UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CARLOS GUERRERO-ROA,

Plaintiff,

v.

CARSBUCKS, INC. and WESTLAKE SERVICES, LLC d/b/a WESTLAKE FINANCIAL SERVICES,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

Civ. Action No: _____

INTRODUCTION

1. Plaintiff Carlos Guerrero-Roa, an individual consumer, brings this action for money damages, injunctive relief, and declaratory judgment, seeking redress for unlawful practices relating to his purchase and financing of an automobile.

2. Plaintiff alleges violations of the Truth In Lending Act, 15 U.S.C. §§ 1601 *et seq.* ("TILA"), Federal Equal Credit Opportunity Act ("ECOA") 15 U.S.C. § 1691, *et seq.*, the New York Motor Vehicle Retail Instalment Sales Act, N.Y.P.P.L. § 301 *et seq.*, New York General Business Law § 349 and § 350, and New York's usury laws.

3. Plaintiff also asserts common law claims for Fraud and Rescission/Mistake.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 15 U.S.C. § 1640 (TILA) and 15 U.S.C. § 1691e (ECOA).

5. This Court has authority to issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and § 2202.

6. This Court has supplemental jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

7. This Court has supplemental jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

8. Venue in this District is proper under 28 U.S.C § 1391 because a substantial part of the events and omissions complained of took place in this District and CarsBucks, Inc. maintains offices, transacts business, and is otherwise found in this district.

THE PARTIES

9. Plaintiff Carlos Guerrero-Roa is and at all relevant times has been a resident of Bronx, New York.

10. Defendant CarsBuck, Inc. ("CarsBuck" or the "Dealership") is a domestic business corporation under the laws of New York, whose principal place of business is located in Kings County New York.

11. Defendant Westlake Services, LLC d/b/a Westlake Financial Services ("Westlake" or the "Bank") is a financial institution with headquarters in Los Angeles, California.

FACTS

12. On June 19, 2015, Plaintiff Carlos Guerrero-Roa purchased a 2005 Lexus RX with the VIN# 2T2HA31U15C041314 (the "Vehicle") from the Dealership, which is at 776 Coney Island Avenue in Brooklyn, New York.

13. Mr. Roa had contacted the Dealership in response to an internet advertisement for a Lexus RX with an advertised price of $6,900.

14. Upon arriving at the Dealership, Mr. Roa told employees of the Dealership that he wanted to purchase the Vehicle with cash at the advertised price.

15. A Dealership employee named Eddy Garcia informed Mr. Roa that the Lexus was available but that it could not be purchased with cash.

16. Instead, Mr. Garcia explained, Mr. Roa would need to acquire the car by way of a one-year financing plan.

17. Mr. Garcia then instructed Mr. Roa to speak with the Dealership's financing manager, John Krane, who continued to insist that Mr. Roa needed to obtain financing despite Mr. Roa's expressed desire to purchase the Vehicle with a one-time payment.

18. Faced with the dealership's unlawful refusal to accept cash purchase of the Vehicle, Mr. Roa eventually assented to the Dealership's insistence that he obtain financing.

19. Mr. Krane informed Mr. Roa that the price of the Vehicle would increase to $7,413.28 in light of his "poor credit score."

20. Mr. Krane then instructed Mr. Roa that he would need to pay a $3,500 deposit and obtain financing in the amount of $6,649.44 (for a total of $10,149.44).

21. Mr. Krane further explained to Mr. Roa that, at the end of the one-year financing agreement, Mr. Roa would have three options: (i) refinance, (ii) trade in the Vehicle, or (iii) pay off all financing with a one-time payment.

22. Based on these terms, and with the vehicle apparently unavailable at the advertised terms and price, Mr. Roa agreed to purchase the Vehicle based on Mr. Krane's representations.

23. To complete the transaction, Mr. Krane instructed Mr. Roa to sign twice on an electronic pad even though Mr. Roa was unable to see the computer monitor displaying the document to which he was signing his name and was not given any copies by the Dealership of what he signed.

