

#52518A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 1208 M. D. 1996
Acting by Attorney General :
THOMAS W. CORBETT, JR. : CIVIL ACTION-EQUITY

Plaintiff :

v. :

METRO CHRYSLER-PLYMOUTH :
JEEP-EAGLE, INC. :
6729 Essington Avenue :
Philadelphia, Pennsylvania 19153 :

Defendant :

RECEIVED
THE COURT OF
COMMONWEALTH
OF PENNSYLVANIA
Dec 21 12 47 PM '96

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE(S) SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Central Pennsylvania Legal Services, Inc.
213-A North Front Street
Harrisburg, PA 17101
(717) 232-0581

Public Services and Lawyers Referral Committee
Dauphin County Bar Association
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

John E. Kelly
Deputy Attorney General

Office of Attorney General
Bureau of Consumer Protection
21 S. 12th Street, Second Floor
Philadelphia, PA 19107
(215) 560-2437

2. Based on its investigation the Commonwealth believes that Defendant has used or is about to use methods, acts or practices declared unlawful by the Consumer Protection Law; the Pennsylvania Automotive Industry Trade Practices Regulation, 37 Pa. Code 301 (hereinafter "Auto Regulations"); the Motor Vehicle Sales Finance Act, Act of June 28, 1947, P.L. 1110, as amended, 69 P.S. §601 et seq., (hereinafter "MVSFA"); and the Federal Odometer Law, Act of July 5, 1994, P.L. 103-272, 49 U.S.C. §32701 et seq., and accompanying regulations 49 C.F.R. §580.

3. The Commonwealth believes that the public interest is served by seeking before this Honorable Court an injunction to restrain methods, acts or practices complained of herein.

4. The unlawful methods, acts or practices described above have been wilfully used by Defendant.

5. This Court has jurisdiction over this action pursuant to the Judicial Code, 42 Pa. C.S.A. §761.

II. THE PARTIES

6. Plaintiff is the Commonwealth of Pennsylvania, acting by Attorney General THOMAS W. CORBETT, JR., through the Bureau of Consumer Protection.

7. Defendant, METRO CHRYSLER-PLYMOUTH-JEEP-EAGLE, INC. (hereinafter "Metro"), is a Pennsylvania corporation engaged in trade and commerce within the Commonwealth as a duly licensed motor vehicle dealer from a principal place of business located

at 6729 Essington Avenue, Philadelphia County.

II. METRO'S BUSINESS PRACTICES

8. Beginning at a time unknown to Plaintiff and continuing into the present, in connection with the sale of motor vehicles Defendant provides consumer financing pursuant to the MVFSA as a duly licensed installment seller.

9. As a licensed installment seller Defendant enters into installment sale contracts with consumers and thereafter either collects payments under said contracts or sells, transfers or assigns them to a duly licensed sales finance company.

10. In the normal course of business, installment sale contracts entered into between Defendant and consumers are invariably sold, transferred or assigned to a sales finance company.

11. With regard to motor vehicle sales transactions in which Defendant provides financing, Defendant often engages in the practice known as "spot delivery."

12. Spot delivery is the practice whereby Defendant enters into a sales agreement and installment sale contract under specific finance terms; transfers title and registration to the purchaser; and immediately delivers the motor vehicle to the purchaser.

13. In some instances through a separate document Defendant purports to make the sales agreement and installment sale contract conditioned upon its ability to subsequently

"secure financing" (e.g. sell or assign the contract to a sales finance company) under the specified terms.

14. The MVSA requires that installment sale contracts contain all agreements of the parties relating to the installment sale; that they be completed as to all essential provisions and contain no blank spaces; that they be signed by both parties; and that copies be provided to buyers at the time of signing.

15. The Auto Regulations prohibit increasing the contract price of a vehicle, and require that Defendant provide purchasers with sales agreements and installment sale contracts that clearly identify all conditions precedent to Defendant's acceptance of said contracts together with a statement that purchasers may cancel their contracts and receive a full refund until such conditions are met.

