

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

RODNEY OLIVER,
ON BEHALF OF
HIMSELF AND OTHERS SIMILARLY
SITUATED

Plaintiff,

v.

AMKO AUTO, INC.

Defendant.

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Case No.: CAL17-07839

JURY TRIAL DEMAND

AMENDED CLASS ACTION COMPLAINT

COMES NOW Plaintiff, Rodney Oliver (“Oliver”), by and through undersigned counsel, The Goldson Law Office and The Frasher Law Firm, P.C., files this Amended Class Action Complaint against Defendant, AMKO Auto, Inc. (“AMKO Auto” or “AMKO” or Defendant), and in support hereof states as follows:

I. INTRODUCTION

Oliver brings this action in pursuit of redress for a blatant and egregious case of fraud, theft, and numerous other violations of Maryland commercial law. Oliver, a Maryland consumer attempted to trade in his car and purchase another, but AMKO deprived him of his vehicle and other property. Not only did AMKO repossess the vehicle that it sold Oliver, but it also refused to return his trade-in. To this day, AMKO Auto Inc. is depriving Oliver of his trade-in vehicle and at least a portion of his down payment.

Considering the publicly available civil complaints filed in Maryland courts and complaints filed with the Consumer Protection division of the Maryland Office of the Attorney General, Oliver understands that he is one of many Maryland consumers that AMKO has defrauded in this fashion. Further, Oliver wishes to represent every consumer that AMKO has defrauded in a similar fashion.

II. PARTIES

1. Plaintiff Rodney Oliver is a natural person residing in Fort Washington, Maryland, and is a “consumer” within the meaning of the Maryland Consumer Protection Act.

2. Defendant AMKO Auto, Inc. is a Maryland corporation, licensed to do business in the State of Maryland, with its principal place of business in District Heights, MD.

III. JURISDICTION AND VENUE

3. This Court has jurisdiction over the Defendant because the defendant engaged and continues to engage in business operations in Prince George’s County, MD.

4. Venue is proper in this Court because the events giving rise to this lawsuit occurred in Prince George’s County, MD.

IV. STATEMENT OF FACTS

5. On June 14, 2016, Oliver went to AMKO Auto in District Heights to trade is vehicle in for another vehicle. He arrived in his 2005 Chevrolet Classic, and at AMKO, he spoke with an AMKO Auto employee and discussed the Chevrolet Classic as a trade-in.

6. On June 14, 2016, Oliver signed paperwork and left the dealership with a 2013 Dodge Dart and with a temporary tag due to expire in August 2016. He paid \$1,000 as down payment and left the 2005 Chevrolet that he traded in at the dealership for a value of \$500 pursuant to the contracts.

7. Among the papers that AMKO requested Oliver sign was a “Vehicle Spot Delivery Agreement.” *See* Exhibit A – Spot Delivery Agreement. This document, as provided by AMKO, was an illegitimate document because it did not and does not comply with the Maryland law that sets forth the requirements for “Spot Delivery” agreements.

8. On AMKO’s Spot Delivery Agreement, it imposed a \$300 fee in the case that AMKO fails to secure third party funding and unilaterally rescinds the Retail Installment Sales Contract.

9. Oliver learned that his financing application was denied approximately 39 days after he purchased the vehicle from AMKO. AMKO failed to notify Oliver within four (4) days of the delivery of the vehicle.

10. On July 29, 2016, Oliver made the first payment of \$348.15 due on the purchase of the Dodge Dart to AMKO as instructed. Oliver also made an insurance payment of \$230 for the Dodge Dart.

11. On August 22, 2016, a third party financing company, Pinnacle Financial Group, Inc., sent Oliver a letter denying his credit request for \$12,748.00.

12. On August 13, 2016, the temporary tag on the purchased Dodge Dart expired. Oliver went to AMKO to inquire about the registration of the Dodge Dart. AMKO informed him that they were repossessing the Dodge Dart because the third-party financing company rejected Oliver's credit application. Oliver requested that AMKO refund his down payment of \$1,000 and return the Chevrolet traded-in vehicle. AMKO refused on both accounts.