24. On information and belief, Mr. Krane applied Plaintiff's digital signature, without Plaintiff's knowledge, to various documents the terms of which were not disclosed to Plaintiff, including *inter alia*, a Retail Installment Agreement dated June 19, 2015 (the "RIC").

25. Mr. Roa only learned of this document in November 2016, when he contacted the Bank requested a copy of the RIC.

26. The RIC contains terms that are entirely different from those that Mr. Roa agreed to in his discussions with Mr. Krane.

27. In particular, the RIC requires 48 monthly payments of $395.80 and does not permit Mr. Roa to pay off all financing with a one-time payment after one year.

28. The RIC requires Mr. Roa to pay a total of $18,998.40 over 48 months. That is over $8,000 more than what Mr. Roa agreed to pay and over $12,000 more than the price at which the Dealership advertised the Vehicle.

29. In addition to the fraud concerning the terms of the sale, Mr. Krane represented that he would procure Mr. Roa an insurance contract with GEICO for $80 per month. But GEICO dropped Mr. Roa as a customer after only a few months because Mr. Krane had falsely informed GEICO that Mr. Roa lived in upstate New York.

30. Three or four days after he purchased the Vehicle, Mr. Roa received a call from the Bank informing him that he had borrowed over $18,000 to finance the purchase of the Vehicle.

31. Mr. Roa informed the Bank that this was not the figure that he had agreed to, and he visited the Dealership approximately one week later.

32. Mr. Roa then returned to the Dealership to raise his concern about the call from the Bank.

33. To placate Mr. Roa, Mr. Krane then signed a letter addressed "[t]o whom it may concern" stating that the Dealership "will have the right to cancel any sub-prime loan agreement at any time for the purpose of finding a better source of financing with lower payments, rates, and buy out options for our customers" and that if "our customers perform well and pay on time in the right amount" then there are "3 options for our customers to exercise[:] . . . (1) traditional refinancing[] . . . (2) upgrade [and] (3) Prepayment payoff." The letter further indicates that the payoff price for option 3 for Mr. Roa was $1,728.

34. Mr. Roa was comforted by the letter and timely made his installment payments for the next year, waiting for June 2016, when he understood he would be able to payoff the installment agreement with a single payment of $1,728.

35. After one year passed, Mr. Roa returned to the Dealership in June 2016 prepared to pay $1,727.99 to pay off all of the financing. Mr. Roa was informed that the Bank was closed, and therefore unable to accept the $1,727.99, and that he should return in a month.

36. When he returned to the Dealership in July 2016, Mr. Roa was again given excuses as to why he was not able to pay off the financing. Mr. Roa sent text messages to Mr. Krane stating that he wanted to make the payments, but never received a satisfactory response.

37. Upon information and belief, the Bank has, at all relevant times, held itself out as the assignee of the RIC that purportedly governs the purchase and financing of the Vehicle.

38. To avoid repossession of the vehicle, a lawsuit on any loan deficiency and damage to his credit, Mr. Roa continues to have to make monthly payments to the Bank of nearly $400 to keep the Vehicle, causing him to pay much more than what he agreed to.

39. The Bank is liable for each claim set forth below either directly in its own right and/or as the purported assignee of the retail installment contract under the FTC Holder Rule and under MVRISA § 302(9).

40. Prior to filing the instant litigation, Plaintiff both on his own and later by and through the undersigned counsel attempted to resolve the dispute with Defendants, including, inter alia, by means of a pre-litigation letter detailing the basic (and outrageous) facts set forth herein and seeking to unwind the transaction.

41. Defendants declined to resolve the dispute at the pre-litigation stage.

COUNT I
TRUTH IN LENDING ACT, 15 §§1601 et seq. ("TILA")

42. Plaintiff repeats and re-alleges and incorporates by reference the foregoing paragraphs.

43. The Dealership, to whom the RIC is payable on its face, regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments.

44. The Dealership is a creditor within the meaning of the TILA, 15 USC § 1602(f) and the relevant implementing regulations set forth in Regulation Z (e.g. § 226.2(a)).

45. The Bank purports to be an assignee of the Dealership and demands and accepts payments under the RIC on that basis.

46. As such, the Bank is an assignee pursuant to TILA, 15 U.S.C. § 1641(a) and the relevant implementing regulations found in Regulation Z.

