

Dealer Granted Summary Judgment in Unauthorized Practice of Law Case

*By Shelley B. Fowler**

In our December 2008 issue, we wrote about the Baker case, one of many cases around the country in which dealers have been hit with class action lawsuits alleging that the dealers' actions in completing legal forms, such as buyer's orders and retail installment contracts, constitute the unauthorized practice of law.

Robert and Stacy Baker bought a vehicle from Go Toyota Scion Arapahoe and agreed to pay a "dealer handling fee" that represented, according to the retail installment sales contract, "costs and additional profits to the seller for items such as inspections, cleaning, and adjusting new and used vehicles and preparing documents related to the sale."

The Bakers sued Go Toyota Scion and other dealerships, alleging that the defendants charged them and other car buyers "an illegal fee for preparing legal documents necessary to effectuate the sale of a motor vehicle and that the [d]efendants engaged in the unauthorized practice of law in connection with the purchase or lease of the motor vehicle," in violation of the Colorado Consumer Credit Code, the Colorado Consumer Protection Act, and common law.

When we first wrote about the case, we were pleased to report that the trial court denied the Bakers' motion to certify the case as a class action. Now, in a recent opinion, the same court—the District Court for Adams County—granted the defendants' motion for summary judgment.

First, the court found that the Bakers did not come forward with any evidence that any portion of the dealer handling fee was specifically for the preparation of legal documents in their transaction or that any of the documents referred to are legal documents. Next, the court found that because the nature of the dealer handling fee was disclosed to the purchasers as profit to the dealers, the charging of the fee cannot be deemed to constitute a deceptive trade practice. Last, the court found that the Bakers lacked standing to allege an unauthorized practice of law where they did not assert an injury to a legally protected interest from the purported violation. The court noted that all prior unauthorized practice of law cases have been brought by a governmental enforcement agency or by attorneys asserting injury to the legal profession.

Our thanks to Michael J. Dommermuth, with the law firm of McGloin, Davenport, Severson & Snow, PC, which represented the defendants in the case, for bringing this recent decision to our attention. He let us know that, back in December, at the request of Tim Jackson, President of the Colorado Automobile Dealers Association, the Colorado Attorney General modified a 1979 Assurance of Discontinuance to permit dealers to drop the disclosure language about the charge representing fees for "preparing documents related to the sale" in documents and in-store signage and to allow dealers to merely disclose that the dealer handling fee represents costs and additional profits to the dealer, without expressly itemizing cost items.

Baker v. Go Toyota Scion Arapahoe, Case No. 07 CV 543 (D. Colo. July 2, 2009).

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