THE KOLAR CHRONICLE

KEEPING YOU UP TO DATE WITH CALIFORNIA CONSUMER LAW AND THE SUCCESS OF KOLAR & ASSOCIATES

Triumphs at Trial

In a great result for the defense in a consumer fraud case, we recently convinced the Court to award $105,000 in attorneys' fees and costs to our dealership. While this was no easy feat, we believe it shows that with a bit of creativity while working with the law, the good guys really can win the case with their wallets a little fuller!

Let's Delve Back into the Cases of 2012

No Consent? No Problem!
(At Least When it Comes to Arbitration)

In *Swissmex-Rapid S.A. de C.V. v. SP Systems, LCC*, the Court held that even though the parties' arbitration agreement did not contain a statement that the parties consented to entry of judgment, the award could still be confirmed. Furthermore, the provider's commercial arbitration rules contained a rule deeming parties to have consented to entry of judgment, and the argument that the parties had not consented to entry of judgment was meritless.

Look Out! Bumpy Roads Ahead With Express Warranties

In *Nelson v. Nissan North America, Inc.*, car buyers alleged that the manufacturer knew that the vehicles had defective transmissions but failed to disclose that fact. They also claimed that the manufacturer expressly warranted that certain dealerships would repair any defects in the powertrain during the warranty period. The Court ruled that the buyers' allegations were sufficient to state a claim under California law for breach of express warranty.

Keeping Current With the Cases of 2013

Just When You Thought Talk Was Cheap

In *Riverisland Cold Storage, Inc. v. Fresno-Madera Prod.*, borrowers alleged that they were induced to enter into a contract with a lender by the lender's oral misrepresentations. The Court concluded that statements made prior or contemporaneous to the making of the agreement should not be excluded to prevent the proof of fraud.

Filling Out the RISC May Be Riskier Than You Think!

In *Rojas v. Platinum Auto Group, Inc.*, the dealer filled out a RISC and improperly entered the buyer's down payment as a remaining cash down payment instead of a deferred down payment. The Court of Appeal held that this was not a trivial violation for failing to disclose. The Court also ruled that substantial compliance is no longer a defense in light of statutory amendments, and a buyer did not have to establish actual damage from a violation.

Heading to Arbitration? Not So Fast…

In *Kramer v. Toyota Motor Corp.*, the District Court denied Toyota's Motion to Compel Arbitration. Given the absence of clear and unmistakable evidence that the plaintiffs agreed to "arbitrate arbitrability" with non-signatories, the District Court had the authority to decide whether the instant dispute was arbitrable. In the absence of a disagreement between the plaintiffs and the dealership, the agreement to "arbitrate arbitrability" did not apply. As a result, it was found that a disagreement between the plaintiffs and Toyota was simply not within the scope of the arbitration agreement.

I'll See You in Court! Federal Court, That Is

In *Kuxhausen v. BMW Financial Services NA LLC*, the plaintiff filed a class action complaint in state court and subsequently filed an amended complaint, adding a new class of plaintiffs. Although removal to federal court must usually occur within 30 days after filing the complaint, the Court held that BMW could remove the class action to federal court because the plaintiff failed to trigger the 30-day period for removal by inadequately stating the amount in controversy.

"I busted a mirror and got seven years bad luck, but my lawyer thinks he can get me five." -Steven Wright

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