



CarMax's Recent Loss Presages A Wave Of Litigation Over "Certified" Used Cars

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CarMax's loss in *Gonzales v. CarMax Auto Superstores, LLC* (9th Cir. Oct. 20, 2016) __ F.3d __, 2016 WL 6122776, is bad news for more than just CarMax. It may well trigger a wave of new individual and class actions against used car dealers and assignees of their contracts.

California Vehicle Code section 11713.18(a)(6) prohibits a car dealer from advertising or selling a used car as "certified" (or any similar word) unless before the sale, the dealer provides the buyer "with a completed inspection report indicating all the components inspected."

Gonzales holds to meet that statutory requirement, an "inspection report" must conform to the commonly understood meaning of that term in the automobile industry; namely, "a report that lists the components inspected, with a space corresponding to each component in which the inspector designates whether or not that component is functional."

Gonzales determined that CarMax's Quality Inspected Certificate was not a proper "completed inspection report" because it only checked off which components had been inspected without indicating whether each of those components passed inspection and functioned properly.

By selling the used car to *Gonzales* as "certified" but providing him only the inadequate Quality Inspected Certificate, CarMax violated Vehicle Code section 11713.18(a)(6). A violation of that section is also a violation of the Consumer Legal Remedies Act and the Unfair Competition Law, and *Gonzales* remands the case for entry of summary judgment against CarMax under those laws. Remedies under those laws may include actual and punitive damages, rescission of the car purchase contract and restitution, injunctive relief and awards of costs and attorney fees.

Bad news for CarMax. It has sold thousands of "certified" used cars in California within the three (CLRA) or four (UCL) year limitations periods. Individual or class suits for rescission or damages are likely to be filed on behalf of many who bought those cars.

CarMax is not alone. Any assignee of a contract for a CarMax "certified" used car is likely to be sued as well, and, under the FTC Holder Rule, may be held liable for CarMax's violation up to the total amount the consumer has paid (including downpayment or trade-in) under the contract. Moreover, other used car dealers may also have followed CarMax's practice. If so, they and the assignees of their contracts may also face a tide of new litigation based on *Gonzales*' holding.

Assignees cannot correct car dealers' violations of section 11713.18, but they can take some steps to prevent loss. First, going forward, they can decline to buy contracts for certified used cars absent proof that the dealer has given the buyer a fully compliant inspection report indicating how each inspected part performed. Second, in referring delinquent contracts for collection, repossession or deficiency judgment suits, assignees can screen out contracts for certified used cars lacking proof of compliance with section 11713.18. Third, if their dealer agreements so provide, assignees can require originating dealers to repurchase non-compliant contracts or defend buyers' suits regarding them. Fourth, assignees may be able

to renegotiate non-compliant contracts with the buyers in exchange for a release of claims, so long as full disclosure is made.

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