

IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. 25-009061

PHILLIP DANIEL MARTINS,

Plaintiff,

v.

CARMAX AUTO SUPERSTORES, INC.,

Defendant.

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**DEFENDANT CARMAX AUTO SUPERSTORES, INC.'S  
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

Defendant, CarMax Auto Superstores, Inc. ("CarMax" or "Defendant"), by and through its undersigned counsel and pursuant to Fla. R. Civ. P. 1.140(b)(6), hereby moves to dismiss the Amended Complaint filed by Plaintiff, Phillip Daniel Martins ("Martins" or "Plaintiff"), and as grounds in support thereof, states as follows:

**INTRODUCTION**

In his initial Complaint, Plaintiff alleged that in April 2024, he purchased a used 2022 BMW (the "Vehicle" or the "BMW") from a CarMax store located in Pompano Beach, Florida. Plaintiff alleged that at the time he purchased the Vehicle, he traded in another vehicle which was insured under an insurance policy issued by GEICO. Plaintiff alleged that the CarMax salesperson failed to request that Plaintiff transfer his current GEICO insurance to the BMW, and instead instructed Plaintiff to list a prior, expired insurance policy with Security National Insurance Company ("Security National") on an insurance affidavit signed by Plaintiff.

Plaintiff further alleged that he thereafter acquired insurance coverage through another insurance company, Direct Auto Insurance ("Direct Auto"), which, according to Plaintiff, failed

to provide adequate coverage for the Vehicle when it was involved in an accident more than eight (8) months later, resulting in the total loss of the Vehicle.

Rather than accept responsibility for his own neglect and/or failure to procure adequate insurance for the Vehicle, Plaintiff filed this action against CarMax, wherein Plaintiff initially asserted claims against CarMax for: (1) negligence; (2) fraudulent misrepresentation; (3) violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"); (4) breach of the implied duty of good faith and fair dealing; and (5) declaratory judgment.

CarMax moved to dismiss Plaintiff's Complaint for failure to state a claim. As explained by CarMax in its Motion to Dismiss, pursuant to the parties' agreements and Florida law, CarMax did not owe Plaintiff a duty to either confirm Plaintiff's insurance coverage or to assist Plaintiff in securing insurance coverage following his purchase of the Vehicle from CarMax. In fact, Plaintiff knowingly signed an insurance affidavit, under penalty of perjury, which according to Plaintiff, listed an insurance policy that Plaintiff knew to be expired. Furthermore, pursuant to the documents signed by Plaintiff at the time of purchase of the Vehicle, Plaintiff expressly assumed any and all responsibility to insure the Vehicle, while CarMax expressly disclaimed any and all liability to do so.

Following a hearing, the Court granted CarMax's Motion to Dismiss and dismissed Plaintiff's initial Complaint in its entirety, *without prejudice*, while providing Plaintiff an opportunity to amend his Complaint.

Plaintiff's Amended Complaint alleges several new "facts" that differ from his original Complaint. More specifically, Plaintiff now alleges that when he purchased the Vehicle from CarMax, he had a current insurance policy with Direct Auto, not GEICO as previously alleged. *See Amended Complaint, at ¶11.* Nonetheless, Plaintiff still acknowledges (as he must) that he

signed the same insurance affidavit, but now alleges that a CarMax employee, rather than using Plaintiff's current insurance information with Direct Auto, retrieved an expired insurance policy from the Vehicle's glove compartment and, without Plaintiff's knowledge, inserted that information (i.e., Security National) into the insurance affidavit. *Id.* at ¶11, 12. Plaintiff further alleges that before leaving the dealership, CarMax instructed him to transfer coverage of the new Vehicle to his insurance company. *Id.* at ¶16. Plaintiff claims, however, that he did not know that the "full coverage" was required, or that the insurance information in the insurance affidavit that he had signed was expired, invalid or insufficient. *Id.*

Plaintiff then alleges that after leaving CarMax following his purchase of the Vehicle, he contacted Direct Auto Insurance to transfer coverage for the Vehicle, only to discover sometime later after suffering an accident that he did not have full coverage needed to cover the loss of the Vehicle. *Id.* In his Amended Complaint, Plaintiff asserts claims against CarMax for: (1) fraudulent misrepresentation (Count I); (2) negligence (Count II); (3) breach of contract (Count III); and (4) violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") (Count IV).

