

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed November 5, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-2697

Lower Tribunal No. 03-11361

**South Motor Company of Dade County, a Florida corporation d/b/a
South Motors Honda,**
Appellant/Cross-Appellee,

vs.

Solomon Poltarack,
Appellee/Cross-Appellant.

An Appeal of a non-final order from the Circuit Court for Miami-Dade County, Michael A. Genden, Judge.

Goldsmith & Atlas and Glen R. Goldsmith; Greenberg Traurig and Elliot H. Scherker, Elliot B. Kula and Daniel M. Samson, for appellant/cross-appellee.

Lyons & Farrar, Marsha L. Lyons and Douglas S. Lyons; George, Hartz, Lundeen and Charles M. Hartz, for appellee/cross-appellant.

Before GERSTEN, C.J., and RAMIREZ, J., and SCHWARTZ, Senior Judge.

PER CURIAM.

This is an appeal by the defendant from an order certifying a class in an action under the Florida Deceptive and Unfair Trade Practices Act, Florida Statute section 501, et seq, which alleged improprieties in an automobile leasing

transaction.

We reverse with directions to dissolve the class.¹ Among other things, (a) the plaintiff has not been shown to be an appropriate class representative, see KIA Motors Amer. Corp. v. Butler, 985 So. 2d 1133 (Fla. 3d DCA 2008); Wyeth, Inc. v. Gottlieb, 930 So. 2d 635 (Fla. 3d DCA 2006); Rollins, Inc. v. Butland, 951 So. 2d 860 (Fla. 2d DCA 2006); Neighborhood Health P'ship, Inc. v. Fischer, 913 So. 2d 703 (Fla. 3d DCA 2005); Chinchilla v. Star Cas. Ins. Co., 833 So. 2d 804 (Fla. 3d DCA 2002); Braun v. Campbell, 827 So. 2d 261 (Fla. 5th DCA 2002); State Farm Mut. Auto. Ins. Co. v. Kendrick, 822 So. 2d 516 (Fla. 3d DCA 2002); (b) the class actually certified is unacceptably uncertain, see KIA Motors, 985 So. 2d at 1136-41; Wyeth, 930 So. 2d at 642-43; Rollins, 951 So. 2d at 870-73, 879-80; Philip Morris v. Hines, 883 So. 2d 292, 294-95 (Fla. 4th DCA 2003); Hutson v. Rexall Sundown, Inc., 837 So. 2d 1090, 1092-94 (Fla. 4th DCA 2003); State Farm, 822 So. 2d at 517-18; Braun, 827 So. 2d at 267-68; and (c) the purported members of the class are not similarly situated, see KIA Motors, 985 So. 2d at 1136-41; Wyeth, 930 So. 2d 642-43; Rollins, 951 So. 2d at 870-73, 879-80; Philip Morris, 883 So. 2d at 294-95; Hutson, 837 So. 2d at 1092-94; State Farm, 822 So. 2d at 517-18; Braun, 827 So. 2d at 267-68.

¹ We do not review the order denying a defense summary judgment in the plaintiff's individual claim because we lack jurisdiction to do so.

For roughly the same reasons, the trial judge correctly denied class certification in an asserted action under the Florida Motor Vehicle Lease Disclosure Act, Florida Statute § 521, et seq. Accordingly, we affirm on the cross-appeal challenging that ruling.

Affirmed in part, reversed in part.