**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

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| RICHARD EMONDS, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civ. No. 3:03CV1114 (AWT) |
| | : | |
| NEWMAN CHRYSLER, INC., | : | |
| | : | |
| Defendant. | : | |

**RULING ON MOTION FOR SUMMARY JUDGMENT**

The plaintiff brings one of his claims in this action pursuant to the Motor Vehicle Information and Cost Savings Act, commonly known as the Odometer Act, 49 U.S.C. § 32701. The plaintiff also set forth in his Complaint claims pursuant to the Truth in Lending Act, 15 U.S.C. § 1601 et seq., the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq., and the Connecticut Truth in Lending Act, Conn. Gen. Stat. § 36a-676 et seq., but he abandoned those claims in his response to the instant motion. Thus, the motion is being granted as to those claims. The defendant has moved for summary judgment on the claim pursuant to 49 U.S.C. § 32701, based on the statute of limitations. For the reasons set forth below, the defendant's motion is being denied as to that claim.

**Part I. Background**

On July 31, 1997, the plaintiff purchased a 1994 Chrysler Lebaron from the defendant for personal, family or household use. As opposed to providing the plaintiff with the original certificate of title, the defendant provided the plaintiff with a DMV Q-1 Form conveying information about the vehicle's mileage. On May 8, 2002, the plaintiff traded in the Chrysler Lebaron to the defendant in connection with the plaintiff's purchase of another vehicle from the defendant. Subsequently, on June 15, 2003, the plaintiff was informed by his attorney that the Chrysler Lebaron had been returned to the manufacturer by the original owner because it had one or more mechanical problems, which had been repaired prior to the resale to the plaintiff. The plaintiff contends that he was never advised that the Chrysler Lebaron had been returned to the manufacturer by its original owner, and that had the defendant shown him the certificate of title at the time of the purchase, as required by the Odometer Act, he would have known that the Chrysler Lebaron was a "manufacturer buyback". He further contends that the defendant withheld the certificate of title and disclosed the mileage of the vehicle in another document with the clear intent to defraud him. He claims actual damages and statutory damages.

**Part II. Legal Standard**

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the facts as to which there is no such issue warrant judgment for the moving party as a matter of law. Fed. R. Civ. P. 56(c). See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Gallo v. Prudential Residential Servs., 22 F.3d 1219, 1223 (2d Cir. 1994). Rule 56(c) "mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." See Celotex, 477 U.S. at 322.

Summary judgment is inappropriate only if the issue to be resolved is both genuine and related to a material fact. Therefore, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. An issue is "genuine . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (internal quotation marks omitted). A material fact is one that would "affect the outcome of the suit under the governing law." Anderson, 477 U.S. at 248. As the court observed in Anderson, "[T]he materiality determination rests on the substantive law, [and] it is the

substantive law's identification of which facts are critical and which facts are irrelevant that governs." Id. Thus, only those facts that must be decided in order to resolve a claim or defense will prevent summary judgment from being granted. When confronted with an asserted factual dispute, the court must examine the elements of the claims and defenses at issue on the motion to determine whether a resolution of that dispute could affect the disposition of any of those claims or defenses. Immaterial or minor facts will not prevent summary judgment. See Howard v. Gleason Corp., 901 F.2d 1154, 1159 (2d Cir. 1990).

When reviewing the evidence on a motion for summary judgment, the court must "assess the record in light most favorable to the nonmovant and . . . draw all reasonable inferences in its favor." Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000) (quoting Del. & Hudson Ry. Co. v. Consol. Rail Corp., 902 F.2d 174, 177 (2d Cir. 1990)). Because credibility is not an issue on summary judgment, the nonmovant's evidence must be accepted as true for purposes of the motion.

Finally, the nonmoving party cannot simply rest on the allegations in its pleadings since the essence of summary judgment is to go beyond the pleadings to determine if a genuine issue of material fact exists. See Celotex, 477 U.S. at 324. "Although the moving party bears the initial burden of establishing that there are no genuine issues of material fact,"

Weinstock, 224 F.3d at 41, if the movant demonstrates an absence of such issues, a limited burden of production shifts to the nonmovant, which must "demonstrate more than some metaphysical doubt as to the material facts, . . . [and] must come forward with specific facts showing that there is a genuine issue for trial." Aslanidis v. United States Lines, Inc., 7 F.3d 1067, 1072 (2d Cir. 1993) (quotation marks, citations and emphasis omitted).

**Part III. Discussion**

The Odometer Act provides that an action must be brought "not later than 2 years after the claim accrues." 49 U.S.C. § 32710(b). "Since actions under the Odometer Act involve allegations of fraudulent conduct, federal courts employ the federal 'discovery rule,' which provides that statutes of limitation applicable to actions sounding in fraud begin to run either from the date the plaintiff discovers fraud or from the date the plaintiff could have, in the exercise of reasonable discretion, discovered fraud. *See Byrne v. Autohaus on Edens, Inc.*, 488 F. Supp. 276, 280 (N.D. Ill. 1980)." Davis v. Adoption Auto, Inc., 731 F. Supp. 1475, 1477 (D. Kan. 1990) (citation omitted). See also Levine v. MacNeil, 428 F. Supp. 675 (D. Mass. 1977); Carrasco v. Fiore Enters., 985 F. Supp. 931 (D. Ariz. 1997).

Here, the defendant has failed to meet its initial burden, under the standards for a motion for summary judgment, of showing that the plaintiff discovered or could have in the exercise of reasonable discretion discovered any claimed violation of 49 U.S.C. § 32701 by June 24, 2001, i.e. two years prior to the date he filed this action. Therefore, summary judgment on the basis of the statute of limitations is not appropriate.

**Part IV. Conclusion**

Defendant's Motion for Summary Judgment (Doc. No. 8) is hereby DENIED as to the plaintiff's claim pursuant to 49 U.S.C. § 32701 and hereby GRANTED as to the claims pursuant to The Truth in Lending Act, 15 U.S.C. § 1601 et seq., the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq., and the Connecticut Truth in Lending Act, Conn. Gen. Stat. § 36a-676 et seq.

It is so ordered.

Dated this 4th day of February 2005, in Hartford, Connecticut.

_____/s/_____
Alvin W. Thompson
United States District Judge