

COMMONWEALTH OF KENTUCKY
40TH JUDICIAL CIRCUIT
CUMBERLAND CIRCUIT COURT
ACTION NO. 10-CI-00 _____

SHAWN RIDDLE
APRIL RIDDLE

PLAINTIFF

v.

VERIFIED COMPLAINT

MATT MONTGOMERY, INC.
Also known as
ALEX MONTGOMERY MT. WASHINGTON

DEFENDANT

SERVE: via certified mail
C. ALEX MONTGOMERY
Registered Agent
9000 Highway 44 East
Mt. Washington, KY 40047

* * * * *

Comes the Plaintiffs, Shawn Riddle and April Riddle, by counsel, and for their Verified Complaint against the Defendant, Matt Montgomery, Inc. a.k.a. Alex Montgomery Mt. Washington, respectfully state as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiffs, Shawn Riddle and April Riddle, (hereinafter "Plaintiff") is and was at all times relevant hereto a resident of Cumberland County, Kentucky and subject to the jurisdiction and venue of this Court.

2. Defendant Matt Montgomery, Inc. a.k.a. Alex Montgomery Mt. Washington (hereinafter "Defendant") is and was at all times relevant hereto a Kentucky corporation conducting substantial business within the Commonwealth of Kentucky under the assumed name Alex Montgomery Mt. Washington, with its principal office located at 9000 Highway 44 East, Mt. Washington, Kentucky 40047 and subject to the jurisdiction and venue of this Court.

3. This action is brought under KRS 367.170 and venue is proper in Cumberland County pursuant to KRS 367.220.

II. FACTS

4. Defendant at all times relevant hereto was in the business of selling and leasing automobiles for personal, family and household purposes.

5. On or about March 8, 2010, Plaintiffs purchased a 2005 Nissan Maxima (hereinafter “automobile”) from Defendant for personal, family and household purposes.

6. In making said purchase, Plaintiffs justifiably relied upon the advertisement listed on Autotrader.com by Defendant, which stated that the automobile had a mileage of 139,949 and did not list any prior damage. See *copy of Autotrader.com advertisement*, attached hereto as Exhibit A.

7. On the drive home from the dealership March 8, 2010, Plaintiff began to experience significant problems with the operation of the automobile.

8. Within seven days of purchase, the Plaintiff took the car to the local Nissan dealership in Columbia, Ky. to have them check on the mechanical problems. At that time, the service manager advised them that the repairs would be so extensive, in excess of \$ 4,000.00, that he did not want to attempt to repair it without the Plaintiff trying to return it to the original dealership.

9. One week after purchase, on March 16, 2010, the Plaintiff met with Steve Coyle, general manager, at the Alex Montgomery Dealership in Burkesville, Ky. to discuss the mechanical problems and asked to return the car to the dealership and provide a refund to the Plaintiff.

9. As a result of these significant operational problems, on or about March 30, 2010

Plaintiff retained Franklin Nissan to conduct an examination of the automobile to determine the source of the significant operational problems. Although the service manager would not put his estimate in writing, he did advise the plaintiffs that the cost of repairs would exceed \$ 4,000.

9. On or about March 31, 2010, _____ determined that the automobile demonstrated indications of previous damage, see *Invoice* attached hereto as Exhibit B:

- (a) previous damage to the front end passenger side; and
- (b) previous damage to the automobile's frame; and
- (c) previous damage to brakes and associated components; and
- (d) previous damage to the automobile's rear; and
- (e) other indicators of previous damage.

10. On April 30, 2010, the Plaintiffs drove the vehicle to Goodman Chevrolet-Cadillac-Nissan in Glasgow, Ky. and asked the service department to complete a thorough insp[ection of the vehicle and note any discrepancies. At the end of their inspection, the service department gave an estimate of \$ 6,732.33 in parts and \$1,386.17 in labor to restore this vehicle to operating condition.

11. The service manager at Goodman was so concerned about the unsafe condition of this vehicle that he refused to allow the Plaintiff to leave the dealership by driving the car. Unfortunately, the Plaintiff did not have any other way to make the 40+ mile trip home, so she had to drive it in an unsafe condition and then park it.

12. Defendant knew or reasonably should have known that the automobile had sustained significant damage prior to its selling of same to Plaintiff, and made willful and/or reckless material misstatements and omissions upon which Plaintiff relied for the purpose of ensuring sale of said automobile to Plaintiff.

11. Plaintiff attempted to obtain remedy from Defendant for these willful and/or reckless material misstatements and omissions.

12. Defendant refused to offer remedy to Defendant for these willful and/or reckless material misstatements and omissions.

