UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL W. KENNEDY,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	3:02CV 1754 (CFD)
BMW FINANCIAL SERVICES, N.A.,	:	
Defendant	:	

RULING ON MOTION TO DISMISS

The plaintiff brought this action alleging violations of the Consumer Leasing Act, 15 U.S.C. § 1667 et seq., the Motor Vehicle Information and Cost Saving Act (the "Odometer Act"), 49 U.S.C. § 32701 et seq., and the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. 42-110a et seq., seeking declaratory and injunctive relief. The defendant has moved to dismiss the plaintiff's complaint [Doc. #13] and amended complaint [Doc. #17].

I. Background[1]

Some time before February 28, 2000, BMW Financial Services NA, LLC ("BMW") was assigned a motor vehicle lease agreement for a 1999 BMW Model 328 by the original lessor, a car dealership. The original lessees were Michael C. and Michael P. Iannuzzi ("the Iannuzzis"). On February 28, 2000, the plaintiff, Michael W. Kennedy ("Kennedy") assumed the Iannuzzis's obligations under the lease.

Kennedy alleges that the original lease agreement contained certain inaccurate disclosures

[1]The allegations are taken from the plaintiff's amended complaint.

regarding fees and other information. Additionally, Kennedy claims that BMW failed to obtain, and provide Kennedy with, an odometer statement from the Iannuzzis. BMW's actions, according to Kennedy, violated the Consumer Leasing Act, 15 U.S.C. § 1667 et seq., the Motor Vehicle Information and Cost Saving Act, 49 U.S.C. § 32701 et seq., and Connecticut's CUTPA provisions, Conn. Gen. Stat. 42-110a et seq.

BMW has moved to dismiss Kennedy's amended complaint on the following bases: (1) BMW, as the assignee of the motor vehicle lease from the dealer, cannot be held liable for the dealer's inaccurate disclosures unless the violation is apparent on the face of the lease documents; (2) Kennedy is not a "transferee" entitled to an odometer disclosure; and (3) Kennedy's CUTPA claim must fail because mere contract breaches do not violate CUTPA.

II. Motion to Dismiss Standard

When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Frasier v. General Elec. Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale-New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). Thus, a motion to dismiss

under 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994) (citations and internal quotations omitted), cert. denied, 513 U.S. 816 (1994). In its review of a 12(b)(6) motion to dismiss, the Court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

III. Discussion

A. Consumer Leasing Act Claim (Count One)

The Consumer Leasing Act ("CLA") was enacted in 1976 as an amendment to the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601. It extended TILA's credit disclosure requirements to consumer leases and its primary purpose is to "assure a meaningful disclosure of the terms of leases ... so as to enable the lessee to compare more readily the various lease terms available to him." 15 U.S.C. § 1601(b). Because lease financing had become an alternative to credit financing and installment sales contracts, Congress also intended CLA disclosure requirements to "enable comparison of lease terms with credit terms where appropriate." Id. The CLA thus requires lessors of personal property subject to its provisions to make certain disclosures upon entering into a lease.[2] See 15 U.S.C. § 1667a (consumer lease disclosures).

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[2]The CLA applies to all leases for the use of "personal property" having a term "exceeding four months" that have a "total contractual obligation not exceeding $25,000." 15 U.S.C. § 1667(1). Neither party disputes that the CLA applies to Kennedy's lease.

The CLA imposes liability upon a "lessor" for failure to disclose certain information in a clear and conspicuous manner, as required by section 1667a. 15 U.S.C. § 1667d. Section 1667(3) defines "lessor" as "a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease." 15 U.S.C. § 1667(3). Under 15 U.S.C. § 1667f, the Board of Governors of the Federal Reserve System has promulgated regulations to implement the CLA - Regulation M. The Official Staff Commentary to Regulation M, 12 C.F.R. Pt. 213.2-2(h)(3) provides that "[a]n assignee may be a lessor for purposes of the regulation in circumstances where the assignee has substantial involvement in the lease transaction." (citing Ford Motor Credit Co. v. Cenance, 452 U.S. 155 (1981)). While TILA expressly limits the liability of "assignees" to a disclosure violation that is "apparent on the face of the disclosure statement," see 15 U.S.C. § 1641(a), the CLA does not expressly address assignee liability. Nor has the Second Circuit spoken on this issue.

In the instant case, BMW's status as an "assignee" or "lessor" and the corresponding scope of liability cannot be decided merely by reference to the amended complaint.[3] Accordingly, the defendant's motion to dismiss as to Count One is DENIED.

B. Motor Vehicle Information and Cost Saving Act (Count Two)

Chapter 327 of the Motor Vehicle Information and Cost Saving Act is known as the "Odometer Act." It provides that "a person transferring ownership of a motor vehicle shall give the

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[3]However, it appears that BMW holds itself out to be the "Lessor" in the Transfer of Interest and Assumption of Obligation under Motor Vehicle Lease Agreement, Exhibit 1, Plaintiff's Objection to Defendant's Motion to Dismiss.

transferee" certain written disclosures, 49 U.S.C. § 32705(a), and its purpose is "to protect purchasers in the sale of motor vehicles with altered or reset odometers." 49 U.S.C. § 32701(b). The Act provides that "[f]or a leased motor vehicle, the regulations prescribed under subsection (a) of this section shall require written disclosure about mileage to be made *by the lessee to the lessor* when the lessor transfers ownership of that vehicle." 49 U.S.C. § 32705(c)(1) (emphasis added). If the lessor subsequently transfers ownership of the vehicle, he must provide the lessee's mileage statement to the buyer. See 49 U.S.C. §§ 32705(a) and (c)(4). The Act defines "transfer" as "to change ownership by sale, gift, or any other means." 49 U.S.C. § 32702(8). If the transferor, with intent to defraud, fails to comply with these requirements, the transferor is subject to suit by the transferee and may be liable for treble damages or $1,500, whichever is greater. 49 U.S.C. § 32710.

The Court concludes that Kennedy cannot maintain his Odometer Act claim against BMW because, according to the amended complaint, BMW never transferred ownership of the vehicle to Kennedy. The Federal Odometer Act, by its express language, applies only to changes in ownership under these circumstances. See 49 U.S.C. § 32705(c)(1), § 32702(8). The implementing regulations also indicate such:

> Transferee means any person to whom ownership of a motor vehicle is transferred, by purchase, gift, or any means other than by the creation of a security interest . . . .
> Transferor means any person who transfers his ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest . . . .

49 C.F.R. § 580.3. Accordingly, the Court concludes that the Odometer Act requires a transfer of the legal ownership from a lessor before its disclosure requirements are triggered. See Francesconi v.

Kardon Chevrolet, Inc., 703 F. Supp. 1154, 1156-60 (D.N.J. 1988) ("It is clear from the language of the statute that the Act contemplates the transfer of legal ownership from one person to another."), aff'd on other grounds, 888 F.2d 18 (3d Cir. 1989). Here, the vehicle was leased to Kennedy but, at all times, was owned by BMW. Accordingly, Count Two fails to state a claim and defendant's motion to dismiss as to Count Two is GRANTED.

C. CUTPA Claim (Count Three)

The Court concludes that the allegations of Count Three are sufficient to state a claim at this time. Accordingly, defendant's motion to dismiss as to Count Three is DENIED.

IV. Conclusion

For the foregoing reasons, the defendant's motion to dismiss the amended complaint [Doc. #17] is GRANTED in part and DENIED in part. The motion to dismiss the original complaint [Doc. #13] is DENIED AS MOOT.

SO ORDERED this ____ day of October 2003, at Hartford, Connecticut.

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CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE