy copies of the petition, response, and reply to Room 2407 on or before December 29, 2000.

DATED: October 10, 2000

ENTER:

JUDGE PETER FLYNN

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Circuit Judge Circuit Court - 1784