

STATE OF INDIANA )  
 ) SS:  
COUNTY OF STARKE )

IN THE STARKE CIRCUIT COURT  
CAUSE NO: 75C01-1701-PL- 060003

LENA HOPFINGER, )  
Plaintiff, )  
 )  
v. )  
 )  
BEST FORD, INC., )  
Defendant. )

**FILED**

JAN 26 2017

*Victoria G. Gentry*  
CLERK OF STARKE CIRCUIT COURT

**COMPLAINT**

COMES NOW Plaintiff, LENA HOPFINGER (hereinafter "Plaintiff"), by and through undersigned counsel, and hereby files her Complaint against Defendant, BEST FORD, INC., and states and alleges the following:

**PARTIES**

1. The Plaintiff is a natural person and resident of South Bend, Indiana.
2. Plaintiff is seventy-three (73) years of age and, pursuant to I. C. 24-5-0.5-4(h), is a "senior consumer."
3. Defendant BEST FORD, INC is an Indiana Domestic For-Profit Corporation (hereinafter "Dealer"). Dealer is located at 300 S. Heaton Street, Knox, IN 46534.

**FACTS**

4. In or around early June, 2016, Plaintiff received a mail advertisement from Dealer.
5. Dealer's promotional advertisement indicated that Plaintiff won a prize, and would have to claim it by coming in-person to Dealer's business location.
6. The promotional advertisement did not require Plaintiff to make a vehicle purchase to win a prize.
7. On or about June 17, 2016, Plaintiff visited Dealer's business location at 300 S. Heaton Street, Knox, IN.

8. Plaintiff came to the dealership with no intent of purchasing a vehicle, and only intended to retrieve her prize.
9. Plaintiff, at the time, owned a 2006 Chevy Malibu (hereinafter "Malibu" or "Trade-in Vehicle"), and owed no payments on it.
10. Upon Plaintiff's arrival at dealership, Plaintiff explained that she came only for the purpose of obtaining her prize.
11. Dealer attempted to sell Plaintiff a vehicle.
12. Plaintiff repeatedly stated that she could not afford a new car.
13. Dealer told Plaintiff that they wanted to evaluate Plaintiff's Malibu to appraise it.
14. Dealer then took Plaintiff's Malibu keys.
15. Dealer required Plaintiff to look at Dealer's vehicle inventory and test-drive vehicles.
16. Plaintiff repeatedly requested her keys from Dealer, but Dealer refused to give back Plaintiff's keys.
17. Dealer kept Plaintiff at the business location for approximately five and a half (5 1/2) hours.
18. Plaintiff has Type 2 diabetes, and requires regular intake of food to maintain appropriate blood sugar levels.
19. During the five and a half (5 1/2) hour period, Plaintiff requested food and water, but was only offered salty popcorn.
20. Plaintiff repeatedly explained that she needed to leave to eat food.
21. Dealer continued to refuse to return Plaintiff's vehicle keys.
22. Plaintiff felt intimidated by Dealer's agent.
23. Plaintiff felt restrained at the dealership.

24. Due to the passage of time, and since Plaintiff's blood sugar was low, Plaintiff's decision-making ability was impaired.
25. Plaintiff was not able to return home from the dealership without access to her vehicle.
26. Plaintiff felt that her only way to leave the dealership was to enter into an agreement for the purchase of a vehicle.
27. At that time, Plaintiff signed a sales and financing agreement for the purchase of a Ford Fiesta ("Ford").
28. Plaintiff agreed to trade-in her Malibu as part of the purchase transaction.
29. Plaintiff delivered possession of the Trade-in Vehicle to Dealer, and received delivery of the Ford.
30. The Ford that Plaintiff purchased was unsuitable for her, as she had difficulty seeing over the steering wheel.
31. After completing the sales transaction, Plaintiff was then allowed to retrieve the prize she allegedly won; a \$5.00 Walmart gift card.
32. Dealer did not return the flyer with winning numbers to Plaintiff.

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33. Plaintiff left the dealership on that date.
34. Plaintiff did not feel safe driving in her condition, due to her low blood sugar.
35. Immediately after leaving the dealership, Plaintiff went to a Taco Bell restaurant, located less than one mile from the dealership, to eat a meal.
36. On June 17, 2016, on the same evening as she signed a purchase agreement for the Ford, Plaintiff called Dealer to try and cancel the Ford purchase agreement, and retrieve her Trade-in Vehicle.
37. Plaintiff was unable to come to an agreement with Dealer over the phone.

