

CROSSING THE CENTER LINE: Broken Contract or Crime?

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As a consumer protection attorney specializing in automobile fraud in the Central Valley, I am often frustrated when talking to a potential new client that has been taken advantage of by a dishonest used car dealer, particularly when the circumstances clearly indicate the dealer has been stealing people's money over an extended period of time and the police tell victims that it is a civil matter. Dealers know that law enforcement takes this position and thus aren't afraid of criminal ramifications, even when their conduct escalates to grand theft.

Automobile fraud is rampant in the Central Valley. Unscrupulous used car dealers engage in yo-yo sales, deceptive advertising, contract misrepresentations, forgery, undisclosed safety issues, and just plain fraud and theft as common schemes to get as much money from car buyers before the buyer is even aware of what just really happened. Common victims are first-time car buyers, the elderly, disabled, undocumented immigrants, Spanish-only speaking citizens, and people with low income.

Consumer protection attorneys and victims are frustrated that dealers are committing crimes, yet the victims aren't given a voice in the criminal justice system, our communities aren't being protected and dealers aren't being held criminally liable. Penal Code section 487 states, "Grand theft is theft committed in any of the following cases: (a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950)" (with exceptions not applicable here), or "(d) When the property taken is ... (1) An automobile." When a car dealer stands behind a fraudulent contract to avoid criminal liability for stealing people's money or property, it is the legal community's responsibility to see it for what it is – a crime, plain and simple.

Many laws come into play when evaluating auto fraud cases, including the Consumer Legal Remedies Act (CC §1750 et seq.), California's Song-Beverly Consumer Warranty Act (CC §1790 et seq.) the Federal Magnuson-Moss Warranty Act (15 USC 2301 et seq.), the Automobile Sales Finance Act (CC §2981 et seq.), the Spanish Language Contract Act (CC §1632 et seq.), Business & Professions Code (B&P §17200 et seq.), California Code of Regulations (CCR Title 13), Code of Federal Regulations (16 CFR 455 et seq.), and the Vehicle Code (primarily VC §§11711 and 11713). Unfortunately, despite these consumer protection laws and criminal statutes, many victims can't find relief from either civil or criminal courts.

California law requires car dealerships to be licensed by the DMV and carry a \$50,000 bond in the event of dealer fraud. If the dealer arranges financing for the sale, the finance company, as the holder of the consumer credit contract, "stands in the shoes" of the dealership and is equally liable for all claims and defenses which the buyer could assert against the dealer. Civil remedies

for victims are possible because even if the car dealer becomes insolvent or skips town, there are two other viable defendants.

Consumer protection attorneys typically take auto fraud cases on a contingency basis because certain consumer protection statutes provide for reasonable attorney's fees and costs to a prevailing plaintiff or party. However, even though the public policy behind these consumer protection laws is designed to enable individual consumers with few resources to bring legitimate civil actions against big business, the economic reality is that private attorneys can rarely afford to litigate these cases on a contingency fee basis when the amount in controversy falls within the jurisdiction of small claims or there are no viable defendants. Further, it is unreasonable to expect that a plaintiff would be able to adequately present his or her case pro per or that a small claim's court judge would have the depth and breadth of knowledge with these laws necessary to properly evaluate the case. Most plaintiffs never even try and are left feeling hopeless and helpless. Here's a real-life example of such a case.

A 20-year-old man goes to a used car dealership, finds a car to purchase, signs a contract and puts down \$2,000 – all the money he's saved up to buy his first car. The dealer agrees to arrange for financing. During the test drive, the dealer points out a few minor mechanical problems and promises to fix them if the young man leaves the car overnight, which he does. The next day the young man goes to the dealership to pick up his car but the dealer demands another \$500 for the repairs. Believing he has no other choice, the young man hands over the money. He returns to the dealership the next day but there is nobody at the dealership. He returns the next day, and the next, and it becomes apparent the dealership has gone out of business – doors are locked, no cars on the lot, lights out.

The young man calls the police to report the theft of his money and car, but the police tell him it is a civil matter, not criminal. No police report is taken. He then contacts a consumer protection attorney who confirms the dealership has gone out of business and the dealer has skipped town. The attorney also discovers that there are several claims already filed against the bond company that will exhaust the bond before the case is even filed. The dealer never attempted to finance the deal so there is no finance company liable for the loss either. The attorney breaks the bad news to the young man and recommends small claims court knowing that any civil relief is highly unlikely. The unfortunate and all too common outcome is that the dealer keeps the car and the down payment, and the young man is out of luck. It is believed that this dealer entered into fraudulent contracts with many people in the several weeks prior to shutting its doors, never intending to actually transfer possession of the cars. He stole thousands of dollars and left many victims behind without recourse. Although this dealer is definitely one of the worse, he is far from the only unscrupulous dealer in town.

Dealers *should* be concerned that criminal charges are possible if they break the law, rather than knowing they can steal from unsuspecting car buyers and the police will just refer the victim to a civil attorney. I'm told by a Deputy District Attorney friend of mine that cases involving some kind of contract bordering between civil and criminal are likely to be rejected as "civil in nature." I can imagine law enforcement is also frustrated in their efforts to stop obvious criminal activity that is shrouded in a civil contract. However, I believe that District Attorneys in

collaboration with civil attorneys can reduce the amount of automobile fraud in the Central Valley, a problem that is rampant and leaves our most vulnerable citizens without any type of relief. I, at least, invite the conversation.

Ms. Hinton is interested in your comments and feedback. She can be reached at her office by phone (559) 328-4800 or email at alicia@alhintonlaw.com.