

COLEMAN & HOROWITT, LLP

CLIENT MEMORANDUM

DISCUSSING ISSUES OF INTEREST TO OUR CLIENTS

499 WEST SHAW AVENUE, SUITE 116, FRESNO, CALIFORNIA 93704 ♦ PHONE: (559) 248-4820 ♦ FAX: (559) 248-4830 ♦
1880 CENTURY PARK EAST, SUITE 404, LOS ANGELES, CA 90067 ♦ PHONE: (310) 286-0233 ♦ FAX: (310) 203-3870
WWW.CH-LAW.COM

COURT DETERMINES FAILURE TO DISCLOSE DEFERRED DOWN PAYMENT IS A REES-LEVERING VIOLATION

By Darryl J. Horowitz

Many consumer lawyers have argued that the failure to disclose a deferred down payment constitutes a Rees-Levering violation even if the amount of the down payment is accurately stated. An issue did, however, exist as to whether or not the inadvertent exclusion of a deferred down payment on the line for a down payment constitutes a Rees-Levering violation. This question has been answered by the court in *Rojas v. Platinum Auto Group, Inc.* (January 15, 2013) 212 Cal.App.4th 997.

In *Rojas*, Rojas purchased a car from Platinum Auto Group. As part of the agreement, Rojas agreed to a deferred down payment, which required four payments, one of which was to be made after the date the second installment payment would be due under the retail installment sale contract. Although the parties agreed that a deferred down payment would be made, the RISC listed the down payment on line 6(g) labeled "Remaining Cash Down Payment" instead of a Deferred Down Payment on line 60 of the contract. The contract was thereafter assigned to Topaz Financial.

Rojas sued Platinum and Topaz seeking rescission and restitution for violation of the Rees-Levering Motor Vehicle Sales Act as well as violation of the Consumer Legal Remedies Act and Business & Professions Code § 17200. Platinum and Topaz demurred on the grounds that while the deferred down payment was not on the correct line, it was a trivial defect and that no

damages were alleged. The demurrer was sustained. On appeal, however, the court found that the trial court erred and that the demurrer should have been overruled. In doing so, the court found that Rees-Levering requires strict compliance as it relates to the disclosure of down payments, including a requirement that a deferred down payment be included on the correct line of the contract. The court found that substantial compliance with this section was not required and damages were presumed to exist based on the statutory history of Rees-Levering. The court noted that the legislature did recently relax the requirements of Rees-Levering as it relates to how government fees are disclosed, but the legislature did not soften the requirements for disclosure of deferred down payments, thus confirming that strict compliance is required.

The court noted that the penalty for a failure to comply with the provisions of Rees-Levering that require the proper disclosure of a deferred down payment is that the contract be determined to be void and unenforceable. Thus, carefully reviewing the contracts that are assigned for proper disclosure of deferred down payments is crucial to avoid the extreme repercussions that may follow for noncompliance.

Rees-Levering does permit enforcement of a contract by the holder where the holder of the RISC has no knowledge that a deferred down payment was made as the contract was improperly prepared, and also permits for

correction of the contract by either the dealer or the finance company within ten days of the execution of the contract. As such, it is more important than ever to carefully review contracts that are received to make sure that all provisions of Rees-Levering are complied with.

This article was prepared by Darryl J. Horowitz, a litigation partner at Coleman & Horowitz, LLP, emphasizing complex business, construction and real

estate litigation, commercial collections, casualty insurance defense, insurance coverage, and alternative dispute resolution. He is a member of the Fresno County Bar Association, American Bar Association, Association of Business Trial Lawyers, California Creditors Bar Association, and the Commercial Law League of America. If you have any questions regarding the subject of this article, please contact Mr. Horowitz at (559) 248-4820/(800) 891-8362, or by e-mail at dhorowitz@ch-law.com.

Litigation Department - Auto Finance

THE LITIGATION DEPARTMENT OF COLEMAN & HOROWITT, LLP, REPRESENTS CLIENTS IN A WIDE VARIETY OF COMMERCIAL AND CONSUMER LITIGATION INCLUDING THE PROSECUTION OF AUTO FINANCE AGREEMENTS WITH CONSUMERS, ENFORCEMENT OF DEALER AGREEMENTS AS WELL AS THE DEFENSE OF INDIVIDUAL AND CLASS ACTION CONSUMER CLAIMS BROUGHT AGAINST LENDERS.

DARRYL J. HOROWITT

E-MAIL: DHOROWITT@CH-LAW.COM EXT. 111

JUDITH M. SASAKI

E-MAIL: JSASAKI@CH-LAW.COM EXT. 202

SHERYL D. NOEL

E-MAIL: SNOEL@CH-LAW.COM EXT. 140

LAURENCE Y. WONG

E-MAIL: LWONG@CH-LAW.COM EXT. 201

RUSSELL W. REYNOLDS

E-MAIL: RREYNOLDS@CH-LAW.COM EXT. 138

C. FREDRICK MEINE III

E-MAIL: FMEINE@CH-LAW.COM EXT. 134

REMA M. KOLIGIAN

E-MAIL: RKOLIGIAN@CH-LAW.COM EXT. 117

JENNIFER T. POOCHIGIAN

E-MAIL: JPOOCHIGIAN@CH-LAW.COM

KEITH M. WHITE

E-MAIL: KWHITE@CH-LAW.COM EXT. 114

COLEMAN & HOROWITT, LLP PROVIDES LEGAL COUNSEL TO THE BUSINESS COMMUNITY IN THE AREAS OF BUSINESS, COMMERCIAL, AND REAL ESTATE LITIGATION AND TRANSACTIONS, CONSTRUCTION LITIGATION, APPEALS, PROFESSIONAL LIABILITY DEFENSE, CASUALTY INSURANCE DEFENSE, INSURANCE COVERAGE, INTELLECTUAL PROPERTY (PATENT PROSECUTION, TRADEMARK, COPYRIGHT, TRADE SECRETS, AND UNFAIR COMPETITION), TAX, PROBATE, AND ESTATE PLANNING. THIS NEWSLETTER IS INTENDED TO PROVIDE THE READER WITH GENERAL INFORMATION REGARDING CURRENT LEGAL ISSUES. IT IS NOT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE OR AS A SUBSTITUTE FOR THE NEED TO SEEK COMPETENT LEGAL ADVICE ON SPECIFIC LEGAL MATTERS. THIS PUBLICATION IS NOT MEANT TO SERVE AS A SOLICITATION OF BUSINESS. TO THE EXTENT THAT THIS MAY BE CONSIDERED AS ADVERTISING, THEN IT IS HEREWITH IDENTIFIED AS SUCH.