PREPARED BY THE COURT

EDWARD M. GREENBERG and BARBARA L. GREENBERG, on behalf of themselves and all others similarly situated, Plaintiff(s), v. MAHWAH SALES AND SERVICE, INC., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO.: **BER-L-6105-15** Civil Action

Argued: **January 8, 2016**
Decided: **January 8, 2016**

Honorable Robert C. Wilson, J.S.C.

Perry P. Pittenger, Esq., from the law offices of Schiller & Pittenger, P.C., appearing for Defendant, Mahwah Sales and Service, Inc.

Michael R. McDonald, Esq. from the law offices of Gibbons P.C. filed a proposed *Amicus Curiae* in Support of Defendant's Motion to Dismiss on behalf of The New Jersey Coalition of Automotive Retailers.

Jeffrey W. Herrmann, Esq., from the law offices of Cohn Lifland Pearlman Herrmann & Knopf LLP, appearing for Plaintiffs Edward Greenberg and Barbara Greenberg, on behalf of themselves and all others similarly situated.

FACTUAL AND PROCEDURAL BACKGROUND

THIS MATTER was commenced by Plaintiffs Edward Greenberg and Barbara Greenberg on behalf of themselves and a putative class (hereinafter collectively, "Plaintiffs") who executed and entered into automobile lease agreements with the Defendant Mahwah Sales and Service, Inc. (hereinafter "Defendant") that contained language that Plaintiffs claim violates the Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA"), N.J.S.A. § 56:12-14 et seq.

On January 29, 2014, the Plaintiffs entered into a purchase agreement for a motor vehicle with the Defendant. The Plaintiff signed a Vehicle Order (hereinafter "Vehicle Order") containing the following provision relating to taxes associated with the transaction:

> **PAYMENT OF SALES AND USE TAXES.** The price for the motor vehicle specified on the face of this Order includes reimbursement for Certain Federal Excise taxes, but does not include sales taxes and use taxes (Federal, State, or Local) or other taxes, unless expressly stated. Customer assumes and agrees to pay, unless prohibited by law, any such sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability.

(See Pls.' Mem. Of Law In Opp. To Def.'s Mot. To Dismiss, Ex. A, at 3). The Plaintiffs claim that this language violates TCCWNA Section 16 because it purportedly suggests that the provision regarding payment of taxes is or may be void, unenforceable, or inapplicable, but fails to explain the applicable law in New Jersey. See N.J.S.A. § 56:12-16.

This pending matter is factually and substantively similar to four identical lawsuits initiated by the same law firm by other "aggrieved" vehicle lessees against other defendant automotive dealers in the State of New Jersey. In these four lawsuits, the plaintiffs seek monetary damages in the form of the statutory penalty imposed on vendors who carry out their business in violation of TCCWNA. N.J.S.A. § 56:12-17. The first two cases – Barbarino v. Paramus Ford, Inc. and Duke v. All American Ford, Inc. consolidated (hereinafter collectively, "All American") – were initiated in this Court. On September 11, 2015, this Court entered an Order and Opinion dismissing the named plaintiffs' complaints in the All American matter. The Court held, *inter alia*, that the plaintiffs failed to demonstrate that the provisions contained in the vehicle leasing agreements were or may have been void, unenforceable, or inapplicable within any jurisdiction, and that the language contained in the leasing agreements did not cause any confusion with respect to the plaintiffs' obligation to pay all taxes for vehicle leasing transactions pursuant to current New Jersey tax laws.

The All American plaintiffs appealed. The Appellate Division has not rendered a decision in that action. Thereafter, counsel for the plaintiffs initiated a separate lawsuit – Muffuletto v. Warnock Dodge, Inc. (hereinafter "Warnock Dodge") – in the Superior Court of Essex County before the Honorable James S. Rothschild, J.S.C. The Honorable James S. Rothschild, J.S.C. ordered that the plaintiffs' complaint was dismissed without prejudice pending the outcome of the Appellate Division's decision in the All American matter.

This matter now comes before the Court pursuant to a motion brought by Perry P. Pittenger, Esq., from the law offices of Schiller & Pittenger, P.C., attorneys for Defendant, Mahwah Sales and Service, Inc., seeking a ruling to dismiss the Plaintiffs' Complaint pursuant to R. 4:6-2. Michael R. McDonald, Esq. from the law offices of Gibbons P.C. filed a *Amicus Curiae* Brief in Support of Defendant's Motion to Dismiss on behalf of The New Jersey Coalition of Automotive Retailers. Opposition was filed by Jeffrey W. Herrmann, Esq., from the law offices of Cohn Lifland Pearlman Herrmann & Knopf LLP, attorney for Plaintiffs Edward Greenberg and Barbara Greenberg, on behalf of themselves and all others similarly situated.