Despite Plaintiff's "new" allegations, Plaintiff has still failed to state a cognizable claim against CarMax. Like before, Plaintiff's claims fail in light of the fact that Plaintiff signed and submitted an insurance affidavit, under penalty of perjury, stating that he had and would maintain adequate insurance for the Vehicle. Furthermore, Plaintiff expressly assumed any and all responsibility to ensure that the Vehicle remained insured against loss, while CarMax expressly disclaimed any and all responsibility to do so. Accordingly, Plaintiff's Amended Complaint should be dismissed, *with prejudice*.

## ARGUMENT

### **I. LEGAL STANDARD ON A MOTION TO DISMISS**

A motion to dismiss tests the sufficiency of a complaint within its four corners. *Biscayne Inv. Group, Ltd. v. Guarantee Mgmt. Services, Inc.*, 903 So. 2d 251, 253 (Fla. 3d DCA 2005) (*citing Coriat v. Global Assurance Group, Inc.*, 862 So. 2d 743 (Fla. 3d DCA 2003)). The inquiry for the trial court is “whether the complaint alleges sufficient ultimate facts that would entitle the plaintiff to relief.” *Biscayne Inv. Group*, 903 So. 2d at 253 (*citing Cohen v. American Home Assurance Co.*, 367 So. 2d 677, 681 (Fla. 3d DCA 1979)). Well-plead facts are admitted, but “of course, conclusions of law are not.” *Wallace Bros. v. Yates*, 117 So. 2d 202, 203 (Fla. 2d DCA 1960). Any exhibit attached to a pleading is considered a part of the pleading for all purposes. *Len Hazen Painters, Inc. v. Wood-Hopkins Const. Co.*, 396 So. 2d 1233 (Fla. 1st DCA 1981). Lastly, where the terms of a legal document are impliedly incorporated by reference into the complaint (but not attached), the Court may consider the contents of the document in ruling on a motion to dismiss. *See Tower Radiology Center v. Direct Gen. Ins. Co.*, 348 So. 3d 1147, 1150 (Fla. 4th DCA 2022).

### **II. THE COURT SHOULD DISMISS PLAINTIFF’S AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM.**

As explained above, Plaintiff’s Amended Complaint is premised upon Plaintiff’s claim that CarMax allegedly: (1) inserted expired insurance information into an Affidavit of Insurance that Plaintiff later signed under oath and under penalty of perjury; (2) failed to confirm Plaintiff’s insurance coverage; and (3) failed to advise Plaintiff that he did not have full insurance coverage for the subject Vehicle.

Even assuming that Plaintiff's allegations are true, which CarMax again denies, all of Plaintiff's claims must still be dismissed for failure to state a cognizable claim under Florida law.

First, as once again conceded by Plaintiff, when Plaintiff purchased the subject BMW from CarMax, he signed and submitted a Florida Insurance Affidavit to CarMax. *See Exhibit 1, Florida Insurance Affidavit.*<sup>1</sup> By signing this Affidavit, Plaintiff attested, under penalty of perjury, that he had the requisite insurance coverage currently in effect for the Vehicle with Security National Insurance Company. CarMax, in turn, justifiably relied upon Plaintiff's sworn representation that he had proper insurance coverage in place when it agreed to sell the Vehicle to Plaintiff. The fact that Plaintiff knew that his insurance with Security National Insurance Company had expired, yet signed and submitted a Florida Insurance Affidavit attesting that such insurance was current anyway, completely negates and bars all of Plaintiff's claims against CarMax in this case.

