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

PHILLIP DANIEL MARTINS,

Plaintiff,

CASE NO: CACE25009061

vs.

CARMAX AUTO SUPERSTORES, INC.,

a foreign profit corporation,

Defendant,

_______________________________/

PLAINTIFF'S MOTION OBJECTING TO DEFENDANT'S MOTION TO DISMISS AND REQUESTING ENTRY OF ORDER ALLOWING DISCOVERY TO PROCEED

COMES NOW Plaintiff, PHILLIP DANIEL MARTINS ("Plaintiff"), and files this Motion Objecting to Defendant's Motion to Dismiss and Requesting that the Court deny dismissal and permit the case to proceed to discovery, and states:

I. THIS MOTION IS NECESSARY BECAUSE DEFENDANT'S POSITION CONTRADICTS ITS OWN CONTRACTS AND CONDUCT

Defendant CarMax seeks dismissal by arguing that Plaintiff alone was responsible for insurance coverage and that CarMax had no obligation to verify insurance before releasing or financing the vehicle.

That argument directly contradicts CarMax's own written agreements, operational procedures, and the facts alleged in the Amended Complaint.

CarMax's Motion to Dismiss attempts to rewrite its contracts, ignore its own obligations, and improperly resolve disputed facts at the pleading stage.

II. CARMAX'S OWN CONTRACT REQUIRES FULL COVERAGE AS A CONDITION OF FINANCING

CarMax required Plaintiff to sign an Agreement to Provide Physical Damage Insurance, which states unequivocally:

Full coverage insurance (collision and comprehensive) is required

<u>If such insurance is not obtained, financing may be refused</u>

<u>Insurance will be verified by the lender within seven (7) days</u>

<u>Failure to have insurance results in rejection of financing or repossession</u>

(See Agreement to Provide Physical Damage Insurance, page 2 of the uploaded exhibit forgery Affidavit by CarMax)

CarMax's litigation position directly contradicts this contract.

CarMax now claims:

it had no obligation to verify insurance

no obligation to confirm full coverage,

and no responsibility despite releasing a financed vehicle.

Those positions cannot coexist with CarMax's own written terms.

III. CARMAX RELEASED AND FINANCED THE VEHICLE WITHOUT VERIFIED FULL COVERAGE

The Amended Complaint alleges, and must be taken as true at this stage, that:

CarMax released the BMW before verifying full coverage

No proof exists that full coverage was transferred to the BMW

CarMax never contacted Plaintiff or any insurer to confirm coverage

CarMax never performed the promised seven-day verification

A salesperson expressly acknowledged the lack of completed insurance by stating:

“When you get home, call your insurance and take care of the rest.”

This statement is an admission that the vehicle was knowingly released without completed insurance compliance.

That conduct:

violates CarMax's own contract,

violates reasonable commercial standards,

and creates a foreseeable zone of risk.

IV. CARMAX CANNOT CLAIM STATUTORY IMMUNITY WHILE VIOLATING ITS OWN CONTRACT

CarMax relies heavily on Fla. Stat. § 320.02, but statutory immunity does not override contractual duties or fraudulent conduct.

More importantly:

The statute presumes the buyer provides the insurance information

Plaintiff alleges the insurance affidavit was completed by CarMax's employee

The expired policy information originated with CarMax, not Plaintiff

Fraud and inducement vitiate reliance and immunity

CarMax cannot:

Insert false insurance information

Release a financed vehicle anyway

Ignore its own verification obligations

Then invoke statutory immunity to avoid discovery

Florida law does not permit a party to benefit from its own wrongdoing.

V. NEGLIGENCE IS INDEPENDENTLY STATED AND CANNOT BE DISMISSED

Plaintiff does not allege that CarMax had a general duty to procure insurance.

Plaintiff alleges that CarMax:

undertook the insurance-verification process,

imposed insurance as a condition of financing,

failed to verify,

failed to follow up,

and knowingly released the vehicle anyway.

Once CarMax undertook these acts, it was required to exercise reasonable care.

The negligence claim is independently and sufficiently pled and cannot be resolved without discovery.

VI. DEFENDANT HAS NO PROOF — AND THAT IS PRECISELY WHY DISCOVERY IS REQUIRED

CarMax has produced no evidence that:

full coverage existed at delivery,

coverage was transferred to the BMW,

any insurer confirmed coverage,

or the seven-day verification ever occurred.

Those facts are exclusively within CarMax's control and require discovery of:

internal policies,

employee testimony,

insurer communications,

financing verification records,

surveillance and transaction logs.

Dismissal at this stage would improperly shield Defendant from accountability before facts can be tested.

VII. DISMISSAL WITH PREJUDICE IS IMPROPER AND UNSUPPORTED

This is Plaintiff's first amended complaint.
New facts were pled.
No discovery has occurred.

Florida courts strongly disfavor dismissal with prejudice under these circumstances, especially where fraud, negligence, and FDUTPA violations are alleged.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

DENY Defendant's Motion to Dismiss in its entirety

REJECT Defendant's attempt to contradict its own contracts

ALLOW the case to proceed to discovery

Grant such other relief as justice requires

PHILLIP DANIEL MARTINS, Pro se
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the PLAINTIFF'S MOTION OBJECTING TO DEFENDANT'S MOTION TO DISMISS AND REQUESTING ENTRY OF ORDER ALLOWING DISCOVERY TO PROCEED has been furnished via electronic mail to all attorneys at record

on January 26, 2026.

PHILLIP DANIEL MARTINS
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