

2013 WL 591919 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

Kay SWEENEY, Plaintiff,

v.

Ron Tonkin CHEVROLET, dba Ron Tonkin Honda, an Oregon Corporation,
Federated Mutual Insurance Company, an Oregon Surety Insurer, Defendants.

No. 130201763.
February 6, 2013.

Not Subject to Mandatory Arbitration; Prayer Demanded \$250,000

Complaint (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 90 years old and English is her second language.

2.

Defendant Ron Tonkin is a registered car dealer who conducts business as a seller of new and used vehicles to consumers in the State of Oregon with a principal place of business in Multnomah County.

3.

Defendant Federated is an Oregon “surety insurer” as that term is defined in [ORS 731.186](#). As a “surety insurer” Defendant Federated 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 Federated conducts regular and sustained business activity in Multnomah County, Oregon such that venue is appropriate here. Defendant Federated issued the required dealer's bond to the other Defendant Tonkin. Plaintiff has a direct right of action against Defendant Federated who is jointly and severally liable for payment of damages under the bond and [ORS 822.030](#).

5.

On December 27,2012, at approximately 10:00 am, Plaintiff took her 1991 Honda Accord to Defendant Tonkin to have her electric door lock fixed. Plaintiff was told that the repair would cost \$1,000 and take several days. Plaintiff was told that she would be better off buying a new car. Defendant Tonkin then began a series of misleading statements and promises in order

to persuade Plaintiff into purchasing a new car from Defendant Tonkin. Plaintiff was also isolated from her family to prevent intervention and made to believe that she could not leave. Although Plaintiff was 90 years old, and purchasing a new car, Plaintiff was sold an additional 7 year extended warranty for the sum of \$2,595 that was unnecessary and unwanted, a process known as “upselling.” Plaintiff was led to believe she was purchasing a new car when in fact she was purchasing a used car.

6.

Plaintiff tried to call her daughter, Ruth Hendricks, for help and left messages at 1:30 pm and 2:20 pm. Ms. Hendricks received the messages and tried to call Plaintiff back at 2:25 pm. Ms. Hendricks immediately called the dealership and was told that Plaintiff was not there. Ms. Hendricks called back and was placed on hold for 10 minutes before being told that Plaintiff was on a test drive. Ms. Hendricks called a third time and asked to speak with the General Manager and was sent to voice mail. Ms. Hendricks called a fourth time and demanded to speak with someone in charge. A person identified as “Jason” took Ms. Hendrick's telephone number and called her back at 2:45 indicating that Plaintiff was not at the dealership. At approximately 3 pm, a family friend arrived at the dealership and found that Plaintiff was at the dealership and that Defendant Tonkin had already sold Plaintiff a new car.

7.

As a result of the misleading sales tactics and overreaching, Plaintiff was persuaded into purchasing a used car that she did not want or need and under the belief that she was purchasing a new car.

8.

In all, Plaintiff has suffered economic damages in the amount of \$23,891.00.

9.

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

10.

Plaintiff intends to seek leave to amend to include a claim for punitive damages.

FIRST CLAIM FOR RELIEF (Fraudulent Representations as to Defendant Tonkin)

11.

Plaintiff realleges paragraphs 1-10 above.

12.

Defendant Tonkin's representations as to the price, model and options of the vehicle she purchased, combined with the representations about Plaintiff's old vehicle were misleading. Defendant Tonkin intended for Plaintiff to rely on those statements, which Plaintiff did. Defendant Tonkin made these statements for its own personal gain.

13.

Plaintiff has been damaged as alleged in Paragraphs 8-9.

14.

Plaintiff intends to seek leave to amend to include a claim for punitive damages.

SECOND CLAIM FOR RELIEF (Elder Financial Abuse as to Defendant Tonkin)

15.

Plaintiff realleges paragraphs 1-8 above.

16.

