NO. 5-09-0362

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MARY JENNIFER MARGARIDA, Plaintiff-Appellant, v. GENERAL MOTORS ACCEPTANCE CORPORATION and GREEN CHEVROLET, INC., d/b/a Green Chevrolet Hummer, Defendants-Appellees, and IGNACIO MARGARIDA, Defendant.	)	Appeal from the Circuit Court of Madison County. No. 05-L-1059 Honorable Ann Callis, Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Welch concurred in the judgment.

R U L E 2 3 O R D E R

Held: The circuit court properly granted the defendants' section 2-619(a)(9) motion to dismiss (735 ILCS 5/2-619(a)(9) (West 2008)) because the plaintiff's complaint was barred by affirmative matters avoiding the legal effect of or defeating the claim.

Mary Jennifer Margarida appeals from the June 24, 2009, dismissal of her fourth amended complaint against the defendants General Motors Acceptance Corporation (GMAC) and Green Chevrolet, Inc., alleging a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2004)) involving the sale of a Hummer vehicle. The circuit court made a Supreme Court Rule 304 (eff. Jan. 1, 2006) finding that an appeal could be taken from a final judgment dismissing the complaint with

regard to fewer than all the parties (leaving claims against defendant Ignacio Margarida extant). We affirm.

The facts included in this order were compiled from a review of the record–specifically, more than 700 pages of pleadings, orders, deposition transcripts, and exhibits which were before the circuit court in the extensive motion and discovery practice that culminated in this dismissal.

Ignacio Margarida had an import tile business in Edwardsville, Illinois, that he incorporated in November 2000. At the time of the occurrences at issue, Mary and Ignacio were married. They have since divorced. Ignacio traded in a van used in the business for a new Hummer vehicle. The Hummer was purchased from Green Chevrolet, Inc., of Peoria, Illinois, on or about December 6, 2003. The vehicle was financed through GMAC. After a trade-in, the total amount owed for the Hummer was $91,769.04, with monthly payments of $1,274.57 over a six-year period. The record reflects that financing was problematic; Ignacio had credit problems, and various efforts were made to secure financing.

Mary did not accompany Ignacio to Peoria to initially look at and test-drive the Hummer. After spending the majority of the day with the vehicle salesperson, Ignacio filed the first credit application in his own name. This application was rejected by GMAC. Another application in the name of the tile company, Ignacio Margarida Import Tile, Inc., and Mary Margarida was also rejected. Mary alleges that then Green Chevrolet and her husband prepared a third credit application listing her as the only person responsible for the loan but listing the income that Ignacio derived from his tile business as if it was Mary's income. The income of the tile business was $10,417 per month. Mary's income per month was only $800.

Mary claims that Ignacio demanded that she be at home when the Hummer was delivered because he needed her to help him sign for the car. Although she signed the

paperwork, Mary claims that she knew nothing of the decision to list the tile company's income on the credit application as her income. She states that the reason for her complete lack of knowledge was that the forms she signed might have been blank and she was never provided with copies of the paperwork. She also alleges that she never knew that her name was the sole name on the loan or that two previous credit applications were rejected. She stated that she tried to ask the Green Chevrolet representative about the papers but was cut off by her husband.

When Ignacio first decided to buy the Hummer at the agency in Peoria, the salesperson, Ken Bizosky, took down preliminary information for the credit application. He obtained the initial credit score via an automated system that requires only a social security number. He recalls that there was a problem with Ignacio's credit report–and specifically remembers that there was an unpaid account with the Circus Circus resort in Las Vegas. While the credit score was far from perfect, he stated that he has seen far worse scores in these initial checks over the years of his work as a vehicle salesperson. The majority of the paperwork was handled by the finance manager at the dealership. However, Bizosky testified that generally speaking, it was standard practice–not only at Green Chevrolet but at all car dealerships–to seek alternate persons who could be a part of the loan application process when it did not appear that the credit score initially obtained would be high enough for the vehicle loan. After Ignacio's application was denied, Bizosky was informed by the finance department that a cosigner would be required. He did not directly speak with Igancio's wife about cosigning on the loan, but he believes that someone in the finance department did.

