

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

DISTRICT COURT DEPARTMENT
FALL RIVER DIVISION
DOCKET NO: 0932CV1729

KIM ARRUDA,
Plaintiff

vs.

F & R AUTO SALES, INC.,
Defendant

STATEMENT OF CASE

This case arises out of the purchase and sale of an automobile. On April 10, 2009, Kim Arruda ("Arruda") purchased a 1996 BMW sedan with 125,386 miles on it from F&R Auto Sales, Inc. ("F&R") for the sum of \$5,080.00.¹ Arruda paid \$2000.00 in cash and borrowed \$3,475.00 from F&R². F&R was in the business of both selling and financing automobiles. The promissory note here did not have a stated interest rate but provided for payments of \$100.00 weekly. It included what the note described as a \$395.00 "Acquisition Fee." As security for the note, Arruda pledged the BMW. F&R warrantied the car for 30 days. Prior to taking delivery of the car Arruda complained to F&R that the steering was off, a radio was needed, the muffler was too loud and the transmission was slipping. F&R agreed to remedy the problems but when she took possession of the vehicle on April 15, 2009, the newly installed radio didn't work, the steering continued to be a problem, the muffler was still too loud and on the day following delivery, one of the tires blew. She replaced the blown tire as well as another,

¹The purchase agreement included an \$80.00 fee for title and document preparation.

² The note is dated the 10th but the court finds it was signed on April 15, 2009.

because it was bald. The cost of the new tires was \$292.08. She complained to F&R that the car was unsafe. They told her to have the car inspected and then they would decide what, if any, repairs had to be made.

On April 17, 2009, the vehicle failed inspection because of its suspension, its front end and the exhaust. Arruda returned the car to F&R and told them she wanted her money back but they refused. F&R kept the car for several days and made repairs to the tie-rod assembly. They also plugged the muffler with putty and were able to obtain an inspection sticker. Arruda didn't want the car back but F&R advised her that they had parked the car at an adjacent Chinese restaurant and that if she didn't pick it up it would be towed. F&R refused to provide any documentation concerning the repairs they had allegedly performed. Arruda picked up the car and its transmission continued to slip. She had the car reinspected and it again failed for a variety of reasons, including the muffler. She took the car to J&S Auto, who examined it, showed her the putty on the muffler and gave her an estimate to replace the muffler, rear shocks, valve cover and flush the transmission, all at a cost of \$1,523.15. She brought the car back to F&R and provided them with the estimate, the failed inspection report, a copy of the "Lemon Law," (which the court finds was not affixed to the window of the car at the time of sale) and again requested that they take the car back. Again, F&R refused. After several days, F&R called to tell her the car had been repaired and that it was again parked at the Chinese restaurant. Arruda reluctantly took possession of the car but the transmission continued to slip and the muffler had not received further repair.

On May 30, 2009, Arruda had the transmission flushed for the sum of \$155.00 but on or about June 11, 2009, the transmission finally failed and she was required to have a used transmission installed at a cost of \$1,050.00. Throughout this period, Arruda remained current with her note payments. She filed a small claims action in July seeking \$2,000.00 in damages. In August, the action was transferred to the regular civil docket at the request of F&R. Arruda stopped paying the note on October 3, 2009. After consultation with her attorney, she attempted to resume payments in November but F&R refused to accept any payment unless she agreed to pay the entire arrearage which included "late fees."

On October 8, 2009, F&R received a 93A demand letter from Arruda requesting \$2,040.00. On October 23, 2009, F&R replied and agreed to pay Arruda \$2,000.00 but only if she returned the car. In the alternative, she could keep the car and make no further payment on the note.³ Neither offer was acceptable to Arruda. At that time, in addition to her down payment of \$2000.00, Arruda had paid a total of \$2,796 toward the note, as well as \$1,526.08 in repairs.⁴ In December, at night, two gentlemen appeared at Arruda's home and attempted to repossess the car. The police were called and the men were sent away because they did not have the proper paperwork. Two weeks later, someone entered upon Arruda's property and without her permission repossessed the car from her garage. The car was later sold by F&R without an accounting for any deficit or surplus due Arruda.

