

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

2010 MAY 26 P 1:10

Colin Andrew et al

FILED IN US DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

v.

Civil Action No: 3:10-cv-353

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In his Official Capacity
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COMPLAINT AND REQUEST FOR INJUNCTIVE AND DECLARATORY RELIEF

Nature of Action

1. This class action arises out of the Defendants' violations of the constitutional right of the Plaintiff's to have the judgments they may obtain or will obtain in District of Columbia or other courts outside of the commonwealth of Virginia enforced by the Commonwealth of Virginia. Defendants enforce a statutory scheme which favors judgments of the Commonwealth of Virginia over judgments of other states, thereby unconstitutionally depriving those such as the plaintiff class of the right to obtain judgments outside of the

Commonwealth of Virginia and wish to have them enforced in Virginia.

2. Defendants' statutory scheme creates a fund administered by the Commonwealth which will pay for unsatisfied judgments issued against Virginia Auto Dealers. A requirement to reimbursement by the fund is that the judgment be issued by a "Virginia Court". Thus, individuals such as the plaintiff, who are or are considering suing a Virginia Auto Dealer, must sue in Virginia court if the dealer ultimately does not satisfy any judgment
3. Plaintiff asserts individual and class claims under 28 USC 1983 for an injunction barring enforcement of the scheme, plus attorneys fees and expenses.

Parties

4. Plaintiff Colin Andrew is a citizen of Washington DC.
5. Defendant Kenneth T. Cuccinelli, II, is the Attorney General of the Commonwealth of Virginia. He is being sued in his official capacity.
6. Jonathan Blank, Tom Haymore, Lynn Hooper, TK Hughes, Henry Jones, David Lacy, Wanda Lewark, Chip Lindsay, Hugh McCreight, Pat Patrick, Frank Pohanka, Matt Queen, Kevin Reilly, Vince Sheehy, Larry Shelor, D.B. Smit, Joe Tate, Jimmy Whitten, Tommy Woodson and Robert Woodall, are all members of the Board.

Jurisdiction

7. The court has subject matter jurisdiction as this case is grounded entirely on claims brought exclusively under 28 USC Section 1983 seeking enforcement of constitutional rights under the Full Faith and Credit Clause of the United States Constitution.
8. Venue is proper because the incident out of which the instant action arose, the sale of the

vehicle in question to plaintiff, took place within this district.

Class Action Allegations

9. This Action is brought as a class action seeking injunctive and declaratory relief, pursuant to FRCP 23(b).
10. Mr. Andrew is not aware of any pending litigation concerning the claims herein except one as follows:
11. DC Attorney Thomas C. Willcox is pursuing an appeal of a denial of a claim of a Masahiro Sato who brought an individual claim against a Virginia Auto Dealer in Washington DC court, obtained a default judgment, and was told his claim was defective in two respects; he had not given the Virginia Motor Vehicle Dealer Board notice of the claim prior to bringing it and the judgment was not obtained in a Virginia court.
12. This Court is the most appropriate forum for adjudicating the claims at issue, which arise under the enforcement of a Virginia statute, which deprives those who obtain judgments against Virginia Auto Dealers outside of the Commonwealth of Virginia of their constitutional right to have such judgments honored in Virginia in the same fashion as a judgment issued by courts of other jurisdictions.
13. Defendants are the Attorney General of Virginia, in his professional capacity, and the individuals members of the Board.
14. None of the individual defendants have qualified immunity as they have failed to obtain a proper opinion from the Attorney General to the effect that the practice at issue in this litigation is lawful.
15. Mr. Andrew does not anticipate any difficulty in the management of this action as Class

action.

