



The Myth of Conditional

Financing After *McCarthy II*

**Texas Court Reinforces Consumer
Rights in Retail Installment
Sales Contracts**

The decision has significant implications for both plaintiffs and defendants in motor vehicle litigation.

By R. Douglas Scott *

I. INTRODUCTION

Retail installment sales contracts are among the most commonly used consumer-finance instruments in Texas, yet disputes involving “spot delivery” or “conditional financing” practices have occupied an uncertain space between dealership practices and statutory consumer protections. The Fourteenth Court of Appeals’ recent decision in *McCarthy v. Wisch Auto Group, Inc. d/b/a Bayway Chevrolet* calls many of those assumptions into question.¹ In *McCarthy II*, the court addressed whether a dealership may rescind a completed retail installment transaction after the failure to assign the contract to a third-party lender. In doing so, the court closely examined the interaction between the retail installment sales contract (“RISC”), the conditional delivery agreement (“CDA”), and multiple provisions of Chapter 348 of the Texas Finance Code governing motor vehicle installment sales. The court ultimately concluded that the RISC became binding upon execution, that Bayway Chevrolet (“Bayway”) was identified as the originating creditor under the transaction documents, and that the Bayway could not rely on the subsequent failure of assignment financing to invalidate the completed sale.

The decision has significant implications for both plaintiffs and defendants in motor vehicle litigation. It limits a dealer’s ability to rely on the failure of third-party financing to justify post-sale rescission and reinforces the statutory protections governing these transactions under the Texas Finance Code, the Deceptive Trade Practices Act (“DTPA”), and the Texas Debt Collection Act (“TDCA”). It also highlights the potential liability that may arise when a dealer represents that a sale is complete, only to later attempt to reverse course.

This article examines the *McCarthy II* decision and its practical impact. It focuses on how the court’s reasoning reframes “conditional financing,” clarifies the role of the dealer as creditor, and provides a framework for evaluating claims arising from failed spot-delivery transactions.

1 This article refers to the Fourteenth Court of Appeals’ 2021 arbitration decision involving the same parties as “McCarthy I” and its 2026 merits opinion as “McCarthy II.” See *Wisch Auto Group, Inc. v. McCarthy*, No. 14-19-00483-CV, 2021 WL 2154075 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.) (“McCarthy I”); *McCarthy v. Wisch Auto Group, Inc.*, __ S.W.3d __, No. 14-24-00040-CV, 2026 WL 771396 (Tex. App.—Houston [14th Dist.] Mar. 19, 2026, no pet. h.) (“McCarthy II”).

II. THE TRANSACTION AND THE DISPUTE

The dispute in *McCarthy II* arises from a transaction that is common in the motor vehicle industry but frequently misunderstood in litigation. Jeffrey and Melissa McCarthy (the “McCarthys”) went to Bayway to purchase a vehicle and ultimately agreed to buy a Chevrolet Silverado (the “Silverado”). As part of the transaction, they traded in their existing vehicle (the “Nissan”) and entered into a retail installment sales contract (“RISC”) identifying the dealership as the seller and creditor. The parties simultaneously executed both the RISC and a separate conditional delivery agreement. The McCarthys left the dealership with the Silverado, and Bayway took possession of the Nissan with the obligation to satisfy the outstanding loan balance. From the consumers’ perspective, the transaction was complete: they had signed the contract, surrendered their prior vehicle, and taken delivery of the new one.

What the McCarthys were not told was that the dealership had only obtained a conditional approval from a third-party lender. That approval required additional verification of income and other conditions before funding would occur. When those conditions were not satisfied to the lender’s approval, the lender declined to fund the transaction several weeks later.

At that point, Bayway attempted to reverse course. It informed the McCarthys that the sale was not final and demanded the return of the Silverado. At the same time, Bayway failed to pay off the loan on the Nissan, which was ultimately repossessed and sold, leaving the McCarthys with a deficiency balance.

The situation escalated quickly. Bayway engaged in repeated collection efforts, including threats of criminal consequences, involvement of law enforcement, and attempts to recover the vehicle through repossession agents. Despite these efforts, the McCarthys maintained possession of the Silverado and pursued legal claims based on the Bayway’s conduct.

The case proceeded to trial, where the jury found in favor of Bayway, rejecting the McCarthys’ statutory claims and finding that they had failed to comply with the contract. The trial court entered a take-nothing judgment. On appeal, however, the Fourteenth Court of Appeals reached a different conclusion on several key issues, setting the stage for a broader examination of whether this type of transaction can ever be treated as “conditional” under Texas law.

