SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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GARDEN STATE AUTOMOTIVE GROUP, LLC, d/b/a GARDEN STATE HONDA, GARDEN STATE NISSAN, LLC, THOMAS SCIALPI and LARAINE CASTELLANO,

Plaintiff(s),

-against-

NISSAN MOTOR ACCEPTANCE CORPORATION, JOHN DOE 1, JOHN DOE 2 and JOHN DOE 3,

Defendant(s).

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DCM PART 5

Present:
HON. JUDITH N. MCMAHON

DECISION AND ORDER

Index No. 102694/2010
Motion No. 001

The following papers numbered 1 to 3 were used on this motion this 15th day of February, 2011:

[001]Notice of Motion [Defendant Nissan](Affirmation in Support).....	1
Affirmation in Opposition [Plaintiffs].....	2
Reply Affirmation [Defendant Nissan]	3

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This action was commenced by the plaintiffs on or about November 29, 2010, alleging, *inter alia*, that the defendant Nissan Motor Acceptance Corporation [hereinafter "NMAC"] breached its fiduciary duty and fraudulently induced plaintiffs to sign a forbearance agreement, promissory note and guaranty[1]. Presently, the defendant NMAC is moving, pursuant to CPLR § 3211(a)(1)(5) and (7), to dismiss the complaint, in its entirety.

The following facts are undisputed; plaintiff Thomas Scialpi was the principal in three car dealerships, Garden State Honda, Garden State Nissan and a dealership in Ashland Kentucky. Plaintiff Thomas Scialpi was the sole owner of two of the aforementioned dealerships, Garden State Honda and Garden State Nissan. Defendant NMAC entered into several Automotive Wholesale

[1]Plaintiff Laraine Castellano, as mother of plaintiff Thomas Scialpi only signed the guaranty.

Financing and Security Agreements[2] [also known as and herein after referred to as "floor plan financing"] with the plaintiffs on June 9, 2004 [Garden State Honda], April 4, 2006 [Ashland Dealership], and May 25, 2006 [Garden State Nissan]. In early-mid 2007, Garden State Honda became "out of trust". In other words, NMAC (as the financing company) was not getting paid pursuant to the floor plan financing agreement and as a result, placed auditors at the various dealerships to ensure the accuracy of the inventory/sales. As the financial situation of GSH grew more dire, plaintiffs and defendants entered into negotiations whereby NMAC agreed to allow plaintiff Thomas Scialpi to liquidate his assets. In order to allow the dealerships to operate, NMAC required plaintiff to enter into a Forbearance Agreement which set forth the terms of the floor plan financing extension while the liquidation was underway. To facilitate the sale of Garden State Honda, NMCA agreed to forgive a large portion of debt and loaned Scialpi $1,750,000.00 (the promissory note in this action) guaranteed by his mother, plaintiff Laraine Castellano.

In this action, plaintiffs, Garden State Automotive Group, LLC, d/b/a Garden State Honda, Garden State Nissan, LLC, Thomas Scialpi and Laraine Castellano, are seeking to recover contending, *inter alia*, that they were fraudulently induced into signing the forbearance agreement, promissory note and guaranty because they were unaware the Garden State Honda was "out of trust". Defendant NMAC is presently moving to dismiss the complaint in its entirety based upon CPLR § 3211(a)(1)(5) and (7).

CPLR § 3211(a)(5) provides (as is relevant here) that a "cause of action may not be

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[2]Automotive Wholesale Finance and Security Agreements provide financing for dealerships to purchase vehicles until they are sold. Once the vehicles sell, the dealerships are to pay a portion of the money to the financing company pursuant to the terms of the agreement. When dealerships fail to abide by this they become "out of trust".

maintained because of . . . collateral estoppel".

> The doctrine of collateral estoppel precludes a party from relitigating an issue which was previously decided against that party, or those in privity, in a proceeding in which there was a fair opportunity to fully litigate the matter. In order to invoke the doctrine, two requirements must be met: (1) the identical issue must have been necessarily decided in the prior action and must be decisive in the present action, and (2) the party who is precluded from relitigating the issue must have had a full and fair opportunity to contest the matter in the prior action. The proponent of collateral estoppel has the burden of demonstrating that the issue was identical and necessarily decided in the first action, whereas the opposing party has the burden of establishing that there was no full and fair opportunity to litigate the matter in the prior action (Strough v. Inc. Vil of W. Hampton Dunes, 78 AD3d 1037, 1039 [2d Dept., 2010]; Mavco Realty Corp. v. M. Slayton Real Estate Inc., 77 AD3d 892, 894 [2d Dept., 2010]; Pav-Co Asphalt Inc. v. County of Suffolk, 66 AD3d 660, 660-661 [2d Dept., 2009]).