MOTION TO DISMISS STANDARD

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . ." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a Complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned

from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The "test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts." Printing Mart, 116 N.J. at 746. However, "a court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULE OF LAW AND DECISION

In 1981, the New Jersey Legislature enacted TCCWNA. The impetus of the New Jersey Legislature to enact TCCNWA was predicated on a growing concern that "[f]ar too many consumer contracts, warranties, notices and signs contain provisions which clearly violate the rights of consumers. Even though these provisions are legally invalid and unenforceable, their very inclusion in a contract, warranty, notice or sign deceives a customer into thinking that they are enforceable, and for this reason the customer often fails to enforce his rights". See Assem. 1660 (Sponsors' Statement), 199th Leg. (N.J. May 1, 1980).

To address this growing concern, TCCWNA prohibits a "seller, lessor, creditor, lender or bailee…in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign…which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed". See

N.J.S.A. § 56:12-15. The Third Circuit explained that TCCWNA does not "establish consumer rights or seller responsibilities. Rather, the statute bolsters rights and responsibilities established by other laws". See Watkins v. DineEquity, Inc., 591 F. App'x 132, 134 (3d Cir. 2014).

The rights of consumers may vary from state to state. To ensure that consumers are aware of their rights, TCCWNA provides that,

> No consumer contract, warranty, notice or sign, as provided for in this act, shall contain any provision by which the consumer waives his rights under this act. Any such provision shall be null and void. No consumer contract, notice or sign shall state that any of its provisions is or may be void, unenforceable or inapplicable *in some jurisdictions* without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey; provided, however, that this shall not apply to warranties.

N.J.S.A. § 56:12-16 (emphasis added). Stated more succinctly, TCCWNA obligates vendors to explain differences in a consumer's rights or responsibilities that may exist among jurisdictions. The rights, remedies, and prohibitions conferred by TCCWNA are "in addition to and cumulative of any other right, remedy or prohibition accorded by common law, Federal law or statutes of this State." N.J.S.A. 56:12-18. "The purpose of the TCCWNA is to prevent deceptive practices in consumer contracts by prohibiting the use of illegal terms or warranties in consumer contracts" and to provide more expansive protections than those that may be afforded in other consumer protection laws. See Kent Motor Cars, Inc. v. Reynolds & Reynolds Co., 207 N.J. 428, 457, 25 A.3d 1027 (2011).

The Plaintiffs have not suffered actual damages. Rather, the Plaintiffs seek recovery under N.J.S.A. § 56:12-17, which provides, in relevant part, that "[a]ny person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than $100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs". N.J.S.A. § 56:12-17. Thus, TCCWNA provides a remedy even if a plaintiff has not suffered any actual damages. See Barrows v. Chase Manhattan Mortg. Corp., 465 F. Supp. 2d 347, 362 (D.N.J. 2006). However, the election of this remedy absent actual damages does not obviate the

burden of the plaintiff to prove a cognizable violation under TCCWNA and survive the motion to dismiss phase. See id.

This matter concerns the sales and use taxes imposed on vehicle lease transactions. Taxes imposed for vehicle leasing transactions are governed by the State of New Jersey pursuant to the Sales and Use Tax Act, N.J.S.A. § 54:32B-1, et seq. A sales tax is imposed on "the receipts from every retail sale of tangible personal property". See N.J.S.A. § 54:32B-3(a). A "sale" is defined as "[a]ny transfer of title or possession...for a consideration...[.]" See N.J.S.A. § 54:32B-2(f). A retail sale includes the purchase of tangible personal property for lease. See N.J.S.A. § 54:32B-2(e)(3). The legislature places primary responsibility on the lessee of the automobile to pay the entire sales tax at the outset of the lease. See N.J.S.A. § 56:32B-2(aa), 56:32B-7(d); L. 2005, c. 126, 1(2)(aa), 7(d); see also New Jersey Dep't of Treas., Div. of Taxation, "Notice: Leases and Rentals of Tangible Personal Property" (Sept. 20, 2005). Currently, the State of New Jersey does not impose an occupational tax on the lessee of a vehicle.

a. Plaintiff Failed to State a Claim on Which Relief Can be Granted.