47. The RIC lists a motor vehicle, an article of personal property, as collateral.

48. The RIC is a written agreement payable in more than four installments.

49. The RIC is a consumer credit transaction within the meaning of the TILA, 15 USC § 1602, and Regulation Z § 226.2.

50. The finance charge indicated on the RIC exceeds $1,000.

51. Prior to the purported consummation of the RIC, Plaintiff was not provided with the TILA disclosures in a form that he, as a consumer, could keep, nor in any form at all.

52. Plaintiff was not provided disclosures that conform with the obligations under the TILA and Regulation Z.

53. The increase of over $8,000 in the sales price of the vehicle from the originally confirmed price of $10,149.44 (and of over $11,000 from the advertised price of $6,900) was incurred incident to the extension of credit and is, therefore, a "finance charge" as defined under TILA § 1605(a) and Regulation Z § 226.4(a).

54. As a result of Defendants' failure to include these as finance charges, the sale price, finance charge, amount financed, and APR disclosed in the retail installment contract are all materially misstated, in violation of TILA § 1638(a)(2) through (5) and Regulation Z §226.18(b), (d), (e), and (h).

55. Defendants thereby violated TILA, 15 USC § 1638(a), (b) and Regulation Z §§ 226.17, 226.18.

56. Because he was not provided with a copy of the RIC – or even able to view it – at the time he was asked to sign it electronically, Mr. Roa was not able to view the document until he received it from the Bank in November 2016.

57. Because the RIC was fraudulently concealed from Mr. Roa, the statute of limitations was therefore tolled through the time he was first able to review it in November 2016.

58. Westlake is liable for these violations pursuant to TILA, 15 U.S.C. 1641, governing TILA liability of assignees.

COUNT II
FEDERAL EQUAL CREDIT OPPORTUNITY ACT ("ECOA")
15 U.S.C. § 1691, *et seq*.

59. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

60. As set forth above, the Dealership informed Plaintiff that it would not sell him the Vehicle at the advertised price due to Plaintiff's allegedly poor credit, and insisted upon a higher price.

61. This action, taken on behalf of the Dealership and, upon information and belief, the Bank, constituted a denial of credit.

62. The failure to provide to Plaintiff any written statement of reasons for the denial of credit to Plaintiff and to provide the disclosures mandated by 15 U.S.C § 1691(d) (2) (b) violated the ECOA.

63. As a result of the above alleged ECOA violations, Plaintiff has suffered substantial actual damages, including imposition of higher costs for the Vehicle's purchase and financing, the loss of his rights to determine the basis for credit denial, loss of the credit itself, frustration, anger, and embarrassment.

64. As a result of the above alleged ECOA violations, Defendants are liable to Plaintiff for statutory damages, actual damages, punitive damages of $10,000.00 against each Defendant pursuant to 15 U.S.C. § 1691e(b) and for attorney's fees and costs pursuant to 15 U.S.C. § 1691e(d).

COUNT III
NEW YORK MOTOR VEHICLE
RETAIL INSTALLMENT SALES ACT § 302, et seq. (MVRISA)

65. Plaintiff repeats and re-alleges and incorporates by reference the foregoing paragraphs.

66. The Plaintiff is a "retail buyer" within the meaning of MVRISA § 301(2).

67. The Dealership is a "retailer seller" within the meaning of MVRISA § 301(3).

68. The transaction as described above involved a "retail instalment sale" within the meaning of MVRISA § 301(4).

69. Pursuant to § 302(5), MVRISA incorporates all TILA disclosure requirements.

70. As set forth above, none of these disclosures were provided at the time of consummation of the sale of the Vehicle.

71. The "Notice To Buyer" disclosure required pursuant to MVRISA § 302(2) was not provided at the time of sale or at any subsequent time.

72. Under MVRISA § 302(1) a motor vehicle retail installment contract shall contain all of the agreements between the parties.

73. As set forth above, the RIC here did not contain all of the agreements between the parties.

74. Under MVRISA § 302(8), a Retail Instalment Contract may not contain any blank spaces at the time it is signed by the consumer.

