Recent Florida Trial Court Decisions Confirm the Narrow Liability of Motor Vehicle Dealer Bond Sureties

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Two recent Florida trial court decisions confirmed the narrow liability a motor vehicle dealer bond surety faces under its bond. In *Swaney vs. Fanning Springs Auto, LLC*, Case No.: 38-2016-CA-847 (Fla. Cir. Ct. 2018), the Plaintiff argued that the dealership improperly charged it a "predelivery service fee" and asserted a claim individually against the motor vehicle dealer bond, as well as on behalf of a purported class of similarly situated individuals. Before the court heard the Plaintiff's motion for class certification, the dealership unconditionally tendered the amount of the predelivery service fee plus finance charges to the Plaintiff. The dealership also agreed to pay Plaintiff's reasonable attorneys' fees.

The surety moved for summary judgment arguing that the dealership's tender mooted the Plaintiff's predelivery service fee claim because he had been made whole. The surety argued the court should dismiss that claim and prohibit the Plaintiff from representing a class on that basis because he no longer had standing. Alternatively, the surety argued that the Plaintiff's predelivery service fee claim was not a proper bond claim because it fell within the Florida Deceptive and Unfair Trade Practices Act that does not apply to motor vehicle dealer bond sureties. The trial court agreed on both fronts and granted the surety's motion for summary judgment. Specifically, the court held that section 320.27(9) – upon which Plaintiff's lawyers often rely in motor vehicle dealer bond cases to establish claims against the surety – "does not create a private cause of action against the surety or establish civil liability of the surety."

In *Alban vs. Power Motors Auto Cars, Inc.*, Case No.: 2016-CA-001410 (Fla. Cir. Ct. 2018) the Plaintiff entered a partnership agreement with the dealership in which each party agreed to put up 50% of capital funds necessary to purchase cars from auction, repair them, and resell them. They would then split the profits. The dealership, however, allegedly absconded with the Plaintiff's capital contribution, and the Plaintiff sued the dealership and its motor vehicle dealer bond surety. The surety moved to dismiss the claims arguing the essence of the Plaintiff's agreement with the dealership was a financing agreement. Therefore, the Plaintiff was not a consumer injured in a wholesale or retail transaction. Rather, the Plaintiff was just an unsatisfied business partner. Accordingly, the surety argued the Plaintiff was not a proper bond claimant. The trial court agreed and dismissed the claims against the surety with prejudice.

These cases are important because they affirm the statutory intent of motor vehicle dealer bonds, which is to provide a modest sum for **consumers** to recover when dealerships go out of business and default in their obligations. Our attorneys represented the sureties discussed in these cases and are available if you have questions or would like to discuss further these or other motor vehicle dealer bond issues.