

Car Buyer Granted Default Judgment Against Dealership for Violations of TILA, Connecticut Retail Installment Sales Finance Act, and State's Unfair Trade Practices Act

October 8, 2020 | [Eric L. Johnson](#)

A consumer saw a 2012 BMW 750i listed for sale for \$15,900. After he visited the dealership, test-drove the BMW, and completed a credit application, the salesman told him that the car price was \$16,500, explaining that the increased price was due to the consumer's credit rating. The consumer agreed to buy the car and to make a \$6,500 down payment. Without the buyer's knowledge, the dealership prepared a retail installment contract, electronically forged his signature, and submitted the forged contract to a finance company.

The contract included a down payment of \$6,250, even though the buyer had not yet paid the down payment and agreed to pay \$6,500, and a \$395 GAP policy that he had not requested. Three days later, the buyer returned to the dealership to pay the down payment, finalize the purchase, and sign the contract. The buyer signed the contract next to the forged electronic signature. When he questioned the GAP charge, the dealership told him that GAP was required by the lender. The dealership asked the buyer to pay the \$6,500 down payment, even though the contract listed a down payment of only \$6,250, explaining that the extra \$250 would be applied to registration costs and his first payment.

The buyer experienced problems with the car almost immediately and paid \$3,429 to fix it. He served notice on the dealership that he was rescinding the transaction and demanded a return of all sums paid under the contract. The finance company agreed to rescind the contract, returned all amounts paid to it under the contract, and agreed to release the title if ordered by a court. However, the dealership failed to return any amounts paid by the buyer. The buyer then sued the dealership for violations of the Truth in Lending Act, the Connecticut Retail Installment Sales Finance Act, and the Connecticut Unfair Trade Practices Act. When the dealership failed to answer the complaint, the buyer moved for a default judgment.

The U.S. District Court for the District of Connecticut first addressed the buyer's claims that the dealership violated TILA by inflating the car's sale price to account for the finance company's fees, listing the GAP charge as part of the amount financed rather than as part of the finance charge, improperly listing the amount of the down payment, failing to provide disclosures to him prior to forging his name on the contract, inaccurately listing the payment schedule, and failing to properly disclose the true annual percentage rate.

The court agreed with the buyer that the dealership improperly included the finance company's fees in the price of the car rather than as part of the finance charge, improperly listed the GAP charge as part of

the amount financed rather than as part of the finance charge because the buyer did not sign or initial an affirmative request for coverage after receiving disclosures regarding the option and cost to buy GAP, inaccurately listed the amount of the down payment, inaccurately listed the first date payments were due, and improperly disclosed the APR due to the underdisclosed finance charge and the timing of the first payment.

However, the court found that the dealership made the financial disclosures timely. According to the court, the buyer did not become contractually obligated on the contract until he signed it, not when it was allegedly forged, and because the dealership made the required disclosures before the buyer signed the contract, those disclosures were made prior to consummation of the transaction.

Next, the court addressed the buyer's claims that the dealership violated the CRISFA by violating TILA, failing to include all essential provisions in the contract, and charging an APR greater than 19%. The court agreed with the buyer that the dealership's TILA violations constituted violations of the CRISFA, the dealership should have included in the contract the parties' agreement that \$250 of the \$6,500 the buyer paid would be applied to registration costs and his first payment, and, when calculated correctly to include the GAP charge and the finance company's fees, the APR exceeded the CRISFA's maximum. Finally, the court addressed the buyer's claims that the dealership violated the CUTPA by understating the finance charge and including other inaccurate information in the contract and agreed, without much discussion, that those failures were unfair practices that violated the CUTPA.

The court rescinded the contract but refused, without further briefing, to require the finance company to release title to the buyer so that the buyer may sell the car and apply the proceeds to the judgment in this case. The court referred the case to a magistrate judge to conduct a hearing on the issue of damages. See *Conley v. 1008 Bank Street, LLC*, 2020 U.S. Dist. LEXIS 152507 (D. Conn. August 22, 2020).

Dealers should pay particular attention to the Case of the Month above. The Federal Trade Commission and the Consumer Financial Protection Bureau have shown significant interest in how items like voluntary protection products are sold, financed and disclosed to consumers. In addition, you shouldn't charge more for the vehicle than its advertised price - don't increase the price of the vehicle because of the consumer's credit. Also, don't add products to the contract the consumer didn't request, make sure the down payment amount lines up and never forge any signature to a contract.

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