



THE SOURCE



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Chief Editor Phyllis Sartin

Season's greetings. I want to thank our auction partners, advertising colleagues, content associates, and of course our dealers for making 2023 a success. I want to revisit two quotes that I still find appropriate for this time of year.

"Count your blessings. Once you realize how valuable you are and how much you have going for you, the smiles will return, the sun will break out, the music will play, and you will finally be able to move forward the life that God intended for you with grace, strength, courage, and confidence." - **Og Mandino**

"The year-end brings no greater pleasure than the opportunity to express to you season's greetings and good wishes. May your holidays and new year be filled with joy." - **Charles Dickens**

See you in 2024!

Disclaimer:

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Everyone is a Buyer

The easiest way for most salespeople to start selling more vehicles today is to understand that everyone is a buyer. Everyone.

No offense, but most consumers don't like talking to salespeople. If you have an Up in front of you or on the phone, this is great news! It means they're a buyer who wants to buy today!

The most successful automotive salespeople I've ever met assume everyone is a buyer until they prove they are not. Conversely, mediocre salespeople believe everyone is tire-kicker until they prove they really want to buy. Do you see the difference?

If you believed someone wasn't a buyer, why would you try? Why would you bother to take them through all the steps of your road-to-the-sale? Why would you want to waste your time on nonbuyers? You wouldn't, so you don't. In the end, you prove yourself correct.

Why Everyone is a Buyer

Successful sellers treat everyone as a buyer because eventually, everyone is a buyer. Waiting for someone to tell you they're finally ready to buy today from you will result in a trip to the unemployment line.

If a prospect took the time to complete an online form, call your dealership, or drive to your lot, they are looking for someone to help them purchase their next vehicle. The average vehicle buyer spends more than three weeks "in market" researching vehicles before they ever connect with a dealership. During this time, they conduct almost a dozen hours of online research. What do you think they want most when they finally decide it's time to visit or contact a dealership?

Treat any of them like a tire-kicker, and they'll be buying elsewhere.

When you believe everyone is a buyer you will slow down and follow your road-to-the-sale. You'll build value in you, the dealership, and the vehicle as you stay in control of your customer. Moreover, you won't allow smokescreen objections to change your mind. After all, they are a buyer who wants to buy today... from you.

But They're Just Doing Research

No, they're not.

Of course, if you believe them, you'll be sending them off to buy across town.

"We're not ready to buy; we're just doing research," is a smokescreen objection. It's used by buyers who are afraid to pull the trigger. They like you and they like the vehicle, they're just indecisive. Believing them and sending them on their way with a promise to "touch base" next week might feel like the right approach. It's not. Because everyone is a buyer who wants to buy today. These folks just need your help.

If you believe they really are buyers who want to buy today, then your response to this very common objection is easy. Using AIM (an effective old-school technique that still works today) is most often the best approach:

Customer (just before the demo drive): "We're not ready to buy today; we're just doing research."

Acknowledge: That makes perfect sense! It's important to do your research to make sure this is the right vehicle for you.

Ignore: Of course, our inventory changes almost hourly, and this vehicle will be long gone by the time you're ready to buy.

Move On: So, let's do this. Let's go ahead and take the Equinox for a quick test drive to make sure it's the vehicle you want to own. When we get back from the test drive, we're going to give you all the numbers so that you can go home and make an informed decision. How's that sound?

Unless they hate the vehicle, they'll allow you to continue to move them through your road-to-the-sale. Why? Because everyone is a buyer!

They Need Your Permission

I was once told by a successful sales manager more than a decade ago that the average customer needed our "permission" to buy a vehicle. That is, they were looking to the salesperson and the manager to let them know it was okay to pull the trigger. That was true then, and it's true today. When you believe everyone is a buyer who wants to buy today, you'll stay in control and take the necessary actions that signal to the customer that it's okay for them to buy today from you. They have your permission!

Good Selling!



Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of Ridiculously Simple Sales Management and Assumptive Selling; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm – and the free sales video training website SteveStauning.com. Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties.