16. There are many questions of law and fact common th the Class which may affect individual members.
17. These include: whether the statute of question, which compels those individuals who are contemplating suing or are suing, Virginia auto dealers to bring their claims in Virginia Courts if they wish to avail themselves of the benefits of the Dealer Board Fund..
18. Whether the statute unconstitutionally discriminates against judgments of other jurisdictions by requiring that any unsatisfied judgment brought to the board for reimbursement be issued by a Virginia Court.
19. Whether such discrimination violates the Full Faith and Credit Clause of the Tenth Amendment to the United States Constitution by unconstitutionally distinguishing between judgments of different states.
20. Whether Mr. Andrew and the Class are entitled to equitable and injunctive relief against the Defendants.
21. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

Factual Allegations

Background

22. Article IV, Section 1 of the United States Constitution, commonly known as the Full Faith and Credit Clause, addresses the duties that states within the United States have to respect the "public acts, records, and judicial proceedings" of other states. This law is

codified in 28 U.S.C. § 1738, which states:

“Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the US and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.”

23. The Commonwealth of Virginia Motor Vehicle Dealer Board (MVDB or Board) regulates enforcement of the regulations to which Virginia Auto Dealers must comply with
24. An important component of the MVDB is enforcement of the Fund.

§ 46.2-1527.3. Recovery from Fund, generally.

Except as otherwise provided in this chapter, whenever any person is awarded a final judgment **in a court of competent jurisdiction in the Commonwealth** for (i) any loss or damage in connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representation made to him by a licensed or registered motor vehicle dealer participating in the Motor Vehicle Transaction Recovery Fund or one of a dealer's salespersons acting for the dealer or within the scope of his employment or (ii) any loss or damage by reason of the violation by a dealer or salesperson participating in the Motor Vehicle Transaction Recovery Fund of any of the provisions of this chapter in connection with the purchase of a motor vehicle on or after January 1, 1989, or the lease of a motor vehicle on or after October 1, 1998, the judgment creditor may file a verified claim with the Board, requesting payment from the Fund of the amount unpaid on the judgment subject to the following conditions:

1. The claim shall be filed with the Board no sooner than 30 days and no later than 12 months after the judgment becomes final along with the evidence of compliance with subdivision 3 below.
2. The Board shall consider for payment claims submitted by retail purchasers of motor vehicles, and for purchases of motor vehicles by licensed or registered motor vehicle dealers who contribute to

the Fund. The Board shall also consider for payment claims submitted by lessees of motor vehicles leased on or after October 1, 1998, from licensed or registered motor vehicle dealers who contribute to the Fund.

3. If the final judgment from a court of competent jurisdiction includes, as part of the judgment, an award of attorney fees and court costs, the Fund may include those in its payment of the claim if (i) the claimant had previously submitted to the trial court a detailed and itemized affidavit by counsel for the judgment creditor seeking such fees and costs, including a breakdown of the hours worked and the subject matter of those hours; (ii) said itemized affidavit formed the basis of the court's award of such fees; and (iii) a copy of such affidavit is provided to the Board with the judgment creditor's claim. If the award of attorney fees and costs by the trial court was not based on a detailed and itemized affidavit from counsel for the judgment creditor with a breakdown of the hours worked, then the Board may review and limit any claim for attorney fees to those attorney fees directly attributable to that portion of the final judgment that is determined to be a compensable claim by the Board against the Fund, and the Board may require a detailed itemization from counsel before considering such claim for attorney fees.

(emphasis added).

25. The Board has indicated, through counsel, that it does not accept judgments from other jurisdictions registered in the Commonwealth pursuant to Va Code § 8.01-465.1, et. seq. Exhibit A at page 3.
26. Representative Plaintiff Colin Andrew is currently bringing litigation against a Virginia Auto Dealer, AIC , in District of Columbia Superior Court, case no 2008 CA 008450.
27. Mr. Andrew has named the Board as an indispensable party in that case. The Board has moved to dismiss, claiming, inter alia, that the Commonwealth of Virginia is not bound to honor judgments originating from District of Columbia courts.
28. The Board has claimed it must limit honoring judgment to those of Virginia Courts

because otherwise victims of Virginia Auto Dealers could sue “anywhere” forcing the Board to appear “anywhere” and intervene to protect its interests.

