S.C. Case No. S222211

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CARL STONE, et al.,

Plaintiffs and Petitioners,

vs.

RACEWAY FORD, INC.,

Defendant and Respondent

After Decision by the Court of Appeal
Fourth Appellate District, Division Two (E054517, E056595)
(Superior Court, County of Riverside, Case No. JCCP 4476
Hon. Dallas Holmes (Ret.), Judge Presiding)

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The fifty-one page Opinion of the Court of Appeal is well reasoned in the law and facts of this case and necessitates no review by this Court. This petition arises after five years of pre-trial proceedings on many issues and claims which did not survive to trial. The trial took place in March 2010, and, after substantial subsequent motion and appellate work, the trial court entered judgment and Raceway was declared the "prevailing party."

Now in a last ditch effort to avoid a $1.5 million attorney fee award, plaintiffs petition this Court to review basically two issues; smog-related fees and the backdating of contracts related to the sale of vehicles. With regard to the smog fees, both the trial court and the Court of Appeal have found that the members of Class Two did not prevail on their cause of action under the Automobile Sales Finance Act (hereinafter "ASFA"). While plaintiffs would like this Court to believe this finding will lead to car dealers "engaging in massive fraud" the reality is that the Court of Appeal found that in this case, the members of Class Two received all of the disclosures required under the ASFA and thus no violation existed. The Court of Appeal also specifically noted that consumers would likely have statutory or common law claims that would provide them with other remedies, especially if, unlike Raceway, the dealership had charged fees with fraudulent intent. Thus plaintiffs' claim regarding the possibility of massive fraud is without merit.

Class One based their claims on the backdating of contracts under the ASFA. The Court of Appeal has remanded this issue back to the trial court to determine if Class One can establish a violation of the ASFA. Plaintiffs' attempt to bring this issue to this Court before it is ripe is improper. As such, there are no grounds for review by this Court and the Petition should be denied in its entirety.

II. DISCUSSION

A. There Are No Grounds for Review by this Court

Review by this Court should be denied because this case does not present an important question of law or the necessity of clarification to secure uniformity of decision among lower courts. (See Rules of Court, rule 8.500(b)(1).) A significant portion of the Court of Appeal's Opinion concludes with the Court of Appeal remanding Class One (backdating of contracts) back to the trial court for further findings. Thus any issue related to Class One is not ripe for review. In addition, the Court of Appeal's Opinion related to Class Two does not present an important question of law. The Opinion addresses the specific facts of this case and is in agreement with its sister Courts. Both the trial court and the Court of Appeal found that Class Two's claims related to smog fees fail based on the facts of this case. As such, there are no grounds for review by this Court.

B. The Petition Is Unsupported By The Facts and Applicable Law

1. Smog Fee Claims

Despite plaintiffs' assertion to the contrary, the Court of Appeal's Opinion on the disclosure of smog related fees will not allow "dealers to engage in massive fraud." For purposes of this petition, plaintiffs have based their smog related claims ***solely*** on Civil Code section 2982, a portion of the ASFA entitled "Formalities of conditional sales contract." As the Court of Appeal aptly pointed out, under section 2982, in this case the "members of Class Two received all the information that the ASFA required them to receive ...." (Opinion pg. 44.) The Court of Appeal was clear that consumers would likely have statutory or common law claims that would provide them with a remedy, especially if, unlike Raceway, the dealership had charged fees with fraudulent intent. (*Id.*)

In this case, plaintiffs do not claim and presented no evidence at trial that Raceway somehow violated the ASFA by failing to disclose

information the ASFA required or that Raceway acted with fraudulent intent. Alternatively, as the Court of Appeal noted, the parties entered into a contract in conformity with the ASFA in which the parties ultimately realized there was a bona fide mistake due to computer error. The record also contains undisputable evidence that Raceway subsequently corrected its mistake upon discovery. Thus, the Court of Appeal was correct in finding that plaintiffs could not assert a claim under the ASFA.

This case is also in agreement with its sister courts. Plaintiffs inappropriately attempt to compare this case to that of *Nelson v Pearson Ford Co.* (2010) 186 Cal.App.4th 983 or *Thompson v. 10,000 RV Sales Inc.* (2005) 130 Cal.App.4th 950, wherein charges in those contracts were intentionally deceptive causing the contracts to not accurately describe the parties' agreements. As discussed above, that was not the case here.

Finally, plaintiffs' contention that the Court of Appeal "blamed the consumer for not knowing the dealership cheated them and signing a contract with improper charges in it" is an outright misstatement of the Court of Appeal's Opinion. (Petition, pg. 15 referring to fn 24 on pg. 44 of the Court of Appeal's Opinion.) The Court of Appeal actually stated "this is not to say that the blame for the improper charges should be placed on the consumer." Rather, the Court of Appeal makes the distinction between a finding of whether the ASFA's disclosure provisions were violated and a finding of whether Raceway was wrong for charging the inappropriate fees.

In short, the Court of Appeal found that there was no violation of ASFA's disclosure provisions because the disclosures were properly made. The contracts accurately disclose the economics of the transaction agreed to by the parties in all respects. Further, the Court of Appeal did not reach the question of whether Raceway or other car dealers were liable under some other statute or law for charging inappropriate smog fees ***as this was the only cause of action appealed in this case.*** Plaintiffs would like to make

this petition about car dealers being able to commit massive fraud. However, simply put, plaintiffs failed to allege a cause of action under which relief could be granted and now have no alternative but to attempt to twist the Court of Appeal Opinion into some broad proposition for which it does not stand.

2. Backdating of Contracts

For some inexplicable reason, plaintiffs include in this petition the Class One (contract backdating) portion of this case. The Court of Appeal has remanded Class One's cause of action for violation of the ASFA back to the trial court to determine if Class One can establish a violation of the ASFA. On remand, the trial court must make the factual determination of whether the backdated contracts disclose incorrect APRs in violation of the ASFA. Currently the record does not enable this decision to be made. (*Pac. Legal Found. v. California Coastal Com.*, (1982) 33 Cal. 3d 158, 170.) Thus any review of the Court of Appeal's discussion regarding Class One is not ripe for review by this Court.

In addition, it should be noted that the trial in this case included testimony by 13 witnesses, and over 90 multi-page documents were introduced into evidence. Plaintiffs were given every opportunity to present legal argument and factual evidence to support their backdating claim in violation of the ASFA. It is apparent from both the Court of Appeal's Opinion and the Statement of Decision by the trial court that any decision regarding Class One's claims rests on both the legal authority cited and factual determinations. The Court of Appeal has now remanded the case back to the trial court for resolution of these factual issues and any review by this Court at his juncture is premature.

3. This Petition Is Really About Attorney's Fees

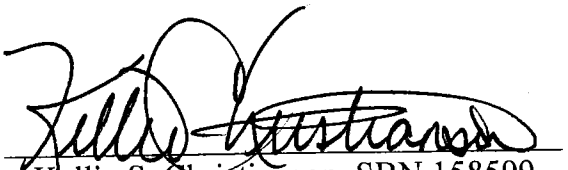
Plaintiffs would like this Court to believe that this Petition is brought to protect consumers. In actuality, this is plaintiffs' attempt to avoid the

$1.5 million fee award which was awarded by the trial court in favor of Raceway. While not yet ripe for review, plaintiffs are keenly aware that if the Court of Appeal's opinion is followed by the trial court, Raceway will likely be the "prevailing party" and entitled to an attorney's fee award authorized by the ASFA. Counsel for plaintiffs are savvy attorneys who specifically pled certain causes of action which carried an attorney's fees provision. In doing so, they have now subjected plaintiffs to a huge attorney's fees award. These individual plaintiffs likely did not realize this was a risk in bringing this case. Counsel for plaintiffs are now grasping at straws hoping in some way to ensure that Raceway is not the "prevailing party" despite Raceway having the law and evidence on its side.

III. CONCLUSION

For the foregoing reasons, this Court should deny the petition for review.

Respectfully submitted,

By: 

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WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1))

Pursuant to California Rules of Court, rule 8.504(d)(1), I certify the text of this answer consists of 1466 words as counted by the Microsoft® Word 2010 word-processing program used to generate the brief.

Dated: Nov. 17, 2014

Kellie S. Christianson

Raceway Ford Cases
California Supreme Court Case No. S222211
Court of Appeal, State of California, Fourth Appellate District
Division Two Case Nos. Case Nos.: E056595 [Related Case E054517]
Riverside Superior Court Case no. JCCP4476

PROOF OF SERVICE

(CODE CIV. PROC., § 1013a(3), C.R.C, RULE 8.25)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 20 Pacifica, Suite 400, Irvine, California 92618-3371.

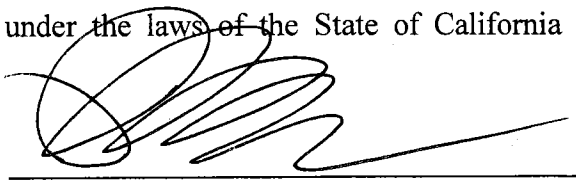
On November 17, 2014, I served the following document(s) described as **ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

☑ **BY MAIL:** I placed a true and correct copy of the document(s) in a sealed envelope for collection and mailing following the firm's ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☑ **BY OVERNIGHT COURIER:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the parties shown herein. I placed the envelope or package at my place of employment in accordance with regular business practices for collection and overnight delivery.

Executed on November 17, 2014, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Patricia D. Tonti-Mace

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