

OCCC CASE NOS. L20-00004 & L20-00005

IN THE MATTER OF:	§	BEFORE THE
	§	
REYNOLDS AND REYNOLDS	§	
4150 SECOND STREET SOUTH,	§	OFFICE OF CONSUMER
SUITE #550	§	
ST. CLOUD, MINNESOTA 56301	§	CREDIT COMMISSIONER
	§	
BYRIDER FRANCHISING, LLC	§	
12802 HAMILTON CROSSING BLVD.	§	
CARMEL, INDIANA 40632	§	STATE OF TEXAS

ORDER DISAPPROVING PLAIN LANGUAGE CONTRACT SUBMISSION

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order Disapproving Plain Language Contract Submission against Reynolds and Reynolds and Byrider Franchising, LLC.¹

Statement of Facts and Law

Chapter 341 of the Texas Finance Code requires motor vehicle retail installment contracts to be written in plain language.² A creditor must use either a model contract adopted by rule of the Texas Finance Commission, or a contract that the creditor has submitted to the OCCC for plain language review.³ A submission must be accompanied by a signed certification that the contract meets requirements for plain language contracts.⁴ Chapter 341’s implementing rules specify that motor vehicle retail installment transactions are subject to federal disclosure requirements.⁵

In February 2019, Reynolds and Reynolds and Byrider Franchising, LLC submitted a motor vehicle retail installment contract to the OCCC for plain language review. The contract’s form number is JD-RSMVLZ-TX Rev. 1/1/2019. Reynolds and Reynolds sent the contract to the OCCC and provided a

¹ Tex. Fin. Code § 341.502.

² Tex. Fin. Code § 341.502(a).

³ Tex. Fin. Code § 341.502(b)-(c).

⁴ 7 Tex. Admin. Code § 84.802(b).

⁵ 7 Tex. Admin. Code § 84.803(a).

submission form for the contract. In the submission form, Reynolds and Reynolds crossed out the sentence that states: "I also certify that the contract is fully compliant with federal and state law." In a separate submission form for the contract, Byrider Franchising, LLC signed the complete certification.

The motor vehicle retail installment contract submitted by Reynolds and Byrider Franchising, LLC does not comply with state and federal law. First, the contract misleadingly suggests that the holder may impose charges that are not authorized by the Texas Finance Code. Second, the contract does not comply with federal disclosure requirements, because it does not include sales tax in the amount financed. Third, the contract contains inconsistent provisions regarding whether a finance charge will be assessed on taxes.

I. Charges Not Authorized by the Texas Finance Code

Chapter 348 of the Texas Finance Code limits the charges that may be imposed in a motor vehicle retail installment transaction.⁶ If a charge is not expressly authorized by statute, a holder may not contract for, charge, or collect the charge in a retail installment transaction.⁷

Chapter 348 authorizes the holder to charge and receive the following charges in collecting from the retail buyer:

- (1) a delinquency charge, if an installment remains unpaid after the 15th day after the maturity of the installment;⁸
- (2) reasonable attorney's fees, if the contract is referred for collection to an attorney who is not a salaried employee of the holder;⁹
- (3) court costs and disbursements;¹⁰
- (4) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the motor vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle;¹¹ and

⁶ Tex. Fin. Code §§ 348.004–348.006, 348.103–348.114.

⁷ *Maley v. 7111 Sw. Freeway, Inc.*, 843 S.W.2d 229, 233 (Tex. App. – Houston [14th Dist.] 1992, writ denied).

⁸ Tex. Fin. Code § 348.107(a).

⁹ Tex. Fin. Code § 348.108(1).

¹⁰ Tex. Fin. Code § 348.108(2).

¹¹ Tex. Fin. Code § 348.108(3).

- (5) a deferment charge, if the retail installment contract is amended to defer all or part of one or more installments.¹²

The motor vehicle retail installment contract submitted by Reynolds and Reynolds and Byrider Franchising, LLC includes collection charges that are not authorized by the Texas Finance Code.

First, on the third page of the contract, item B. of “REMEDIES” states: “We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.” This provision goes beyond the charges authorized by the Texas Finance Code, and misleadingly suggests that in collecting on the retail installment contract, the holder may add amounts for all unpaid taxes, assessments, liens, and repairs, and charge a finance charge on those amounts.

Second, on the fourth page of the contract, the “EXPEDITED PAYMENT FEE” section states: “To the extent permitted by applicable law, if you request to make an expedited payment using a method for which either we or our service provider charges a fee, you understand and agree that you will pay us or our service provider the fee for that service.” This provision misleadingly suggests that applicable law might allow the holder may charge an expedited payment fee, when this amount is not authorized by the Texas Finance Code.

For these reasons, the contract includes collection charges that are not authorized by Chapter 348 of the Texas Finance Code, and does not comply with state law.

II. Failure to Include Sales Tax in Amount Financed

A. Regulation Z’s Requirement to Disclose Amount Financed

Motor vehicle retail installment transactions are subject to the disclosure

¹² Tex. Fin. Code § 348.114(a).

requirements of the federal Truth in Lending Act and Regulation Z.¹³ Under Regulation Z, a creditor must disclose the amount financed.¹⁴ Regulation Z describes the amount financed as “the amount of credit provided to you or on your behalf.”¹⁵ For purposes of Regulation Z, the term “credit” refers to the right to defer payment of a debt or to incur debt and defer its payment.¹⁶ Credit includes amounts that the consumer has a continuing obligation to pay the creditor.¹⁷ State law governs whether a consumer has an obligation.¹⁸

Regulation Z requires the creditor to calculate the amount financed by: (1) determining the cash price (subtracting any downpayment), (2) adding any other amounts financed by the creditor that are not part of the finance charge, and (3) subtracting any prepaid finance charge.¹⁹ Regulation Z allows the creditor to include taxes in either the cash price or other amounts financed.²⁰

B. Texas Law’s Requirements for Deferred Sales Tax

In a seller-financed motor vehicle sale, Texas law allows two methods for the seller to collect sales tax and remit it to the appropriate taxing authority.

The first method is a sales tax advanced transaction. In a sales tax advanced transaction, the seller pays all the sales tax to the county assessor-collector up front, within 20 working days of the sale.²¹ The sales tax is included in the principal balance, and the seller may impose a finance charge on this amount.²²

The second method is a sales tax deferred transaction. In a sales tax deferred transaction, the sales tax obligation is paid to the Texas Comptroller of Public Accounts over time, by spreading the total sales tax obligation over the

¹³ Tex. Fin. Code § 348.009(a); 7 Tex. Admin. Code § 84.803(a).

¹⁴ Regulation Z, 12 C.F.R. § 1026.18(b).

¹⁵ Regulation Z, 12 C.F.R. § 1026.18(b).

¹⁶ Regulation Z, 12 C.F.R. § 1026.2(a)(14).

¹⁷ Regulation Z Official Commentary, 12 C.F.R. pt. 1026 supp. I para. 2(a)(14)1.i., iii., iv.

¹⁸ Regulation Z Official Commentary, 12 C.F.R. pt. 1026 supp. I para. 2(a)(13)1.

¹⁹ Regulation Z, 12 C.F.R. § 1026.18(b)(1)-(3).

²⁰ Regulation Z, 12 C.F.R. § 1026.2(a)(9); Regulation Z Official Commentary, 12 C.F.R. pt. 1026 supp. I paras. 2(a)(9)1., 18(b)(2)1.

²¹ Tex. Tax Code § 152.041(a), (c); 7 Tex. Admin. Code § 84.102(17).

²² 7 Tex. Admin. Code § 84.102(14)(A).

term of the transaction.²³ Each time the seller receives a payment from the buyer, the seller remits a portion of the payment to the comptroller, corresponding to the amount owed for that month.²⁴ The seller may not charge a finance charge on the deferred sales tax.²⁵ Under the Texas Tax Code, deferred sales tax is part of the sales price, is a debt owed to the seller by the buyer, and is recoverable at law in the same manner as the sales price.²⁶

C. Disclosure of Sales Tax in the Submitted Contract

Under Texas law, deferred sales tax is a debt that the buyer owes to the seller over time.²⁷ This means that buyer has a continuing obligation to pay deferred sales tax to the seller. Therefore, for purposes of Regulation Z, deferred sales tax is credit, is financed by the seller, and must be included in the amount financed.²⁸ In order to comply with Regulation Z, deferred sales tax must be disclosed as part of the amount financed. For this reason, in the model itemization of amount financed adopted by rule of the Texas Finance Commission, deferred sales tax is included in the amount financed.²⁹

In the contract submitted by Reynolds and Reynolds and Byrider Franchising, LLC, the deferred sales tax is not included in the amount financed. Instead, on the second page of the contract, the sales tax is disclosed as a separate item, immediately below the amount financed on line x.

By failing to include sales tax in the amount financed, the contract inhibits a buyer's ability to use disclosures for comparison shopping. The contract's amount financed will appear artificially lower when compared to other transactions where sales tax is included in the amount financed. The contract will appear to include savings that do not actually exist. For this reason, the contract hides the actual cost of the transaction, in a manner inconsistent with the purposes of the Truth in Lending Act and Regulation Z, which include making consumers aware of the costs of credit transactions.³⁰ The contract is also

²³ Tex. Tax Code § 152.047; 7 Tex. Admin. Code § 84.102(18).

²⁴ Tex. Tax Code § 152.047(e).

²⁵ 7 Tex. Admin. Code § 84.102(14)(B).

²⁶ Tex. Tax Code § 152.047(d).

²⁷ Tex. Tax Code § 152.047(d).

²⁸ Regulation Z, 12 C.F.R. § 1026.18(b)(1)-(3).

²⁹ 7 Tex. Admin. Code § 84.808(8)(B) fig.

³⁰ See Truth in Lending Act, 15 U.S.C. § 1601(a) ("The informed use of credit results from an awareness of the

inconsistent with the purposes of Section 341.502 of the Texas Finance Code and its implementing rules, which include ensuring that contracts are written in plain language designed to be easily understood by the average consumer.³¹

Because form JD-RSMVLZ-TX does not include deferred sales tax in the amount financed, the contract does not comply with federal law, and does not comply with the implementing rules for plain language contracts.

III. Inconsistent Provisions Regarding Finance Charge on Taxes

The contract contains inconsistent statements about whether finance charge will be assessed on taxes.

On the second page of the contract, the line disclosing sales tax states: "Sales Tax (The sales tax is included in your monthly payment amount, but no finance charge is assessed on this amount)." This suggests that no finance charge will be assessed on sales taxes.

However, on the third page, item B. of "REMEDIES" states: "We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full." This suggests that finance charge may be assessed on taxes not paid by the buyer. These provisions are inconsistent with each other.

Because the contract contains inconsistent provisions about whether finance charge will be assessed on taxes, it does not comply with the purposes of Section 341.502 of the Texas Finance Code and its implementing rules, which include ensuring that contracts are written in plain language designed to be easily understood by the average consumer.³²

cost thereof by consumers.").

³¹ Tex. Fin. Code § 341.502(a)(1); 7 Tex. Admin. Code § 84.802(b).

³² Tex. Fin. Code § 341.502(a)(1); 7 Tex. Admin. Code § 84.802(b).

Authority

If the Commissioner determines that a plain language contract does not comply with Section 341.502 of the Texas Finance Code or its implementing rules, then the Commissioner shall issue an order disapproving the contract.³³ If the Commissioner issues an order disapproving a contract, a person may not use the contract after the order takes effect.³⁴

The Commissioner has determined that the motor vehicle retail installment contract submitted by Reynolds and Reynolds and Byrider Franchising, LLC, form JD-RSMVLZ-TX Rev. 1/1/2019, does not comply with Section 341.502 of the Texas Finance Code and its implementing rules. For this reason, the Commissioner issues this Order.

Order

IT IS ORDERED that:

1. The plain-language contract submitted by Reynolds and Reynolds and Byrider Franchising, LLC, form number JD-RSMVLZ-TX Rev. 1/1/2019, is DISAPPROVED.
2. Reynolds and Reynolds and Byrider Franchising, LLC must cease and desist using form number JD-RSMVLZ-TX Rev. 1/1/2019 in motor vehicle retail installment transactions.

Right to Request Hearing

Reynolds and Reynolds and Byrider Franchising, LLC have the right to request a hearing regarding this Order.³⁵ Reynolds and Reynolds and Byrider Franchising, LLC's request must be made in writing and sent to the OCCC not later than 30 days after Reynolds and Reynolds and Byrider Franchising, LLC receive this Order. Reynolds and Reynolds and Byrider Franchising, LLC must send the request to:

³³ Tex. Fin. Code § 341.502(c).

³⁴ Tex. Fin. Code § 341.502(d).

³⁵ Tex. Fin. Code § 14.208(b).

Matthew Nance
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

If Reynolds and Reynolds and Byrider Franchising, LLC request a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.³⁶ If Reynolds and Reynolds and Byrider Franchising, LLC fail to request a hearing by this deadline, this Order is considered final and enforceable.³⁷

All communications with the OCCC concerning this matter must be through Matthew Nance, Deputy General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7660, or by email to matthew.nance@occc.texas.gov.

Signed this 7th day of January, 2020.

/s/ Leslie Pettijohn
Leslie L. Pettijohn
Consumer Credit Commissioner
State of Texas

³⁶ Tex. Fin. Code § 14.208(b).

³⁷ Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on January 7, 2020, a true and correct copy of this Order Disapproving Plain Language Contract Submission has been sent to Reynolds and Reynolds and Byrider Franchising, LLC by the following:

Reynolds and Reynolds
Attn: Hubert (Chip) Zyvoloski
4150 Second Street South, Suite #550
St. Cloud, MN 56301
chip_zyvoloski@reyrey.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5193 4449

Reynolds and Reynolds
Attn: CT Corporation, Registered Agent
1021 Main, Suite 1150
Houston, TX 77002

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5193 4456

Byrider Franchising, LLC
Attn: Jeffrey B. Higgins
12802 Hamilton Crossing Blvd.
Carmel, IN 40632
jeffh@jdbyrider.com

- hand-delivery
- facsimile
- electronic mail
- regular mail
- certified mail, return receipt requested
#91 7199 9991 7037 5193 4463

Byrider Franchising, LLC
Attn: Byrider, Registered Agent
3216 Southwest Military Drive
San Antonio, TX 78211

hand-delivery

facsimile

electronic mail

regular mail

certified mail, return receipt requested
#91 7199 9991 7037 5193 4470

/s/ Matthew Nance _____

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
State Bar No. 24074794
2601 North Lamar Blvd.
Austin, Texas 78705
512-936-7660 (phone)
512-936-7610 (fax)
matthew.nance@occc.texas.gov