

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CARRIE A. PEEL

RESPONDENT,

v.

**CREDIT ACCEPTANCE
CORPORATION, ET AL.**

APPELLANT.

DOCKET NUMBER WD75409

DATE: May 28, 2013

Appeal From:

Jackson County Circuit Court
The Honorable Peggy S. McGraw, Judge

Appellate Judges:

Division One: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Mark D. Pfeiffer,
Judge

Attorneys:

Bernard E. Brown, Dalek K. Irwin and Gina M. Chiala, Kansas City, MO, for respondent.

James F. Bennett and Robert F. Epperson, Clayton, MO and James R. Jarrow, Kansas City, MO,
for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

v.

**CREDIT ACCEPTANCE
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Before Division One: Gary D. Witt, Presiding Judge, Thomas H. Newton, Judge and Mark D. Pfeiffer, Judge

Carrie Peel brought suit against Credit Acceptance Corporation ("CAC") and Car Time L.L.C., alleging violations of Missouri's Merchandising Practices Act ("MPA") in connection with Peel's purchase of a used automobile which was financed by CAC and sold by Car Time. Peel never received the title to the car. CAC continued to aggressively collect on the debt while knowing about the lack of title. Following a trial in the Circuit Court of Jackson County, a jury found CAC liable to Peel and awarded Peel \$11,007.81 in actual damages and \$1,187,789.05 in punitive damages. Attorney fees were assessed at \$165,250. The trial court reduced the punitive award to \$881,789.05 pursuant to the statutory cap in section 510.265. CAC appealed, alleging eight points of error.

AFFIRMED.

Division One holds:

In its Point One, CAC alleges that the non-MAI instruction failed to include the essential element that the MPA violation was "in connection with" the sale of the car. Because no specific objection was made to the instruction on this basis before the trial court, the error is unpreserved; however, even if it had been properly preserved, the instruction was not erroneous because it properly submitted the essential elements of the claim.

Similarly, in Point Two, CAC alleges error in the failure of Peel to properly prove that CAC's actions were "in connection with" the sale. There was evidence in this case that the actions of CAC were sufficiently connected with the sale for the jury to make this finding.

In Point Three, CAC argues that the trial court erred in failing to submit its proffered mitigation of damages instruction to the jury. CAC failed to properly plead the affirmative defense of mitigation of damages in its answer and therefore was not entitled to an instruction on that defense. Even if properly pled, it is unclear whether this defense is even applicable to a claim under the MPA.

In Point Four, CAC alleges that the submission of punitive damages was improper. With its long history of doing business in Missouri, CAC should have been aware that it could not collect a debt based on a void sale of an automobile. CAC continued to aggressively collect on this debt and, in spite of more than 100 calls from Peel explaining her predicament, continued to tell Peel that it was not CAC's problem. There was sufficient evidence to submit the issue of punitive damages.

In Point Five, CAC argues that the trial court erred in failing to further remit the award of punitive damages. The trial court did reduce the punitive damage award from \$1,187,789.05 to \$881,789.05 pursuant to section 510.265. CAC argues that the amount should have been further remitted. Based on its conduct toward Peel, it was not an abuse of discretion or a violation of the Due Process Clause of the Constitution to deny any further remission of the punitive damages awarded.

In Point Six, CAC alleges that the non-MAI submitted instruction, stating that a vehicle sale without transfer of title is void under Missouri law, was erroneous. Once again the allegation of error was not properly preserved. Even if it had been preserved, under the statute and relevant cases, the instruction was a proper statement of the law relating to these facts.

In Point Seven, CAC argues that it was error for the trial court to deny its motion for a mistrial during Peel's opening statement because CAC alleges Peel violated a ruling on a motion in *limine*. While it is questionable that the statement made did in fact violate the ruling, the trial court properly exercised its discretion in addressing the perceived violation of its pretrial order. A mistrial was not required to address the issue.

In Point Eight, CAC alleges the trial court erred in dismissing its counter-claim against Peel for unjust enrichment. CAC failed to prove that it conferred a benefit on Peel or that an injustice resulted, so its claim must fail.

The judgment of the trial court is affirmed.

Opinion by Gary D. Witt, Judge

May 28, 2013

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