SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T:
HON. DAWN JIMENEZ,
Justice.

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NINA HORTON,

Plaintiff,

– against –

DANCY AUTO GROUP OF GREAT NECK LLC., MACKY DANCY AUTO GROUP OF GREAT NECK LLC., DANCY POWER AUTOMOTIVE GROUP, GREAT NECK AUTO SALES LLC., JP MORGAN CHASE BANK, N.A.,

Defendants.

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Trial/IAS Part 27

DECISION/ORDER

Index No. 602350/19
Mot. Seq. 1
Mot. Date: 3/30/22
XXX

The following e-filed papers read herein:	NYSCEF Doc. Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	21-59
Opposing Affidavits (Affirmations)	60-63
Reply Affidavits (Affirmations)	66-80

Defendant JP Morgan Chase Bank, N.A. (Chase) moves for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint as against Chase. Plaintiff opposes the motion. The remaining defendants Dancy Auto Group of Great Neck LLC, Macky Dancy Auto Group of Great Neck LLC, Dancy Power Automotive Group and Great Neck Auto Sales LLC have neither appeared nor answered the complaint. For the reasons set forth herein, Chase's motion is granted.

This action arises out of the alleged improper repossession of a 2011 Nissan Maxima purchased by plaintiff from Dancy Auto Group of Great Neck LLC (Dancy) pursuant to a retail installment contract dated February 12, 2015 (the Contract) that was assigned to Chase. Plaintiff commenced this action by filing of a summons with notice on February 18, 2019 and thereafter filed a complaint on March 26, 2019. The complaint asserts nine different causes of action sounding in contract, tort and statutory violations of the General Business Law, the Motor Vehicle Retail Instalment Sales Act and the Uniform Commercial Code.

In support of its motion, Chase submits, inter alia, a copy of the pleadings; plaintiff's deposition testimony; the deposition testimony of Anjanette M. Giardenelli, a market credit manager employed by Chase; the deposition testimony of Jennifer Grogan, a business analyst employed by Chase; the Contract; letters regarding plaintiff's application and loan approval; the notice of sale/redemption; the deficiency letter; the account payment history; and Chase's account notes. Chase argues that it is entitled to judgment as a matter of law on the ground that it properly exercised its rights under the Contract in repossessing and selling the vehicle and complied with all applicable statutory requirements related thereto.

Plaintiff, in opposition, argues that there are triable issues of fact as to, inter alia, whether there was a valid loan agreement between the parties and its terms. She also asserts that Chase failed to properly credit her loan payments. To the extent that Chase argues that it is not liable for any false statements or misrepresentations made by Dancy regarding the sale of the vehicle, plaintiff invokes Personal Property Law § 302(9), which states that "[t]he assignee of a retail installment contract or obligation shall be subject to all claims and defenses of the buyer against the seller arising from the sale." She claims that Dancy induced her to purchase the vehicle under the impression that she had obtained a loan on more favorable terms than the terms contained in the agreement ultimately presented to her. In support of her contentions, plaintiff cites portions of her deposition testimony and submits an additional affidavit.

"To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented" (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25 [2019]). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by submission of admissible evidence sufficient to eliminate any material issues of fact (*see Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once that initial burden is met, the burden shifts to the nonmoving party to produce evidentiary proof demonstrating the existence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, at 324).

Applying these principles to the instant matter, Chase is entitled to summary judgment dismissing the complaint. Chase demonstrated, prima facie, that it properly enforced its rights under the Contract to repossess the vehicle given that plaintiff executed the Contract and thereafter defaulted on payments due thereunder. Pursuant to the Contract, plaintiff financed $24,227.94 at the rate of 13.49% and was obligated to make monthly payments of $521.89 for 66 months to Chase beginning on March 12, 2015. Plaintiff admitted to signing the Contract with these terms and her conclusory averments that there was no valid loan agreement are insufficient to raise a triable issue of fact. The testimonial and documentary evidence refutes plaintiff's allegations in the complaint that the vehicle was wrongfully repossessed, that she was not given proper notice of the sale and her right to redeem, and that her account was not properly credited based on her prior loan payments and the proceeds from the sale. By exercising its rights under the Contract, Chase did not breach the Contract, convert plaintiff's personal property, or engage in deceptive, consumer-oriented conduct within the meaning of GBL § 349 (*see Sabeno v Mitsubishi Motors Credit of Am., Inc.*, 20 AD3d 466, 469 [2d Dept 2005]).

To the extent that plaintiff argues that Dancy falsely represented to her that it was necessary for her to purchase an extended warranty in order to obtain financing for the vehicle, and that Chase is subject to liability for this misrepresentation pursuant to Personal Property Law § 302(9), Chase demonstrated that plaintiff suffered no injury as a result of the alleged misrepresentation, as her account was credited for the full amount of the warranty (*see Amalfitano v NBTY Inc.*, 128 AD3d 743, 745-756 [2d Dept 2015]). Even if the Court considered plaintiff's affidavit, which is not notarized by a notary public licensed in New York or accompanied by a certificate of conformity, her assertion that she had to pay out of pocket for certain unspecified repairs as a result of Dancy's failure to purchase the warranty is insufficient to raise a triable issue of fact.

The alleged misrepresentations regarding Chase's fraud investigation of Dancy are not actionable under GBL § 349, as they do not constitute consumer-oriented behavior with an impact on consumers or the public at large (*see Disa Realty, Inc. v Rao*, 168 AD3d 1037, 1040 [2d Dept 2019]; *Anthony Tranchina Gen. Contr. Corp. v Greco Bros. Ready Mix Concrete Co.*, 138 AD3d 647, 648 [2d Dept 2016]). In any event, it has not been shown that Chase made any false statements with respect to the purported investigation.

Plaintiff's remaining causes of action, which repeat the same allegations under different legal theories, must be dismissed for the same reasons.

The Appellate Division case law relied upon by plaintiff is inapposite. Here, unlike *Ramirez v National Coop. Bank (NCB)* (91 AD3d 204 [1st Dept 2011]), plaintiff has had the benefit of engaging in considerable discovery and Chase moves to dismiss the complaint pursuant to CPLR 3212, rather than CPLR 3211. Plaintiff's claims, which consist either of conclusory allegations, hearsay or statements which have been refuted by evidence adduced during discovery, are insufficient to withstand summary judgment.

Accordingly, it is

ORDERED that Chase's motion for summary judgment is granted, and the complaint is dismissed as against it; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court. Any arguments not specifically addressed herein have been considered and are rejected.

Dated: May 31, 2022
Mineola, N.Y.

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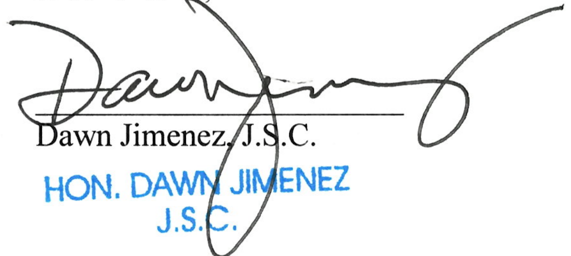

Dawn Jimenez, J.S.C.