Maryland Case Highlights Reasons to Distinguish Between Loans and Installment Contracts

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The case we are writing about is noteworthy not just because a dealer won a case in consumer-friendly Maryland (as rare as that is), but also for a couple of reasons we in the business sometimes forget. We'll tell you the facts of the case and look at how the court addressed those facts, and then we'll get to the other points worth considering illustrated by the case.

Here are the facts of the case (*Dupreez v. GMAC, Inc.*, 2017 Md. App. LEXIS 1197 [Md. App. Dec. 5, 2017]):

James Dupreez signed a retail installment contract (RIC) to buy and finance a truck. The RIC was assigned to GMAC, Inc.

When Dupreez failed to make certain payments on the contract, GMAC charged late fees. GMAC eventually repossessed the truck, and sent Dupreez a notice stating it would sell the truck unless he paid past due payments, late charges, and costs of repossession. GMAC sold the truck and sued Dupreez to collect the balance of the RIC that remained after the sale.

Dupreez counterclaimed and alleged GMAC violated the Maryland Interest and Usury statute when it repossessed and sold the truck, because it provided incorrect information in its pre-sale notices to him. His counterclaim further alleged the RIC violated the Maryland Retail Installment Sales Act (MRISA) by requiring him to pay late fees and repossession costs, and by charging for a repair warranty and debt-cancellation insurance without itemizing the amounts in the RIC. He also alleged a violation of Maryland's Consumer Protection Act, unjust enrichment, and negligent misrepresentation-all based on the premise that the RIC violated the MRISA.

The trial court granted GMAC's motion to dismiss. Dupreez appealed.

The Court of Special Appeals of Maryland (Maryland's intermediate appellate court) affirmed the trial court's decision. The appellate court first held that the usury statute does not apply to installment sales of motor vehicles, because the statute applies to "loans" and RICs are not "loans."

Second, the appellate court held that the MRISA does not prohibit a creditor from charging late fees and repossession expenses for vehicles with a sale price in excess of $25,000. The MRISA generally applies to sales of goods that have a cash sale price of $25,000 or less. Because the sale price of Dupreez's truck exceeded $25,000, the MRISA did not regulate GMAC's ability to charge late fees and repossession expenses; instead, according to the appellate court, GMAC's ability to do so is governed by the Uniform Commercial Code. The appellate court also found GMAC had a right to charge late fees, because the RIC provided that the holder of the contract could assess such fees.

Because Dupreez's other claims were premised on GMAC's alleged violations of the usury statute and the MRISA, the appellate court concluded the trial court did not err in dismissing them.

The first point you should note is the court's distinction between RICs and loans. Dealers who sell and finance RVs, cars and other goods using RICs frequently, and carelessly, refer to their financing of these items as "loans." That is incorrect. As this case illustrates, RICs are frequently subject to state regulations that differ from those regulating loan transactions.

As this case also illustrates, plaintiffs' lawyers are not above trying to convince courts that loans are installment sales, or vice versa, when such a "recharacterization" as we call it, can provide a colorable basis for a claim. Occasionally, a court will fall for that argument. That's why we stress to dealers (and finance companies) that loans and credit sales are different creatures, and referring to them erroneously can help plaintiffs' lawyers who try to make such arguments.

The second point to note, and one that is particularly important for RV dealers selling higher-priced units, is that some state and federal laws simply don't apply to some larger transactions. Sometimes the limit is based on the price of the goods financed, and sometimes the limit is triggered by the amount financed. Here, the cutoff for the operation of the state law relied on by the consumer was $25,000 - transactions in amounts higher than that were not subject to that law's restrictions. The cap for the application of the federal Truth in Lending Act and Consumer Leasing Act is higher - $55,800 for 2018, and adjusted for inflation, but still eliminates a bunch of highline transactions.

The lesson is one highline dealers and their lawyers should always keep in mind. When the customer's lawyer is threatening you with a Truth in Lending lawsuit, it can be effective to point out to the lawyer that the transaction isn't governed by that law.

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