

2013 WL 1857246 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

Judith BACHMAN, Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, an Oregon Surety Insurer, Defendant.

No. 130405892.
April 26, 2013.

Not Subject to Mandatory Arbitration; Prayer Demanded \$150,000

Complaint (Fraudulent Representations; Unlawful Trade Practices; Civil Elder Abuse)

Tim Quenelle, OSB #93400, Attorney for Plaintiff.

1.

Plaintiff is an individual residing in the State of Oregon. Plaintiff is 73 years old and suffers from spinal degenerative disease and dyscalculia.

2.

Defendant Travelers is an Oregon “surety insurer” as that term is defined in [ORS 731.186](#).

3.

As a “surety insurer” Defendant Travelers is subject to the provisions of the Oregon Insurance Code as defined by [ORS 731.004](#), including but not limited to [ORS 742.061](#).

4.

Defendant Travelers conducts regular and sustained business activity in Multnomah County, Oregon such that venue is appropriate here. Defendant Travelers issued the required dealer's bond to Gilbert Tilbury Company, LLC doing business as Chuck Colvin Auto Center (Dealer). Plaintiff has a direct right of action against Defendant Travelers who is jointly and severally liable for payment of damages under the bond and [ORS 822.030](#).

5.

On April 6, 2013 Plaintiff was on Dealer's lot and looking to purchase a used vehicle to replace her current vehicle. Dealer showed Plaintiff a 2000 Nissan Altima. Plaintiff drove that vehicle and ultimately decided to purchase it.

6.

Dealer gave Plaintiff a purchase contract that stated the purchase price of the vehicle was \$8,999. Dealer added “gap” insurance to that contract without Plaintiff’s consent. When Plaintiff asked about that insurance Plaintiff was told that insurance was required by the credit union. Under the terms of the contract, Plaintiff’s interest rate was 2.49% and her monthly payments were to be \$138.97. Plaintiff signed that contract and drove home.

7.

On April 11, 2013, Dealer telephoned Plaintiff and told her that the contract needed to be rewritten, but that all the terms were the same and the only change was to a different credit union. Defendant came to Plaintiff’s home about 7:30 pm that night. Dealer had Plaintiff come outside her residence, where there was light visible light, and handed her a new contract to sign. When Plaintiff tried to read the contract, Dealer told Plaintiff that she did not need to read the terms as they were the same except for the change of credit union.

8.

Due to the statements made by Dealer, the poor lighting outside of her residence and Plaintiff’s Dyscalculia condition, Plaintiff failed to notice significant differences to the contract and signed it.

9.

Plaintiff discovered within a few hours that she had agreed to a higher interest rate of 3.99%, a higher finance charge and a higher monthly payment. Recently, Plaintiff discovered that the car she purchased had an advertised asking price of \$7,995. Plaintiff was never told this when she agreed to pay \$8,999 for the car.

10.

As a result of the misleading sales tactics and overreaching, Plaintiff was persuaded into purchasing a used car for higher than the advertised price, higher than the agreed interest rate and with the addition of “gap” insurance that was forced upon her.

11.

In all, Plaintiff has suffered economic damages in the amount of \$10,000.

12.

Plaintiff has also suffered non-economic damages for the loss of trust, betrayal, embarrassment, humiliation and anxiety caused by Dealer’s manipulations in the amount of \$50,000.

FIRST CLAIM FOR RELIEF

(Fraudulent Representations)

13.

Plaintiff realleges paragraphs 1-12 above.

14.

Dealer's representations as to the price, interest rate, monthly payment, and need for "gap" insurance were misleading. Dealer intended for Plaintiff to rely on those statements, which Plaintiff did. Dealer made these statements for its own personal gain.

15

Plaintiff has been damaged as alleged in Paragraphs 11-12.

16.

Pursuant to [ORS 822.030](#), Defendant is jointly and severally responsible for the damages caused by the fraudulent representations made by Dealer.

SECOND CLAIM FOR RELIEF

(Elder Financial Abuse)

17.

Plaintiff realleges paragraphs 1-12 above.

18.

Dealer wrongfully appropriated money from Plaintiff through the use of selling her a used car that was misrepresented as to price, interest rate and monthly payment. Dealer did so through fraud, illegal sales practices and misleading statements for the sole reason to deprive Plaintiff of additional money.

19.

Plaintiff has been damaged as a result of this financial **abuse** in the amount of \$30,000 for economic damages.

20.

Plaintiff has also suffered non-economic damages for the loss of trust, betrayal and embarrassment caused by Dealer's manipulations in the amount of \$150,000.

21.

Plaintiff is also entitled to recover her reasonable attorney fees pursuant to [ORS 124.100](#).

22.

