

# Couple wins suit on forced van return

## Judge: Conflicting agreements unlawful

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In a case that affects how auto dealerships sell cars in Ohio, a federal judge in Cincinnati has ruled in favor of a Kentucky couple forced to return a used car to Jeff Wyler Eastgate more than a month after they bought it.

Wyler, part of one of the nation's 100 biggest auto dealer groups, the Jeff Wyler Automotive Family, asked that Brian and Jennifer Patton of Worthville, Ky., return the 2003 Ford Windstar minivan because Wyler could not secure financing for the purchase. The couple bought it for \$18,665 on Nov. 10, 2005, and was asked to return it Dec. 21.

The Pattons returned the van but also filed suit, alleging violations of the federal Truth in Lending Act. They argued that the so-called purchase spot delivery agreement allowing Wyler to reclaim the van contradicted the retail installment sale contract that spelled out the purchase price, total amount financed, interest rate and monthly payments.

U.S. District Judge Susan Dlott agreed.

"The representation in the installment contract that Wyler Eastgate is providing credit ... for the Pattons' purchase is rendered meaningless by the language in the Purchase Spot Delivery Agreement permitting the dealership, in essence, to cancel the purchase," Dlott wrote.

Spot delivery helps auto dealers make sales because it allows consumers to drive away in their newly purchased vehicles even with tentative financing approval.

"Most purchases take place at night when banks and finance companies are closed," said Don White, the lawyer who represented Wyler Eastgate. "The buyer wants to take the car, and they bring it back if the financing doesn't go through. Spot delivery has been a normal practice for auto dealerships in Ohio since the mid-'90s."

The case hinged in part on whether Wyler is a "creditor" under the Truth in Lending Act. The installment contract signed by the Pattons identifies Wyler as the creditor. Dlott thus granted the Pattons a summary judgment finding that Wyler violated the law.

"The purpose of the Truth in Lending Act would be frustrated if automobile dealerships are permitted to rescind the terms of integrated automobile retail installment sales contracts by use of a second, contradictory form," Dlott wrote.

The Pattons were represented by Raymond Ingalsbe of Palm Beach Gardens, Fla., and Steven Shane of Bellevue.

"The decision has enormous implications in the sale and financing of motor vehicles in Ohio and across the country," Ingalsbe said. "The court ruled that Wyler's spot-delivery procedure violated the Truth in Lending Act because Wyler uses it to change the financing terms of contracts it enters into..."

White said he plans to appeal the ruling. Meanwhile, he said Wyler is trying to figure out how to comply with it.

"They're going to have to determine whether or not they can incorporate the spot-delivery agreement into the retail installment sales agreement," White said. "We're running it by the Ohio Automobile Dealers Association."