By virtue of Plaintiff signing and submitting the Florida Insurance Affidavit, Plaintiff's claims against CarMax are statutorily barred. Specifically, Fla. Stat. §320.02, which requires proof of ownership to be submitted in connection with the registration of a motor vehicle in Florida, provides in pertinent part as follows:

... The [insurance] card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department shall constitute sufficient proof of purchase. If an affidavit is provided as proof, it must be in substantially the following form:

Under penalty of perjury, I (Name of insured) do hereby certify that I have Personal Injury Protection, Property Damage Liability, and, if required, Bodily

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<sup>1</sup> As explained above, even though Plaintiff did not attach the Florida Insurance Affidavit to his Amended Complaint (like he did to his initial Complaint), the Court may still consider the affidavit when considering and ruling upon CarMax's Motion to Dismiss, because Plaintiff specifically cites to and incorporates the instrument in his Amended Complaint. *See Tower Radiology Center*, 348 So. 3d at 1150. The same holds true for Plaintiff's Agreement to Provide Physical Damage Insurance addressed later in this motion. *Id.*

Injury Liability) Insurance currently in effect with (Name of insurance company) under (policy number) covering (make, year, and vehicle identification number of vehicle). (Signature of Insured)

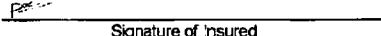
Such affidavit must include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.

*See* Fla. Stat. §320.02(5)(a).

Notably, Fla. Stat. §320.02(5)(a) further provides that “[B]y executing the aforesaid affidavit, no licensed motor vehicle dealer will be liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein.” *See* Fla. Stat. §320.02. (Emphasis added).

In this case, Plaintiff admits that he signed the Florida Insurance Affidavit, which includes the exact same language prescribed by Fla. Stat. §320.02, above:

FLORIDA INSURANCE AFFIDAVIT		
Under penalty of perjury, I <u>PHILLIP DANIEL MARTINS</u> certify that I have (Name of Insured)		
<u>Personal Injury Protection, Property Damage Liability, and, when required, Bodily Injury Liability</u>		
Insurance currently in effect with <u>SECURITY NATIONAL INSURANCE COMPANY</u> under (Name of Insurance Company)		
<u>G008186022</u> (Policy Number)	<u>1952</u> Company Code Number (5 digits)	covering the following motor vehicle:
<u>2022</u> Year	<u>BMW</u> Make	<u>3MW5R7J01N8C69704</u> Vehicle Identification Number
This insurance company is licensed to issue insurance policies in Florida. I understand that my <u>driver license, license plate(s) and registration(s) will be suspended effective from the registration date, if the insurer denies that this policy is in force.</u>		
 Signature of Insured		
WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.		
HSMV 83330 (Rev. 09/09) <a href="http://www.flhsmv.gov">www.flhsmv.gov</a>		

*See Exhibit 1, Florida Insurance Affidavit.*

As expressly stated in Fla. Stat. §320.02(5)(a), Plaintiff's execution of the Florida Insurance Affidavit completely exculpates CarMax, as a licensed motor vehicle dealer, from any and all liability due to any inadequate, insufficient, or false information contained therein. For this reason, all of Plaintiff's claims against CarMax should be dismissed by the Court.

Second, Plaintiff's claim that CarMax allegedly inserted expired insurance information in the affidavit without Plaintiff's knowledge or consent (which affidavit Plaintiff later signed), does not alter the fact that Plaintiff's Amended Complaint must still be dismissed. Florida courts consistently hold that a party may not defend against the enforcement of an agreement on the grounds that he or she failed to read the agreement and was not aware of its terms. *See, e.g., Manning v. Interfuture Trading, Inc.*, 578 So. 2d 842, 845 (Fla. 4th DCA 1991) ("The rule is well established that a party's mere failure to read a contract and thus to know and understand its terms and implications is not grounds for rescission or revocation.").