"Collateral estoppel is an 'elastic doctrine' and 'the fundamental inquiry is whether relitigation should be permitted in a particular case in light of what are often competing policy considerations, including fairness to the parties, conservation of the resources of the court and the litigants, and the societal interests in consistent and accurate results" (Langdon v. WEN Management Co., 147 AD2d 450, 452 [2d Dept., 1989]).

Here, the defendant NMAC has met its burden, as the proponent of collateral estoppel, that the issues raised by plaintiffs herein are identical and defendants had a full and fair opportunity to litigate the issues in the prior action (Strough v. Inc. Vil of W. Hampton Dunes, 78 AD3d at 1039; Mavco Realty Corp. v. M. Slayton Real Estate Inc., 77 AD3d at 894). The prior action was commenced by NMAC on or about October 2009, against Thomas Scialpi and Laraine Castellano, pursuant to CPLR § 3213. In that action Mr. Scialpi and Ms. Castellano appeared and defended the

motion brought by NMAC. After oral argument and all papers were submitted were submitted, NMAC was awarded summary judgment. This court determined that judgment pursuant to CPLR § 3213 was appropriate after NMAC presented proof of a "promissory note, guaranty and the defendants' failure to make payment according to its terms"[3].

Further, Mr. Sciapli and Ms. Castellano fully opposed the motion with defenses alleging, *inter alia*, fraudulent inducement, breach of fiduciary duty and breach of the covenant of good faith. This court considered those defenses and found them completely without merit or evidence to substantiate. Specifically, Mr. Scialpi contended that "[u]pon information and belief, NMAC misrepresented the facts relating to the amount of out of trust conditions at the Garden State Nissan and Ashland Kentucky dealerships, at the time NMAC induced me into signing the Note"[4] and "NMAC made this representation knowing it was false and misrepresenting the facts to induce GSH and me to sign the Note and to induce Castellano to sign the Guarantee"[5]. Also in the prior action, Ms. Castellano opposed the motion contending she signed the guaranty "under duress and coercion"[6] and that

> [d]ue to the alleged underlying fraud, fraudulent inducement, breach of duty and misrepresentation relating to the financing of the dealership, Scialpi has a defense to the obligations alleged to be due under the Promissory Note, which I have not waived and can

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[3]See this court's Decision and Order dated March 12, 2010.

[4]See Defendant NMAC's Exhibit "C" the "Affidavit of Thomas Scialpi in Opposition to the Motion for Summary Judgment In Lieu of Complaint", pg. 2.

[5]See Defendant NMAC's Exhibit "C" the "Affidavit of Thomas Scialpi in Opposition to the Motion for Summary Judgment In Lieu of Complain", pg. 5.

[6]See Defendant NMAC's Exhibit "D" the "Affidavit of Laraine Castellano in Opposition to Motion for Summary Judgment in Lieu of Complaint", pg. 1.

> assert. In addition to the defenses to the underlying claim under the Promissory Note, I have valid defenses to any claim by NMAC under the Guarantee, as I was fraudulently induced into entering into the July 3, 2007 Forbearance Agreement and the Guarantee and did not enter into the Guaranty voluntarily or knowingly and did not waive any defenses.[7]

It is well settled that bone fide defenses to a claim based upon CPLR § 3213 include "waiver, estoppel, bad faith, fraud, or oppressive or unconscionable conduct" (Mahopac Nat'l Bank v. Baisley, 244 A.D.2d 466, 467 [2d Dept., 1997]; Capstone Bus Credit, LLC v. Imperia Family Realty, LLC, 70 AD3d 882, 883 [2d Dept., 2010]). The court considered those defenses and found them to be completely without merit.