In this case, after the paperwork was prepared by one of the employees in the Green Chevrolet finance department, Bizosky drove the Hummer down to the Margarida home with the paperwork. Bizosky states that as far as he was aware, the income information

listed in the credit paperwork was income attributable to Ignacio rather than to Mary. While Mary claims in her amended complaint that the papers she signed were blank, her deposition testimony on this point contradicted that claim, in that she testified that she did not know whether the papers were blank. Bizosky testified that he did not know whether the papers were blank or not because he had not looked at them.

The vehicle developed mechanical problems, and General Motors agreed to take it back and substitute collateral on the loan for another Hummer. This was after GMAC rejected two new loan applications on the basis that the income stated was not sufficient to carry the loaned amount. The substitution agreement reaffirmed the original contract with the new collateral. The difference in price between the old Hummer and the new Hummer was paid by the Margaridas on a tile company business check.

In her deposition, Mary testified that she was afraid of her husband. Regarding the Friday night in December when Bizosky came down with the loan papers for the first Hummer, she does not recall Bizosky saying much of anything about the papers. She remembers that she was ordered by her husband to sign them. Earlier that day, Ignacio called Mary a couple of times to make sure that she would be home when the new vehicle was delivered. Ignacio told her that she needed to sign for the vehicle. Mary testified that she assumed that she was signing as a cosigner on the loan. When she inquired about what the papers were all about, Ignacio told Mary not to make him look foolish and to sign the papers. At the time, she had three small children–one of whom was a baby–in the kitchen. It was dinnertime and the children were crying. She testified that she never understood that the papers were related to a loan but just thought that for some reason she had to sign them in order to take delivery of the vehicle. This statement is inconsistent with her other testimony about her belief that she was signing the paperwork in the capacity of a cosigner. She had been involved in two prior motor vehicle loans in her life–a process that she

described as lengthy. This transaction, in contrast, was extremely short. Bizosky did not give her copies of the paperwork before he left. She had no prior contact with Green Chevrolet regarding this transaction. On one occasion, Ignacio directed Mary to call GMAC in order to allow him to speak with them about the loan on the Hummer. She was confused by this request but did as he requested. With respect to the second vehicle, Mary claims that she never spoke with anyone from Green Chevrolet by telephone about additional loan applications or about the substitution of collateral under the original loan agreement. She acknowledges signing paperwork for the second Hummer in May 2004. She received a telephone call from GMAC at a certain point in time about payments being missed, but after that call, Ignacio got caught up on the payments. Eventually, Ignacio advised Mary that GMAC was going to repossess the vehicle. Mary testified that she gave no one authority to use her social security number in order to obtain a credit bureau report on her or to make loan applications for either Hummer.

Thomas Smith testified that he was the finance manager on duty at Green Chevrolet on Saturday, December 6, 2003, the date of purchase of the first Hummer. He reviewed the paperwork in the Margarida file prior to his deposition, and according to the file he was the finance manager who dealt with Ignacio; however, he has no independent recollection of those dealings. He also cannot remember whether or not he ever met with Mary in person or spoke with her over the phone. He testified that at Green Chevrolet, the finance manager would get involved with a vehicle purchase after the salesman completed the sale. When the customer needs to finance and chooses to go through the dealership, the customer completes a credit application. The finance manager then pulls the credit bureau report on the customer. The finance manager does not make credit decisions. The decision to finance is made by the financial institutions that receive the information. Smith does not remember whether or not Ignacio was approved for credit through GMAC. A photo identification of

loan applicants was not required by Green Chevrolet. Smith identified a GMAC document in which Mary's loan application was approved. He testified that from custom he would have filled in Mary's social security number after talking with her by phone or meeting with her in his office, but he does not specifically remember which occurred. Smith confirmed that Green Chevrolet's practice in signing the documents was that the documents had to be signed in the presence of a Green Chevrolet representative. He had no involvement with the second Hummer exchange, and he believes that David Alex Angevine handled a good part of that transaction.