75. Plaintiff was, in essence, required to sign the RIC without any disclosure of its terms at all, i.e. with every material term left functionally "blank".

76. For all of the reasons stated herein, under MVRISA § 307, Defendants, including the Bank, are barred from recovering any credit service charge, delinquency, or collection charge on the RIC.

COUNT IV
USURY

77. Plaintiff repeats and re-alleges and incorporates by reference the foregoing paragraphs.

78. Pursuant to General Obligations Law § 5-501, the legal rate of interest in New York is "six per centum per annum unless a different rate is prescribed in §14-a of the Banking Law." Section 14-a (1) provides: "The maximum rate of interest provided for in section 5-501 of the general obligations law shall be sixteen per centum per annum."

79. Defendants obscured the actual rate of interest charged and the total amount financed by hiding additional interest as costs within the purchase.

80. In reality, the increase in the cash price of the vehicle showing on the RIC and/or the cost of the additional mandatory products and charges are finance charges that should have been disclosed as such in the contract.

81. When these charges are added to the incomplete finance charge, the total finance charge is well over the both the civil usury rate of 16% and New York's criminal usury rate of 25% (New York Penal Law, Section 190.40).

82. Pursuant to NYGOL § 5-501 and New York Penal Law 190.40 and 190.42, the alleged interest is therefore usurious, and the creditor forfeits both principal and interest due on the transaction.

83. As a result of Defendants' violations, Plaintiff is entitled to a declaratory judgment that her obligation to Bank, the purported assignee of the loan made by the Dealership, is void, and are entitled to damages in the amount of all principal, interest, fees and other charges paid on the auto loan to date.

COUNT V
NEW YORK GENERAL BUSINESS LAW § 349
(DECEPTIVE CONSUMER PRACTICES)

84. Each of the deceptive acts and practices set forth above constitutes a violations of NYGBL § 349 independent of whether these acts and practices constitute violations of any other law.

85. These deceptive acts and practices were committed in conduct of business, trade, commerce or the furnishing of a service in this state.

86. Each of these actions was consumer oriented and involves misleading conduct that is recurring and has a broad impact upon the public, or, in the alternative, such misleading practices are the types that could easily recur, could

potentially impact similarly situated consumers, and are therefore consumer-oriented and harmful to the public at large.

87. The Dealership's conduct and statements were materially misleading.

88. As a result of these violations of NYGBL §349, Plaintiff suffered actual damages as set forth above.

89. The Dealership's violations were willful and knowing and committed in bad faith.

90. For these reasons, Plaintiff is entitled to actual damages as set forth above, three times the actual damages up to $1000, punitive damages, attorney's fees, costs and declaratory judgment that the Dealership's practices are deceptive in violation of § 349.

COUNT VI
NYGBL § 350 (FALSE ADVERTISING)

91. Plaintiff repeats and re-alleges and incorporates by reference the foregoing paragraphs.

92. Under NYGBL § 350, "false advertising" means "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with

respect to the commodity . . . to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual."

93. The Dealership's oral and written representation that the Vehicle's price and the contents of the RIC constitutes false advertising pursuant to NYGBL § 350.

94. The Dealership's false advertising was done knowingly and willfully and committed in bad faith.

95. As a result of these violations of NYGBL §350, Plaintiff -- who would not have purchased the Vehicle at any price but for the Dealership's false advertising -- suffered actual damages as set forth above.

96. For these reasons, Plaintiff is entitled to injunctive relief (enjoining the false advertising practices described above), actual damages as set forth above, three times the actual damages up to $10,000, punitive damages, reasonable attorney's fees and costs.

COUNT VII
FRAUD

97. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

98. As set forth above, the Dealership made representations as to material facts regarding the RIC.

99. Specifically, the Dealership falsely advertised the vehicle for a price that it refused to honor; fraudulently insisted that the vehicle was required to be

purchased via financing as a means of increasing the price of the vehicle without Mr. Roa's knowledge; applied Mr. Roa's signature to documents that contained terms different than those upon which he had agreed; and falsely informed Mr. Roa that, after one year, he could pay off the remaining amount due on the RIC with a one-time payment of $1,728.