Furthermore, one is presumed to know the contents of a contract that they signed, even in the case where the individual cannot read English. *See Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Benton*, 467 So. 2d 311 (Fla. 5th DCA 1985). If a person cannot read the instrument they are signing, it is as much their duty to procure some reliable person to read and explain it to them, before they sign it, as it would be to read it before they signed it if they were able to do so. *See Rivero v. Rivero*, 963 So. 2d 934 (Fla. 3d DCA 2007); *see also, Rocky Creed Retirement Props., Inc. v. Estate of Fox ex rel. Bank of America, N.A.*, 19 So. 3d 1105 (Fla. 2d DCA 2009). Thus, any failure on Plaintiff's part to read and understand the Florida Insurance Affidavit that he signed – under penalty of perjury – bars Plaintiff's claims against CarMax.

Third, in addition to signing the above-referenced Florida Insurance Affidavit, because Plaintiff financed his purchase of the Vehicle, he was also required to sign and submit an Agreement to Provide Physical Damage Insurance. *See Exhibit 2.* In this document, Plaintiff once again acknowledged and agreed that he was solely responsible for procuring and maintaining adequate insurance coverage for the Vehicle:

**... I agree that I am solely responsible for making arrangements for, obtaining and maintaining the required insurance coverage. I also understand that CarMax will not make arrangements for my required insurance coverage, nor are the premiums included in the monthly installments I will pay under the Retail Installment Contract.**

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**By signing below, I agree to promptly secure the required insurance coverage and understand that if I do not obtain the required insurance coverage, the finance company that has agreed to finance my Retail Installment contract may refuse to fund the financing.**

*See Exhibit 2, Agreement to Provide Physical Damage Insurance (emphasis in original).*

Thus, Plaintiff not only attested that he had current, adequate insurance coverage in place for the Vehicle, but he also agreed and acknowledged that it was his sole responsibility to maintain such insurance, whereas CarMax had no responsibility to do so. Like before, these facts completely contradict and negate the entire premise of Plaintiff's amended claims against CarMax. *See Harry Pepper Assoc., Inc. v. Lasseter*, 247 So. 2d 736 (Fla. 3d DCA 1971) (where there is an inconsistency between the allegations in a plaintiff's complaint and the specific facts in exhibits attached thereto, the pleading is objectionable and subject to dismissal).<sup>2</sup>

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<sup>2</sup> This includes, but is not limited to, Plaintiff's claim that he was unaware that "full coverage" was needed when insuring the Vehicle. As the Agreement to Provide Physical Damage Insurance makes clear, Plaintiff was required at all times to maintain both collision and comprehensive coverage for the Vehicle. *Id.*

Fourth, Plaintiff claims that CarMax is liable for the alleged loss of the Vehicle because CarMax: (a) purportedly failed to follow up and confirm insurance coverage for the Vehicle within seven (7) days; and (b) failed to notify Plaintiff of any deficiency in insurance coverage. These claims fail for the same reason as Plaintiff's other claims. For one, as explained above, Plaintiff expressly agreed when he signed the Agreement to Provide Physical Damage Insurance that it remained his sole responsibility to obtain and maintain the required insurance coverage for the Vehicle, and that CarMax would have no role or responsibility in doing so.

Furthermore, despite Plaintiff's claim to the contrary, CarMax did not breach the subject insurance agreement based upon any failure to confirm Plaintiff's insurance coverage within seven (7) days of Plaintiff's execution of the agreement. As the Agreement to Provide Physical Damage Insurance makes clear, the right for the lender to confirm insurance coverage was expressly intended to protect the lender, not Plaintiff, from financial loss should an accident or damage occur to Plaintiff's Vehicle. Specifically, the Agreement states, in pertinent part, as follows:

I understand that to provide protection from serious financial loss should an accident or damage occur, my Retail Installment Contract requires that the vehicle be continuously covered by insurance as set forth below...

I understand that if, for any reason, the required insurance coverage as designated below is not continuously maintained, the lienholder, may at its option, secure insurance according to the terms of my Retail Installment Contract. This does not relieve me, however, from securing and maintaining the required insurance coverage. I further understand that the amount of such coverage obtained by the lienholder may be limited to the amount I owe for the Vehicle under the Retail Installment Contract, and that such insurance coverage will not provide any additional liability coverage.