13. AMKO Auto has also charged Oliver illegal fees by demanding that Oliver pay for each mile that he drove the Dodge Dart.

14. After repeated demands, AMKO refused to offer Oliver a full refund, but rather offered to pay Oliver \$600 of his \$1,000 down payment.

15. Upon information and belief, AMKO offered Oliver \$600 of the \$1,000 down payment because the illegal Spot Delivery Agreement imposed fees of \$300, \$75 per day of usage, and \$0.54 per mile for usage. AMKO was charging Oliver for at least a portion of those fees.

V. PROPOSED CLASSES

16. Pursuant to Md. Rule 2-231, proposed class is defined as all individuals in the three subclasses below:

CLASS A

All persons who:

- a) signed a retail installment sales contract with the defendant since October 1, 2015;
- b) signed a Spot Delivery Agreement in the same transaction;
- c) did not receive funding from a third party finance company in the same transaction; and

- d) did not receive the return of his or her trade-in vehicle and any other money or property given to the Defendant as a part of the transaction.

CLASS B

All persons who:

- a) signed a retail installment sales contract with the defendant since three years prior to the initial filing of this lawsuit;
- b) signed a Spot Delivery Agreement in the same transaction;
- c) did not receive funding from a third party finance company in the same transaction; and
- d) did not receive the return of the trade-in vehicle and any other money or property given to the Defendant as a part of the transaction.

VI. CLASS REPRESENTATION ALLEGATIONS

A. Statement of Maintainable Class Claims

17. Pursuant to Md. Rule 2-231, this case is maintainable on a class-wide basis pursuant to Md. Rule 2-231(b)(2) and (3), and the Class Representative brings this action on behalf of himself and a class of all other persons similarly situated, to remedy the ongoing unfair, unlawful and/or deceptive practices alleged herein, and seeks damages on behalf of all those persons who have been harmed thereby.

B. Identification of Common Questions of Law or Fact

18. Pursuant to Md. Rule 2-231(a)(2), there are questions of law and fact common to the Class, which common issues predominate over any issues involving individual class members.

19. The legal questions common to the Class Representative and to each class member are: a) whether or not the defendant's use of the "Vehicle Spot Delivery Agreement" attached hereto as Exhibit A is an unfair and deceptive trade practice, and b) whether or not the defendant's use of the "Vehicle Spot Delivery Agreement" violates Md. Transp. Code Ann., § 15-311.3.

20. The factual questions common to the Class Representative and to each class member is: a) whether or not the Defendant canceled the initial retail installment

sales contract with class members and b) how much money and/or property the Defendant collected and kept after canceling the contract.

C. Allegations of Typicality

21. Pursuant to Md. Rule 2-231(a)(3), the Class Representative's claims are typical of those of the classes he seeks to represent because he signed a form "Vehicle Spot Delivery Agreement" that upon information and belief, many other members of the class signed. This form details AMKO's pattern and practice of engaging in spot delivery fraud. As such, the claims of the Class Representative are identical to those of the class members.

D. Allegations of Numerosity

22. Based on information publicly available including the number of complaints from individuals filed in Maryland Courts and the number of complaints filed with the Consumer Protection Division of the Maryland Office of the Attorney General, many people in Maryland feel like they have been wronged by the defendant.

23. The Defendant has two locations in Maryland, and at the time of the filing of this complaint, the Defendant has 156 vehicles available for sale on their website:

<http://www.amkoauto.com/view-inventory>.

24. Members of proposed Classes A and B consist of persons who purchased vehicles in each of AMKO's locations.

25. Based on the foregoing, the prospective class is likely to include more than 60 members, and are so numerous that joinder of all members would be impractical. The exact size of the proposed class and the identity of the members are readily ascertainable from AMKO Auto's records.

E. Adequacy of Class Representatives

26. Pursuant to Md. Rule 2-231(a)(4), the Class Representative will fairly and adequately protect and represent the interests of each class member. The Class Representative has no conflict of interest which would interfere with his ability to represent the interests of each class member.

27. The class representative has retained counsel with experience handling consumer claims, and consumer class action claims.