Pursuant to [ORS 822.030](#), Defendant is jointly and severally responsible for the damages caused by the fraudulent representations made by Dealer.

THIRD CLAIM FOR RELIEF

(Unlawful Trade Practices)

23.

Plaintiff realleges and reincorporates by reference herein paragraphs 1 through 12.

24.

Dealer's acts in selling Plaintiff a car at a higher than advertised price, with forced "gap insurance" and by misrepresenting the interest rate and payments, made to an **elderly** person who suffers from Dyscalculia, constitutes willful violations of the Unlawful Trade Practices Act, as set forth more specifically in [ORS 646.608 et. seq.](#) More specifically:

A. Dealer represented that the car possessed characteristics, ingredients, uses, benefits or qualities that it did not possess; and with the intent not to provide them as represented; and with false and misleading representations about the price and credit availability, and by failing to disclose a known material defect in violation of [ORS 646.608\(e\), \(i\), \(j\), \(k\) \(t\) and \(u\)](#)(by and through [OAR 137-020-0020](#)).

25

Plaintiff would not have purchased the car from Dealer but for the misrepresentations.

26.

As a result of the violations, and pursuant to [ORS 646.638](#), this court should award Plaintiff her damages in the amount of \$10,000. In addition, Plaintiff should be awarded her reasonable attorney fees, costs and disbursements.

27.

Pursuant to [ORS 822.030](#), Defendant is jointly and severally responsible for the damages caused by the fraudulent representations made by Dealer.

FOURTH CLAIM FOR RELIEF

(Violations of the Vehicle Code)

28.

Plaintiff realleges and reincorporate by reference herein paragraphs 1 through 12.

29.

The sale of the vehicle to Plaintiff by Dealer was accomplished through fraudulent representations and concealed terms, in violation of [ORS 822.030](#) which prohibits sales that violate the vehicle code related to the transfer of vehicles and the regulation of vehicle dealers, in one or more of the following ways:

A. Dealer sold the vehicle through the use of fraudulent representations and concealment of known material defects related to the advertised price, "gap" insurance, disclosed interest rate and monthly payment in violation of [OAR 137-020-0030\(3\)\(a\), \(c\), \(f\), \(L\), \(o\), \(s\), \(v\), \(y\), \(z\)](#) (Motor Vehicle Price and Sales Disclosure);

30.

As a result of the violations of [ORS 822.030](#), Plaintiff suffered damages as alleged in Paragraphs 11-12.

31.

In addition, Plaintiff should be awarded her costs, disbursements and reasonable attorney fees pursuant to [ORS 646.638](#).

32.

Pursuant to [ORS 822.030](#), Defendant is jointly and severally responsible for the damages caused by the violations of the vehicle code made by Dealer.

FIFTH CLAIM FOR RELIEF

(822.030)

33.

Plaintiff realleges and reincorporate by reference herein paragraphs 1 through 12.

34.

Defendant is jointly and severally liable for payment of any damages as a result of fraud, fraudulent representations and violations of the vehicle code of Dealer pursuant to [ORS 822.030](#). Dealer's conduct as alleged in Paragraphs 1-12 constitutes fraud, fraudulent representations and violations of the vehicle code.

35.

That conduct of Dealer caused Plaintiff to suffer damages as alleged in Paragraphs 10 and 11. Plaintiff also suffered damages in the amount of attorney fees which are recoverable against Defendant through [ORS 646.638](#).

36.

In addition, Plaintiff is entitled to recover her attorney fees directly from Defendant pursuant to the terms and conditions found in [ORS 742.061](#).

WHEREFORE, Plaintiff prays for judgment:

1) On her first claim for relief against Defendant in the amount of \$10,000 for economic damages, \$50,000 for non-economic damages, prejudgment interest at 9% and her costs and disbursements herein;

- 2) On her second claim for relief against Defendant in the amount of \$30,000 for her economic damages, \$150,000 for non-economic damages, attorney fees pursuant to [ORS 124.100](#), with prejudgment interest at 9% and costs and disbursements herein,
- 3) On her third claim for relief against Defendant in the amount of \$10,000, along with prejudgment interest at 9%, reasonable attorney fees pursuant to [ORS 646.638](#), and costs and disbursements herein,
- 4) On her fourth claim for relief against Defendant in the amount of \$10,000 for economic damages, along with prejudgment interest at 9%, reasonable attorney fees pursuant to [ORS 646.638](#), and costs and disbursements herein, and;
- 3) On her fifth claim for relief against Defendant in the amount of \$10,000, along with the reasonable attorney fees incurred pursuant to [ORS 646.638](#), and separately pursuant to [ORS 742.061](#), and costs and disbursements herein.

DATED: April 25, 2013

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