

IRA GORE, JR.,

Plaintiff,

vs.

BAYERISCHE MOTOREN WERKE A.G.;  
 BMW OF NORTH AMERICA, INC.;  
 GERMAN AUTO, INC.; AND  
 ITS AGENTS, SERVANTS AND  
 EMPLOYEES; AND FICTITIOUS  
 PARTY DEFENDANTS A, B AND C  
 BEING ANY OTHER INDIVIDUAL  
 BUSINESS OR CORPORATION WHO  
 INDUCED PLAINTIFF TO PURCHASE  
 THE VEHICLE SUBJECT TO THIS  
 COMPLAINT, AND WHO NEGOTIATED  
 THE TERMS OF AND CONSUMMATED  
 THE SALE OF THE VEHICLE,  
 WHOSE IDENTITIES ARE OTHERWISE  
 UNKNOWN BUT WHOSE NAMES WILL  
 BE ADDED BY AMENDMENT WHEN  
 ASCERTAINED; FICTITIOUS  
 PARTY DEFENDANTS D, E AND F  
 BEING INDIVIDUALS OR ENTITIES  
 WHO WERE RESPONSIBLE FOR THE  
 IMPORT AND DISTRIBUTION OF  
 THE VEHICLE WHICH IS  
 SUBJECT OF THIS COMPLAINT,  
 AND THOSE ENTITIES MAKING  
 REPRESENTATIONS THAT THE  
 VEHICLE WAS NEW AT THE TIME  
 OF ITS SALE, OR WHO FAILED TO  
 ACCURATELY DISCLOSE THE  
 CONDITION OF THE VEHICLE, OR  
 ANY ENTITY WHO INTENTIONALLY  
 OR NEGLIGENTLY FAILED TO  
 DISCLOSE THAT THE VEHICLE  
 SUBJECT TO THIS COMPLAINT  
 WAS NOT A NEW VEHICLE, WHOSE  
 IDENTITIES ARE OTHERWISE  
 UNKNOWN BUT WHOSE NAMES WILL  
 BE ADDED BY AMENDMENT WHEN  
 ASCERTAINED; AND FICTITIOUS  
 PARTY DEFENDANTS G, H AND I  
 BEING THOSE INDIVIDUAL OR  
 ENTITIES WHO INTENTIONALLY  
 OR DELIBERATELY WITHHELD  
 INFORMATION FROM THE PLAINTIFF  
 CONCERNING THE CONDITION OF  
 THE VEHICLE PRIOR TO THE SALE  
 WITHHOLDING SUCH INFORMATION  
 INTENTIONALLY OR NEGLIGENTLY,  
 WHOSE IDENTITIES ARE UNKNOWN  
 BUT WHOSE NAMES WILL BE ADDED  
 BY AMENDMENT WHEN  
 ASCERTAINED,

Defendants.

IN THE CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

CV90 9658

CIVIL ACTION NO. \_\_\_\_\_

**FILED IN OFFICE**

DEC. 17 1990

**POLLY CONRADI**  
Clerk

## COMPLAINT

Comes now Ira Gore, Jr., Plaintiff in the above-styled cause, stating the following in support of his claim against the Defendants:

### COUNT ONE - INTENTIONAL FRAUD OR DECEIT

1. On or about January 25, 1990, the Plaintiff purchased a 1990 BMW 535i automobile V.I.N. #WBAHD1318LBF09263 (hereinafter referred to as "vehicle") from the Defendant, German Auto, Inc. (hereinafter referred to as "German Auto").
2. At all times prior to the sale of the vehicle to the Plaintiff, the Defendants represented that the vehicle was a brand new vehicle.
3. That such representation was material to Plaintiff in his decision to purchase the vehicle, because the Plaintiff believed and relied upon the express representations of the Defendants prior to the purchase of the vehicle. As a result of the representations, the Plaintiff financed the purchase price of \$40,750.88 in order to consummate the purchase the vehicle which is the subject of this complaint.
4. That the Plaintiff's reliance upon the statements made by the Defendants were reasonable in light of the relative bargaining position of the parties.
5. That the representations by the Defendants were false and the Defendants knew them to be false at the time of their making. That the Defendants' misrepresentation was intentional and was gross, oppressive or malicious and committed with the intent to cause injury. The Defendant's actions are based on a pattern or practice of intentional wrongful conduct justifying punitive damages.
6. As a proximate result of the misrepresentations described above, Plaintiff incurred the following injuries and damages: He has paid a sum of money to the Defendant considerably greater than the value of the vehicle as of the date of purchase; the vehicle is worth significantly less than had the vehicle been as represented; the Plaintiff has incurred out of pocket expenses; the Defendant has undergone mental suffering as a result of these misrepresentations.

WHEREFORE, Plaintiff demands judgment in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), including punitive damages and costs of court.

### COUNT TWO - RECKLESS MISREPRESENTATION

7. Plaintiff realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 6 of this Complaint.

8. On or about January 25, 1990, the Plaintiff purchased a 1990 BMW 535i automobile V.I.N. #WBAHD1318LBF09263 (hereinafter referred to as "vehicle") from the Defendant, German Auto, Inc. (hereinafter referred to as "German Auto").

9. At all times prior to the sale of the vehicle to the Plaintiff, the Defendants represented that the vehicle was a brand new vehicle.

