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Cause No. 09-09180

FILED

09 JUL 14 2010

GARY TITMUS
CLERK OF DISTRICT COURT
NORMA GARZA
CITY

DDH INVESTMENTS OF NORTH
TEXAS, INC., d/b/a SATURN OF
LEWISVILLE,

Plaintiff,

v.

DEBORAH RICHARDSON, JACOB
SNEED, MARGIE MOTURI,
TESSA MORENO, MELISSA BREWER,
FRED TRYON, SHERRY HUNTER,
CARMEN BASS, NATASHA RECTOR,
GABRIEL MALDONADO,
KJAMURANE VRBANI, JEFFREY
MANTHEI, METROPOLITAN
FINANCE, LLC, and TEXAS
DEPARTMENT OF
TRANSPORTATION,

Defendants.

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

162nd-1

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff DDH Investments of North Texas, Inc., d/b/a Saturn of Lewisville ("Saturn of Lewisville") files this Original Petition complaining of Defendants Deborah Richardson ("Richardson"), Jacob Sneed ("Sneed"), Margie Moturi ("Moturi"), Tessa Moreno ("Moreno"), Melissa Brewer ("Brewer"), Fred Tryon ("Tryon"), Sherry Hunter ("Hunter"), Carmen Bass ("Bass"), Natasha Rector ("Rector"), Gabriel Maldonado ("Maldonado"), Kjamurane Vrbani ("Vrbani"), and Jeffrey Manthei ("Manthei") (Richardson, Sneed, Moturi, Moreno, Brewer, Tryon, Hunter, Bass, Rector, Maldonado, Vrbani, and Manthei shall be referenced herein as "Defendant Customers"), Metropolitan

Finance, LLC ("Metropolitan Finance"), and Texas Department of Transportation ("TXDOT") and for cause of action respectfully shows the Court the following:

I.

Discovery Control Plan

Plaintiff intends that the Court enter a discovery control order as contemplated by Rule 190.3 of the TEXAS RULES FOR CIVIL PROCEDURE ("Level Two").

II.

Parties

Plaintiff is a Texas corporation. Plaintiff was formerly doing business in the State of Texas under the assumed name of Saturn of Irving ("Saturn of Irving"); however, Saturn of Irving is no longer doing business, having recently ceased business operations. For the purposes of this lawsuit, Plaintiff is the successor-in-interest to all of the rights of Saturn of Irving.

Richardson is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Richardson may be served at her usual place of abode which is 6512 Deseo, #334, Irving, Texas 75039, or wherever she may be found in the State of Texas.

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Sneed is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Sneed may be served at his usual place of abode which is 12538 Burninglog Lane, Dallas, Texas 75243, or wherever he may be found in the State of Texas.

Moturi is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Moturi may be served at her usual place of

abode which is 3517 W. Northgate, #803, Irving, Texas 75062, or wherever she may be found in the State of Texas.

Moreno is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Moreno may be served at her usual place of abode which is 401 S. Baugh Street, Alvarado, Texas 76009, or wherever she may be found in the State of Texas.

Brewer is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Brewer may be served at her usual place of abode which is 230 S. MacArthur, #222, Coppell, Texas 75019, or wherever she may be found in the State of Texas.

Tryon is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Tryon may be served at his usual place of abode which is 1522 Sunset Village Drive, Duncanville, Texas 75137, or wherever he may be found in the State of Texas.

Hunter is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Hunter may be served at her usual place of abode which is 1558 Chapman Drive, Lancaster, Texas 75134, or wherever she may be found in the State of Texas.

Bass is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Bass may be served at her usual place of abode which is 106 Navajo, Palestine, Texas 75803, or wherever she may be found in the State of Texas.

✓ Rector is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Rector may be served at her usual place of abode which is 152 East Plaza Blvd., #1161, Hurst, Texas 76053, or wherever she may be found in the State of Texas.

✓ Maldonado is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Maldonado may be served at his usual place of abode which is 12337 Kerrison Way, #212, Crowley, Texas 76036, or wherever he may be found in the State of Texas.

✓ Vrbani is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Vrbani may be served at his/her usual place of abode which is 8641 Las Vegas Court, Ft. Worth, Texas 76116, or wherever he/she may be found in the State of Texas.

✓ Manthei is an individual who has done business in the State of Texas by entering into an agreement with Saturn of Irving. Manthei may be served at his usual place of abode which is 3433 W. Country Club, Apartment Number 1087, Irving, Texas 75038, or wherever he may be found in the State of Texas.

