

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99CV7852	DATE	August 25, 2000
CASE TITLE	Jafri v. Lynch Ford		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) Filed motion of [use listing in "Motion" box above.]

(2) Brief in support of motion due _____.

(3) Answer brief to motion due _____. Reply to answer brief due _____.

(4) Ruling/Hearing on _____ set for _____ at _____.

(5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) Trial[set for/re-set for] on _____ at _____.

(8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) General Rule 21 FRCP41(a)(1) FRCP41(a)(2).

(10) [Other docket entry] Defendant's motion to dismiss Counts II, III and V of plaintiff's amended complaint is hereby denied without prejudice (#25-1).

Ronald A. Guzman

(11) [For further detail see order (on reverse side of/attached to) the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.		number of notices	Document Number
<input type="checkbox"/>	No notices required.		date docketed	
<input type="checkbox"/>	Notices mailed by judge's staff.		docketing deputy initials	
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<input checked="" type="checkbox"/>	Docketing to mail notices.		mailing deputy initials	
<input type="checkbox"/>	Mail AO 450 form.			
<input type="checkbox"/>	Copy to judge/magistrate judge.			
MMP	courtroom deputy's initials	Date/time received in central Clerk's Office		

ORDER

Pending is defendant's motion to dismiss Counts II, III and IV of plaintiff's amended complaint. Defendant's motion to dismiss Count II is denied. Defendant relies on *Janikowski v. Lynch Ford*, 210 F.3d 765 (7th Cir. 2000) to support its argument that this count should be dismissed. In opposition, plaintiff relies on the specific circumstances of her individual transaction to set forth her claim under the TILA. Taking plaintiff's allegations as true, defendant, on December 10, 1998 obtained credit information on plaintiff the time she purchased the 1999 Ford Explorer. Plaintiff fully believed that she had "purchased" the vehicle and that the sale was final. Defendant then called plaintiff back and claimed that the sale was not, in fact final, based upon its failure to secure financing. Plaintiff then was required to come back to the dealership and sign a lease agreement in order to retain possession of the vehicle. Plaintiff's allegations that defendant checked her credit supports her contention that the purchase of the car was final prior to her leaving the car dealership.

As to Count III, plaintiff's allegations that defendant's agent backdated the lease to a time in which plaintiff's first installment payment was already past due, sets forth a possible claim under the CLA, 15 USC § 1667 a(9). Again, defendant relies on *Janikowski*. *Janikowski*, however, is distinguishable because there it was established that the purchase was contingent on plaintiff's obtaining 5.9% financing. Also, Vates, the salesman in the *Janikowski* case, told the plaintiff that he would "try" to get her 5.9%, but that it was unlikely. Vates told *Janikowski* he was only able to get her 11.9% financing the day after she went to see him about purchasing a vehicle. *Janikowski* then returned to the dealership the following day and agreed to purchase the car. She made the trade and sealed the deal with full knowledge of the varied terms and conditions in the contract. The same is not true for plaintiff in this case. Plaintiff was not told that there might be a problem with respect to the securing of financing or that the lease had been backdated.

Defendant in support of his motion to dismiss count V, claims that a car dealership is not subject to ICSSOA, 815 ILCS 605/5. Recently, however, in *Midstate Siding and Window Co., Inc. v. Rogers*, 309 Ill.App.3d 610, 722 N.E.2d 1156 (3rd. Dist 2000) the Appellate Court held that defendant was a credit services organization under the statute because it had offered to secure financing for the plaintiff in furtherance of her purchase of aluminum siding. This case sets forth persuasive authority which would allow defendant Lynch Ford to be held liable under this act. This Court is also aware of Judge Holderman's ruling in *Fogle v. William Chevrolet*, 99 C 5960 but because this is a motion to dismiss and there is a possibility the Illinois Supreme Court might rule otherwise we decline to dismiss this count. According to plaintiff's allegations, on December 10, 1998, Lynch Ford, by its agent, represented to plaintiff that Lynch Ford would provide or assist with obtaining an extension of credit to purchase the Explorer automobile. Furthermore, on December 10, 1998, Lynch Ford never gave plaintiff a written statement containing the information set forth in 815 ILCS 605/6(1)-(7). Therefore, defendant's motion to dismiss Count V is denied.