16. Defendant's installment sale contracts fail to provide the essential provision that said contract is conditioned upon its sale, transfer or assignment to a sales finance company.

17. In some instances Defendant's installment sale contracts contain blank spaces and do not contain the signatures of both Defendant and purchasers.

18. In some instances Defendant fails to provide purchasers with copies of sales agreements and installment sale contracts at the time said documents are signed.

19. In making spot delivery sales, acting as an agent for the Pennsylvania Department of Transportation, Defendant requires purchasers to obtain insurance coverage for the vehicle,

completes a title transfer application on the purchaser's behalf, and either issues a temporary registration or transfers the license plate from the trade-in vehicle to the newly purchased vehicle.

20. Thereafter, if Defendant is unsuccessful in selling, transferring or assigning the installment sale contracts under the terms specified therein, Defendant represents to purchasers that said contracts are void and that purchasers must either enter into another installment sales contract under less favorable financial terms or return the vehicle and transfer title back to Defendant.

21. Where purchasers return their vehicles, in accordance with Defendant's instructions, Defendant fails to obtain odometer disclosure statements from them as required by Federal Law.

22. In some cases where purchasers return their vehicles in accordance with Defendant's instructions, Defendant refuses to return the purchasers' trade-in vehicles and resells them to third parties.

23. Defendants resell returned and previously sold vehicles as new in violation of the Auto Regulations and Consumer Protection Law.

IV. CLAIM FOR RELIEF

COUNT I

24. The Plaintiff restates and incorporates herein by

reference all matters set forth in ¶¶1 through 23 above.

25. Defendant's conduct described above constitutes an unlawful method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce pursuant to §201-3 of the Consumer Protection Law as defined by §§201-2(4)ii, 201-2(4)v, 201-2(4)vi and 201-2(4)vii.

COUNT II

26. The Plaintiff restates and incorporates herein by reference all matters set forth in ¶¶1 through 25 above.

27. Defendant's conduct described above constitutes an unlawful method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce pursuant to §201-3 of the Consumer Protection Law as set forth in §§301.4(a)(2)v, 301.4(a)3, 301.4(a)7, 301.2(4), and 301.2(6) of the Auto Regulations.

COUNT III

28. The Plaintiff restates and incorporates herein by reference all matters set forth in ¶¶1 through 27 above.

29. Defendant's conduct described above violates §§613 and 615 of the MVSFA which constitutes a per se unlawful method of competition and unfair or deceptive act or practice in the conduct of trade or commerce pursuant to §201-3 of the Consumer Protection Law as defined by §§201-2(4)ii, 201-2(4)v and 201-2(4)vii.

COUNT IV

30. The Plaintiff restates and incorporates herein by reference all matters set forth in ¶¶1 through 29 above.

31. Defendant's conduct described above violates §32705 of the Federal Odometer Law which constitutes a per se unlawful method of competition and unfair or deceptive act or practice in the conduct of trade or commerce pursuant to §201-3 of the Consumer Protection Law as defined by §§201-2(4)ii, 201-2(4)v, 201-2(4)vi and 201-2(4)vii.

V. PRAYER FOR RELIEF

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to issue an Order:

A. Finding Defendant, Metro's conduct as described in this Complaint in violation of the Consumer Protection Law, Auto Regulations, MVSFA and Federal Odometer Law.

B. Enjoining Defendant, its agents, employees, successors and all other persons acting on its behalf, directly or through any corporate or other entity, as follows:

1. Every installment sale contract (as defined by the MVSFA) SHALL be completed and delivered to buyers in full conformity with the MVSFA. In connection therewith:

(a) Every installment sale contract shall be in writing and shall contain all of the agreements between the buyer and the seller relating to the installment sale of the motor vehicle sold and shall be signed by both the buyer and the

seller.