✓ Metropolitan Finance is a Texas limited liability company that may be served by serving its registered agent, Malieka Strange, at 5704 Rubblestone Drive, McKinney, Texas 75070, or wherever he/she may be found in the State of Texas.

Defendant Texas Department of Transportation ("TXDOT") is a public agency which is a necessary party joined herein to prevent the transfer of title to each and every vehicle referenced / described herein. TXDOT has agreed to accept service by facsimile to

their attorney Claire McGuinness. Therefore, no formal issuance of citation or service of process is necessary at this time.

III.

Jurisdiction and Venue

This Court has jurisdiction over the defendants (not including TXDOT) because they each entered into an agreement with Saturn of Irving concerning the purchase and/or finance of automobile(s) from Saturn of Irving and they reside in the State of Texas. This Court has jurisdiction over the controversy because the amount in controversy is within the jurisdictional limits of this Court. In addition, this Court has subject matter jurisdiction over this lawsuit.

Venue is proper in Dallas County, Texas pursuant to Chapter 15 of Texas' Civil Practice & Remedies Code because all or a substantial part of the events giving rise to these claims occurred in Dallas County, Texas, and no other mandatory venue provisions apply.

IV.

Factual Background

Each of the Defendant Customers agreed to purchase a used automobile from Saturn of Irving. In each case, Metropolitan Finance represented to Saturn of Irving that such entity would finance the Defendant Customers' purchase of the aforementioned vehicle(s). Despite their assurances to the contrary, Metropolitan Finance did not, in fact, fund any of the proposed vehicle sales to the Defendant Customers. Therefore, in each case, Saturn of Irving has delivered possession of an automobile to a customer in reliance on the promise of payment of the purchase price by Metropolitan Finance; but in each

case, Saturn of Irving has not been paid the purchase price by either the customer or Metropolitan Finance. Each of the twelve (12) failed transactions is described as follows:

1. Deborah M. Richardson. On March 4, 2009, Richardson entered into an agreement with Saturn of Irving concerning her desire to purchase that certain 2008 Saturn VUE with VIN 3GSCL33P28S680281 at a price of \$22,132.96. Richardson made a \$2,000.00 cash down payment toward the purchase price; the balance of the purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$20,132.96; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Richardson, the dealership has never been paid by Metropolitan Finance or Richardson for the automobile.
2. Jacob Sneed. On March 2, 2009, Sneed entered into an agreement with Saturn of Irving concerning his desire to purchase that certain 2006 Saturn VUE with VIN 5GZCZ23D16S802615 at a price of \$10,211.59. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$10,211.59; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Sneed, the dealership has never been paid by Metropolitan Finance or Sneed for the automobile.
3. Margie Moturi. On February 18, 2009, Moturi entered into an agreement with Saturn of Irving concerning her desire to purchase that certain 2006 Chrysler PT Cruiser with VIN 3A4FY58B06T268980 at a price of \$10,290.83. The

purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$10,290.83; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Moturi, the dealership has never been paid by Metropolitan Finance or Moturi for the automobile.

4. Tessa Moreno. On February 7, 2009, Moreno entered into an agreement with Saturn of Irving concerning her desire to purchase that certain 2007 Saturn ION with VIN 1G8AJ55F27Z177886 at a price of \$10,798.32. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$10,798.32; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Moreno, the dealership has never been paid by Metropolitan Finance or Moreno for the automobile.
5. Melissa Brewer. On February 28, 2009, Brewer entered into an agreement with Saturn of Irving concerning her desire to purchase that certain 2005 Saturn Relay with VIN 5GZDV03L85D176382 at a price of \$8,433.13. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$8,433.13; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Brewer, the dealership has never been paid by Metropolitan Finance or Brewer for the automobile.
6. Fred Tryon. On February 26, 2009, Tryon entered into an agreement with Saturn of Irving concerning his desire to purchase that certain 2006 Chevrolet

LD 1500 CAB with VIN 1GCEC14XX6Z300496 at a price of \$8,000.00. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$8,000.00; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Tryon, the dealership has never been paid by Metropolitan Finance or Tryon for the automobile.