David Alex Angevine was one of the Green Chevrolet finance managers at the time of both Margarida vehicle transactions. He believes that Mr. Bizosky was the sales person handling the Margarida transaction. Angevine's testimony involved the overall finance paperwork practices in which Green Chevrolet engaged at the time of these two transactions. He explained that he and Tom Smith, the two finance department employees, worked together on the preparation and execution of the paperwork. Who did which task depended upon which finance department employee was free at the time that the preparation and/or execution needed to be completed. Specific details about these two transactions were not always remembered by Angevine, and so his testimony tended to be more general in nature. Angevine testified that he did not prepare the credit application. He believes that Tom Smith might have done so. He has no knowledge of any rejected credit applications. He does not verify information included on a credit application. If the customer was present, then the practice was to obtain written authorization to make a credit check on that person. Angevine testified that he was not involved in the bulk of the first transaction, which occurred in a different building than where he works. Angevine believes that at some point, the "deal" came over to his office in order to finalize the transaction. Although not entirely clear on the specifics, Angevine thinks that he finalized the loan and title paperwork which

Bizosky took to Edwardsville for signing. Angevine stated that his impression was that the couple was purchasing the Hummer for use in their tile business. Angevine does not know why Mary was listed as the sole person responsible for the loan on the vehicle. Angevine does not approve or disapprove of credit applications and merely acts as the conduit between the car dealership and the financing company. He testified that Green Chevrolet would never submit an application that was unsigned, and he acknowledged the possibility that Ignacio, as the spouse, could have provided Mary's information for inclusion on the application. However, he has no information regarding whether or not this is what occurred. He provided no specific reason for why the loan on the first Hummer was approved a couple of days prior to the date Mary's signature appears on the loan documents, other than speculation that Mary provided her approval over the phone. Angevine testified that loan paperwork is always signed by the customer in the presence of a dealership employee, but not always the finance manager. The customer receives a face-to-face discussion about what each paper to be signed involves. There are some duplicate documents that are signed in blank in order to avoid having the vehicle owner come back in at a later date to sign them. Specifically, he referenced duplicate requests for title and Secretary of State power-of-attorney forms, as well as a form documenting the possibility of no rebate being received on the sale of a specific vehicle. Angevine does recall being involved in the second Hummer transaction. He believes that he was the one who facilitated the collateral substitution on the Hummer loan after two new loan applications were turned down. He cannot remember whether he personally spoke to Mary regarding the second transaction. He is pretty sure that Bizosky took the paperwork back to Edwardsville for the Margaridas to sign.

Mary alleges that it was only after the Hummer was repossessed and the loan was in default that she learned that she was the one obligated on the loan. She claims that consequently her own credit has been severely damaged and that her own request for

financing for a subsequent motor vehicle was denied.

Mary filed suit against GMAC, Green Chevrolet, Inc., and Ignacio Margarida on October 3, 2005, seeking damages under the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2004)) and alleging liability in concert. Her complaint was amended several times during the course of the case.

Her first amended complaint, filed on January 31, 2006, added a count for violations under the Sales Finance Agency Act (205 ILCS 660/1 *et seq.* (West 2004)). On May 3, 2006, GMAC counterclaimed, seeking the unpaid balance on the loan, $57,835.

On July 25, 2007, Mary sought and was granted leave to file a second amended complaint, which included counts pursuant to the Consumer Fraud Act and the Uniform Deceptive Trade Practices Act (815 ILCS 510/1 *et seq.* (West 2006)). GMAC and Green Chevrolet filed a motion to dismiss her second amended complaint on August 15, 2007, claiming that the allegations made by Mary were too generic and lacked the specificity required by the acts pursuant to which she was making claims. Furthermore, GMAC argued that no claims were alleged that GMAC directly committed any deceptive acts towards Mary. The court heard argument on this motion to dismiss, and on September 26, 2007, the court granted the motion to dismiss and granted Mary leave to amend.