29. To the contrary, the due process clause of the United States Constitution, as interpreted in conjunction with state long arm statutes, limits the ability of any prospective plaintiff to sue Virginia auto dealers within the limits of the long arm jurisdiction of that state, as interpreted in the context of the Due Process Clause of the United States Constitution.
30. In practical terms, this means that a Virginia Auto Dealer is only likely to be sued in either Virginia Maryland or Washington DC, in any event nowhere that is in violation of the Due Process Clause of the United States Constitution.
31. The Board has also claimed that because it has an administrative process to ensure claimants have complied with the statute, such administrative proceeding is unique to Virginia, and therefore, Virginia is entitled to a limited exception to the Full Faith and Credit Clause for administrative proceedings within the state.
32. To the contrary, the statute in question does not create an administrative proceeding to be heard in Virginia. Rather, the Commonwealth of Virginia, through the Board, uses the administrative proceedings in question to ensure statutory compliance. In the present circumstance, through these proceedings, the Board enforces the statute in an unconstitutional manner, unconstitutionally discriminating against out of state judgments.
33. The Plaintiff Colin Andrew and the Class is entitled to a declaration from this court that the defendants will honor their constitutional right to have judgments from other states honored by the Commonwealth of Virginia.

Mr. Andrew’s Transaction

34. On December 15 2008, Mr. Andrew sued AIC Inc, a Virginia Auto Dealer, with offices in Hyattsville and Manassas, in DC Superior Court, alleging fraud in a December 2006 transaction in which, Mr. Andrew alleges, he was defrauded into purchasing a vehicle, when AIC, Mr. Andrew alleges, represented he would only be the guarantor.
35. Mr. Andrew alleged that, pursuant to the DC Long Arm Statute, the exercise of jurisdiction over AIC was proper, in that AIC obtained a significant portion of its revenues from sales in DC, had caused tortious injury in the District of Columbia. Therefore, his complaint alleged, AIC would reasonably expect to be haled into a DC Court, and such exercise of jurisdiction over DC was in comport with the Due Process Clause of the US Constitution.
36. If Mr. Andrew obtains a judgment against AIC, AIC may become insolvent. In that case, according to the Board, as its statutes are interpreted by the defendants, the VMDB will not honor the judgment. In contrast, if Mr. Andrew sued in Virginia, the VMDB would honor the judgment. Therefore, the VMDB's actions, under color of official right, are in violation of the Full Faith and Credit Clause. Mr. Andrew seeks declaratory relief that such interpretation is unconstitutional

Count One
42 U.S.C. §1983

37. The allegations in Paragraphs 1 through 31 are incorporated herein by reference
38. 42 U.S.C. § 1983 : US Code - Section 1983: Civil action for deprivation of rights

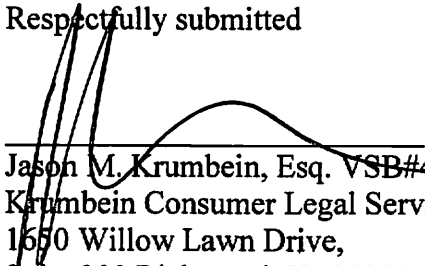
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,

39. By failing to honor the judgments of the court of the District of Columbia, and other jurisdictions, the defendants are violating the constitutional rights of the class under the Full Faith and Credit Clause. The Plaintiff Class may not exercise their right to sue Virginia Auto Dealers in a jurisdiction of the choice of the Plaintiff Class (subject to the limits of personal jurisdiction statutes and Due Process), without the risk their constitutional rights will be violated by the defendants if the Virginia Auto Dealer in question becomes insolvent and the Plaintiff seeks to have the non-Virginia judgment honored by the VMVDB.

WHEREFORE, Colin Andrew seeks, on behalf of the class, an injunction barring the defendants from enforcing Section § 46.2-1527.3 in the unconstitutional manner it is now interpreted, and a declaration that the Commonwealth of Virginia, and the MVDB, will, consistent with the Full Faith and Credit Clause, honor out of state judgments, reasonable attorneys fees and costs incurred in the prosecution of this action, and any other relief this court deems just and proper.

Respectfully submitted



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