The language in Plaintiffs' Vehicle Orders do not violate TCCWNA and therefore, Plaintiffs' complaint fails to state a claim on which relief can be granted. At the time Plaintiffs executed the Orders, Plaintiffs were obligated to the pay all taxes on the leased motor vehicles. Plaintiffs do not allege that they suffered any financial injury as a result of this provision. Specifically, Plaintiffs do not assert that it is wrongful for Defendants to obligate customers, including Plaintiffs, to pay taxes. Furthermore, Plaintiffs do not assert that they paid taxes that they should not have paid pursuant to New Jersey law governing automobile sales and leases. New Jersey's Sales and Use Tax Act imposes an obligation on customers to pay sales tax applicable to their vehicle lease transactions. Plaintiffs have not uncovered the existence of any statute in any jurisdiction which alters this basic obligation. Rather, Plaintiffs contend that the Vehicle Orders violate TCCWNA because the Orders included the

provision in which Plaintiffs assumed and agreed "to pay, *unless prohibited by law*, any such sales, use or occupational taxes imposed on or applicable to" the vehicle leasing transactions. Plaintiffs assert that the language of the Order somehow constitutes a technical violation of TCCWNA and therefore, Plaintiffs and the putative classes are each entitled to $100 windfall payment. See N.J.S.A. § 56:12-17.

The Plaintiffs argue that the Vehicle Orders do not clearly set forth the consumers' rights with respect to their obligations to pay taxes on the vehicles. The phrase "unless prohibited by law" does not offend TCCWNA because it does not state that the provision's enforceability varies by state. Plaintiffs allege that the phrase "unless prohibited by law" following the enumerated tax provisions suggests that the preceding provision is or may be void, enforceable, or inapplicable somewhere and does not explicitly state whether the provision is enforceable in New Jersey. To reiterate, N.J.S.A. § 56:12-16 prohibits a consumer contract, notice, or sign from stating that any of its "provisions is or may be void, enforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable within the State of New Jersey". See N.J.S.A. § 56:12-16. At oral argument, the Plaintiffs, by and through their counsel, emphasized that the absence of any notification from the Vehicle Orders that New Jersey does not obligate the lessee to pay occupational taxes violates the plain language of TCCWNA.

The language of TCCWNA is clear on its face that in order to establish a violation of TCCWNA, the aggrieved party must establish that the provisions at issue are or may be void, unenforceable or inapplicable in New Jersey in order to successfully plead a violation under N.J.S.A. § 56:12-16. See N.J.S.A. § 56:12-16. In Gomes v. Extra Space Storage, Inc., No. 13-0929 KSH CLW, 2015 U.S. Dist. LEXIS 41512 (D.N.J. Mar. 31, 2015), the plaintiff contended that the terms of a personal storage space agreement violated the New Jersey Self-Service Storage Act, the United States Bankruptcy Code, the New Jersey Consumer Fraud Act, and TCCWNA. See Gomes v. Extra Space

Storage, Inc., No. 13-0929 KSH CLW, 2015 U.S. Dist. LEXIS 41512, at *8 (D.N.J. Mar. 31, 2015). The Court found that the personal storage space agreement contained provisions that implied that such provisions may be invalid in New Jersey by stating that they operate only to the extent of the applicable law. Id. at *19-20. The court denied the defendant's motion to dismiss, holding that "Gomes therefore stated a plausible claim for relief under the TCCWNA because he alleged that these three clauses are unenforceable in New Jersey, and they do not contain N.J.S.A. § 56:12-16's 'magic words'". Id. at *20. The holding in Gomes reinforces that the aggrieved party must demonstrate that the contract provision at issue is or may be void, unenforceable or inapplicable in order to successfully plead a violation of N.J.S.A. § 56:12-16. See Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co., 207 N.J. 428, 433-35 (2011) (alleging violations of Consumer Fraud Act ("CFA") and TCCWNA); Vaz v. Sweet Ventures, Inc., 2011 N.J. Super. Unpub. LEXIS 3189, *1 (Law Div. July 12, 2011) (finding that "limit of liability" provision violated other New Jersey laws, including CFA); Wilson v. Kia Motors Am., Inc., No. 13-1069, 2015 U.S. Dist. LEXIS 82332, at *5, *7-8, *10-11 (D.N.J. June 25, 2015) (holding that plaintiff failed to establish violation under CFA and therefore, failed to establish a claim under TCCWNA). In other words, the Vehicle Orders cannot violate the statute as a matter of law because the contractual language contained therein does not declaratively or impliedly state that the sales tax provisions are or may be void, enforceable or inapplicable in a particular jurisdiction, without specifying enforceability in New Jersey.