You may contact Steve directly by calling him at 888-318-6598 or via email at Steve@SteveStauning.com

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Push Vs. Pull Notification

When I think of “Push Notification” as it relates to Internet Advertising, I always remember the scene from the 1980 movie, “Used Cars”, starring Kurt Russel. I remember the scene where the big dude is trying to get the pencil necked shopper to sit in the car. He wanted the shopper to see how roomy and comfortable the car was inside but the shopper refuses saying he doesn’t want to get inside, he was just looking. After a few failed attempts the man grabs the shopper up by his lapel and literally shoves him in the driver’s seat saying, “oh just get in the M... F...ing car!” Fast forward 40 years and today’s car dealer is asking, “What is Push Notification? How is it different from Pull Notification? Can it work for me?” Let’s compare Push and Pull Notification approaches.

Most marketing is considered Pull Notification. Think of it as the carrot on the stick. Your advertising is normally trying to entice the buyer to take action. For instance, your website probably has several Call To Action pages where you are enticing the shopper to provide you with their contact information in exchange for something they want. A link for “Apply for Credit” leads them to your Credit Application page where they can fill in the form in hopes of getting in return a Credit acceptance offer. Or maybe it is an SMS Call To Action that encourages them to enter a vehicle code and in return get a specific vehicle listing sent to their phone. It requires the shopper to act for it to work. If they ignore your links and other Calls To Action, the marketing efforts fall short.

Push Notification on the other hand allows you to reach out to the customer without them even having to visit your website. For instance, let’s say your website allows for the consumer to sign up for Price Change Alerts on a vehicle you have in stock that interests them. Once they opt in for that notification you have the ability to reach out to that client any time they are online. In this example, let’s assume you lower (or just change) the price of that listing. With Push Notification enabled on your website, you could have an alert sent to that shopper the next time they log on to the Internet with the same computer and browser they were using when they were perusing your website, last. This notice would get to that shopper even if they did not return to your website. They could be shopping for cars on another dealership website and get notice that the vehicle they were interested in the other day just had a Price Update! That notice would include a link back to your vehicle’s Window Sticker Page or Vehicle Details Page (VDP). This alert got triggered the moment you updated the price of that listing and happened without the shopper having to do anything!

For the first time, you can stay in contact with your consumers while they are still in the buying process. Now, this type of communication does require the consumer to opt in for these notices and it comes with the ability for them to opt out at any time. Their personal, private information is protected and they are able to remain anonymous, but if they are interested in the vehicle and enticed enough to take further action, they will cough up

their contact information and go from being an anonymous car shopper to a known, verifiable prospect.

Having Push Notification enabled on your website is not only easy, it is also a no-brainer! Today’s car shoppers are being bombarded with offers and solicitations and it may take several attempts on your part to get them to turn that computer off and go visit your dealership. If you talk to your web provider and they either don’t know what you are talking about or cannot provide this service, we hope you contact us today at www.JTZEnterprise.com! Meanwhile, consider showing your sales team the classic film, “Used Cars”. It continues to be one of the best sources for sales training. Think of it as a how (not) to sell cars education!



*John Summer
Owner
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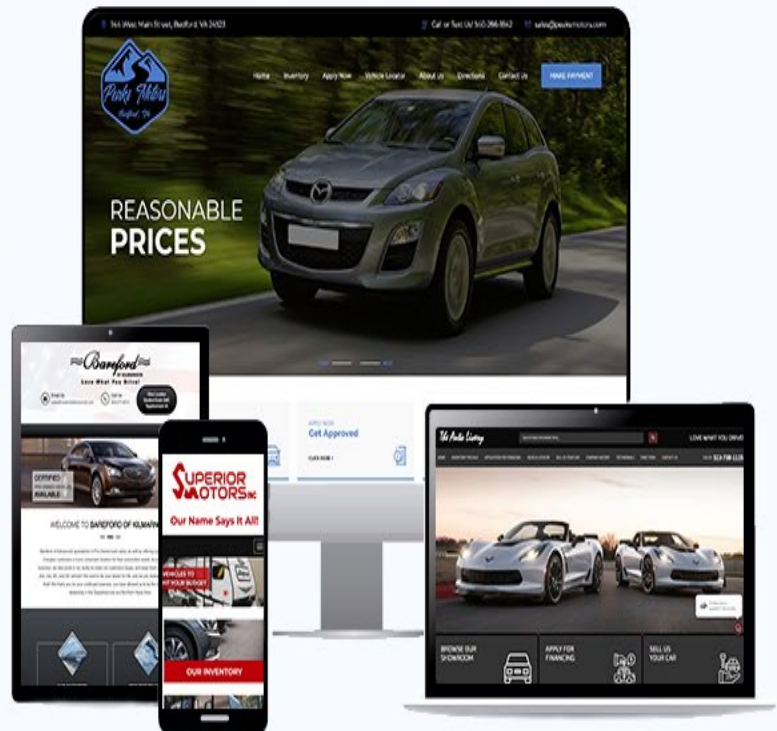
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Rhode Island Auto Dealerships Ordered to Pay over Half a Million Dollars for Deceptive Advertisements