7. Sherry Hunter. On February 19, 2009, Hunter entered into an agreement with Saturn of Irving concerning her desire to purchase that certain 2007 Saturn ION with VIN 1G8AJ55F97Z119029 at a price of \$12,825.12. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$12,825.12; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Hunter, the dealership has never been paid by Metropolitan Finance or Hunter for the automobile.
8. Carmen Bass. On February 21, 2009, Bass entered into an agreement with Saturn of Irving concerning her desire to purchase that certain 2007 Suzuki Forenza with VIN KL5JD56Z17K558052 at a price of \$9,604.18. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$9,604.18; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Bass, the dealership has never been paid by Metropolitan Finance or Bass for the automobile.

9. Natasha Rector. On February 21, 2009, Rector entered into an agreement with Saturn of Irving concerning her desire to purchase that certain 2005 Saturn VUE with VIN 5GZCZ23D95S850989 at a price of \$12,268.87. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$12,268.87; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Rector, the dealership has never been paid by Metropolitan Finance or Rector for the automobile.
10. Gabriel Maldonado. On February 21, 2009, Maldonado entered into an agreement with Saturn of Irving concerning his desire to purchase that certain 2000 Volkswagen Beetle with VIN 3VWCD21C1YM486619 at a price of \$5,973.22. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$5,973.22; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Maldonado, the dealership has never been paid by Metropolitan Finance or Maldonado for the automobile.
11. Kjamurane Vrbani. On February 20, 2009, Vrbani entered into an agreement with Saturn of Irving concerning his/her desire to purchase that certain 2008 Saturn VUE with VIN 3GSCL33P58S681098 at a price of \$16,650.37. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$16,650.37; however, the draft was dishonored and, despite Saturn of

Irving's delivery of the aforementioned vehicle to Urbani, the dealership has never been paid by Metropolitan Finance or Urbani for the automobile.

12. Jeffrey Manthei. On March 2, 2009, Manthei entered into an agreement with Saturn of Irving concerning his desire to purchase that certain 2002 Saturn L300 with VIN 1G8JW54R92Y515828 at a price of \$4,566.54. The purchase price was to be paid to Saturn of Irving by Metropolitan Finance. In fact, Metropolitan caused a draft to be issued to Saturn of Irving in the amount of \$4,566.54; however, the draft was dishonored and, despite Saturn of Irving's delivery of the aforementioned vehicle to Manthei the dealership has never been paid in full by Metropolitan Finance or Manthei for the automobile.

In each of these twelve (12) cases, Saturn of Irving delivered the subject vehicle in reliance on Metropolitan Finance's commitment to deliver the purchase price on behalf of its putative borrower.

Saturn of Lewisville has delivered written notice to each of the aforementioned Defendant Customers to inform them of the fact that Metropolitan Finance failed and/or refused to deliver the purchase price to Saturn of Irving for their respective vehicles.

Saturn of Irving fully performed all of its obligations under the various transactions described herein. Defendant Customers and Metropolitan Finance have jointly and severally failed to perform as agreed by failing and/or refusing to remit the purchase price for the vehicles described herein.

Each of the Defendant Customers knew that their agreement to purchase and take delivery of the aforementioned vehicles was conditioned on their delivery of the purchase price to Saturn of Irving.

TXDOT is named as a party to this suit in order to administratively freeze any and all title work for each of the aforementioned vehicles since Saturn of Irving has never been paid for its sale of the vehicles. Saturn of Lewisville does not want title to pass freely to a buyer in the ordinary course since it has not been paid for the sale to each of the Defendant Customers.

As a result of the Defendant Customers' failure and Metropolitan Finance's failure to pay the agreed and authorized amounts, Saturn of Lewisville retained the services of the attorneys at Shackelford, Melton & McKinley, LLP to prosecute this action and has agreed to pay a reasonable fee for same.

Saturn of Lewisville has satisfied, fulfilled, or otherwise complied with any and all conditions precedent to recovery. All of the foregoing facts are incorporated into the causes of action set forth below.

V.

Count One: Cause of Action for Permanent Injunction

Saturn of Lewisville would show that, unless TXDOT is restrained from issuing new or replacement Certificate(s) of Title on the aforementioned vehicles, Saturn of Lewisville will suffer irreparable and immediate injury since Saturn of Lewisville will not be able to peaceably regain possession and ownership of the vehicles. Saturn of Lewisville would further show that it has no adequate remedy at law.

Saturn of Lewisville respectfully requests that: (1) if no Certificate(s) of Title have been issued on any of the above-described vehicles, a permanent injunction be issued ordering TXDOT to refrain from processing any title transactions and issuing Certificate(s) of Title and registration(s) in the name of any of the Defendant Customers;

(2) if Certificate(s) of Title have been issued in the name of any of the Defendant Customers, a permanent injunction be issued ordering TXDOT to cancel the Certificate(s) of Title in the name of any of the Defendant Customers; (3) a permanent injunction be issued ordering TXDOT to reinstate title in the above-described vehicles in the name of Saturn of Lewisville; and (4) all other and further relief to which Saturn of Lewisville may show itself to be justly entitled.