Upon thorough consideration of the language of the statute, the Plaintiffs' Complaint do not sufficiently aver a violation of N.J.S.A. § 56:12-16. Specifically, the Complaint alleges that the Vehicle Order violates the Act, as follows:

> 6. [Defendant] sells and leases motor vehicles to the public at its dealership located at 55 Franklin Turnpike, Mahwah, Bergen County, New Jersey 07430.
>
> 7. One January 29, 2014, Plaintiffs entered into an agreement with [Defendant] to purchase a 2014 Ford Mustang vehicle (the "Vehicle").

> 8. In order to effectuate the purchase of the Vehicle, Plaintiffs entered into a consumer contract described as a Retail Order with [Defendant] (the "Contract")...
>
> 29. The Contract used by Defendant in its transaction with Plaintiffs, and the contracts used by Defendant with members of the putative Class, are written consumer contracts within the meaning of TCCWNA, as set forth at N.J.S.A. § 56:12-15 and -16.
>
> 31. Paragraph 9 of the "Additional Terms and Conditions" section of the Contract, which states in relevant part: "Consumer assumes and agrees to pay, unless prohibited by law, any such sales, use or occupational taxes imposed on or applicable to the transactions covered by this Order, regardless of which party may have primary tax liability," violates Act at N.J.S.A. § 56:12-16 in that it fails to specify which of the aforesaid provisions are, or are not, void, unenforceable or inapplicable within the State of New Jersey.
>
> 32. Pursuant to N.J.S.A. § 56:12-17, and as a result of Defendant's violations of the Act, Plaintiff, and all class members similarly situated, are statutorily entitled to damages of not less than $100 for each such violation, together with reasonable attorney's fees and court costs.

(See Pittenger Cert. in Supp. Of Def.'s Mot. To Dismiss, Ex. A, at 3, 7-8). Unlike the aggrieved parties in Gomes or the aforementioned case law, who alleged cognizable violations under applicable New Jersey law, the Plaintiffs in this matter fail to articulate how the provisions are presently void or may be void in New Jersey, or presently violate or may violate any applicable New Jersey law, thus rendering the provisions void, unenforceable, or inapplicable. To reiterate, New Jersey's Sales and Use Tax Act imposes an obligation on customers to pay sales tax applicable to their vehicle lease transactions, and the Plaintiffs have not uncovered the existence of any statute in this jurisdiction or another jurisdiction that alters this basic obligation.

Similarly, the Plaintiffs attempt to parse the language of the statute to achieve an unintended consequence never envisioned by the New Jersey legislature at the time it enacted the statute. Firstly, when read conjunctively with the phrase "void, unenforceable or inapplicable", TCCWNA applies only where an agreement states that a provision is void in "some jurisdictions" without specifying its enforceability or lack thereof in New Jersey. N.J.S.A. § 56:12-16. In Shelton v. Restaurant.com, 214

N.J. 419 (2013), the Supreme Court of New Jersey analyzed TCCWNA and held that "a contract or notice cannot simply state in a general, nonparticularized fashion that some of the provisions of the contract or notice may be void, inapplicable, or unenforceable *in some states*. See Shelton v. Restaurant.com, Inc., 214 N.J. 419, 427-428 (N.J. 2013) (emphasis added). The Supreme Court acknowledged that TCCWNA applies when a provision's enforceability varies by state and its enforceability in New Jersey is vague. Id. That is obviously not the instant situation.

Subsequent case law in the state of New Jersey has followed the Supreme Court's approach. The phrase "unless prohibited by law" does not explicitly or impliedly state that the tax provisions may be invalid under New Jersey law. In Bohus v. Restaurant.com, Inc., 784 F.3d 918 (3d Cir. 2015), the Third Circuit considered if certain gift certificates issued by Defendant complied with TCCWNA when the gift certificates contained the following language: "1) the certificate '[e]xpires one (1) year from date of issue, *except in California and where otherwise provided by law*[,]' and 2) the certificate is '[v]oid to the extent prohibited by law'". See Bohus v. Restaurant.com, Inc., 784 F.3d 918, 921 (3d Cir. 2015) (emphasis added). The declarative language in the gift certificates at issue in Bohus is substantially dissimilar to the provisions at issue in this case, which do not expressly or impliedly impose different rights or responsibilities on the consumer based upon jurisdiction. The provisions only focus on applicability within the state of New Jersey.