10. That such representation was material to Plaintiff in making his determination to purchase the vehicle. That the Plaintiff believed and relied upon the express representations of the Defendants and the Plaintiff financed the purchase price of \$40,750.88 in order to consummate the purchase the vehicle which is the subject of this complaint.

11. The statements made by the Defendants were false and made by the Defendants without knowledge of the true facts and that the Defendants made the representation recklessly without regard to ascertaining the truth or falsity of those representations.

12. As a proximate result of the misrepresentations described above, Plaintiff incurred the following injuries and damages: He has paid a sum of money to the Defendant considerably greater than the value of the vehicle; the vehicle is worth significantly less than represented by the Defendant; the Plaintiff has incurred out of pocket expenses; the Plaintiff has undergone mental suffering as a result of these misrepresentations by the Defendants.

13. The Defendant's actions justify punitive damages in that the misrepresentation was intentional and was gross, oppressive or malicious and committed with the intent to cause injury. The Defendant's actions are based on a pattern or practice of intentional wrongful conduct justifying punitive damages.

WHEREFORE, Plaintiff demands judgment against the Defendants in the sum of FIVE

HUNDRED THOUSAND DOLLARS (\$500,000.00), including punitive damages and costs of court.

### **COUNT THREE - MISTAKEN INTENTIONAL FRAUD OR DECEIT**

14. The Plaintiff realleges and incorporates by reference each and every allegation contained in Counts One and Two of this Complaint.

15. The Defendant's representations were made willfully in order to induce the Plaintiff to purchase this vehicle although the Defendants had knowledge of the falsity of these representations.

16. As a proximate result of these misrepresentations, Plaintiff incurred the following injuries and damages: He has paid a sum of money to the Defendant considerably greater than the value of the vehicle as of the date of purchase; the vehicle is worth significantly less than represented; the Plaintiff has incurred out of pocket expenses; the Plaintiff has undergone mental suffering as a result of these misrepresentations.

WHEREFORE, Plaintiff demands judgment against the Defendants in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), including punitive damages and costs of court.

### **COUNT FOUR - SUPPRESSION OF MATERIAL FACTS**

17. Plaintiff realleges and incorporates by reference each and every allegation contained in Counts One, Two and Three of the Complaint.

18. That the Defendants failed to disclose the fact that this vehicle had been repainted prior to selling it to the Plaintiff.

19. That the Defendants had a duty to disclose these facts due to the particular circumstances since the Defendant was in a superior position to discover and have access to these facts, while the Plaintiff had no way to ascertain the truth or falsity thereof.

20. The Defendants concealment of these facts were done to induce the Plaintiff to act to his detriment.

21. That the Plaintiff purchased the vehicle at full market price upon reasonable

reliance that the vehicle was new.

22. That the representations by the Defendants were false and the Defendants knew them to be false at the time of their making. That the Defendants' misrepresentation was intentional and was gross, oppressive or malicious and omitted with the intent to cause injury. The Defendant's actions are based on a pattern or practice of intentional wrongful conduct justifying punitive damages.

23. As a proximate result of the misrepresentations, Plaintiff incurred the following injuries and damages: He has paid a sum of money to the Defendant considerably greater than the value of the vehicle as of the date of purchase; the vehicle is worth significantly less than had the vehicle been as represented; the Plaintiff has incurred out of pocket expenses; the Plaintiff has undergone mental suffering as a result of these misrepresentations.

WHEREFORE, Plaintiff demands judgment against the Defendants in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), including punitive damages and costs of court.

#### COUNT FIVE

24. The Plaintiff realleges and incorporates by reference each and every allegation contained in Counts One, Two, Three and Four of the Complaint.

25. One or about January 25, 1990, the Plaintiff contracted with the Defendants to purchase and acquire title to a brand new 1990 BMW 535i vehicle.

26. The Defendants breached this contract with Plaintiff by selling a 1990 BMW 535i automobile which was not brand new and in fact had damage to it which required the vehicle to be repainted.

27. As a result of Defendants' breach of contract, the Plaintiff lost the value of the amounts paid to the Defendants in excess of the fair market value of the vehicle.

WHEREFORE, the Plaintiff demands judgment in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), including punitive damages and costs of court.

COUNT SIX

28. The Plaintiff realleges and incorporates by reference each and every allegation contained in Counts One, Two, Three, Four and Five of the Complaint.

29. That the Plaintiff has suffered consequential and incidental damages as a result of the defective condition of the vehicle, and a result of its nonconformity.

30. That the condition of the vehicle represents a nonconformity which substantially impairs the value of the vehicle to the Plaintiff. Plaintiff avers that he accepted said vehicle without knowledge of its nonconformity, having been reasonably induced to accept the vehicle, to operate the vehicle by the assurances of the Defendants.

WHEREFORE, Plaintiff demands judgment for an amount sufficient to compensate the Plaintiff for the damages suffered.

*A. W. Bolt* 013  
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Andrew W. Bolt, II

*S. K. Wollstein*  
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Stephen K. Wollstein

Attorneys for Plaintiff, Ira Gore, Jr.  
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Anniston, AL 36202  
(205) 237-4641

**PLAINTIFF DEMANDS TRIAL BY STRUCK JURY.**

Serve by certified mail:

Bayerische Motoren Werke A.G.  
P. O. Box 1227  
Westwood, NJ 07675-1227

BMW of North America  
P. O. Box 1227  
Westwood, NJ 07675-1227

German Auto, Inc.  
2200 Third Avenue South  
Birmingham, AL 35233