Mary then filed an amendment to a paragraph contained within her second amended complaint. GMAC and Green Chevrolet filed answers to this complaint.

Mary's third amended complaint was filed in January 2009. The defendants filed a motion to dismiss this version of the complaint in early March 2009. Again, the defendants believed that the complaint lacked specificity and that no claim of deceptive practices could be made. The defendants pointed to responsive pleadings and Mary's deposition testimony showing that Mary acknowledged that she signed the papers and that she did not tell the salesperson that she did not want to sign these papers and further, that she was not told

anything by representatives of the defendants which induced her to sign the documents. The defendants argued that because Illinois law requires those who sign legal papers to ascertain the contents of those papers and because Mary testified that she did not do so, Mary could not make a claim of fraud or misrepresentation. The motion to dismiss was called, heard, and granted in April, 2009. Mary was given leave to refile and a directive to separate her fraud allegations into separate counts.

Mary filed her fourth amended complaint in early May 2009. Count I was brought pursuant to the Consumer Fraud Act and alleged a plot on the part of GMAC, Green Chevrolet, and Ignacio. Mary claimed that Green Chevrolet and Ignacio together devised a plan to use her good credit in order to obtain the financing necessary to allow for the sale of the Hummer. Mary alleged that an "integral part" of the plan was to keep her uninformed and then surprise her with the paperwork. She claimed further that the plan was to induce her to sign the loan documents by giving her the false impression that she "was only accommodating her husband in his acquisition of a motor vehicle." She alleged that the Green Chevrolet salesperson did not disclose to her that there had been other rejected credit applications and that he did not disclose that there was a plan to make her solely responsible for the loan. She alleged that the defendants were jointly or severally guilty of violating the Consumer Fraud Act by making a predatory loan which required payments in excess of her monthly income, by deceiving her into thinking that she was merely accommodating her husband's purchase of the Hummer, by concealing that she was the sole person responsible on the loan and the owner of the vehicle, by concealing that his prior credit applications had been denied and that her name had been substituted on the credit application and by creating the likelihood of confusion or misunderstandings by the defendants' practices or absence thereof; she also alleged that GMAC was liable for failing to verify the identity of the credit applicant, failing to verify his income, and failing to detect dealer fraud or trigger a fraud

inquiry where two prior applications were rejected and another application was submitted with the same financial data under a different name. She sought compensatory and punitive damages, as well as equitable relief, including a rescission, an injunction, a declaration that the contracts are void, and an attorney fees award. Count II was essentially the same except that it was related to the second Hummer transaction. Count III made allegations similar to those in count I with respect to the first Hummer transaction but claimed that the defendants' tortious actions were committed "in concert." Count IV was also an in-concert tort claim but involved the second Hummer transaction.

On June 8, 2009, defendants GMAC and Green Chevrolet filed a motion to dismiss this fourth amended complaint. The motion was filed pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)). In their motion, the defendants contended again that Mary was not able to establish a deceptive act or practice in light of her admission that she had signed the papers, believing that she was to be a cosigner. The defendants further pointed out that the allegations regarding the "deception" at issue were contradicted by her own deposition testimony. The defendants also argued that Mary's claim that copies of the paperwork were not provided to her was not relevant and lacked a connection to a deceptive act or practice. Additionally, GMAC contended that as an assignee of the loan, Illinois law precludes liability under the Consumer Fraud Act unless the assignee's fraud is "active and direct" (*Jackson v. South Holland Dodge, Inc.*, 197 Ill. 2d 39, 52, 755 N.E.2d 462, 470 (2001)). An assignee's only responsibility is to look at the documents assigned to see if there are any defects on the face of the document. *Jackson*, 197 Ill. 2d at 50, 755 N.E.2d at 469. The defendants also argued that, assuming that the fraudulent acts in this case were only committed by Ignacio, the plain language of the Consumer Fraud Act does not bar the defendants from receiving the benefits derived from Ignacio's fraud. See *Zekman v. Direct American Marketers, Inc.*, 182 Ill. 2d 359, 369, 695