In comparison, analysis of the rental agreement at issue in Castro v. Sovran Self Storage, Inc., Civ. No. 14-6446, 2015 U.S. Dist. LEXIS 92310 (D.N.J. July 16, 2015) is persuasive here.[1] In Castro, the rental agreement provided as follows: "[i]f one or more of the provisions of this Rental Agreement are deemed to be illegal or unenforceable the remainder of this Rental Agreement shall be unaffected and shall continue to be fully valid, binding and enforceable." Castro v. Sovran Self Storage, Inc.,

[1] There is a scarcity of case law analyzing the provisions of TCCWNA at issue here. The litigants and the Court have surveyed the case law and have relied on reported as well as persuasive unreported cases to fully brief this issue.

No. 14-6446 JEI, 2015 U.S. Dist. LEXIS 92310, at *15 (D.N.J. July 16, 2015). The plaintiff alleged that this provision improperly stated that the finding of one or more provisions of the rental agreement illegal or unenforceable did not affect the remainder of the agreement without specifying which provisions are void or unenforceable, and thus violated TCCWNA. Id. at *12-13.

The court in Castro distinguished this provision from the provision contained in the lease/rental agreement in Martinez-Santiago v. Public Storage, 38 F. Supp. 3d 500 (D.N.J. 2014). In Martinez-Santiago v. Public Storage, 38 F. Supp. 3d 500 (D.N.J. 2014), the District Court for New Jersey analyzed a lease/rental agreement of property that contained a contractual provision stating that "[i]f any provision of this Lease/Rental Agreement shall be invalid or prohibited *under the laws of the state in which the Premises are located*, such provision shall be ineffective only to the extent of such prohibition or invalidity". Martinez-Santiago v. Public Storage, 38 F. Supp. 3d 500, 511 (D.N.J. 2014) (emphasis added). While the contractual provision did not explicitly state in a simple, declarative sentence that some provisions may be invalid under state law, the District Court concluded that the wording of the savings clause implied that assertion with its facially apparent emphasis on "the laws of the state in which the Premises are located". Id. In contrast to the agreement in Martinez, the court in Castro found that the defendant's rental agreement was specific to New Jersey, and that there was no indication that the provision contemplated the contract's application in multiple jurisdictions necessitating a clarification of its enforceability in New Jersey. See Castro, 2015 U.S. Dist. LEXIS at *15. Rather, the court found that the provision operated as a severability clause, protecting the remainder of the contract should some portion of it be declared void or unenforceable. Id. The court therefore found that N.J.S.A. § 56:12-16 did not govern the provision of the rental agreement and granted the defendant's motion to dismiss the plaintiff's TCCWNA claim as it related to that provision. Id. at *15-16.

Similarly, unlike the provisions Martinez-Santiago, the challenged provision "unless prohibited by law" preceding the tax provisions does not impliedly assert that some provisions may be invalid in a specific jurisdiction, or void where prohibited by law in a specific state. Conversely here, the challenged provision simply states that the lessee of the vehicle assumes and agrees to pay any such sales, use or occupational taxes applicable to the transaction. There can be no doubt that New Jersey state law, and New Jersey law alone, governs the tax obligations related to the sale governed by the Vehicle Order. The Plaintiffs are New Jersey residents. Defendants are New Jersey automotive dealerships. The transactions occurred in New Jersey. The most reasonable interpretation of N.J.S.A. § 56:12-16 is that if a consumer contract is or may be used in multiple jurisdictions and expressly states that any of its provisions are or may be void, unenforceable or inapplicable in certain of those jurisdictions, it must specify where such provisions are or are not void, unenforceable or inapplicable in New Jersey. Similar to the rental agreement in Castro, there is nothing in the language of the Vehicle Order, or in facts as alleged by the Plaintiffs, that would suggest any law, other than New Jersey, governs or could govern the statutorily-established sales tax obligations associated with these dealings. See Castro, 2015 U.S. Dist. LEXIS at *15-16. Rather, the flexible language or phrase "unless prohibited by law" that precedes the tax provisions simply protects enforceability of the remainder of the contract should any portion of it be altered in the future. See id. at *15. This language does not violate TCCWNA and therefore, Plaintiffs' complaints failed to articulate a legal basis entitling plaintiff to relief. See Sickles, 379 N.J. Super. at 106.

