

TYPES NOT MAPPED YET September 11, 2015 | TTR not mapped yet | Jeffrey N. Brown

Appellate decision helps CA dealers navigate CLRA responses

On August 27, 2015, the California Court of Appeals reaffirmed the denial of plaintiff's fees and costs totaling \$182,273.00 in *Benson v. Southern California Auto Sales, Inc., et al*, Case No. G050484. This is a significant ruling for California car dealers because the court held that a reasonable and timely response to a Consumers Legal Remedies Act (CLRA) notice letter precludes recovery of plaintiff's attorney's fees and costs.

The Benson case depicts a familiar story to many dealers who have received CLRA letters. A careful review of what happened in the Benson case can help dealers determine what should go into a CLRA response.

The CLRA seeks to protect consumers from unfair and deceptive acts and also facilitates pre-complaint settlement of consumer actions in a limited period of time. Under the CLRA, a plaintiff must give written notice of particular violations under the CLRA. The written notice requirement is intended to forestall litigation by requiring both parties to attempt to fix the problem before going to court. Therefore, if a dealer provides "an appropriate correction, repair, replacement or other remedy" within the 30-day statutory safe harbor, a consumer is not able to recover monetary damages, fees or costs.

What happened in Benson?

In Benson, the plaintiff allegedly purchased a used Infiniti vehicle with undisclosed frame damage, paid more than the advertised vehicle price, and claimed a deferred down payment was improperly disclosed on the purchase contract. The plaintiff sent the dealership two CLRA notices demanding correction and other forms of relief, but filed a lawsuit before the dealership's 30-day safe harbor period expired. The dealership sent a timely response within the 30 days and offered to settle with rescission of the contract (i.e. refund all car payments and pay off of the loan) and payment of \$2,500 for attorney's fees and incidental damages, but conditioned the offer on a mutual settlement and release of all claims. Plaintiff rejected the offer and litigated the case, which eventually settled with the exception of attorney's fees and costs.

The trial court denied the fee motion, finding that the dealership made an appropriate CLRA correction and response. Despite the inclusion of a release of all claims in the CLRA response, the trial court found the released claims did not add any value and were inextricably intertwined with the CLRA claim.

The Court of Appeals affirmed the lower court's decision and noted a lawsuit cannot go forward until the potential plaintiff receives a response to a notice or the time for responding has expired. If a plaintiff sues without fulfilling such requirements, the lawsuit is fatally defective from the beginning. Therefore, a plaintiff should not be able to make the defendants pay fees for filing and maintaining a fatally defective lawsuit for damages under the CLRA, unless the dealer's response is not appropriate or no response is made within the statutory time period.

What does the Benson case mean for dealers?

The Benson decision helps dealers across the state determine what steps they can take to forestall litigation and under what circumstances a court will determine that damages, fees and costs are unavailable to a plaintiff. It is important for car dealers to consult with counsel on all pre-litigation efforts, including the initial investigation and the drafting of a timely CLRA response to the notification letter.

Upon receipt of a CLRA notice, it is critical to immediately act by conducting an internal investigation to determine if the facts indicate a consumer may likely prevail. If that is the case, making an appropriate and reasonable correction offer within the statutory 30-day safe harbor should cut off damages and fees. For example, in Benson, the trial court determined the dealership's CLRA response (i.e. rescission, payment of attorneys' fees and incidental damages and a settlement and release of all claims), was an appropriate correction and remedy.



Dealers should also review their insurance policies to determine if a CLRA notice or the filing of a complaint will trigger coverage for defense and indemnity. If receipt of a CLRA notice triggers coverage, dealers should consider providing written notice to their carriers immediately upon receipt of a CLRA notice.

Overall, it is important for dealers to maintain internal policies to ensure CLRA notices are forwarded to the correct individual at the dealership, the internal investigation is made a top dealership priority and a reasonable CLRA response is put together with the help of legal counsel, all within the 30-day safe harbor period.

authorsTest

jeffrey

Jeffrey N. Brown