N.E.2d 853, 858-59 (1998). The defendants argued that the in-concert claims should fail because in-concert claims are historically attached to common law tortious claims and there is no independent in-concert cause of action and there has not ever been such a claim recognized relative to an underlying statutory claim. Moreover, the defendants argued, Mary did not plead any facts showing that the defendants did, in fact, act in concert with each other. No relationship between GMAC, Green Chevrolet, and/or Ignacio Margarida is factually alleged, and the defendants contend that the claims she made were mere conjecture.

In response, Mary filed a pleading in which she alleged that the defendants' motion to dismiss should be stricken. The motion was labeled a section 2-619 motion, but Mary argued that it should not have been because the defendants did not argue any of the grounds for a dismissal listed in section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)). Mary argued that the motion was actually a section 2-615 motion (735 ILCS 5/2-615 (West 2008)) and that because it was a section 2-615 motion, the court must consider all the facts she alleged as true, accurate, or complete. Before reiterating the allegations of her amended complaint, she contended in her response that even a negligent concealment could constitute a fraud and that the silence of the car salesman was sufficient to establish a cause of action because the car salesman had knowledge of the true facts.

The motion was called and heard on June 24, 2009, and was summarily sustained without any rationale provided. Mary appeals from this dismissal.

On appeal from a circuit court's involuntary dismissal of a complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)), we must determine " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 109-10, 708 N.E.2d 1140, 1144 (1999) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17,

619 N.E.2d 732, 735 (1993)). In other words, our review is *de novo*. *In re Estate of Mayfield*, 288 Ill. App. 3d 534, 542, 680 N.E.2d 784, 789 (1997).

Mary argues on appeal, as she did below, that the motion should never have been filed pursuant to section 2-619. Surprisingly, however, Mary filed an appendix in three volumes totaling 765 pages, of which 234 pages were identified as pages of deposition transcripts and 63 pages were identified as exhibits. The remaining 457 pages were identified as either pleadings or orders of the court. We are at a loss to reconcile Mary's argument that the defendants' motion to dismiss should have been designated as a section 2-615 motion with her filing of and extensive reference in argument to affidavits and other supporting documents apart from the pleadings. It is axiomatic that the court may not consider affidavits or other supporting materials for purposes of a section 2-615 motion. *Kirchner v. Greene*, 294 Ill. App. 3d 672, 677, 691 N.E.2d 107, 112 (1998); *Barber-Colman Co. v. A & K Midwest Insulation Co.*, 236 Ill. App. 3d 1065, 1068, 603 N.E.2d 1215, 1218-19 (1992).

In contrast to a section 2-615 motion, the court may consider extraneous proof in support of or in denial of a section 2-619 motion. "If, upon the hearing of the motion, the opposite party presents affidavits or other proof denying the facts alleged or establishing facts obviating the grounds of defect, the court may hear and determine the same and may grant or deny the motion. If a material and genuine disputed question of fact is raised[,] the court may decide the motion upon the affidavits and evidence offered by the parties[] or may deny the motion without prejudice to the right to raise the subject matter of the motion by answer and shall so deny it if the action is one in which a party is entitled to a trial by jury and a jury demand has been filed by the opposite party in apt time." 735 ILCS 5/2-619(c)

(West 2008).[1]

Section 2-619 of the Code of Civil Procedure provides a vehicle by which a defendant can ask the court to involuntarily dismiss the plaintiff's complaint on the basis of certain defects or defenses. These types of defects or defenses involve subject matter jurisdiction, legal capacity, *res judicata*, a statute of limitations, the pendency of another action between the parties, a release, the satisfaction or discharge of the claim, the statute of frauds, the unenforceability of a claim against the defendant due to minority or disability, and "[t]hat the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(1) through (a)(9) (West 2008).