Before the appeal addressed in *McCarthy II*, the parties had already appeared before the Fourteenth Court of Appeals in an earlier interlocutory appeal involving Bayway’s attempt to compel arbitration under the RISC. In that appeal, now referred to herein as *McCarthy I*, the court affirmed the trial court’s denial of arbitration. Although *McCarthy I* primarily addressed contract formation and arbitration principles, the opinion foreshadowed many of the concerns that later became central to *McCarthy II*, particularly the tension between Bayway’s reliance on the RISC for arbitration purposes while simultaneously treating the underlying transaction as non-final once financing failed.

III. THE COURT’S HOLDING: A RISC IS NOT A CONDITIONAL AGREEMENT

The central issue on appeal was whether the transaction could be treated as contingent on the Bayway’s ability to assign the retail installment sales contract (“RISC”) to a third-party lender. Bayway’s position reflected a common industry assumption: that a vehicle sale completed through “spot delivery” remains subject to financing approval and may be unwound if that approval does not materialize.

That assumption did not arise in a vacuum. For decades, dealerships have operated under a business model in which they act as intermediaries, originating retail installment contracts with the expectation that those contracts will be promptly assigned to third-party lenders. When a lender declines to purchase the contract, the dealer is left holding the paper. From a practical standpoint, this creates pressure to reverse the transaction rather than retain the credit risk. As a result, some dealers have treated delivery of the vehicle as effectively “conditional,” even where the governing contract does not reflect that understanding.

Historically, disputes arising from these transactions have not always produced clear appellate guidance. Many cases turn on fact-specific issues involving disclosures, contract language, or conditional-delivery agreements. Others resolve before appellate review, leaving the underlying legal theory largely untested. This lack of clarity has allowed the concept of “conditional financing” to persist as a practical assumption, even where its legal foundation is uncertain. The Fourteenth Court of Appeals rejected that premise.

A. The RISC Is Binding at Execution

The court began with the language of the contract itself. The RISC identified Bayway as the seller and creditor and set forth the essential terms of the transaction, including the amount financed, payment schedule, and obligations of the parties. Nothing in the agreement made the transaction contingent on third-party financing.

Under settled contract principles, the agreement became binding when it was executed. The court emphasized that a RISC is not a preliminary agreement or placeholder. It is the operative credit contract governing the transaction. Once signed, it establishes enforceable rights and obligations



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between the dealer and the consumer. Bayway's expectation that it would later assign the contract to a lender did not alter that analysis. Assignment is a separate transaction. It may affect whose expectation that it would later assign the contract to a lender did not alter that analysis. Assignment is a separate transaction. It may affect who ultimately receives payments, but it does not determine whether a contract exists in the first place.

B. Texas Law Prohibits Conditional Assignment

The court's analysis did not stop at the contract. It also relied on the Texas Finance Code, which directly addresses this issue. Section 348.1015 prohibits a retail installment contract from being conditioned on its assignment to a third party. Any provision attempting to impose such a condition is void.

This statutory prohibition is significant. It reflects a legislative decision to treat RISCs as complete and binding agreements at the time of execution, not as contingent arrangements dependent on outside approval. The court's opinion reinforces that principle by refusing to recognize a condition that the statute itself invalidates.

In practical terms, this means that a dealer cannot accomplish indirectly, through practice or characterization, what the statute forbids directly. Even if a dealer subjectively views the transaction as contingent on financing, that understanding has no legal effect if it is not reflected in an enforceable and lawful contract provision.

C. The Dealer Remains the Creditor

A related issue addressed by the court was the identity of the creditor. Bayway argued, in substance, that it merely facilitated financing and that GM Financial would have become the ultimate creditor had the assignment been completed. The court rejected that position.

The RISC expressly identified Bayway Chevrolet as the "Seller/Creditor." The agreement obligated the consumers to make payments under the contract and gave the dealership the right to enforce the debt, repossess the vehicle upon default, and recover a deficiency balance. The dealership also retained the right to assign the contract to another entity. Those provisions are consistent with the dealership originating the credit transaction itself.

The distinction matters because many post-sale disputes arise from a dealer's attempt to characterize itself as merely a conduit between the consumer and a lender. *McCarthy II* makes clear that this characterization is inconsistent with the structure of the transaction reflected in the RISC. The dealer is the originating creditor at the moment the contract is signed, even if it later intends to transfer the paper to a third-party finance company.

This conclusion is consistent with the broader statutory framework governing retail installment transactions. The dealer originates the extension of credit, negotiates the terms of the transaction, executes the RISC, and possesses all rights associated with the debt unless and until those rights are assigned. The dealer's expectation that it will later sell or assign the contract does not alter the legal reality that the dealer is the creditor when the transaction is consummated.

The distinction is particularly important in spot-delivery litigation because dealerships frequently argue that they merely arrange financing and therefore should not bear responsibility when financing later fails. *McCarthy II* undermines that position. The court repeatedly emphasized that Bayway, not GM Financial, was the creditor identified in the RISC and the entity that initially extended credit to the consumers. The possibility of a future assignment did not change the nature of the original transaction.

