

12
ORIGINAL

Receipt Number
539700

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

JUDETH PARKER and
GREGG PARKER,

Plaintiffs,

-vs-

Case: 5:06-cv-11049
Assigned To: O'Meara, John Corbett
Referral Judge: Morgan, Virginia M
Filed: 03-10-2006 At 03:36 PM
CMP JUDETH PARKER ET AL V ORCHARD C
HRYSLER DODGE JEEP ET AL (LG)

DEMAND FOR JURY TRIAL

ORCHARD CHRYSLER DODGE JEEP, INC.,
and WFS FINANCIAL, INC.,

Defendants.

Adam G. Taub (P48703)
Lyngklip & Taub Consumer Law Group, PLC
Attorney Plaintiffs
24500 Northwestern Highway, Suite 206
Southfield, MI 48075
(248) 746-3790
adamlaw@pop.net

COMPLAINT & JURY DEMAND

JURISDICTION

1. This court has jurisdiction under the Truth In Lending Act, 15 U.S.C. § 1640(e) 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 Plaintiffs to this lawsuit are as follows:
 - a. Judeth Parker who resides in Washington Township, Michigan.
 - b. Gregg Parker who resides in Washington Township, Michigan.

4. The Defendants to this lawsuit are as follows:
 - a. Orchard Chrysler Dodge Jeep, Inc. ("Orchard Chrysler") which is a corporation doing business in Michigan at 64600 Van Dyke, Washington, MI 48095, and whose resident agent Robert E. Brent maintains its office at 64600 Van Dyke, Washington, MI 48095, 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.
 - b. WFS Financial, Inc. ("WFS Financial, Inc.") which is a corporation doing business in Michigan at 23 Pasteur, Irvine, CA 92618, and whose resident agent The Corporation Company maintains its office at 30600 Telegraph Rd., Ste. 2345, Bingham Farms, MI 48025.

5. At all relevant times Orchard Chrysler -- in the ordinary course of its business -- regularly extended or offered consumer credit for which a finance charge is, or may be imposed or which, by written agreement is payable in more than 4 installments and is the person to whom the transaction which is the subject of this action is initially payable, and is a "creditor" under TILA, 15 U.S.C. § 1602(f) and regulation Z § 226.2(a)(17).

VENUE

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

GENERAL ALLEGATIONS

9. On or about January 13, 2006, Mrs. Parker and Mr. Parker went to the business place of Orchard Chrysler for the purpose of purchasing a vehicle.
10. Mrs. Parker and Mr. Parker executed a purchase agreement and retail installment contract with Orchard Chrysler for a 2001 Land Rover Discovery, VIN# SALT154X1A711716 ("the vehicle").
11. The retail installment contract is currently held by WFS Financial, Inc..
12. Plaintiffs purchased a comprehensive DaimlerChrysler extended service contract at the time they purchased the vehicle.
13. Plaintiffs would not have purchased the vehicle without a a comprehensive DaimlerChrysler extended service contract.
14. Prior to signing the retail installment contract and other paperwork, Plaintiffs stressed the importance of getting a comprehensive DaimlerChrysler extended service contract.
15. Orchard Chrysler imposed charges upon Plaintiffs for a a comprehensive DaimlerChrysler extended service contract and included those charges in the amount financed.

16. Before executing the purchase agreement, Orchard Chrysler made the following material representations ("material representations") which also constituted an express warranty, were false, and related to the vehicle:
 - a. the vehicle came with a comprehensive DaimlerChrysler Service Contract
 - b. the vehicle was eligible for a comprehensive DaimlerChrysler service contract
17. Before executing the purchase agreement, Orchard Chrysler made the following specific representations which constituted express warranties:
 - a. the vehicle came with a comprehensive DaimlerChrysler service contract.
 - b. that the vehicle was eligible for a comprehensive DaimlerChrysler service contract.
18. The vehicle did not meet Orchard Chrysler's specific representations which constituted express warranties; specifically, Orchard Chrysler failed to provide the warranty it promised to the Plaintiffs.
19. The vehicle constitutes a "good" under article 2 of the UCC, M.C.L. §440.2101 et seq.
20. Under M.C.L. §492.114a and the terms of the contract itself, WFS Financial, Inc. is subject to all claims and defense that arise against the seller for the sale of the vehicle, and is jointly liable to the extent of any payments received from Mrs. Parker and Mr. Parker for breach of warranty or contract of sale.

