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HEADLINE: Consumer Fraud Act Violated by Not Revealing Used Car's History

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BODY:

In an apparent ruling of first impression in New Jersey, a car dealer has been held in violation of the Consumer Fraud Act for selling a used car without disclosing its prior use as a loaner.

Morris County Superior Court Judge Rosemary Ramsay denied defense motions for remittitur and a new trial on Dec. 14 in the case, in which a jury awarded the plaintiff treble damages of $30,000.

Ramsay also awarded $45,202 in fees and expenses, in Montgomery v. Millenium Auto Group, MRS-L-2839-10.

Research by both sides found that no other court has ruled on whether the statute applies to the failure to disclose that a used car was a loaner, plaintiff lawyer Herbert Korn says.

Glenn Montgomery Jr. of Long Valley bought the 2008 Mercedes Benz ML 350 from Millennium Mercedes Benz in Bridgewater for $42,815 on March 21, 2009.

Soon after, his wife noticed the outline of stick-on letters spelling "courtesy car" and the dealer name in the car's rear window. The letters had been removed, but their outlines became visible when the glass was covered by raindrops, Montgomery claimed.

When Montgomery complained, the dealer allegedly agreed to take back the car for $10,000 less than Montgomery paid, but he did not accept the offer.

Montgomery sued, claiming, among other things, that the dealership and saleswoman Allyson Gutman knew it was a loaner but "misrepresented, deceived and committed an unconscionable commercial practice through fraud and falsity by advising Montgomery that the automobile was a leased car traded in by its owner."

Montgomery said he would not have bought the car had he known it was a loaner.

In September, a Morris County jury found that Millenium Mercedes-Benz in Bridgewater violated the Consumer Fraud Act through its representations to Montgomery.

The jury found for him after hearing testimony from his expert witness, Lawrence Swanson, general manager of Joyce Honda in Denville.

Swanson said in his report to Korn that a loaner is worth 10 percent to 15 percent less than another used car because it is driven by multiple drivers, whose skills and habits vary.

For that reason, it is "standard practice in the retail automotive business" to disclose whether a car for sale was used as a loaner, Swanson continued.

The dealership's lawyer, Adrienne Matthews of Margolis Edelstein in Berkeley Heights, presented testimony at trial from the dealer's manager, who took the position that the number of people using the car was immaterial, says Korn, a Morristown solo.

Korn says it is technically correct to say that it was a leased car traded in by its owner because the dealership leased it from the manufacturer while using it as a loaner.

"When they say to a purchaser this is a one-owner, turned-back lease car, they're right but it really is a misrepresentation," says Korn.

The manager maintained that the car's condition was paramount and that the vehicle had passed inspections before it was sold, says Korn.

Korn had sought roughly $65,000 in fees, based on an hourly rate of $400.

Ramsay found the rate reasonable but reduced billings to $40,000 after finding Korn charged for certain ministerial acts, such as reading correspondence, that should be performed by a paralegal.

Ramsay then enhanced fees by 10 percent because Korn took the case on contingency, resulting in total fees of $44,198. She also awarded costs of $1,004.

Korn says the verdict suggests the jury didn't accept the defendants' assertion that a car's history as a loaner vehicle is immaterial.

"Some people would say it doesn't make a difference to me; other people would say it makes a tremendous difference to me," Korn says.

Matthews did not respond to telephone messages left at her office.

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