In the present action, Mr. Scialpi and Ms. Castellano pled seven causes of action; breach of fiduciary duty regarding out of trust, breach of implied covenant of good faith and fair dealing regarding out of trust, conspiracy to defraud, fraudulent inducement, breach of contract, breach of fiduciary duty regarding maintaining floor plan financing, and lastly, breach of implied covenant of good faith and fair dealing regarding maintaining floor plan financing. More specifically, Mr. Scialpi and Ms. Castellano contend that NMAC breached its fiduciary duty and the covenant of good faith by creating the out of trust situation. With respect to the fraud causes of action, the complaint reads that "NMAC misrepresented the facts relating to the amount of out of trust conditions at GSN and the Ashland Dealership, at the time NMAC induced GSH and Scialpi to sign the Forbearance Agreement and the Note, and induced Castellano to sign the Guarantee and make the GSH Payment to NMAC on the closing of the sale of GSH assets"[8]. Plaintiffs also contend that

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[7]See Defendant NMAC's Exhibit "D" the "Affidavit of Laraine Castellano in Opposition to Motion for Summary Judgment in Lieu of Complaint", paragraph 49.

[8]See defendant NMAC's Exhibit "A", plaintiff's Summons and Complaint, pg 11.

NMAC breached its fiduciary duty and the covenant of good faith by failing to extend the floor plan financing. As the indistinguishable wording in this complaint and the prior litigations affidavits make clear, Mr. Scialpi and Ms. Castellano are pleading in their complaint the identical issues they raised as defenses in the prior litigation commenced by NMAC. This court rejected those defenses.

The second prong of collateral estoppel now requires the plaintiffs herein to establish "that there was no full and fair opportunity to litigate the matter in the prior action" (Strough v. Inc. Vil of W. Hampton Dunes, 78 AD3d at 1039; Mavco Realty Corp. v. M. Slayton Real Estate Inc., 77 AD3d at 894). The plaintiffs have failed. Throughout the instant complaint and plaintiffs affidavits the exact same contentions are pleaded as causes of action where they were raised as defenses in the previous litigation. They are, namely, that NMAC created and knew about the out of trust situation without informing the plaintiffs and then conspired/fraudulently induced them into signing the forbearance agreement, promissory note and guaranty. This court found those defenses unavailing in the previous action and considering their regurgitation in the instant litigation finds collateral estoppel applies.

With respect to plaintiffs Garden State Automotive Group, LLC, d/b/a Garden State Honda and Garden State Nissan, the court finds these parties in privity and as such are also collaterally estopped. Pursuant to plaintiffs complaint, Garden State Honda and Garden State Nissan are both limited liability companies, organized and operating in the State of New Jersey. Further, the *sole owner*, of BOTH dealerships is plaintiff Thomas Scialpi. Whether a nonparty to a prior action can be collaterally estopped is determined by the nonparty's relationship to the prior litigants/litigation and is "such that [its] own rights or obligations in the subsequent proceeding are conditioned in one way or another on, or derivative of, the rights of the party to the prior litigation" (Chambers v. City

of New York, 309 AD2d 81, 86 [2d Dept., 2003]). While no precise definition of "privity" with respect to collateral estoppel exists, courts will consider "whether the party sought to be bound and the party against whom the litigated issue was decided have a relationship that would justify preclusion, and whether preclusion, with its severe consequences, would be fair under the particular circumstances" (id.).

Here, the court finds that the relationship between plaintiff Thomas Scialpi and both Garden State Honda and Garden State Nissan, as sole owner, is such that preclusion is warranted. Plaintiff Scialpi himself corroborates this fact throughout his affidavits and letters wherein he signs and clearly makes the decisions as sole owner for both Garden State Honda and Garden State Nissan. As a result, this court finds that plaintiffs have (1) raised the identical issues in this complaint that were decided and rejected as defenses in the prior action and (2) had a full and fair opportunity to litigate to litigate. Further, in weighing the policy considerations this court finds it unfair to the defendants in having to defend this repetitive action and a burden on an already taxed court system (Langdon v. WEN Management Co., 147 AD2d 450, 452 [2d Dept., 1989]).

Accordingly, it is

ORDERED that the defendant Nissan Motor Acceptance Corporation's motion [001] to dismiss the complaint is hereby granted and the complaint is dismissed, and it is further

ORDERED that the Clerk enter Judgment accordingly.

THIS IS THE DECISION AND ORDER OF THE COURT.

Dated: April 5, 2011 E N T E R,

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Hon. Judith N. McMahon
Justice of the Supreme Court