COUNT I – Truth In Lending Act (Orchard Chrysler and WFS Financial)

21. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
22. Orchard Chrysler failed to accurately disclose the cash price of the vehicle.

23. The failure to properly disclose the cash price of the vehicle consequently caused a failure to inaccurately disclose the amount financed in violation of 15 U.S.C. § 1638; 16 CFR § 226.18 (b) and (c).
24. Orchard Chrysler improperly itemized a charge in the amount of \$1,880.00 for a service contract as an amount financed when in fact that charge was a finance charge within the meaning of Reg Z § 226.4.
25. Orchard Chrysler failed to accurately disclose the applicable finance charge as required by 15 U.S.C. § 1638 and Reg Z § 226.18(d)
26. Orchard Chrysler failed to accurately disclose and itemize the amount financed in violation of 15 U.S.C. § 1638, Reg Z § 226.18(b), and Reg Z § 226.18(c).
27. As a consequence of failing to accurately state the actual finance charge, Orchard Chrysler also misstated the applicable "APR" in violation of 15 U.S.C. § 1338 and Reg Z § 226.18(e).
28. Orchard Chrysler failed to accurately disclose the applicable "APR" as required by 15 U.S.C. § 1638; Reg Z § 226.18(32); Reg Z § 226.22.
29. Mrs. Parker suffered damages as a result of this violation of the TILA.

COUNT II – Magnuson-Moss Warranty Act (Orchard Chrysler and WFS Financial)

30. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
31. Parker is a consumer as defined in 15 U.S.C. § 2301(3).
32. Orchard Chrysler has violated 15 U.S.C. § 2304(d) by failing to provide the service contract it promised.
33. Mrs. Parker and Mr. Parker have suffered damages as a result of these breaches of warranty and failure to provide a remedy under 15 U.S.C. § 2304(d).

COUNT III – Common Law Conversion (Orchard Chrysler and WFS Financial)

34. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
35. Orchard Chrysler has converted the \$1,880.00 service contract charge.
36. Mrs. Parker suffered damages as a result of this conversion.

COUNT IV – Statutory Conversion (Orchard Chrysler and WFS Financial)

37. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
38. After obtaining Mrs. Parker and Mr. Parker signature on all documents necessary to convey title and complete the financing of the vehicle, Orchard Chrysler delivered the vehicle to Mrs. Parker and Mr. Parker.
39. Orchard Chrysler took money from the Plaintiffs for the comprehensive DaimlerChrysler extended service contract, knowing that the vehicle did not qualify for a comprehensive DaimlerChrysler extended service contract .
40. Orchard Chrysler had no right to possess the \$1,880.00.
41. Orchard Chrysler was not acting on behalf of any individual or entity with the right to possess the vehicle.
42. Orchard Chrysler's actions in taking possession of the \$1,880.00 was wilful or intentional, and in derogation of the contract of sale.
43. These acts constitute a willful or intentional conversion under M.C.L. § 600.2919a.
44. Mrs. Parker and Mr. Parker suffered damages as a result of this violation of the Michigan Conversion Statute.

COUNT V – Motor Vehicle Sales Finance Act (Orchard Chrysler and WFS Financial)

45. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
46. Orchard Chrysler imposed upon Plaintiffs charges which are not authorized by the MVSA in violation of M.C.L. § 492.131.
47. Mrs. Parker and Mr. Parker suffered damages as a result of this violation of the MVSA.

COUNT VI – Motor Vehicle Code Violations (Orchard Chrysler and WFS Financial)

48. Mrs. Parker incorporates and Mr. Parker incorporate the preceding allegations by reference.
49. Orchard Chrysler failed to provide the Plaintiffs with a copy of the RD-108.

COUNT VII – Constructive Fraud (Orchard Chrysler and WFS Financial)

50. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.

