

## CASE PROFILE

### Clark v. Alan Vester Auto Group

*Ineffective legal hold leads to favorable rulings for plaintiff in state court*

#### KEY INFORMATION

|                       |   |
|-----------------------|---|
| <b>Reference No.:</b> | N.C. Sup. Ct. County of Vance, No. 06CVS1411            |
| <b>Date:</b>          | July 17, 2009   |
| <b>Court:</b>         | North Carolina Supreme Court, County of Vance           |
| <b>Judge:</b>         | North Carolina Supreme Court Justice John R. Jolly, Jr. |
| <b>Sector:</b>        | Automotive  |
| <b>Type:</b>          | Contractual Misrepresentation Dispute                   |

#### CASE SUMMARY

In this case, plaintiff sought certification of a class action for car buyers who had received loans through a group of auto dealerships. Plaintiff claimed that defendant falsely reported he had made a down payment. Plaintiff argued that dealers did this in order to increase the likelihood that buyers would receive loans and approval for higher loan amounts. Plaintiff sought to represent a class not only of buyers from the same dealership, but also buyers from all dealerships under the same corporate umbrella. In response, defendant argued that plaintiff lacked standing to sue the other dealerships and he would not be a proper class representative for all buyers.

In addition, plaintiff filed a motion to stop destruction of cover sheets, which allegedly contained falsified information regarding down payment made by the buyer. Defendant continued to destroy cover sheets even after the court entered an order requiring them to produce all records that showed down payments. Defendant responded by stating it would "continue with its normal business practice that has been in place for many years."

The court held that "where there has been improper destruction of documents even without notice of a claim, there can exist spoliation, particularly when the wholesale document destruction flies in the face of legal standards for document retention." Moreover, plaintiff did not need to show that the spoliation involved intentional misconduct.

#### OUTCOME

Judge Jolly ruled against defendant and certified a class against all dealerships. The court also ruled that defendant had spoliated evidence by destroying cover sheets and gave an "appropriate spoliation jury instruction with regard to inferences raised by the absence of Cover Sheets." The court awarded plaintiff their attorney fees related to the spoliation issue. In addition, the court transferred the burden of class notice from plaintiff to defendant, citing the destruction went "directly to the existence and identify of class members"; therefore, defendant should bear the cost of identifying and notifying class members of the action.

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