The court's analysis therefore carries implications beyond Chapter 348 of the Texas Finance Code. Creditor status carries with it not only contractual rights but also statutory obligations under a variety of federal and state consumer-protection laws. One of the most significant examples arises under the Equal Credit Opportunity Act.

D. Creditor Status Carries Potential ECOA Consequences

One of the most significant aspects of *McCarthy II* may ultimately be found not in its interpretation of the Texas Finance Code, but in its treatment of the Equal Credit Opportunity Act ("ECOA"). While most attention has focused on the court's rejection of "conditional financing," the opinion may have equally important implications for federal consumer-credit litigation.

The trial court granted summary judgment against the *McCarthys* on their ECOA claim, concluding that Bayway was not a creditor subject to the statute. The Fourteenth Court of Appeals reversed in part, holding that the summary-judgment evidence created at least a fact issue regarding whether Bayway qualified as a creditor. In doing so, the court relied on many of the same facts that ultimately drove its analysis throughout the remainder of the opinion: Bayway accepted the credit application, extended credit through the RISC, and expressly identified itself in the transaction documents as the "Seller/Creditor."

Bayway argued that GM Financial made the credit decision and that any obligations arising under the ECOA belonged solely to GM Financial. According to Bayway, it merely facilitated the transaction and expected to assign the contract once financing was finalized. The court rejected that argument, concluding that the evidence would permit a factfinder to determine that Bayway itself qualified as a creditor under the statute.

That holding is significant because creditor status under the ECOA carries substantive obligations. Among other things, creditors generally must provide notice when adverse action is taken concerning a consumer's application for credit. The purpose of the notice requirement is to ensure transparency in the credit process and to provide consumers with sufficient information to understand, investigate, and challenge the basis for the denial or termination of credit. The notice requirement serves a particularly important function in spot-delivery transactions because consumers who have already surrendered a trade-in vehicle and taken possession of a replacement vehicle may have effectively been removed from the credit marketplace before learning that financing has failed.

In the context of spot-delivery transactions, the issue becomes particularly important when financing later collapses after the consumer has already signed the RISC, surrendered a trade-in vehicle, obtained insurance, and taken possession of the replacement vehicle. Dealerships frequently take the position that any adverse-action obligations belong exclusively to the third-

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party lender because the lender ultimately declined to purchase the contract. *McCarthy II* suggests that the analysis may not be so simple. If the dealership originated the credit transaction and qualifies as a creditor under the statute, the dealership may itself bear responsibility for complying with the ECOA's notice requirements.

The consequences of failing to provide a required adverse-action notice can be substantial. The ECOA creates an independent federal cause of action and authorizes recovery of actual damages, punitive damages in appropriate cases, attorney's fees, and costs. As a result, a creditor's failure to comply with the statute may create liability separate and apart from any claim arising under the Texas Finance Code, the Deceptive Trade Practices Act, the Texas Debt Collection Act, or the underlying retail installment contract itself.

For consumer practitioners, this portion of the opinion may prove to be one of *McCarthy II*'s most important long-term contributions. Attorneys evaluating failed-financing or spot-delivery disputes should not limit their analysis to state-law claims. Counsel should also determine who originated the credit transaction, who qualified as the creditor under the transaction documents, whether an adverse action occurred, and whether the consumer received the notices required by federal law.

Ultimately, the ECOA discussion reinforces the broader theme running throughout *McCarthy II*. A dealership cannot simultaneously claim the benefits of creditor status while disclaiming the obligations that accompany it. If the dealership is the creditor when the transaction is consummated, it may also be the creditor for purposes of federal consumer-protection statutes when the transaction later unravels.

E. The Conditional Delivery Agreement Did Not Save the Transaction

Bayway also relied heavily on a separate Conditional Delivery Agreement ("CDA"), arguing that the vehicle delivery remained temporary until financing was finalized. The court was unpersuaded.

The CDA expressly stated that it became void upon execution of the RISC. Texas Finance Code section 348.013 likewise provides that a conditional delivery agreement is void once the parties execute a retail installment contract for the vehicle. Because the parties executed the RISC at the same time as the CDA, the statutory framework itself rendered the CDA ineffective once the RISC became operative.

This portion of the opinion is particularly important because dealerships frequently rely on conditional delivery forms to argue that no completed sale occurred. *McCarthy II* demonstrates that these agreements cannot override the governing statutory structure where the parties have already entered into a binding retail installment contract.

The opinion therefore reinforces a hierarchy that is often blurred in litigation. The RISC governs the financing transaction. Once executed, the parties' rights and obligations arise from that agreement and from the Texas Finance Code. Ancillary delivery documents cannot be used to negate the statutory protections attached to the RISC itself.