The question here is whether the defendants' motion raised an affirmative matter that could defeat the claim. "The phrase 'affirmative matter' refers to something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Glisson v. City of Marion*, 188 Ill. 2d 211, 220, 720 N.E.2d 1034, 1039 (1999) (citing *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 486, 639 N.E.2d 1282, 1290 (1994)).

At the outset, we believe that the defendants appropriately moved for a dismissal under section 2-619(a)(9). While this case could have been disposed of by a summary judgment, there is nothing inappropriate about a section 2-619 motion to dismiss serving as the vehicle for the case's final resolution. "The purpose of section 2-619 is primarily that of affording a means of obtaining at the outset of a case a summary disposition of issues of law or of easily proved issues of fact, with a reservation of jury trial as to disputed questions of fact." *Inland Real Estate Corp. v. Lyons Savings & Loan*, 153 Ill. App. 3d 848, 853-54, 506

[1]It is important to note that there is no right to a trial by a jury under the Consumer Fraud Act. See *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33, 643 N.E.2d 734 (1994).

N.E.2d 652, 657 (1987) (citing Ill. Ann. Stat., ch. 110, par. 2-619, Historical & Practice Notes, at 662 (Smith-Hurd 1983)). A section 2-619 motion to dismiss can essentially amount to a summary judgment procedure under circumstances such as those in the case before us. *Palmisano v. Connell*, 179 Ill. App. 3d 1089, 1097, 534 N.E.2d 1243, 1249 (1989).

In order to state a cause of action under the Consumer Fraud Act, the plaintiff must allege facts that show the following:

1. A deceptive act or practice by the defendant.

2. The defendant intended for the plaintiff to rely on the deception.

3. The deception occurred in the course of conduct involving a trade or commerce.

4. The consumer fraud proximately caused the injury alleged by the plaintiff.

Connick v. Suzuki Motor Co., 174 Ill. 2d 482, 501, 675 N.E.2d 584, 593 (1996).

The alleged facts must "state with particularity and specificity the deceptive manner" of the acts or practices of the defendants. *Sklodowski v. Countrywide Home Loans, Inc.*, 358 Ill. App. 3d 696, 703, 832 N.E.2d 189, 196 (2005).

Counts I and II of Mary's complaint allege general acts of collusion by GMAC, Green Chevrolet, and Ignacio, without any specifics about how the deceptive acts were accomplished. Thus, her complaint does not contain well-pleaded facts. She makes no claim that a specific misrepresentation was made at the time she signed the loan documents. She acknowledges both in her complaint and in her deposition testimony that she signed the legal documents binding her to the loan. While she admits that she did not read the papers she signed, she pleaded no facts that amount to any deception on the part of the dealership or GMAC which in any way kept her from reading the documents. Nor could she, because she admits that the reason for not reading the documents she was signing was her fear of

admonishment by her husband, Ignacio–not actions or inaction on the part of the dealership or GMAC. She alleges that some of the paperwork was in blank, yet in her deposition testimony she stated that she could not remember or recall whether or not the paperwork she signed was completed. Furthermore, Mary states that she voluntarily signed the documents under a belief that she was a cosigner. The documents themselves, however, are unambiguous–Mary is the only person listed on the vehicle loan documents.

In addition to the lack of specific factual substance of Mary's claims, Illinois law does not support her theory of deceptive practices. Given her acknowledgment that she signed the loan documents in question as a joint obligor, Mary is obligated on the loan and her contentions of misrepresentation are irrelevant. See *Leon v. Max E. Miller & Son, Inc.* 23 Ill. App. 3d 694, 699-700, 320 N.E.2d 256, 260 (1974). While Mary tries to distance herself from the obligation by referring to herself as an secondary obligor or an accommodation party, these distinctions do not support her cause. The paperwork clearly lists Mary as the buyer of the vehicle. Furthermore, section 3-419 of the Uniform Commercial Code states the law on accommodating parties and provides that the obligation of the accommodating party may be enforced. 810 ILCS 5/3-419 (West 2008). The accommodating party's liability is connected to the capacity in which the party signed the legal document. 810 ILCS 5/3-419(b) (West 2008). In this case, Mary admits that she thought that she had signed as a joint obligor. Consequently, by her own acknowledgment, coupled with the law relative to joint accounts, Mary was liable.