38. Dealer told Plaintiff to come into the dealership on Monday, June 20, 2016, to talk with Dealer's agents.
39. On June 20, 2016, Plaintiff returned to the dealership and met with Dealer's agents.
40. Plaintiff explained that she wanted her Trade-in Vehicle back, and wanted to cancel her purchase agreement.
41. Plaintiff also explained that she could not properly see over the steering wheel of the Ford.
42. Dealer refused to allow Plaintiff to cancel the purchase, but offered to exchange the Ford for another vehicle.
43. On June 21, 2016, Plaintiff returned to the dealership with a friend.
44. Plaintiff continued to request her trade-in back, and requested that Dealer cancel the contract.
45. Dealer again refused any form of cancellation.
46. Dealer represented to Plaintiff that the Plaintiff's trade-in vehicle was already sold, and that she would not be able to get it back.
47. While at the dealership, Dealer's agents tried to sell the Trade-in Vehicle to Plaintiff's friend.
48. Plaintiff confronted Dealer with the attempted sale to Plaintiff's friend, and Dealer denied the allegations.
49. Dealer and Plaintiff entered into an agreement whereby Plaintiff exchanged the Ford for a new vehicle, a 2012 Chevy Malibu, VIN 1G1ZB5E04CF259074 (hereinafter "Chevy") for a total sale price of \$27,176.00.
50. Plaintiff's original purchase agreement for the Ford was destroyed by Dealer at that time.
51. Dealer sold the Chevy to Plaintiff subject to the terms of a Retail Installment Contract and Security Agreement. A true and correct copy of the Retail Installment Contract and Security Agreement is attached hereto as Exhibit A.

52. Under the section titled "Itemization of Amount Financed," the RISC specified that \$50.00 was charged because it was "paid to public officials, including filing fees." It also charged a \$199.00 Documentary Fee. See Exhibit A.
53. The document preparation fee was not disclosed as a negotiable fee.
54. The fee for document preparation exceeded the expenses of preparation.
55. Plaintiff also received a "Vehicle Purchased" form, which recognized the purchase agreement and terms of sale. A true and correct copy of the Vehicle Purchased form is attached hereto as Exhibit B.
56. Despite entering this second financing and purchase agreement, Plaintiff did not want to finance the purchase of the Chevy.
57. The Chevy was a more expensive vehicle, and required a larger financing contract.
58. Plaintiff felt that she had no alternative to agreeing to purchase the Chevy, as she needed a suitable vehicle for transportation.
59. Subsequently, Plaintiff again attempted to request a cancellation of the purchase agreement entirely.
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60. Dealer refused any subsequent cancellation of the contract.
61. On or about October 14, 2016, Plaintiff gave notice of Dealer's deceptive actions.
62. Dealer's actions have not been cured.
63. Dealer's actions are incurable, since they are part of a scheme, artifice or device with intent to defraud or mislead

**FIRST CAUSE OF ACTION**  
***Duress***

64. Paragraphs 1-63 are incorporated as though fully stated herein.
65. Plaintiff entered into a Retail Installment Contract and Security Agreement with Dealer for the purchase of a vehicle.
66. Dealer and its agents restrained Plaintiff by taking Plaintiff's keys and refusing to return them to Plaintiff.
67. Without access to her car, Plaintiff was unable to leave the premises.
68. Plaintiff was intimidated by the actions of Dealer's agents, and she felt powerless to remove herself from the forced sales presentation of Dealer's agents.
69. Plaintiff was kept at the dealership for approximately five and a half (5 1/2) hours in total.
70. By means of restraint and intimidation directed at a Plaintiff, Plaintiff was coerced to sign the purchase agreement for the Ford.
71. Plaintiff lacked the strength of mind or will to resist, as a result of her age and health condition, and as a result of the length of time Plaintiff was restrained at the dealership.
72. Plaintiff signed an agreement for the purchase of the Ford, a vehicle that was unsuitable and unsafe for her to drive since she had difficulty seeing over the steering wheel.
73. Plaintiff subsequently signed a new Retail Installment Sales Contract, for the purchase of a Chevy.
74. This second agreement was a product of the original coercion and duress.
75. The Retail Installment Contract and Security Agreements between Dealer and Plaintiff are invalid as a result of duress.

**SECOND CAUSE OF ACTION**  
***Conversion***

76. Paragraphs 1-75 are incorporated as though fully restated herein.
77. Dealer exercised dominion and control over Plaintiff's trade-in vehicle.
78. Dealer kept the trade-in vehicle from Plaintiff prior to signing a purchase agreement induced by duress.
79. Dealer continued to exercise dominion and control over the trade-in vehicle.
80. The trade-in vehicle was the property of Plaintiff prior to sale.
81. The Plaintiff's interest in the trade-in vehicle should be treated as continuing, since she was deprived of ownership by the deceptive, abusive, and coercive actions of Dealer.
82. Dealer's exercise of dominion and control of the trade-in vehicle was, and is, to the exclusion of the rights of Plaintiff.
83. Plaintiff has been damaged by the loss of her vehicle as a result of Dealer's conversion.