F. Appropriateness of Class Treatment under Rule 2-231(b)

28. A class action is superior to other methods for fair and efficient adjudication of this controversy. Because the damages suffered by the individual class members may be relatively small compared to the expense and burden of litigation, it would be impractical and economically unfeasible for class members to seek appropriate damages individually. The prosecution of separate actions by the individual class members, even if possible, would create a risk of inconsistent or varying adjudications with respect to the individual class members against AMKO.

29. The Class Representatives are represented by counsel competent and experienced in consumer protection litigation.

30. Members of the proposed class who have an interest in individually controlling the prosecution of separate claims against AMKO Auto will not be prejudiced by this action. Each member of the proposed classes will be identified through discovery and will be notified and given an opportunity to opt out of their respective class(es).

31. The Class Representatives do not presently know the nature and extent of any pending litigation to which a member of the proposed classes is a party and in which any question of law or fact controverted in the present action is to be adjudicated. The Class Representatives will identify any such pending litigation through discovery from the Defendant.

32. This Court is an appropriate forum for the present action in that the Class Representatives are, and at all times herein mentioned have been, residents of Maryland; the

Class Representatives' vehicle was purchased in this county, and AMKO Auto has a location in this county.

33. Certification of a class under Md. Rule 2-231(b)(3) is appropriate as the questions of law or fact common to the members of the class predominate over any questions affecting an individual class member; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

34. The Class Representative requests certification of a Class A and Class B for monetary damages under Md. Rule 2-231(c).

35. There are no difficulties likely to be encountered by the Court in management of this proposed class action.

36. The Class Representatives' counsel is entitled to a reasonable fee from the class members, from a common fund for the handling of this action, or from an order directing the Defendant to pay attorney's fees.

COUNT I – Violation of Maryland ‘Spot Delivery Law’ - Md. Transp. Code § 15-311.3

Alleged Individually and on Behalf of All Class Members

37. The preceding allegations of this Complaint are reiterated and incorporated herein by reference as if fully set forth herein.

38. Named Plaintiff asserts this claim on behalf of himself and the Class against AMKO.

39. Maryland's General Assembly passed legislation, effective October 1, 2015, that sets strict rules for how auto dealerships are to handle "spot delivery" sales; the law sets forth that when a car is sold contingent on financing that has not yet been granted by a third party finance company, the dealership may not keep any monies or property paid, and may not charge the consumer for the use of the car. This law is codified in Md. Transp. Code Ann., § 15-311.3.

40. This law requires auto dealers to notify consumers within four (4) days of delivery of the vehicle whether they received financing approval for the consumer. The notice

must give the consumer two (2) days to return the vehicle. *Md. Transp. Code Ann., § 15-311.3(a)(1)*.

41. AMKO violated this law by never providing written notice to Oliver, by not contacting him within four (4) days to demand the purchased vehicle, by retaining the down-payment of \$1,000 and the traded-in vehicle, and for charging per mile driven on the purchased vehicle.

42. If the dealer and buyer do not agree on new financing terms, this law also requires the auto dealer to return any money received, and return any vehicle traded in in the same condition in which the dealer received the vehicle. *Md. Transp. Code Ann., § 15-311.3(d)(2)(ii)(1)(A)*.

43. AMKO violated this law by repossessing the Dodge Dart without offering to return the Chevrolet Classic.

44. If the sale is canceled because the seller and buyer do not agree to terms, then the dealer may not charge the buyer a fee for the use of the purchased vehicle. *Md. Transp. Code Ann., § 15-311.3(d)(2)(ii)(2)*.

45. AMKO violated this law by demanding payments for miles driven and other expenses.

46. As a proximate result to the violations of the Maryland Sport Delivery Law, Plaintiff suffered financial loss, loss of economic opportunity, and mental anguish.

47. The Class Representative and members of the Class are entitled to damages that include actual damages determined by the money taken by the Defendant, the value of property taken by the Defendant, and/or the increase in cost of any contract signed after the initial retail installment sales contract.

COUNT II – Violation of the Maryland Consumer Protection Act - Md. Code Ann., Comm.

Law §§ 13-101 et. seq. (“MCPA”)

Alleged Individually and on Behalf of All Class Members

48. The preceding allegations of this Complaint are reiterated and incorporated herein by reference as if fully set forth herein.

49. Named Plaintiff asserts this claim on behalf of himself and the Class against AMKO.

50. Maryland legislature enacted the MCPA in response to a “mounting concern over the increase of deceptive practices in connection with sales of merchandise, real property, and services and the extension of credit.” The practices of AMKO Auto are the type of practices that the MCPA was passed to prevent, and for which the MCPA gives consumers an avenue of redress.

51. Pursuant to the MCPA, unfair and deceptive trade practices include the failure to state a material fact if the failure deceives or tends to deceive. *MCPA § 13-301(3)*.

52. AMKO Auto was unfair and deceptive in its dealings with Oliver, and defrauded him out of \$1,000 and his Chevrolet Classic. By taking and keeping monies and vehicle, the Defendant engaged in unfair or deceptive trade practices described in MCPA § 13-301(1), (3).

53. The Maryland Motor Vehicle Administration has prohibited dealerships like AMKO from offering Spot Delivery Agreements to consumers to sign if those agreements can result in failures to return trade-in vehicles or down payments. *See* Exhibit B Maryland Motor Vehicle Administration Bulletin. The bulletin was issued on March 10, 2005 to all Maryland dealerships .

54. Pursuant to the MCPA, unfair and deceptive trade practices are violations of the MCPA.

55. Pursuant to the MCPA, a person injured by a violation of the MCPA may bring an action to recover for injuries or loss sustained as well as reasonable attorney’s fees.

56. Pursuant to Md. Transp. Code § 15-311.3(g)(1), the violation of the ‘Spot Delivery Law’ in Count I is also an unfair and deceptive trade practice, and a violation of the MCPA.

57. In light of Exhibit B, and the unfair and deceptive nature of the business practice employed in AMKO’s Spot Delivery Agreements (*see* Exhibit A), the spot delivery violations described in the Statement of Facts that took place before October 1, 2015 were a violation of the Maryland Consumer Protection Act.

58. Pursuant to the MCPA, a person injured by a violation of the MCPA may bring an action to recover for injuries or loss sustained as well as reasonable attorney’s fees.

59. The Class Representative and members of the Class are entitled to damages that include actual damages determined by the money taken by the Defendant, the value of property taken by the Defendant to compensate the class for the unlawful deprivation of property.

COUNT III – PERMANENT INJUNCTION

Alleged Individually and on Behalf of All Class Members

60. The preceding allegations of this Complaint are reiterated and incorporated herein by reference as if fully set forth herein.

61. Named Plaintiff asserts this claim on behalf of himself and the Class against AMKO.

62. The Spot Delivery Agreement attached hereto as Exhibit A demonstrated the defendant's dedicated pattern and practice of breaking Maryland law, which upon information and belief, is continuing to this day. The named Plaintiff requests that this court issue an injunction barring AMKO from demanding that its customers sign the agreement, and an injunction specifically demanding that AMKO begin to comply with Md. Transp. Code Ann., § 15-311.3.

VII. CONCLUSION

WHEREFORE, Rodney Oliver, on behalf of himself and all others similarly situated, requests:

- A) An order certifying the Classes and appointing Plaintiffs as the representative of the Class, and appointing undersigned counsel as Class Counsel;
- B) An award to Plaintiff and each of the members of the Classes for an amount including all money and property taken and retained by the Defendant;
- C) An award for pre-judgment and post-judgment interest to the extent permitted by law;
- D) An award for attorney's fees, costs and expenses incurred in the investigation, filing, and prosecution of this action to the extent permitted by law;
- E) For all remedies available to the Class and Class Representatives under Maryland law including punitive damages;
- F) A permanent injunction enjoining AMKO Auto from engaging in conduct in violation of Md. Transp. Code § 15-311.3; and
- G) For other and further relief as the Court may deem proper.

Respectfully Submitted.