FINDINGS and RULINGS

COUNT I

Violation of Truth In Lending Act

After consideration of the credible evidence and the law, the Court finds that F&R violated the Truth In Lending Act, 15 U.S.C. §§1601 et seq., by failing to use a proper finance disclosure form and by failing to disclose that the \$395.00 "Acquisition Fee" was actually a finance charge that would not have been due had Arruda paid cash for the car and was only assessed as a condition of her loan.⁵ The court will not award damages under this count since those damages would duplicate the damages awarded under Count IV.

³According to F&R, the note balance on October 24, 2009, was \$1,104.00. See Exhibit #7.

⁴ Repair costs include the following: Used transmission \$1,050.00; tires \$292.08; transmission flush \$155.00; additional inspection \$29.00.

⁵F&R's actions are also a violation G.L. c. 140D.

COUNT II

Violation of Massachusetts Retail Installment Sales Act

After consideration of the credible evidence and the law, the Court finds that F&R violated the Massachusetts Retail Installment Sales Act, G.L. c 255B §§ 1 et seq., by failing to disclose that the \$395.00 "Acquisition Fee" was actually a finance charge that would not have been due had Arruda paid cash for the car and was only assessed as a condition of her loan and further by charging in excess of the allowable annual interest rate of 21 percent.⁶ The court will not award damages under this count since those damages would duplicate the damages awarded under Count IV.

COUNT III

Breach of Warranty

After consideration of the credible evidence and the law, the Court finds that F&R breached its implied warranty that the subject auto was merchantable in that the vehicle's tires, transmission, muffler and suspension system were defective at the time of sale. Arruda had a right to reject the auto and require that F&R refund her purchase price, as well as all expenses she incurred as a result of the purchase. The court will not award damages under this count since those damages would duplicate the damages awarded under Count IV.

COUNT IV

Violation of G.L. c. 93A

After consideration of the credible evidence and the law, the Court finds that F&R violated 93A and that such violations were both knowing and wilful. Those violations include the following: Failure to display a "Lemon Law" sticker on the auto and failure to comply with G.L. c. 90, §7N by voiding the sale and refunding Arruda's purchase price upon request; Failure to comply with the Truth-In-Lending Act; Failure to comply with the Massachusetts Retail Installment Sales Act; Improper repossession of a motor vehicle; Multiple misrepresentations to Arruda concerning the condition of the vehicle at the time

⁶In determining that F&R charged in excess of twenty-one percent, the court accepts the calculations made by plaintiff in her Request for Rulings #29 - #36.

of sale, the repairs made by F&R before and after sale, and Arruda's rights and obligations flowing from the purchase. The court awards damages of \$6,322.08 which it calculates as follows:

Down Payment	\$2,000.00
Installment Payments	\$2,796.00
Additional Inspection Fee	\$ 29.00
Used Transmission	\$1,050.00
Transmission Flush	\$ 155.00
New Tires	\$ <u>292.08</u>
Total Damages	\$6,322.08

The court trebles those damages to the amount of \$18,966.24 and awards Arruda her reasonable attorney fees and costs. Within 21 days of the date of this decision, counsel for Arruda will submit an affidavit of attorney fees and costs, with a copy to defense counsel. Counsel for F&R may submit his opposition to those attorney fees within 10 days of receiving a copy of Arruda's fee request. Upon receipt of these documents the court will assess reasonable attorney fees and costs, without further hearing.

COUNT V

Violation of G.L. c. 255B, §20B

After consideration of the credible evidence and the law, the Court finds that F&R violated G.L. c. 255B, §20B in that F&R entered upon Arruda's property to effectuate the repossession of her automobile without her knowledge or permission. F&R also failed to give Arruda an opportunity to redeem her auto within 20 days after its repossession and further failed to give Arruda an accounting after her repossessed auto was sold. The court will not award damages under this count since those damages would duplicate the damages awarded under Count IV.