*See Exhibit 2, Agreement to Provide Physical Damage Insurance.*

Thus, the Agreement to Provide Physical Damage Insurance specifically put Plaintiff on notice that if he did not secure and maintain adequate insurance for the Vehicle, the lender had the option – not the obligation – to force place insurance on the Vehicle. Thus, even if CarMax (who

is not the lienholder in this case) failed to confirm insurance coverage, such assertion is not a claim or defense for Plaintiff in this instance because according to the plain language of the agreement: (a) the provision was meant solely to protect the lienholder's interest in the Vehicle; (b) the lienholder was not required to force place insurance in the event insurance coverage was lacking or inadequate; and (c) any force placed insurance secured by the lienholder need only have covered the lienholder's interest in the Vehicle, not any interest of Plaintiff.

Lastly, Plaintiff's claims fail based upon Plaintiff's allegation that after purchasing the Vehicle from CarMax, Plaintiff did in fact contact his insurer, Direct Auto Insurance, and requested that coverage be transferred to the Vehicle. If true, this further demonstrates that any failure to procure adequate insurance coverage for the Vehicle, as well as the subsequent loss of the Vehicle, was not due to any fault or misrepresentation made by CarMax, but solely due to Plaintiff and/or Direct Auto Insurance's failure to properly secure insurance coverage for the Vehicle, which again, remained Plaintiff's sole responsibility pursuant to the parties' agreement and applicable Florida law.

### **CONCLUSION**

For all of the reasons explained above, Plaintiff's Amended Complaint does not resolve the same fatal pleading deficiencies contained within Plaintiff's (initial) Complaint. Accordingly, Plaintiff's Amended Complaint should be dismissed in its entirety. Furthermore, as Plaintiff's Amended Complaint demonstrates, Plaintiff cannot allege any new facts that would negate or circumvent the documents that he signed, regardless of how many opportunities he is given to amend his Complaint. Simply put, further amendment would be futile. Plaintiff's Amended Complaint should therefore be dismissed, *with prejudice*.

WHEREFORE, Defendant, CarMax Auto Superstores, Inc., respectfully requests that the Court enter an Order: (1) dismissing Plaintiff's Amended Complaint for failure to state a cause of action, *with prejudice*; (2) awarding CarMax its reasonable attorneys' fees and costs incurred in this action; and (3) granting such other and further relief that the Court deems just and proper under the circumstances.

Dated: January 22, 2026

Respectfully submitted,

**LEGON FODIMAN & SUDDUTH, P.A.**  
*Counsel for Defendant CarMax Auto  
Superstores, Inc.*  
121 Alhambra Plaza, Suite 1505  
Coral Gables, FL 33134  
Tel.: (305) 444-9991

By: Jeffrey A. Sudduth  
TODD A. FODIMAN  
Fla. Bar No.: 612189  
JEFFREY A. SUDDUTH  
Fla. Bar No.: 169950

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct of the Florida was filed on this 22<sup>nd</sup> day of January, 2026, with the Florida e-Portal, which will send notice to the following:

Phillip Daniel Martins, *pro se Plaintiff*  
160 W. Camino Real, #102  
Boca Raton, FL 33432

By: Jeffrey A. Sudduth  
Jeffrey A. Sudduth

# EXHIBIT 1

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## FLORIDA INSURANCE AFFIDAVIT

Under penalty of perjury, I PHILLIP DANIEL MARTINS  
(Name of Insured) certify that I have

Personal Injury Protection, Property Damage Liability, and, when required, Bodily Injury Liability

Insurance currently in effect with SECURITY NATIONAL INSURANCE COMPANY under  
(Name of Insurance Company)

G008186022 1952 covering the following motor vehicle:  
(Policy Number) Company Code Number (5 digits)

<u>2022</u>	<u>BMW</u>	<u>3MWSR7J01N8C69704</u>
Year	Make	Vehicle Identification Number

This insurance company is licensed to issue insurance policies in Florida. I understand that my driver license, license plate(s) and registration(s) will be suspended effective from the registration date, if the insurer denies that this policy is in force.

  
Signature of Insured

**WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.**

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# EXHIBIT 2

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