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*Attorneys for Plaintiff Rodney Oliver
and Proposed Class Counsel*

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable




Ingmar Goldson, Esq.

Certificate of Service

I hereby certify that on this 25th day of January, 2018, a copy of the foregoing Amended Class Action Complaint was sent via electronic mail and mailed first-class, postage prepaid to:

Laina Lopez
Berliner Corcoran & Rowe, LLP
1101 Seventeenth St. NW, Suite 1100
Washington, DC 20036


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igoldson@goldsonlawoffice.com



AM-KO AUTO
5611 MARLBORO PIKE
DISTRICT HEIGHTS MD 20747



VEHICLE SPOT DELIVERY AGREEMENT

Customer Name(s) RODNEY OLIVER
Address: 8656 FORT FOOTE ROAD FT. WASHINGTON MD 20744

Vehicle Description: _____ Make: DODGE Model: DART
Year: 2013
Mileage: 32,996 VIN #: 1C3CDFBA0DD310825

Although I have been permitted to take delivery of the above described vehicle, I understand that financing for the purchase of the vehicle has not been finalized, the dealership and I intend that financing for my purchase of the vehicle will be assigned to a third party. I understand that I have to bring all related documents that the dealership requires for my financing to be complete, and I understand that the dealership is asking for such documents only to complete my loan towards the vehicle that I am purchasing. I understand that this agreement is for the purpose of allowing me to take delivery of the vehicle, subject to the following terms and conditions, until a final decision regarding my request for financing is made.

1. I must have a valid driver's license to operate the vehicle and maintain full insurance coverage on the vehicle. I may not permit anyone who does not have valid drive license and insurance to operate the vehicle.
2. In the event that any of my information provided for financing of this vehicle proves to be false or documentation required by me to complete financing is not provided to the dealership with in the approved time limit set forth by the dealership. My loan approval shall be cancelled and, the vehicle purchased will need to be returned back to the dealership upon demand. In return, there will be cancellation fee incurred from the date of the delivery agreement, the fee will include and be calculated as \$75.00 per day for usage of the vehicle, \$0.54 cents per mile driven from the date of delivery, and a \$300.00 processing fee, the total sum will be deducted from the given down payment of the agreement and the remaining balance shall be returned to you.
3. If I am in breach of this agreement or fail to return the vehicle to the dealership as required by this agreement, I will be required to pay all expenses incurred by the dealership to have the vehicle returned and the dealership, or any of its agents or employees, may peacefully retake the possession of the vehicle.
4. I will hold harmless the dealership against any and all losses, liability, damages, injuries, claims, demands, costs and expenses arising out of my use, possession and control of the vehicle and/or any breach of my responsibility as set forth in this agreement.

By signing below, I acknowledge that I have read this agreement and I understand and agree to be bound by the terms and conditions set forth herein. This delivery agreement is incorporated by references into the retail purchase agreement.

Rodney Oliver 6/14/16
Customer Date

[Signature] 6/14/16
Dealership Representative Date

Customer Date



Maryland Motor Vehicle Administration
6601 Ritchie Highway, N.E.
Glen Burnie, Maryland 21062
1-800-950-1MVA (1682)
CUSTOMER SERVICE CENTER
1-800-492-4575
TTY
www.marylandmva.com
MSB 017E

D 03-05-01

March 10, 2005

BULLETIN TO:

ALL DEALERS, TITLE SERVICES

1. "Spot Delivery"- "Fronting" -"Macarthur Statement"
2. Proper recording of "Delivery Date"
3. ERT Sticker Accountability
4. Salesman Licenses
5. Class "E" Vehicles
6. Proper recording of Lien Codes

1. "Spot Delivery" - "Fronting" - "Macarthur Statement" etc.

Temporary registration permits, or certificates and plates, may not be used by dealers in cases where vehicles are released to potential purchasers prior to consummation of a vehicle sales transaction. These types of transactions are commonly referred to by the industry as "Spot delivery," "Fronting" "Macarthur Statement," etc.

