

CLARK v. ALAN VESTER AUTO GROUP

06-CVS-141

NORTH CAROLINA SUPERIOR COURT, VANCE COUNTY

September 2, 2008

Reporter

2008 NCBC Motions LEXIS 209 *

JOHN CLARK, et al., Plaintiffs, v. ALAN VESTER
AUTO GROUP, INC., et al., Defendants. Rule 2.1
Exceptional

Type: Motion

Counsel

[*1] Michael B. Pross, Esq., N.C. State Bar No. 27050,
John Hughes, Esq., N.C. State Bar No. 22126, Wallace &
Graham, P.A., Salisbury, NC.

Judges

John Jolly

Title

**PLAINTIFFS' MOTION TO STRIKE
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND PLAINTIFFS' ALTERNATIVE
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Text

Rule 2.1 Exceptional Plaintiffs move to strike the
Defendants' motion for summary judgment in this matter
on the grounds that to date the Court has limited
discovery to class certification and spoliation issues.

In the alternative, should the Court deem it appropriate to
entertain motions for summary judgment at this time,
pursuant to *Fed R. Civ. P. 56(a)*, Plaintiffs hereby move for
partial summary judgment as follows:

1. That Defendant Alan Vester Enterprises, LLC is liable
as a matter of law under Plaintiff John Clark's claim under
the Motor Vehicle Dealers and Manufacturers Licensing
Law, *N.C. Gen. Stat. § 20-285*, et seq. (Count 1 of the Third

Amended Complaint); and

2. That Defendants Alan Vester Nissan, Inc. and Alan
Vester Enterprises, LLC are liable as a matter of law under
Plaintiff Mary Carmon's claim under the Fair Credit
Reporting Act, *15 U.S.C. § 1681*, *[*2] et seq.* (Count 13 of
the Third Amended Complaint).

Plaintiffs respectfully contend that as to these two discrete
issues, there is no genuine issue of material fact and
accordingly that Plaintiffs are entitled to entry of judgment
as a matter of law. In further support hereof, Plaintiffs file
herewith their brief in support.

This the 2nd day of September, 2008.

/s/ John Hughes, Esq.

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CERTIFICATE OF SERVICE

I do hereby certify that I have on this 2nd day of
September, 2008, served a copy of the foregoing
document upon all counsel of record as follows.

Lyn K. Broom

Teague, Rotenstreich and Stanaland, L.L.P.

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