Defendant Tonkin wrongfully appropriated money from Plaintiff through the use of selling her a used car that was represented as new, with unnecessary options and add-ons, and when Plaintiff simply needed her door fixed on her old car. Defendant Tonkin did so through fraud, illegal sales practices and misleading statements for the sole reason to deprive Plaintiff of additional money.

17.

Plaintiff has been damaged as a result of this financial **abuse** in the amount of \$71,673.00 for economic damages.

18.

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

19.

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

THIRD CLAIM FOR RELIEF

(Unlawful Trade Practices as to Defendant Tonkin)

20.

Plaintiff realleges and reincorporates by reference herein paragraphs 1 through 10.

21.

Defendant Tonkin's acts in selling Plaintiff a used car that was represented as new, with unnecessary options and add-ons, and when Plaintiff simply needed her door fixed on her old car, made to an **elderly** person who is a non-native English speaker,

constitutes willful violations of the Unlawful Trade Practices Act, as set forth more specifically in [ORS 646.608 et. seq.](#) More specifically:

A. Defendant 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, in violation of [ORS 646.608\(e\), \(i\), \(j\), \(k\) \(t\) and \(u\)](#)(by and through [OAR 137-020-0020](#)).

22.

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

23.

As a result of the violations, and pursuant to [ORS 646.638](#), this court should rescind the sale and refund award Plaintiff her purchase price and associated damages, in the amount of \$23,891. In the alternative, if rescision is not appropriate, this court should award Plaintiff her damages in the amount of \$20,000. In addition, Plaintiff should be awarded her reasonable attorney fees, costs and disbursements. Plaintiff will also seek leave to amend to include a claim for punitive damages.

FOURTH CLAIM FOR RELIEF

(Violations of the Vehicle Code against Defendant Tonkin)

24.

Plaintiff realleges and reincorporate by reference herein paragraphs 1 through 10.

25.

The sale of the vehicle to Plaintiff by Defendant Tonkin was accomplished through fraudulent representations and concealed defects, 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. Defendant Tonkin sold the vehicle through the use of fraudulent representations and concealment of known material defects related to the used nature of the vehicle in violation of [OAR 137-020-0030\(o\)](#) (Motor Vehicle Price and Sales Disclosure);

26.

As a result of the violations of [ORS 822.030](#), Plaintiff suffered damages as alleged in Paragraphs 8 and 9.

27.

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

FIFTH CLAIM FOR RELIEF (against Defendant Federated)

28.

Plaintiff realleges and reincorporate by reference herein paragraphs 1 through 10.

29.

Defendant Federated is jointly and severally liable for payment of any damages as a result of fraud, fraudulent representations and violations of the vehicle code of Defendant Tonkin pursuant to [ORS 822.030](#). Defendant Tonkin's conduct as alleged in Paragraphs 1-10 constitutes fraud, fraudulent representations and violations of the vehicle code.

30.

That conduct of Defendant Tonkin caused Plaintiff to suffer damages as alleged in Paragraphs 8 and 9. Plaintiff also suffered damages in the amount of attorney fees which are recoverable against Defendant Tonkin through [ORS 646.638](#).

31.

In addition, Plaintiff is entitled to recover her attorney fees directly from Defendant Federated 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 Tonkin in the amount of \$23,891 for economic damages, \$50,000 for non-economic damages, prejudgment interest at 9% and here costs and disbursements herein;
- 2) On her second claim for relief against Defendant Tonkin in the amount of \$71.673 for her economic damages. \$150.000 for non-economic damages, with prejudgment interest at 9% and costs and disbursements herein.
- 3) On her third claim for relief against Defendant Tonkin for rescision, in addition to damages of \$23,891 or in lieu of rescision for judgment in the amount of \$20,000, 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 Tonkin, in the amount of \$23.891 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 fifth claim for relief against Defendant Federated, damages of \$23,891, along with prejudgment interest at 9% reasonable attorney fees pursuant to [ORS 646.638](#) and [ORS 742.061](#), and costs and disbursements herein.

DATED: February 5, 2013