(b) Every installment sale contract shall be completed as to all essential provisions including, but not limited to, sale, transfer and assignment contingencies, prior to the signing of such contract by the buyer.

(c) No installment sale contract shall be signed by any party thereto when such contract contains blank spaces to be filled in after such contract has been signed except as permitted by §615(A) of the MVSFA.

(d) An exact copy of the installment sale contract shall be furnished by the seller to the buyer at the time the buyer signs such contract in full conformity with §613(C) of the MVSFA.

2. Every sales agreement and installment sale contract SHALL be completed and delivered in full conformity with the Auto Regulations. In connection therewith:

(a) Such contracts shall contain a list of all conditions precedent to the dealer's acceptance of the contracts set forth in a clear and conspicuous manner including, but not limited to, sale, transfer or assignment contingencies as well as a statement that the purchaser may cancel the contract at any time until Defendant advises buyers that the conditions have been met.

(b) Defendant shall provide buyers with copies of sales agreements and installment sale contracts in full conformity with §301.4(a)3.

3. Defendant SHALL NOT make any representation or a statement of fact concerning its ability to sell, transfer or assign an installment sale contract at a particular rate and for a particular term if it knows or should know that such representation is false and misleading or if Defendant does not have sufficient information upon which a reasonable belief in the truth of the representation could be based.

4. Defendant SHALL NOT enter into installment sale contracts for specific rates and terms unless it has a prior reasonable basis that it will be able to sell, transfer or assign the contract under such rates and terms.

5. Defendant SHALL NOT represent that any motor vehicle is new if it has been sold, bargained, exchanged, or given away; has had title transferred from the person who first acquired it from the manufacturer or dealer; or has an odometer reading of 500 miles or more, not including mileage incurred in delivery from the manufacturer or in transporting the vehicle between dealers for sale.

6. Where Defendant sells a motor vehicle pursuant to a spot delivery and it is returned by the buyer:

(a) Defendant shall obtain an odometer disclosure statement from the buyer upon the return of the vehicle in full conformity with the Federal Odometer Act.

(b) Defendant shall disclose to subsequent buyers that said vehicle is used.

C. Granting restitution to all purchasers who suffered monetary loss resulting from Defendant's failure to honor the terms of its original installment sale contracts.

D. Finding the Defendant liable and requiring the Defendant to pay to the Commonwealth a civil penalty in the amount of \$1,000.00 for each and every wilful violation of the Consumer Protection Law and the Commonwealth's costs in pursuing this action.

E. Granting such other relief as the Court deems appropriate.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

JOSEPH K. GOLDBERG, Director
BUREAU OF CONSUMER PROTECTION

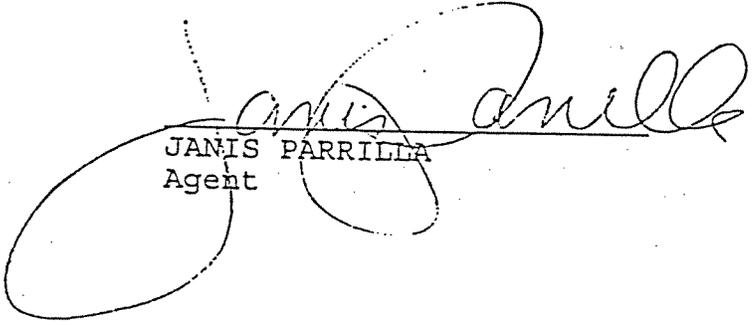
BY:


JOHN E. KELLY
Deputy Attorney General

Office of Attorney General
Bureau of Consumer Protection
21 S. 12th Street, 2nd Floor
Philadelphia, PA 19107
(215) 560-2437

VERIFICATION

I, JANIS PARRILLA, am an Agent with the Office of Attorney General, Philadelphia Regional Office of the Bureau of Consumer Protection. I hereby affirm that the facts set forth in the foregoing Complaint in Equity are true and correct and made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn statements made to authorities.


JANIS PARRILLA
Agent