**THIRD CAUSE OF ACTION**  
***Deceptive and Unfair Practices by Dealer***

84. Paragraphs 1-83 are incorporated as though fully stated herein.
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85. Dealer has engaged in deceptive, unfair, and abusive acts and practices and is liable for such practices under Indiana Code § 24-5-0.5.-3(a).
86. Dealer is a supplier, as defined by I.C. § 24-5-0.5-2.
87. Plaintiff is a consumer, as defined by I.C. § 24-5-0.5-2.
88. Plaintiff is seventy-three (73) years of age, and is therefore a "senior consumer" pursuant to I. C. § 24-5-0.5-4(h).
89. Dealer charged a document preparation fee that failed to meet the requirements of I.C. § 9-32-13-7 in the following ways:

- a. The fee did not reflect expenses actually incurred for the preparation of documents;
- b. The fee was not affirmatively disclosed by Dealer; and,
- c. The fee was not negotiated by the Dealer and Plaintiff.

90. Dealer's abusive and unfair actions towards Plaintiff included:

- a. Taking Plaintiff's vehicle keys to keep Plaintiff on-premises at the dealership;
  - b. Keeping Plaintiff on the dealership premises for approximately five and a half (5 1/2) hours, despite repeated requests to leave;
  - c. Repeatedly urging Plaintiff to purchase a vehicle when Plaintiff stated that she could not afford to purchase a vehicle;
  - d. Failing to provide Plaintiff with the promotional prize that she allegedly won, and did win, until after the completion of a sales transaction;
  - e. Failing to return the promotional contest notice to Plaintiff at the time the prize was awarded;
  - f. Representing to Plaintiff that Plaintiff's trade-in vehicle was sold, while attempting to sell Plaintiff's trade-in vehicle while Plaintiff was present at the dealership.
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- g. Exploitation of Plaintiff's age and health condition to induce a sale by wearing Plaintiff down;
  - h. Charging a document preparation fee that was unfair, pursuant to I.C. § 9-32-13-7 since it:
    - i. Did not reflect expenses actually incurred for preparation of the documents;
    - ii. Was not affirmatively disclosed by the dealer;
    - iii. Was not negotiated between the dealer and purchaser.

91. Dealer's actions were uncured deceptive acts, since Plaintiff gave notice to Dealer under I.C. § 24-5-0.5-5(a), and no offer to cure has been made.
92. Dealer's actions were also incurable deceptive acts, in that they were done by Dealer as part of a scheme, artifice, or device with intent to defraud or mislead.
93. Plaintiff has sustained, and will continue to sustain, damages, as a proximate result of Dealer's deceptive, abusive, and unfair practices.
94. Plaintiff, who is over seventy-three (73) years of age, is entitled to treble damages pursuant to I. C. § 24-5-0.5-4(h) because she is a "senior consumer."

**FOURTH CAUSE OF ACTION**  
***Violations of I.C. 24-8 et seq. for Promotional Contests***

95. Paragraphs 1-94 are incorporated as though fully stated herein.
96. Dealer, as a domestic corporation, is a "Person" as defined by I.C. § 24-8-2-2.
97. Dealer's promotional advertisement that Plaintiff received was a "Promotion" for the purpose of I.C. § 24-8-2-5, since it offered a chance to obtain property based on a representation that Plaintiff has been awarded or may have been awarded a prize.
98. In violation of I.C. § 24-8-4-1, Dealer failed to inform Plaintiff of the prize she would receive before a sales presentation began.
99. In violation of I.C. 24-8-4-3 Dealer failed to return the notice of the promotion to Plaintiff at the time the prize was awarded to Plaintiff.
100. Dealer is liable to Plaintiff for damages pursuant to I.C. § 24-8-6-2.

**PRAYER FOR RELIEF**

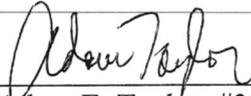
WHEREFORE, Plaintiff respectfully prays that this Court:

- a. Declaratory relief be entered that the purchase agreements Plaintiff and Dealer entered into herein were the product of duress, and are invalid as a matter of law;

- b. Award damages for the fair market value of the property converted by Dealer, in addition to punitive damages.
- c. Declaratory relief be entered that the seller's actions violated Indiana's Deceptive Consumer Sales Act, I.C. 24-5-0.5 et seq., and restore to Plaintiff any money or property which the Dealer acquired from her by means of these violations;
- d. Award three times the actual damages or \$1,000.00, whichever is greater, for each willful violation of Indiana's Deceptive Consumer Sales Act, I.C. 24-5-0.5 et seq., as well as attorney's fees and costs;
- e. Award treble damages under Indiana's Deceptive Consumer Sales Act pursuant to I. C. § 24-5-0.5-4(h) because Plaintiff is a "senior consumer."
- f. Award two (2) times the actual damages sustained by the person; or (2) five hundred dollars (\$500) plus attorney's fees pursuant to I.C. § 24-8-6-2, for Dealer's violations of trade regulations for promotional gifts and contests.
- g. Award such other relief as the Court deems appropriate.

Respectfully submitted,

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