On July 26, 2023, the Rhode Island Office of the Attorney General reached an agreement with three Rhode Island car dealerships to settle two lawsuits that the AG's office had filed against the dealerships. The lawsuits and the subsequent agreement pertain to the car dealerships' alleged violations of the Rhode Island Deceptive Trade Practices Act for charging more for vehicles than they were advertising on their websites, automatically charging every customer \$249 for a sealant product and warranty, and describing vehicles as available for "auction" or "wholesale" prices.

The Lawsuits

In March 2022, the AG's office filed separate complaints against Grieco Honda and Grieco Toyota, alleging that the dealerships violated the DTPA and Rhode Island Division of Motor Vehicles regulations. In the complaint filed against Grieco Honda, the AG's office described the problematic business practice: the dealership offers a price on its website but refuses to honor that price at the dealership. The complaint alleged that the dealership charges an undisclosed "addendum fee," which the consumer only finds out about after visiting the dealership, test-driving the car, and deciding to make the purchase. The complaint acknowledges that the dealership's website includes a disclosure stating that the listed price does not include taxes, license fees, or doc fees, but it points out that the disclosure fails to mention an "addendum fee." The AG's office alleged that such practice is unfair and deceptive under the DTPA and is also offensive to the public policy promoted by the DMV regulations. The complaint asked the court to enjoin the dealership from advertising false and misleading prices, refusing to honor advertised prices, and advertising prices without full disclosure of additional fees. The complaint sought restitution to the affected consumers, civil penalties, costs, and attorneys' fees.

The second complaint is related to dealer advertising practices as well. According to the complaint, Grieco Toyota's website indicates that its vehicles are for sale at "wholesale prices" and that customers could "pay what we pay going to auction." The complaint stated that the use of "wholesale price" in advertisements violated the DMV regulations because the regulations expressly prohibit use of that term. In addition, the DMV regulations provide that the price of a vehicle cannot be advertised in relation to the vehicle's "dealer cost." The complaint alleged that the terms used constituted an unfair method of competition or unfair and deceptive act or practice under the DTPA. The AG's office asked the court to order a permanent halt to the dealer's problematic advertisement practices and sought civil penalties, costs, and attorneys' fees.

The Agreement

Beyond the two complaints filed in March 2022, the agreement outlined another practice that the AG's office found problematic. According to the agreement, Grieco Honda, Grieco Toyota, and Grieco Hyundai automatically charged every customer \$249 for a sealant product and warranty between January 1, 2021, and March 18, 2022. According to the agreement, the customers were charged automatically before the dealerships obtained

their express informed consent and learned of the charge only after they had initiated the purchase process. The AG's office alleged that the practice was deceptive and unfair to competing businesses because the dealerships advertised a lower price (i.e., the price not including the sealant product and warranty) for a car than the price for which the dealerships ultimately intended to sell the car. In addition, the AG's office alleged that the practice violated the DMV regulations, which prohibit dealers from charging an automatic consumer fee other than sales tax, a documentation fee, and a title preparation fee.

Penalty and Outcome

Pursuant to the agreement, the dealerships must refund each customer who purchased the sealant product and warranty \$69 (\$457,815 in total), which is the approximate profit the dealerships earned on each sale. In addition, the agreement directs each dealership to pay the AG's office \$33,334 (\$100,002 in total) for costs and expenses related to this matter. Lastly, the dealerships agreed to:

- comply with the DMV regulations;
- refrain from charging consumers for any products or services without obtaining express informed consent;
- refrain from advertising any price unless the vehicle is actually available for purchase at the price advertised; and
- refrain from advertising that vehicles are available for "wholesale" or "auction" prices or at prices similar to the "dealer cost."

Exciting and eye-catching auto advertisements are an essential part of the automotive sales industry. However, it can be difficult and hazardous for dealerships to navigate auto advertisements from time to time, especially when state laws and regulations vary. It is always a good idea to consult your marketing compliance counsel before engaging in a new advertising campaign.



***Tracy Wang** is an associate in the Maryland office of Hudson Cook, LLP. She can be reached at 410.782.2340 or by email at twang@hudco.com.

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The CARLAWYER© Federal Developments

On September 19, the **Consumer Financial Protection Bureau issued Circular 2023-03, titled "Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B."** The circular presents the following question: "When using artificial intelligence or complex credit models, may creditors rely on the checklist of reasons provided in CFPB sample forms for adverse action notices even when those sample reasons do not accurately or specifically identify the reasons for the adverse action?" The Bureau's short answer is no, stating that "creditors may not rely on the checklist of reasons provided in the sample forms (currently codified in Regulation B) to satisfy their obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action. Nor, as a general matter, may creditors rely on overly broad or vague reasons to the extent that they obscure the specific and accurate reasons relied upon." The Bureau's detailed analysis is provided in the circular.

On September 20, the **Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency released an interagency statement announcing that they extended the period for giving favorable consideration under the Community Reinvestment Act regulations to financial institutions for bank activities that help to revitalize or stabilize Puerto Rico and the U.S. Virgin Islands.** Puerto Rico and the U.S. Virgin Islands were declared major disaster areas on September 20, 2017, after the areas were hit by Hurricane Maria. Pursuant to the CRA regulations, the agencies give favorable consideration to financial institutions' activities that satisfy the definition of "community development." These activities include loans, investments, and services that help to revitalize or stabilize designated disaster areas. The current interagency statement grants a second 36-month extension for recognizing activities that help to revitalize or stabilize Puerto Rico and the U.S. Virgin Islands through September 20, 2026. The agencies previously extended the period for giving favorable consideration in May 2021.

On September 21, the **Consumer Financial Protection Bureau released an outline of proposals under consideration for the Bureau's Fair Credit Reporting Act rulemaking.** First, the Bureau states that it is "considering proposals to regulate many data broker activities as covered under the FCRA, which would prohibit the sale of covered data for purposes other than those authorized under the FCRA. Most notably, this would limit the sale of certain data broker data for advertising or marketing, for the most part constraining the sale of data to only those companies or persons to whom the consumer applied for credit, insurance, employment, housing, or some other service, or to whom the consumer otherwise authorized access. This would also subject certain data brokers to FCRA obligations, ensuring, for example, that consumers have a right to obtain data about themselves held by data brokers and to dispute inaccuracies in that data." Second, the Bureau is considering proposals relating to the reporting of medical debt. Specifically, the Bureau is considering proposals that would prohibit consumer reporting agencies from including medical debt collection information on consumers' credit reports used

by creditors in making underwriting decisions and prohibit creditors from obtaining or using medical debt collection information when evaluating consumers' credit applications. The proposal would not stop creditors from obtaining medical debt collection information for certain other purposes, such as evaluating loan applications to pay for medical services. Third, the Bureau is considering a proposal that would clarify circumstances in which data breaches may result in a consumer reporting agency violating the FCRA's permissible purpose provision. Finally, the Bureau is considering proposals relating to consumers' rights under the FCRA to dispute the completeness or accuracy of information contained in their consumer reports, either by filing a dispute directly with a consumer reporting agency or by filing a dispute directly with the entity that furnished the disputed information. Noting how costly, ineffective, and time-consuming the consumer reporting dispute process can be for consumers, the Bureau is considering proposals related to two types of disputes: (1) those that are classified by a consumer reporting agency or furnisher as involving legal matters; and (2) those involving systemic issues at a consumer reporting agency or furnisher.

On September 21, the **Federal Trade Commission and the Federal Communications Commission announced that they signed a renewed memorandum of understanding with international public agencies that are members of the Unsolicited Communications Enforcement Network in an effort to continue to promote cross-border collaboration, information-sharing, and intelligence with respect to illegal unsolicited communications, including illegal telemarketing calls, text messages, and emails.** The original MOU was signed in 2016.

On September 21, the **National Credit Union Administration approved a final rule that amends the agency's regulations regarding the purchase of loan participations and the purchase, sale, and pledge of eligible obligations and other loans (including notes of liquidating credit unions).** The final rule relocates and clarifies the NCUA's provisions regarding indirect lending and indirect leasing. The final rule also provides credit unions with additional flexibility to participate in loans acquired through indirect lending arrangements, allowing credit unions to use advanced technologies and opportunities offered by the fintech sector. In addition, the final rule removes certain prescriptive limitations and other qualifying requirements relating to eligible obligations and provides credit unions with additional flexibility to purchase eligible obligations of their members. The final rule is effective 30 days after publication in the Federal Register.

On September 27, the **Office of the Comptroller of the Currency issued Bulletin 2023-30 to announce a revised version of the "Lease Financing" booklet of the Comptroller's Handbook.** The booklet discusses risks and risk management practices associated with lease financing and provides examiners with a framework for evaluating the lease financing activities of national banks, federal savings associations, and federal branches and agencies of foreign banking organizations.

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The CARLAWYER[®]

Case(s) of the Month

Trial Court Erred in Concluding that Used Truck Buyer's Reliance on Dealership's Verbal Representations that Truck's Replacement Engine Was Covered by Warranty Was Unreasonable as Matter of Law: An individual contacted a dealership over the phone to inquire about a used truck for sale, and a salesperson stated that the truck had a replacement engine that was subject to a 2-year warranty issued by the engine manufacturer. The individual went to the dealership the following day, and he contended that the dealership's representative repeated that the engine was covered by a 2-year manufacturer's warranty. The warranty had, in fact, expired. The individual bought the truck. The individual stated that, at the time of purchase, he was provided with a pamphlet that a representative said was a copy of the warranty. Apparently, the pamphlet was "a blank warranty brochure" and did not, in fact, indicate that the replacement engine was under warranty. Fourteen months later, the truck's engine failed. The individual sued the dealership, alleging fraud and violation of the Indiana Deceptive Consumer Sales Act. The trial court granted the dealership's motion for partial summary judgment.

The **Court of Appeals of Indiana** reversed the trial court's decision. According to the appellate court, "[t]he trial court's analysis with respect to the partial summary judgment motion boils down to the idea that [the individual] should have taken a close look at the paperwork he was handed. If he had done so, or if any reasonable person had done so, he would have concluded that the statements regarding the warranty were untrue, and, thus, it would be unreasonable to rely upon them. The trial court correctly observes that '[t]here is nothing in the designated evidence to suggest the engine was actually covered by warranty.' There is, however, designated evidence supporting the claim that the Dealership represented to [the individual] that there was such a warranty. The Dealership, of course, denies that fact, so there is no doubt that there is a genuine issue of material fact thereto. The question then becomes whether it was reasonable for [the individual] to rely upon those representations, assuming they were made. This is a question for the jury. The trial court at once holds that there is no evidence either way with respect to whether [the individual] examined the paperwork or merely relied upon the Dealership's characterizations of that paperwork, but also that [the buyer] 'did not exercise reasonable prudence' by failing to discover the absence of a warranty. The designated evidence raises more questions than it answers, and many of those questions are factual in nature. Thus, they are questions suited to the functions of a jury. The designated evidence is simply insufficient to allow the trial court to conclude that [the individual's] reliance on the verbal representations of the dealership was unreasonable as a matter of law." See *Garrett v. Nissan of Lafayette, LLC*, 2023 Ind. App. LEXIS 229 (Ind. App. August 11, 2023).

This Month's CARLAWYER[®] Compliance Tip

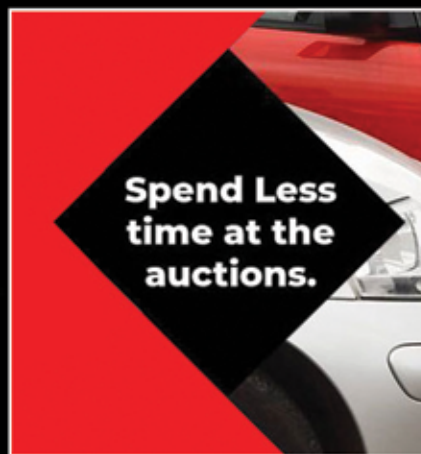
Does your compliance officer (don't tell us you don't have one) regularly visit the websites of the CFPB, the FTC, your state's Attorney General and your state's motor vehicle and consumer protection agencies to see what they are up to? That's a really good (and inexpensive) way to head off legal problems before they get started. If that's not on the schedule, it should be. Better yet, get press releases and news alerts sent to your compliance officer. You don't have to "like" the CFPB or the FTC to follow them on Facebook, X (formerly Twitter), or to subscribe to receive press releases and news alerts.

So, there's this month's roundup! Stay legal, and we'll see you next month.



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By: Shelley B. Fowler

Dealership's Statements About Car's Safety Inspection and Registration Efforts Do Not Amount to Fraud

When a car buyer is unhappy with his or her purchase—for whatever reason—one of the claims the buyer may, and commonly will, assert in a lawsuit is that the dealership engaged in fraud. As you will see from the facts of a recent case, a fraud claim can be difficult to prove.

Weens Simon, a Connecticut resident, bought a used BMW from Baker Motor Company of Charleston, Inc., the owner of nine South Carolina dealerships, in July 2021. Baker Motor had advertised the BMW online as having had a safety inspection by a certified technician. Simon did not physically inspect the BMW before the purchase, but he received a CARFAX report from Baker Motor stating that the car had been in no major accidents. Baker Motor provided Simon with a temporary registration for the car and allegedly promised to take the steps necessary to register the car in Connecticut.

After the car broke down twice during Simon's first few months of ownership, he learned from a BMW service technician that, among other problems with the car, the muffler was not factory-provided and was installed incorrectly, the engine's serial number did not correspond with the car's vehicle identification number, and the car's brake lines were severely damaged. Simon demanded that Baker Motor either repair the defects or buy back the car. It also came to Simon's attention that the car was not registered as promised.

After Baker Motor refused to make repairs or buy the car back, Simon sued in August 2022, alleging various violations of South Carolina law. Baker Motor moved to dismiss four of the claims in the complaint—revocation of acceptance, fraud, violation of the South Carolina Regulation of Motor Vehicle Manufacturers, Distributors, and Dealers Chapter, and violation of the South Carolina Unfair Trade Practices Act. Simon opposed the motion only as to the fraud claim. The U.S. District Court for the District of South Carolina granted the motion, finding that Simon did not state a claim for fraud, which is subject to a heightened pleading standard, including the pleading of facts related to the "time, place, speaker, and contents of the allegedly false acts or statements" that amounted to fraud.

Simon alleged that Baker Motor's false representations fell into two categories—false statements regarding the condition of the car in both the CARFAX report and the online advertisement and false statements regarding its ability to register the car in Connecticut.

Addressing the representations regarding the condition of the car first, the court determined that the CARFAX report "is not actionable because it cannot be attributed to Baker Motor for purposes of determining whether there was fraud." The court relied on the fact that Simon did "not allege that Baker Motor contributed to the report or otherwise adopted it or

represented it to be true." Turning to the ad, the court found that, despite the defects Simon discovered with the car, there was no evidence that the representation about the safety inspection was false, and the court was unwilling to conclude that the defects that Simon complained about should have been discovered through a safety inspection.

As for the statements about registering the car, the court found that Simon alleged that Baker Motor promised to take the steps necessary to register the car in Connecticut at the time of the purchase and then continued to assure him that it was taking those steps, even though he learned that the car would be unable to pass an emissions test and inspection necessary to be registered in Connecticut, and it was still not registered more than one year after the purchase date. However, the court found that Baker Motor's statements did not meet the heightened pleading standard for fraud, including when, where, in what manner, and by whom the statements about registering the car were made.

Even though Simon did not succeed on his fraud claim, there were other claims in the complaint that Baker Motor did not seek to dismiss, including negligence and breach of contract. Simon could possibly still succeed in proving those claims, which are not subject to a heightened pleading standard. Had Simon alleged more facts in his complaint, such as that the defects found in his car should have been discovered by a safety inspection conducted by a certified technician, had he attached a copy of the ad he relied on, or had he pled when, where, by whom, and in what manner Baker Motor made representations about the actions it was taking to register the car in Connecticut, he might have had more luck on his fraud claim.

Even though Baker Motor won this round, this case should serve as an example for dealerships about the importance of refraining from making representations about the quality or condition of any vehicle or actions it is taking with regard to a vehicle that it cannot support. Fraud may be hard to prove, but it is not impossible.

Simon v. Baker Motor Company of Charleston, Inc., 2023 U.S. Dist. LEXIS 103367 (D.S.C. June 13, 2023).

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