100. As set forth in detail herein, these representations were all false.

101. The Dealership intended to deceive Mr. Roa and was aware at all relevant times that the RIC required 48 months of payments totaling over $18,000.

102. Mr. Roa believed and justifiably relied upon the Dealership's representations and was induced by them to purchase the Vehicle.

103. Had the Dealership been truthful about the sales terms and the contents of the RIC and had the Dealership not made these fraudulent misrepresentations, Plaintiff would not have purchased the Vehicle.

104. As a result of such reliance, Plaintiff sustained actual damages (including both pecuniary and non-pecuniary damages).

105. Moreover, the Dealership's conduct was egregious on every level; it was a virtually larcenous scheme.

106. As a result of Plaintiff's reasonable reliance upon the Dealership's misrepresentations, Plaintiff is entitled to actual damages as set forth above, punitive damages, and costs.

COUNT IIX
RESCISSION/MISTAKE

107. Plaintiff repeats and re-alleges and incorporates by reference the foregoing paragraphs.

108. As alleged herein, Defendants have committed fraudulent acts and made fraudulent representations to Plaintiff.

109. Based on Defendants fraud and misrepresentations, even were Plaintiff to be deemed to have entered into the RIC, entry into the contract would be founded upon material mistake.

110. As a result of Defendants' fraud and misrepresentations and Plaintiff's resulting material mistake, Plaintiff has sustained damages.

111. Because Plaintiff has consistently sought to resolve this dispute and receive a refund of all charges that were not accurately and truthfully disclosed, there can be no claim of laches.

112. Plaintiff is ready, willing and able to restore the parties to the position each occupied prior to the execution of the subject agreements, providing that Defendants return all the money paid by Plaintiff in connection with this transaction and otherwise restore Plaintiff to the status quo ante.

113. Plaintiff has no remedy at law.

114. By reason of the foregoing, Plaintiff is entitled to a judgment rescinding and setting aside the Retail Installment Contracts and all service contracts and

insurance products, and directing the return to her of all money paid in connection with this transaction.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants as follows:

a. COUNT I, TRUTH IN LENDING ACT, judgment against Defendants for statutory damages, actual damages, attorney's fees, litigation expenses and costs, declaratory judgment that they have violated TILA and Regulation Z, and such other or further relief as the Court deems appropriate;

b. On COUNT II, Equal Credit Opportunity Act ("ECOA"), judgment against Defendants, statutory damages, actual damages, punitive damages, reasonable attorney's fees, costs and expenses, and declaratory judgment that Defendants have violated ECOA;

c. On COUNT III, VIOLATIONS OF MVRISA, declaratory judgment against Defendants that they have violated MVRISA and an order barring recovery of any credit service charge, delinquency, or collection charge under the RIC and disgorging all such monies paid to date, as well as costs of the action;

d. On COUNT IV, USURY, declaratory judgment that Plaintiff's Vehicle loan is void, actual damages in the amount of all principal, interest, fees, and charges paid and such other and further relief as the Court deems appropriate;

e. On COUNT V, NYGBL § 349, judgment against Defendants, injunctive relief, actual damages, three times the actual damages up to $1,000, punitive damages, costs and reasonable attorney's fees, declaratory judgment that Defendants have engaged in deceptive conduct, and such other or further relief as the Court deems appropriate;

f. On COUNT VI, NYGBL § 350, judgment against Defendants, injunctive relief, actual damages, three times the actual damages up to $10,000, punitive damages, costs and reasonable attorney's fees pursuant to NYGBL § 350(e), declaratory judgment that Defendants have engaged in

false advertising and such other or further relief as the Court deems appropriate;

g. On COUNT VII, FRAUD, judgment against Defendants, actual damages, punitive damages, and costs;

a. On COUNT IIX RESCISSION/MISTAKE, judgment rescinding and setting aside the Retail Installment Contract and service contract, and directing the return to Plaintiff of all money paid in connection with this transaction;

Such other and further relief as law or equity may provide.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury as to all issues so triable.

Dated: February 14, 2017

Respectfully Submitted,

s/Daniel A. Schlanger

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