

RECEIPT NUMBER
200524704

ORIGINAL 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN -- SOUTHERN DIVISION

DAVID CORN
Plaintiff

-vs-

Case No.

Hon.

DEMAND FOR JURY TRIAL

FANNON FAMILY AUTOMOTIVE, LLC,

Defendant

Adam G. Taub (P48703)
Lyngklip & Taub Consumer Law Group, PLC
Attorney For David Corn
24500 Northwestern Highway, Suite 206
Southfield, MI 48075
(248) 746-3790

JUDGE : Battani, Marianne O.
DECK : S. Division Civil Deck
DATE : 04/21/2005 @ 15:27:06
CASE NUMBER : 2:05CV71578
CMP CORN V. FANNON FAMILY AUTO
(KC)

MAGISTRATE JUDGE B. CURRY/MAGISTRATE JUDGE A. L. ALLEN

COMPLAINT

JURISDICTION

1. This court has jurisdiction under the Motor Vehicle Cost Savings and Information Act, 49 U.S.C. §§ 32701-32711 and 28 U.S.C. §§ 1331,1337.
2. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the Federal law claims under 28 U.S.C. § 1367.

PARTIES

3. The Plaintiff to this lawsuit is David Corn who resides at 829 East George, Hazel Park, MI 48030.
4. The Defendants to this lawsuit is Fannon Family Automotive, LLC ("Fannon Family Auto") which is a corporation doing business in Michigan at 112 East 11 Mile Road, Royal Oak, MI 48067, and whose resident agent Gary W. Fannon maintains its office at 1123 E. Eleven

Mile Road , Royal Oak, MI 48067, and which by statute and condition of licensing, may be served through the Michigan Department of State, Compliance Division, 3rd Floor – Treasury Building, 430 W. Allegan Street, Lansing, MI 48918.

5. At all relevant times Fannon Family Auto – in the ordinary course of its business – operated a motor vehicle sales establishment which in the ordinary course of business sold motor vehicles to consumers like Mr. Corn.

VENUE

6. The transactions and occurrences which give rise to this action occurred in Oakland County.
7. Mr. Corn is a citizen of the State of Michigan and resides in Oakland County.
8. Venue is proper in the Eastern District of Michigan.

GENERAL ALLEGATIONS

9. On or about January 20, 2005, Mr. Corn went to the business place of Fannon Family Auto for the purpose of purchasing a vehicle.
10. Mr. Corn executed a purchase agreement with Fannon Family Auto for a 1998 VW Golf, VIN# 3VWFA81H6WM250811 ("the vehicle").
11. Mr. Corn purchased an extended service contract or warranty at the time he purchased the vehicle .
12. Before executing the purchase agreement, Fannon Family Auto made the following material representations ("material representation") which also constituted an express warranty, were false, and related to the vehicle:
 - a. the vehicle came with a service contract

13. At the time of the sale, the agent for the dealer did not present Mr. Corn with a copy of the title.

COUNT I – Federal Vehicle Cost Savings and Information Act

14. Mr. Corn incorporates the preceding allegations by reference.
15. Instead of providing the disclosure Fannon Family Auto, upon information and belief, forged the signature of Mr. Corn on the odometer disclosure required by 49 U.S.C. §§32701-32711.
16. Fannon Family Auto failed to provide the disclosure of mileage and/or other required disclosures on the reassignment of title as pursuant to 49 U.S.C. §§32701-32711 *et seq.*

COUNT II – Statutory Conversion

17. Mr. Corn incorporates the preceding allegations by reference.
18. The Defendant failed to forward any money to the warranty company, instead, wilfully converting it to its own use.
19. These acts constitute a willful or intentional conversion under MCL § 600.2919a entitling Mr. Corn to recover treble the value of the money converted.

COUNT III – Common Law Conversion (Fannon Family Auto)

20. Mr. Corn incorporates the preceding allegations by reference.
21. These actions constitute a conversion at common law, entitling Mr. Corn to recover the value of the money converted.

COUNT IV – Violation of Michigan Consumer Protection Act (Fannon Family Auto)

22. Mr. Corn incorporates the preceding allegations by reference.
23. The facts set forth in this complaint establish that Fannon Family Auto has violated the

following provisions of the Michigan Consumer Protection Act, M.C.L. § 445.903(1):

- a. (e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
 - b. (p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.
 - c. (y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.
 - d. (z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.
24. Mr. Corn has suffered damages as a result of these violations of the Michigan Consumer Protection Act.

COUNT V – Misrepresentation (Fannon Family Auto)

25. Mr. Corn incorporates the preceding allegations by reference.
26. The material representations were intended to induce the reliance of Mr. Corn.
27. The material representations did induce the reasonable reliance of Mr. Corn.
28. Fannon Family Auto made the material representations with actual knowledge of their falsity.
29. Fannon Family Auto made the material representations with reckless disregard to their truth or falsity.
30. Fannon Family Auto made the material representations even though it should have known that they were false.

31. These actions constitute misrepresentations upon Mr. Corn by Fannon Family Auto.
32. Mr. Corn has suffered damages as a result of these misrepresentations.

JURY DEMAND

33. David Corn demands a jury trial in this case.

REQUEST FOR RELIEF


Plaintiff requests that this Honorable Court grant the following relief:

- a. *Assume jurisdiction over this case including all supplemental claims.*
- b. *Award actual damages.*
- c. *Award statutory and exemplary damages.*
- d. *Award statutory costs and attorney fees.*

Respectfully Submitted,

LYNGKLIP & TAUB
CONSUMER LAW GROUP, PLC

By:


Adam G. Taub P48703
Attorney For David Corn
24500 Northwestern Highway, Ste. 206
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(248) 746-3790
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Dated: April 21, 2005

PROB/RSW
71578

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Oakland

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

David Corn

DEFENDANTS **05-71578**
FANNON FAMILY AUTOMOTIVE, LLC

(b) County of Residence of First Listed Oakland

County of Residence of First Listed Oakland

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known) MARRIANNE O. BATTANI

Lyngklip & Taub Consumer Law Group P.C.
24500 Northwestern Hwy., Ste. 206
Southfield MI 48075

MAGISTRATE JUDGE R. STEVEN WHALEN

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com mod ities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 LISC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 H IA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMCD/WWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multi district Litigation
- 7 Appeal to District Judge from Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This cause of action is being brought for violations under the Motor Vehicle Cost Savings and Information Act, 49 U.S.C. §§ 32701-32711 and 28 U.S.C. §§ 1331 1332

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- \$ DEMAND
- CHECK YES only if demanded in complaint:
JURY DEMAND. Yes No

VIII. RELATED CASE(S) INSTRUCTIONS: IF ANY

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

4-21-05

[Handwritten Signature]

Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)
- Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes: