

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

IRA GORE, JR.,)
)
Plaintiff,)
)
vs.)
)
BMW OF NORTH AMERICA, INC.,)
 et al.,)
Defendants.)

Civil Action No:
CV-90-9658

FILED IN OPEN COURT ON THIS THE
11 DAY OF JUNE, 1992

WAYNE THORN, JUDGE

ANSWER

Bayerische Motoren Werke A.G. ("BMW AG"), answers the plaintiff's complaint as follows:

1. BMW AG is a business entity which was organized and which exists under and by virtue of the laws of the Federal Republic of Germany and which has its principal place of business in the Federal Republic of Germany and has no place of business and conducts no business transactions in Alabama, the state of plaintiff's residence, and, as such, is not and has never been a citizen or resident of the State of Alabama.

2. The plaintiff's attempted service of process on BMW AG is not in compliance with the "Convention on Service Abroad of Judicial and Extrajudicial Documents of Civil and Commercial Matters," 20 UST 361.

3. The Court's denial of this defendant's motion to quash plaintiff's purported service of process, even if such service is effective, comes too late for BMW AG to defend the allegations made against it at trial or to seek disposition of the claims against it by summary judgment or motion for judgment on the pleadings prior to trial.

4. The plaintiff's complaint in this action fails to state a claim against BMW AG upon which relief can be granted.

5. This defendant denies the material allegations of the complaint and demands strict proof of any complaint purportedly served on it.

DEFENSES

I. Defendant denies that the plaintiff is entitled to any relief sought in any complaint or to any other different, or further relief.

II. Defendant denies the breach of any legal duty owed by the defendant to the plaintiff.

III. The plaintiff lacks standing to assert any claim on behalf of any other purchaser of a BMW vehicle.

IV. Plaintiff's claim of punitive damages in any complaint filed by the plaintiff violate the fourth, fifth, sixth, and fourteenth amendments of the Constitution of the United States, on the following grounds:

(a) it is a violation of the Due Process and Equal Protection Clauses of the fourteenth amendment of the United States Constitution to impose punitive damages, which are penal in nature, against the civil defendants upon the plaintiff's satisfying a burden of proof that is less than "beyond a reasonable doubt" burden of proof required in criminal cases;

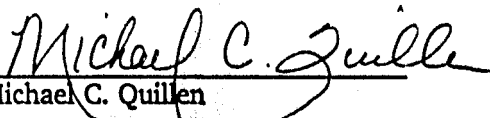
(b) the procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against the defendants which thereby violates the Due Process Clause of the fourteenth amendment of the United States Constitution;

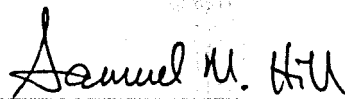
(c) the procedures pursuant to which punitive damages are awarded result in imposition of different penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the fourteenth amendment of the United States Constitution;

(d) the procedures pursuant to which punitive damages are awarded permits the imposition of punitive damages in excess of the maximum criminal penalties for the same or similar conduct, which thereby infringes the Due Process Clause of the fifth and fourteenth amendments and the Equal Protection Clause of the fourteenth amendment of the United States Constitution.

V. The plaintiff has failed to state a claim upon which award of punitive damages could be allowed under applicable Alabama law.

VI. The Court does not have personal jurisdiction over this defendant.


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