Mary directs us to go beyond the words of the legal contracts at issue and to look at how the defendants obtained her signature. However, the cases she cites in support of this argument are not helpful, because in each case the defendants specifically made misrepresentations to the plaintiff that served to induce the signing of the contracts. In contrast, Mary's claims are unsupported by any specific misrepresentation. *Cf. Duran v.*

Leslie Oldsmobile, Inc., 229 Ill. App. 3d 1032, 1042, 594 N.E.2d 1355, 1363 (1992) (the plaintiff was told by the defendant that the motor vehicle in question was a demonstrator car–as opposed to its true status as a used car); *Totz v. Continental Du Page Acura*, 236 Ill. App. 3d 891, 895-96, 602 N.E.2d 1374, 1376-77 (1992) (where the plaintiff was told by the salesperson that the car was in "perfect condition" while the dealership knew that the car had been involved in a serious accident and the documents listed the car as being sold "as is"); *Bates v. William Chevrolet/Geo, Inc.*, 337 Ill. App. 3d 151, 153-55, 785 N.E.2d 53, 55-57 (2003) (the plaintiff signed a document regarding financing "in blank," with the understanding that the representative would secure lending in the range to which the plaintiff agreed, only to discover that what was actually obtained was at a far higher rate); *Randle v. Glendale Nissan, Inc.*, No. 04 C 4129 (N.D. Ill. 2005) (memorandum and order) (where the financing terms to which the plaintiff agreed were different than what she received).

With respect to GMAC, Mary's claim also fails because of GMAC's role as merely an assignee of the agreement. GMAC's role in this process was to provide financing based upon Mary's representations. No requirement under the law exists that would require an in-depth investigation into the entries included on a request for financing. In Illinois, an assignee can only be held responsible under the Consumer Fraud Act if the assignee's "fraud is active and direct." *Jackson*, 197 Ill. 2d at 52, 755 N.E.2d at 470. In *Jackson v. South Holland Dodge, Inc.*, the assignee of the motor vehicle loan was Chrysler Finance. *Jackson*, 197 Ill. 2d at 43, 755 N.E.2d at 465-66. The supreme court held that Chrysler Finance could not be responsible for alleged misrepresentations made by the dealership in that case unless there were "apparent defects" that could be found upon a review of the face of the assigned loan document. *Jackson*, 197 Ill. 2d at 50, 755 N.E.2d at 469. The assignee's obligation to check for defects on the face of the loan document is based on the federal Truth in Lending Act. 15 U.S.C. §1641(a) (2006).

Mary's argument that GMAC should be duty-bound to obligors on loans it receives in assignment goes beyond what is mandated by federal law. As long as the fraud at issue cannot be detected from the face of the documents themselves, GMAC cannot be responsible for any alleged misrepresentations on the part of the dealership. See *Jackson*, 197 Ill. 2d at 43, 755 N.E.2d at 465-66. The Consumer Fraud Act also limits its reach if a transaction or an action taken is allowed under federal law; then the Consumer Fraud Act simply does not apply. 815 ILCS 505/10b(1) (West 2008). There is no disputed fact that has been pleaded alleging that the "fraud" was detectable from the face of the documents.

Finally, with respect to Mary's in-concert claims, counts III and IV, we conclude that a dismissal was proper. These claims, also brought pursuant to the Consumer Fraud Act, substantially track the allegations in count I, relative to the first Hummer transaction, and count II, relative to the second Hummer transaction, differing essentially in the use of the term of art that the defendants acted "in concert." Because we have already determined that a dismissal was proper under counts I and II with regard to defendants Green Chevrolet and GMAC sued "jointly, severally[,] or in the alternative," there is no need for us to address the same conduct under an in-concert liability theory.

For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

Affirmed.