Maryland Vehicle Law and Agency Regulations provide for the issuance of types of temporary registrations only in case of bona fide sales. As this Administration has advised in previous Bulletins, a bona fide sale exists only after all financial arrangements and any other prerequisite conditions have been met. Until such time, there has been no sale and temporary registrations may not be issued. Moreover, any deposit or trade-in received in such a transaction must be immediately returned to the prospective purchaser if he is unable to secure the necessary financing or meet any other prerequisite of the contract. Dealers should make sure that all personnel who handle trade-ins are aware of the importance of ascertaining whether the sale has been finalized before disposing of the traded-in vehicle.

I wish to remind all dealers that Maryland Vehicle Law does allow a dealer to permit a prospective buyer to drive a vehicle under a dealer plate for a period of not more than 10 days from the date of delivery of the vehicle to the prospective buyer.

Complaints about the spot delivery have been the result of "Supplemental Contracts" that are added to finance contracts stating financing has not been finalized contrary to agency regulation. Dealers are advised not to use these "Supplemental Contracts", which have resulted in financing at higher rates than originally contracted, and failure to return deposits, and failure to return trade -in vehicles.

2. Proper recording of "Delivery Date"

"Delivery Date" is the date that a temporary tag or transferred or "hard tag" is put on the vehicle and the vehicle is driven off the lot by the consumer. This is the day that determines the beginning of the thirty (30) days the dealer is allowed for titling the vehicle. It is of the utmost importance that the delivery date as defined above is accurately recorded on the "Application for Certificate of Title" "Form VR-5", Temporary Tag or Tag Transfer Certificate and on the ERT Title and Registration Screens. The MVA Internal Auditing Division will be reviewing transactions for dealership accuracy and compliance.

3. ERT Sticker Accountability

All dealers should account for registration stickers and tags by maintaining perpetual records and conducting regular physical audits of all state properties. Dealers should immediately report missing or stolen stickers to local law enforcement, the Administration's ERT Unit, and Business Licensing & Consumer Services. Dealers should follow the same procedure for any other state properties that are missing or stolen. The lost or stolen properties should be immediately reported to local law enforcement and to Business Licensing & Consumer Services.

*Registration stickers should be kept secure and separate from other office supplies.

*The three key functions: access, record keeping and independent review should be properly segregated.

4. Salesman Licenses

All persons who, for any form of compensation, under any form of agreement or arrangement with a dealer, buys, sells, exchanges, negotiates or attempts to buy, sell, exchange or negotiate the purchase, sale, or exchange of a vehicle must be licensed as a salesman. This includes finance and Internet sales employees. Employees who are required to be licensed may not engage in sales activity until their license has been authorized, paid, and issued by this Administration. There is no grace period. Incomplete applications will be returned.

5. Class "E" Vehicles

Effective on July 1, 2005 (3rd Quarter of 2005), title transactions involving Class "E" Vehicles will be included with Class A, Class D and Class M vehicles as transactions that can be identified as late and receive a fine for late titling. Fines for "Class E" transactions will be addressed in the same fashion as the other classes listed above, as stated in the policy that governs the Late Titling Fine Assessment Process.

6. Proper recording of Lien Codes

The MVA assigns a unique 4-digit lien code to all banks, financial institutions, credit unions, etc. If a lien is being recorded, this number should be entered into TARIS at the time of titling. The lien code will become critical to the One-Part-Title Project because we will no longer be mailing a Security Interest Filing (SIF) to the Secured Party. Instead, we will send an electronic file of liens placed on their behalf. When using a 0000 code, the lien would be updated on our database, but the Secured Party would not receive confirmation of the lien placement. To address this issue, the following steps will be taken:

- Modify the title and the VR-5 to include Lien Code as a required field.
- Modify the TARIS screen to prohibit an all zero (0000) lien code.
- Add lien code look up to the Intranet.
- Notify ERT vendors that we will not accept 0000 lien codes.
- Assign a lien code to all secure parties including individual lien holders. If a lien holder does not have a code at the time paperwork is submitted, one will be created for them. This code will be given to them with instructions that all future transactions must include the code or the transactions will be rejected.

Charles D. Schaub, Manager
Business Licensing and Consumer Services

CDS/dp