Moreover, the Plaintiffs' interpretation of N.J.S.A. § 56:12-16 suggests that any flexible and commonplace contractual clause such as "unless prohibited by law" implicates the Act. The Plaintiffs' interpretation ignores the import of the phrase "in some jurisdictions" with respect to the application of the statute. The phrase "unless prohibited by law" complies with the current sales and use tax structure in New Jersey. Firstly, the contractual provision in the Vehicle Order that obligates

the Plaintiffs' to pay the taxes associated with leasing the vehicles fully complies with New Jersey law. As the law remains today, New Jersey law makes the lessee responsible for paying the sales taxes related to vehicle leasing transaction. Plaintiffs cannot point to any statutory authority that states otherwise. Similarly, New Jersey law does not obligate the lessee to pay occupational taxes on vehicle leasing transactions. However, the tax structure is often subject to change by the Legislature. The inclusion of flexible language "unless prohibited by law" neither alters this responsibility nor creates confusion as to which party, the lessee or lessor, bears the responsibility. Secondly, even if, *arguendo*, the New Jersey Legislature amended the current tax structure and shifted responsibility for paying the taxes onto another party, such as the lessor rather than the lessee, the "unless prohibited by law" language is flexible enough to comply with such a change. As the law remains today and for purposes of this litigation, the contractual provisions in the Vehicle Order unambiguously obligated Plaintiffs to pay all taxes associated with leasing the vehicles and the inclusion of flexible language such as "unless prohibited by law" does not deceive or create confusion as to the rights and responsibilities of the Plaintiffs.

The Defendant did not declaratively or impliedly state that a provision was unenforceable in New Jersey. Unlike other TCCWNA case law, there is no additional disclosure that the Vehicle Orders could make to more fully inform the Plaintiffs of their rights and responsibilities as lessees of a vehicle in the State of New Jersey. Compare Castro, 2015 U.S. Dist. LEXIS at *15-16, with Martinez-Santiago, 38 F. Supp. 3d at 511, and Bohus, 784 F.3d at 921. The Legislature enacted TCCWNA as a remedial measure with the overarching purpose of ensuring that consumers know the full terms and conditions of consumer contracts entered into by consumers with a vendor. See Shelton, 214 N.J. at 430, 442. In other words, TCCWNA's primary goal is to prevent confusion among consumers as to their legal rights. The Court does not find that the language of the Orders creates confusion. Plaintiffs' interpretation, if accepted, would permit Plaintiffs and the putative class to reap

a windfall in the form of civil penalties despite suffering no harm or deprivation of rights, and subject vehicle retailers to potentially endless liability for executing contracts that seemingly comply with the language of TCCWNA as drafted.

As stated in this Court's previous Opinion entered in All American, if the New Jersey Legislature intends for TCCWNA to target flexible language such as the language used in the Orders, the Legislature should clarify the language and scope of the statute. At this juncture, the Court finds that the challenged provision accurately and unambiguously informs consumers of their obligations to pay taxes under the current New Jersey tax structure and the flexible language of "unless prohibited by law" does not violate TCCWNA.

In accordance with the foregoing reasons, Defendant's motion to dismiss Plaintiffs' complaint is **GRANTED**.

HON. ROBERT C. WILSON

Perry A. Pittenger, Esq. - NJAID 031121984
SCHILLER & PITTENGER, P.C.
1771 Front Street - Suite D
Scotch Plains, New Jersey 07076
Phone: (908) 490-0444
Attorneys for Defendant Mawah Sales and Service, Inc.

EDWARD M. GREENBERG and BARBARA L. GREENBERG, on behalf of themselves and all others similarly situated, Plaintiffs, v. **MAHWAH SALES AND SERVICE, INC.,** Defendant.	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION** **BERGEN COUNTY** **Docket No. BER-L-6105-15** **CIVIL ACTION** **ORDER**

THIS MATTER having been opened to the Court by Schiller & Pittenger, P.C., attorneys for Defendant, Mahwah Sales and Service (Perry A. Pittenger, Esq., appearing) for an Order granting their Motion to Dismiss Plaintiffs' Complaint against the Plaintiffs, Edward M. Greenberg and Barbara L. Greenberg, (Jeffrey W. Herrman, Esq., appearing), and the Court having considered the papers submitted in support thereof and any in opposition thereto; and having heard the oral argument of counsel, and for good cause shown:

IT IS on this 8th day of JANUARY, 2015 **ORDERED**:

1. **THAT** the Defendant's Motion to Dismiss Plaintiffs' Complaint with Prejudice is hereby granted;

2. **THAT** a copy of this Order shall be served upon all counsel of record within five (5) days of the receipt thereof by counsel for Defendants .

ROBERT C. WILSON, J.S.C