Action on Requests for Findings of Fact and Rulings of Law

Requests for Findings of Fact and Rulings of Law by Arruda:

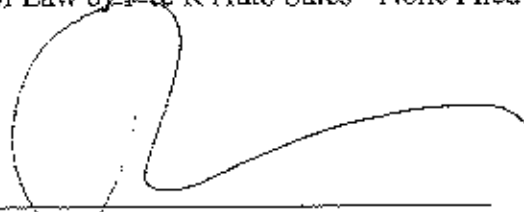
In lieu of addressing Arruda's individual Requests for Findings of Fact #1 - #49, the court refers to its Statement of the Case. See Mass. R Civ. P. 52 (c)

Requests for Rulings of Law #1 - #49 are allowed

Requests for Rulings of Law #50 - #82 are deemed waived.

Requests for Findings of Fact and Rulings of Law by F & R Auto Sales - None Filed

DATE: July 28, 2011

A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a long, sweeping horizontal stroke that ends in a slight upward curve.

Thomas S. Barrett, Justice

JUDGMENT FOR PLAINTIFF(S)

DOCKET NUMBER

200932CV001729

Superior Court of Massachusetts
District Court DepartmentCASE NAME **KIM ARRUDA vs. F & R AUTO SALES, INC.**

PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT

P01 KIM ARRUDA

CURRENT COURT

Fall River District Court
Fall River Justice Center
186 South Main St.
Fall River, MA 02721-5308
(508) 491-3200

DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT

D01 F & R AUTO SALES, INC.

←←←←←
WHEN
YOU
MUST
APPEAR
←←←←←

ROOM/SESSION

PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

P01 KIM ARRUDA
120 WALKER STREET
SWANSEA, MA 02777

FURTHER ORDERS OF THE COURT

ATTORNEY FOR PARTY TO WHOM THIS COPY OF JUDGMENT IS ISSUED

P01 DEBORAH GWEN ROHER
ATTORNEY AT LAW
56 NORTH MAIN STREET, #413
P. O. BOX 2984
FALL RIVER, MA 02722**JUDGMENT FOR PLAINTIFF(S)**

On the above action, after trial by a judge, the issues having been duly tried or heard, and a finding or verdict having been duly rendered, IT IS ORDERED AND ADJUDGED by the Court (Barrett, Hon. Thomas S.) that the Plaintiff(s) named above recover of the Defendant(s) named above the "Judgment Total" shown below plus such other costs as may be taxed pursuant to law, with postjudgment interest thereon pursuant to G.L. c. 235, §8 at the "Annual Interest Rate" shown below from the "Date Judgment Entered" shown below until the date of payment.

NOTICE OF ENTRY OF JUDGMENT

Pursuant to Mass. R. Civ P. 54, 58, 77(d) and 79(a), this Judgment has been entered on the docket on the "Date Judgment Entered" shown below, and this notice is being sent to all parties. Attached are any rulings of law, or any findings of fact and rulings of law, which may have been made by the Court pursuant to Mass. R. Civ. P. 52(c) or 64A(c).

1. Date of Breach, Demand or Complaint	8/18/2009
2. Date Judgment Entered	9/26/2011
3. Number of Days of Prejudgment Interest (Line 2 - Line 1)	769
4. Annual Interest Rate of 12.00%/ 365 = Daily Interest Rate	0.032877%
5. Single Damages	\$6,322.08
6. Prejudgment Interest (lines 3x4x5)	\$1,598.36
7. Double or Treble Damages Awarded by Court (where authorized by law)	\$12,644.16
8. Costs	\$195.00
Filing Fee & Surcharge	
9. Attorney Fees Awarded by Court (where authorized by law)	\$16,725.00
10. Other Costs Awarded by Court	\$396.78
11. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (lines 5+6+7+8+9+10)	\$37,881.38

DATE JUDGMENT ENTERED
9/26/2011CLERK-MAGISTRATE/ASST. CLERK
X *Ma* *E. Hayes*