

**Consumer Debt in NY, 10 Years After:
Crisis, Progress, and the Work Ahead**

CARS: STILL TAKING CONSUMERS FOR A RIDE

June 12, 2018 , 1:15 pm – 2:45 pm, Room 4-07
Robert Martin, Matthew Schedler, Marcella Silverman

RELEVANT LAW

FEDERAL LAW

1. Preservation of Consumers' Claims and Defenses ("FTC Holder Rule") - 16 C.F.R. §§ 433.1 & 433.2
2. Magnuson Moss Consumer Warranty Act - 15 U.S.C. § 2301 et seq.
3. Consumer Leasing Act and Regulation M - 15 U.S.C. § 1667 et seq. and 12 C.F.R. Part 213
4. Truth in Lending Act and Regulation Z - 15 U.S.C. § 1601 et seq. and 12 C.F.R. § 1026
5. Equal Credit Opportunity Act and Regulation B – 15 U.S.C. §1691 et. seq. and 12 C.F.R. Part 1002

STATE LAW

N.Y. General Business Law ("G.B.L.")

6. N.Y. New Car Lemon Law – G.B.L. § 198-a
7. *New York's New Car Lemon Law: A Guide for Consumers*
N.Y.S. Office of the Attorney General
8. N.Y. Used Car Lemon Law – G.B.L. § 198-b
9. *New York's Used Car Lemon Law: A Guide for Consumers*
N.Y.S. Office of the Attorney General
10. Automobile Trade-In Protection – G.B.L. § 198-c
11. Consumer Protection from Deceptive Acts and Practices
 - a. Deceptive Acts and Practices Unlawful - G.B.L. § 349
 - b. False Advertising Unlawful, G.B.L. §§ 350 & 350-a

N.Y. General Obligations Law (“GOL”)

12. Buyer’s Right of Redemption, GOL § 7-401

N.Y. Personal Property Law (“PPL”)

13. N.Y. Motor Vehicle Retail Installment Sales Act (“MVRISA”), PPL, Art. 9, §§ 301 et seq.
 - a. N.Y.’s Better Version of FTC Holder Rule, PPL § 302(9)
 - b. Post-Repossession Rights and Related Notices, PPL § 316
 - c. No Blanks in Retail Installment Contract, PPL § 302(8)
14. N.Y. Motor Vehicle Retail Leasing Act - PPL §§ 330-353, including:
 - a. Requirements of Motor Vehicle Leasing Agreements - PPL § 337
 - b. Restrictions on Early Termination Liability - PPL § 341
 - c. Penalties - PPL § 346

N.Y. Uniform Commercial Code (“UCC”)

15. Duty of Good Faith - UCC, Art. 1, § 1-304
16. Four-Year Statute of Limitations - UCC, Art. 2, § 2-725
17. Implied Warranty: Merchantability; Usage of Trade - UCC, Art. 2, § 2-314
18. Exclusion or Modification of Warranties - UCC, Art. 2, § 2-316
19. Post-Repossession/Pre-Disposition Notification; Right to Redeem – UCC, Art. 9, §§ 9-611, § 9-613(a), 9-614(a)

N.Y. Vehicle and Traffic Law (“VTL”)

20. Dealer’s Certificate of Roadworthiness on Sales of Used Cars – VTL § 417
21. State Bonding Statute – VTL § 415(6-b)
22. Repossession of motor vehicle; garageman’s lien; notice to police – VTL § 425

LOCAL (N.Y.C.) LAW

N.Y.C. Administrative Code (“Admin. Code”)

23. Duties of Used Car Dealers; Liability for Violations – Admin Code §§ 20-264, 268.0-268.6 for used car dealers, bans financing and add-ons as a condition of sale, bans blank contract terms, requires a cancellation option, document retention, and posting of a consumers bill of rights at dealership (as amended eff. 2/2018 by Int. No. 1539-2017 & Int. No. 1540-A-2017)

CASES / DECISIONS

Fraud, Deception, False Advertising, TILA violations

24. *People of State of New York v. Giuffre Motor Car Co., LLC, et al.*, Decision & Order, Index No. 30163/2010 (Supreme Court, Kings County Dec. 7, 2011)

Holder Rule, Assignee Liability

25. *Ramirez v National Coop. Bank*, 91 A.D.3d 204 (1st Dept. 2011)

Four-Year Statute of Limitations

26. *Autovest v. Nathan*, 2015 WL 1360148 (N.Y. Civ. Ct. Kings County 2015)

Leases

27. *PNC Bank, N.A. v. Porco*, 296 A.D.2d 451, 452 (2nd Dep’t 2002)
(Early Termination as Unenforceable Penalty)
28. *Ford Motor Credit Co. v. Esposito*, 8 Misc. 3d 230, 232 (Dist. Ct. Suffolk Co. 2005)
(Lease Post-default Notification and Remedies)

Post-default UCC violations –

Lots of confusion: Rebuttable Presumption v. Absolute Bar

Rebuttable Presumption

29. *Kobler v. Ford Motor Credit*, 93 A.D.2d 205 (3d Dep’t 1983) (but states this only in dicta and relies on non-consumer cases in support, *Flickinger Co. v. 18 Genesee Corp.*, 71 A.D.2d 382 (4th Dep’t 1979) and *General Electric Credit Corp v. Durante Bros*, 79 A.D.2d 509 (1st Dep’t 1980), for which a different section of the UCC applies)

Absolute Bar

30. *Central Budget Corp. v. Garrett*, 48 A.D.2d 825 (2d Dep't 1975)
31. *Liberty Bank v. Thomas*, 222 A.D.2d 1019 (4th Dep't 1995) (upholding dismissal of complaint because "plaintiff failed to give defendant the required notice of the sale of the automobile and ...failed to conduct the sale of the automobile in a commercially reasonable manner")
32. *Coxall v. Clover Commercial Corp.*, 4 Misc. 3d 654, 665, 781 N.Y.S.2d 567, 577 (Kings Cty. Civ. Ct. 2004)
33. *Ford Motor Credit v. Hernandez*, 210 A.D.2d 656 (3d Dep't 1994) (denying plaintiff's motion for summary judgment because plaintiff failed to make a prima facie showing that the sale was commercially reasonable, which was a "prerequisite to obtaining a deficiency judgment")
34. *HSBC v. Amagli*, 18 Misc.3d 139(A) (App. Term, 2d and 11th Dis. 2008) (same).

UCC Damages in addition to a bar to recovery

35. *Coxall v. Clover Commercial Corp.*, 4 Misc. 3d 654, 665 (Kings Cty. Civ. Ct. 2004)
36. *Liberty Bank v. Thomas*, 222 A.D.2d 1019 (4th Dep't 1995)
37. *ESL Fed. Credit Union v. Bovee*, 9 Misc. 3d 256, 265 (Sup. Ct. 2005) (noting that statutory damages are available even though the deficiency is eliminated or reduced "either pursuant to the rebuttable presumption" or "under the existing traditional approaches allowed for consumer transactions").

Right to Redeem

38. *Park Auto Sales v. Lemonier*, 9 Misc. 3d 942, 944 (City Ct. Mt. Vernon. 2005)