III. COUNT I: WILLFUL VIOLATION OF KRS 367

13. Plaintiff reaffirms, reiterates and incorporates by reference the allegations contained in numerical paragraphs 1-12 as if fully stated herein.

14. Both Plaintiff and Defendant conform to the statutory criteria set forth in KRS 367.110 *et seq.* (hereinafter “the Consumer Protection Act”).

15. Defendant’s acts as enumerated herein constitute violations of the Consumer Protection Act.

16. As a direct and proximate result of Defendant’s violations of the Consumer Protection Act, Plaintiff has suffered damages in excess of the jurisdictional minimum and is entitled to compensatory damages for same pursuant to KRS 367.220.

17. These violations were committed by Defendant willfully, maliciously and with flagrant indifference and wanton disregard of the rights and safety of Plaintiff, and upon this account Plaintiff is entitled to punitive damages for same.

IV. COUNT II: FRAUD

18. Plaintiff reaffirms, reiterates and incorporates by reference the allegations contained in numerical paragraphs 1-17 as if fully stated herein.

19. In order to induce Plaintiff to purchase said automobile, Defendant, through its agents and representatives, executed a fraudulent scheme whereby they knowingly and recklessly

made material misrepresentations and omissions, upon which Plaintiff relied to his detriment and injury.

20. Said fraudulent scheme constitutes a violation of the public policy of the Commonwealth of Kentucky as codified in KRS 186A, KRS 190, KRS 355, KRS 367 and other statutes not enumerated herein.

21. As a direct and proximate result of Defendant's fraudulent scheme, Plaintiff, by justifiably relying thereupon, acted and did forbear to act and has suffered damages for which he is entitled to recover compensatory damages.

22. Defendant's fraudulent and oppressive acts and omissions were committed willfully, maliciously and with flagrant indifference and wanton disregard of the rights and safety of the Plaintiff; for which the latter is entitled to recover punitive damages.

V. COUNT III: BREACH OF CONTRACT/ESTOPPEL/UNJUST ENRICHMENT

23. Plaintiff reaffirms, reiterates and incorporates by reference the allegations contained in numerical paragraphs 1-22 as if fully stated herein.

24. Plaintiff and Defendant entered into a contract for goods as defined in KRS 367.220 for which consideration was given.

25. Defendant was contractually obligated to operate in honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing and did in fact breach said obligation, said breach being the proximate cause of Plaintiff's damages.

26. By undertaking the actions complained of herein, Defendant has been unjustly enriched for which it would be inequitable to permit same to benefit, and are promissory and equitably estopped from denying this contract.

27. As a direct and proximate result of Defendant's breach and unjust enrichment, Plaintiff has suffered damages in excess of the jurisdictional minimum and is entitled to compensatory damages for same.

VI. COUNT IV: NEGLIGENCE

28. Plaintiff reaffirms, reiterates and reincorporates the facts and allegations contained in numerical paragraphs 1-27 by reference as if fully stated herein.

29. Defendant has negligently pursued their business activities as pertains to the sale of said automobile, said negligence being the proximate cause of Plaintiff's actual for which Defendant is liable and for which Plaintiff is entitled to compensatory damages.

30. Said negligence was wanton, willful and reckless, is the proximate cause of Plaintiff's actual damages, for which Defendant is liable and for which Plaintiff is entitled to punitive damages.

* * * * *

WHEREFORE, the Plaintiffs, Shawn Riddle and April Riddle, hereby demand judgment against the Defendant, Alex Montgomery Mt. Washington as follows:

1. That Plaintiff recover compensatory damages in an amount to be determined by the trier of fact, plus the legal rate of interest, and in a sum that exceeds the minimum dollar amount necessary to confer jurisdiction upon this Court;

2. That Plaintiff recover punitive damages in an amount to be determined by the trier of fact;

3. That Plaintiffs recover attorney fees, costs and expenses incurred in bringing this action;

4. That Plaintiff receive a trial by jury on all issues so triable; and

5. That Plaintiff receive such other and further relief to which he may appear entitled, now or hereafter.

Respectfully submitted,

Hon. Stephen H. Poindexter
412 Courthouse Square, Ste. 202
P.O. Box 904
Burkesville, KY 42717
Phone/Fax: (270) 864-1205

VERIFICATION

I, Shawn Riddle, verify that the foregoing allegations are true and correct to the best of my knowledge and belief.

SHAWN RIDDLE

COMMONWEALTH OF KENTUCKY
COUNTY OF CUMBERLAND

Subscribed and sworn to before me by Shawn Riddle, this ___ day of May, 2010.

Notary Public, KY, State at Large
My commission expires: _____