

Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS—Auto finance lender requests dismissal of CFPB and New York AG’s UDAAP case, (Aug. 19, 2024)

Banking and Finance Law Daily Wrap Up

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By Ursula Furi-Perry, J.D., MBA

The lender claims that the complaint not only fails to state a claim for unfair or deceptive practices or fraud, but also fails to adequately allege abusive acts or practices.

Credit Acceptance Corporation (CAC), an auto finance lender incorporated and headquartered in Michigan that participates in the subprime market, has [submitted](#) a renewed motion to dismiss and an accompanying memorandum of law to the New York federal district court, asking the court to dismiss a lawsuit brought against it by the Consumer Financial Protection Bureau (CFPB) and the Attorney General of the State of New York. The two agencies had brought the enforcement action against CAC for allegedly engaging in deceptive and abusive acts or practices (*CFPB v. Credit Acceptance Corp.*, No. 23 Civ. 0038-JHR (S.D.N.Y. Aug. 14, 2024)).

The lawsuit alleges that CAC made predatory loans carrying “exorbitant” interest rates and expensive add-on products to millions of borrowers who could not afford to repay in full; hid the true cost of credit on the loans by pushing its used car dealers to manipulate vehicle prices based on borrowers’ projected performance; provided loans without regard to whether borrowers could afford them; and then used aggressive debt-collection methods and created financial incentives for dealers to add extra products to loans in ways that made borrowers think the add-on products were required (see [Banking and Finance Law Daily](#), Jan. 5, 2023).

CAC has filed a renewed motion to dismiss the suit in its entirety with prejudice under Rule 12(b)(6) of the Federal Rules of Civil Procedure. “The Consumer Financial Protection Bureau and Office of the New York Attorney General, in an increasingly familiar tack, are using this action to sidestep the legislative process and impose sweeping regulatory reform. They do so despite clear recent messaging from the Supreme Court that agency overreach will not survive judicial scrutiny,” the defendant [asserts](#) in its memorandum of law filed in support of the motion to dismiss.

The defendant’s memorandum argues that agencies do not have unbridled authority, that CAC’s alleged acts would not give rise to liability under the existing regulatory regime, and that finding for the plaintiffs “would have a chilling effect that would drastically change how auto finance operates and severely restrict opportunities for consumers to purchase vehicles.” Specifically, the memorandum notes that the complaint failed to state a claim for unfair or deceptive practices or fraud, as it has failed to allege that the defendants deceived consumers about the cost of credit in their contracts, nor had it pled any “hidden finance charges.”

Moreover, the memorandum submitted by the defendant argues that CAC’s marketing statements were not deceptive, noting that the CFPB itself publishes similar statements about improving credit scores for consumers. The plaintiffs “cannot credibly contend that the challenged statements are useful to consumers if published by the CFPB but deceptive when uttered by Credit Acceptance,” the memorandum notes. The memorandum also asserts that the plaintiffs failed to allege abusive acts or practices by the defendant, that the complaint did not allege CAC took advantage of consumers’ lack of understanding, nor that CAC took unreasonable advantage of consumers’ inability to protect their own interests.

CAC also claims that the CFPB’s participation in the action is improper, citing funding sources as the basis for that argument. The defendant claims it did not violate the Consumer Financial Protection Act, as the complaint failed to state a claim for “substantial assistance” under that Act and failed to allege that the defendant

substantially assisted any dealers in any alleged wrongdoing. Lastly, the CAC's memorandum asserts that there were no violations of New York usury laws or any other state laws.

Attorneys: Vanessa Buchko for the Consumer Financial Protection Bureau. Jane M. Azia, Office of the New York Attorney General, for People of the State of New York. Anand Subram Raman (Skadden Arps Slate Meagher & Flom LLP) for Credit Acceptance Corp.

Companies: Credit Acceptance Corp.

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