VI.

Count Two: Cause of Action for Conversion

Alternatively, the Defendant Customers have converted Saturn of Lewisville's personal property because Saturn of Lewisville owned or had legal possession of the vehicles or or entitlement to possession of the vehicles. Additionally, the Defendant Customers have unlawfully and without authorization assumed and exercised dominion and control over the personal property to the exclusion of, or inconsistent with Saturn of Lewisville's rights because the Defendant Customers did not pay for the vehicles. Saturn of Lewisville has demanded return of the vehicles, but the Defendant Customers have refused to return the vehicles to Saturn of Lewisville.

VII.

Count Three: Breach of Contract

Alternatively, Saturn of Irving sold the above-described vehicles to the Defendant Customers pursuant to an agreement under which each of the Defendant Customers were to deliver the purchase price to Saturn of Irving. The Defendant Customers have breached their agreement(s) by failing to pay the purchase price(s) for the vehicles.

VIII.

Count Four: Quantum Meruit

Alternatively, Saturn of Lewisville sues the Defendant Customers under *quantum meruit* for the usual, reasonable, and customary value of Saturn of Irving's services and/or materials; namely, the above-described vehicles. Saturn of Irving delivered the services and/or materials in accordance with its agreement with the Defendant Customers. Saturn of Irving charged the Defendant Customers for the vehicles and the Defendant Customers accepted the vehicles with full knowledge the Saturn of Irving expected to be paid the purchase price for each vehicle. The Defendant Customers would be unjustly enriched if Saturn of Lewisville is not paid the purchase price for each vehicle sold. The vehicles were accepted by the Defendant Customers under such circumstances as reasonably notified the Defendant Customers that Saturn of Irving expected to be paid by the Defendant Customers.

IX.

Count Five: Fraud and Fraudulent Inducement

Metropolitan Finance is liable to Saturn of Lewisville for fraud and fraudulent inducement. Metropolitan Finance made material misrepresentations to Saturn of Irving; namely, that Saturn of Irving would be paid by Metropolitan Finance for each of the purchase price(s) of the vehicles sold to the Defendant Customers. These representations were false; Metropolitan Finance did not pay Saturn of Irving for the Defendant Customers' purchase(s) of the vehicles from Saturn of Irving. Metropolitan Finance knew its representations were false when they were made or the representations were made without knowledge of the truth. Metropolitan Finance intended Saturn of Irving to

act upon the representations described herein by delivering the subject automobiles to the Defendant Customers. Saturn of Irving did, in fact, rely on Metropolitan Finance's representations and, in doing so, suffered injury.

X.

Count Six: Claim for Attorneys' Fees and Costs

Saturn of Lewisville has made demand upon the Defendant Customers and Metropolitan Finance thirty (30) days prior to the trial of this cause for payment of the amounts due and unpaid under the terms of sales. As a result of their failure to pay Saturn of Lewisville, Saturn of Lewisville employed the services of Shackelford, Melton & McKinley, LLP to prosecute this action. Accordingly, Saturn of Lewisville is entitled to an award of its reasonable and necessary attorneys' fees incurred in the prosecution of this action pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 38.001, *et seq.*, and for any appeals.

WHEREFORE, PREMISES CONSIDERED, Saturn of Lewisville requests that:

1. Each of the defendants be cited to appear and answer herein and that on final trial or other disposition, Saturn of Lewisville recover actual damages from the Defendant Customers and Metropolitan Finance in an amount to be determined by the trier of fact;
2. Saturn of Lewisville recover pre-judgment and post-judgment interest from the Defendant Customers and Metropolitan Finance as allowed by law;

3. Saturn of Lewisville recover reasonable and necessary attorneys' fees incurred in the prosecution of this suit, and on any appeals from the Defendant Customers and Metropolitan Finance;
4. an Order directing TXDOT to cancel any and all attempted transfers of the title(s) after the date that the Defendant Customers took possession of the vehicles from Saturn of Lewisville;
5. all costs of Court; and
6. such other relief to which Saturn of Lewisville shall show itself justly entitled.

Respectfully submitted,

SHACKELFORD, MELTON & MCKINLEY, LLP

By: 

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