**COUNT VIII – Violation of Michigan Consumer Protection Act
(Orchard Chrysler and WFS Financial)**

51. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
52. The facts set forth in this complaint establish that Orchard Chrysler has violated the following provisions of the Michigan Consumer Protection Act, M.C.L. § 445.903(1):
 - a. (c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.
 - b. (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.

- c. (m) Causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.
- d. (n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
- e. (o) Causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.
- f. (q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided .
- g. (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.
- h. (x) Taking advantage of the consumer's inability reasonably to protect his or her interests by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability.
- i. (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.

53. Mrs. Parker and Mr. Parker have suffered damages as a result of these violations of the Michigan Consumer Protection Act.

COUNT IX – Misrepresentation (Orchard Chrysler and WFS Financial)

54. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
55. The material representations were intended to induce the reliance of Mrs. Parker and Mr. Parker.
56. The material representations did induce the reasonable reliance of Mrs. Parker and Mr. Parker.
57. Orchard Chrysler made the material representations with actual knowledge of their falsity.
58. Orchard Chrysler made the material representations with reckless disregard to their truth or falsity.
59. Orchard Chrysler made the material representations even though it should have known that they were false.
60. These actions constitute misrepresentations upon Mrs. Parker and Mr. Parker by Orchard Chrysler.
61. Mrs. Parker and Mr. Parker have suffered damages as a result of these misrepresentations.

COUNT X – Breach of Contract (Orchard Chrysler and WFS Financial)

62. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.
63. Orchard Chrysler's tender of the performance did not conform due to the vehicle's mechanical defects, lack of merchantability, or fitness for intended purpose which existed at the time of delivery.
64. The failure of Orchard Chrysler to deliver conforming goods, title, and follow up services at the contract price, constitutes a material breach of contract.

65. Mrs. Parker and Mr. Parker have suffered damages as a result of this breach of contract.

COUNT XI – Breach of Warranties (Orchard Chrysler and WFS Financial)

66. Mrs. Parker and Mr. Parker incorporate the preceding allegations by reference.

67. Orchard Chrysler has breached its express warranties.

68. Mrs. Parker and Mr. Parker have suffered damages as a result of these breaches of warranty.

JURY DEMAND

69. Judeth Parker and Gregg Parker demand a jury trial in this case.

REQUEST FOR RELIEF

Plaintiffs request 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 punitive damages.*
- d. *Award statutory costs and attorney fees.*

Respectfully Submitted,

LYNGKLIP & TAUB
CONSUMER LAW GROUP, PLLC

By:


Adam G. Taub (P48703)

Attorney For Judeth Parker
24500 Northwestern Highway, Ste. 206
Southfield, MI 48075
(248) 746-3790
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Dated: March 10, 2006

ORIGINAL

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Macomb

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

JUDETH PARKER and
GREGG PARKER

DEFENDANTS

ORCHARD CHRYSLER DODGE JEEP, INC., and
WFS FINANCIAL, INC.

(b) County of Residence of First Listed Macomb

County of Residence of First Listed Macomb

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

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

Lyngklip & Taub Consumer Law Group, PLC
24500 Northwestern Hwy., Ste. 206, Southfield, MI 48075
(248) 746-3790

Case: 5:06-cv-11049
Assigned To: O'Meara, John Corbett
Referral Judge: Morgan, Virginia M
Filed: 03-10-2006 At 03:36 PM
CMP JUDETH PARKER ET AL V ORCHARD C
HRYSLER DODGE JEEP ET AL (LG)

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. CITIZEN

(For Divers

- Citizen of This State 1 1 Incorporated or Principal Place of Business in This State 4 4
Citizen of Another 2 2 Incorporated and Principal of Business in Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 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 Inj/ry - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input checked="" 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"/> 680 Other LABOR <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"/> 780 Other Labor Litigation <input type="checkbox"/> 781 Empl. Ret. Inc. Security Act	<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 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (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	<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 USC 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"/> 898 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<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	<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	<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		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 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.)

Plaintiff brings this cause of action for violations of the Truth in Lending Act 15 U.S.C. § 1640 and 28 U.S.C. §§ 1331, 1337

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) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/10/06

[Handwritten Signature]

PURSUANT TO LOCAL RULE 83.11

1. 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 :