F. Arbitration Enforcement and the Inconsistency of Conditional Financing

The tension underlying Bayway's litigation position became apparent years before the Fourteenth Court of Appeals issued its merits opinion in *McCarthy II*. In an earlier interlocutory appeal, now referred to as *McCarthy I*, Bayway sought to compel arbitration pursuant to the arbitration provision contained in the retail installment sales contract ("RISC"). Although *McCarthy I* formally concerned arbitration, the dispute foreshadowed the central issue later resolved in *McCarthy II*.

Bayway's arbitration argument necessarily relied upon the enforceability of the RISC. The arbitration provision appeared in the RISC itself, not in the Conditional Delivery Agreement ("CDA"). To compel arbitration, Bayway was therefore required to rely upon the validity and enforceability of the very agreement it later characterized as non-final once financing failed.

That position exposed a fundamental inconsistency common in spot-delivery litigation. Dealerships frequently seek to enforce provisions of the RISC that benefit the dealership, including arbitration clauses, repossession rights, default provisions, and attorney-fee provisions, while simultaneously arguing that the transaction remained conditional and subject to rescission because a third-party lender declined to purchase the contract. In effect, the dealership seeks to treat the RISC as binding when advantageous and non-binding when burdensome.

McCarthy II substantially undermines that approach. The court held that the RISC became binding upon execution, that Bayway was the originating creditor under the transaction, and that Texas Finance Code section 348.1015 prohibited conditioning the contract upon subsequent assignment to a lender. The court further held that the CDA became void upon execution of the RISC under section 348.013.

Viewed together, *McCarthy I* and *McCarthy II* create a coherent framework for future litigation. A dealership that seeks to enforce rights arising from a RISC may face substantial difficulty simultaneously arguing that the transaction never became final because financing later failed. While the two opinions address different legal issues, both reflect judicial skepticism toward attempts to selectively enforce portions of a retail installment transaction while disavowing the transaction's overall finality.

In that respect, *McCarthy I* was more than an arbitration dispute. It was an early indication of the broader doctrinal conflict ultimately resolved in *McCarthy II*: whether a dealership may simultaneously rely upon the RISC when it provides contractual advantages and disregard the same agreement when lender assignment efforts prove unsuccessful.

G. The Practical Realities Underlying the Dealership Position

Although the Fourteenth Court of Appeals ultimately rejected Bayway Chevrolet's position, the dealership's arguments did not arise in isolation or from mere opportunism. The modern retail automobile industry operates within a financing structure that creates substantial practical pressure in favor of conditional-delivery practices, particularly in transactions involving subprime or near-subprime borrowers.

In most modern vehicle transactions, dealerships do not intend to retain retail installment contracts for the life of the loan. Instead, dealers typically originate RISCs with the expectation

that the contracts will be rapidly assigned to institutional lenders or finance companies. The dealership receives payment from the assignee shortly after execution of the transaction, allowing the dealer to recover the vehicle's purchase price, free internal credit lines, and continue high-volume sales operations without functioning as a long-term lender.

This system depends heavily on speed. Consumers often expect same-day delivery, and dealerships compete aggressively by advertising immediate approval and rapid vehicle turnover. The practice also serves another important business purpose: removing the consumer from the credit marketplace. Once a consumer signs the RISC, surrenders a trade-in vehicle, obtains insurance, and drives away in the replacement vehicle, the consumer is far less likely to continue shopping for alternative financing or competing vehicles. The dealership, however, retains the opportunity to locate an assignee for the contract. From the dealership's perspective, immediate delivery helps secure the transaction while financing approval remains incomplete. Financing decisions are therefore frequently made before lenders complete final underwriting review. In many transactions, the lender initially provides only conditional approval subject to later verification of income, employment, insurance coverage, residency, or other underwriting requirements.

That structure creates obvious commercial risk for dealerships. If the lender later declines to purchase the contract, the dealer may be forced to retain a high-risk loan it never intended to service. For dealerships operating on thin margins or high inventory turnover, retaining large volumes of unassigned paper may create significant liquidity concerns. The risk becomes even more pronounced in transactions involving buyers with impaired credit, fluctuating income, recent medical leave, or other underwriting irregularities.

Dealerships also emphasize that they do not view themselves as traditional lenders in the ordinary sense. Unlike banks or finance companies, dealerships are principally engaged in the sale of vehicles, not the long-term servicing of consumer debt. From the dealer's perspective, the extension of credit reflected in the RISC is often viewed as temporary or intermediary in nature, existing only until assignment to the ultimate financing source.

The Bayway litigation illustrates many of these concerns. The record reflected that GM Financial initially issued only a conditional approval and later declined funding after concerns arose regarding verification of Jeffrey McCarthy's income while he was on medical leave. The dealership argued that the consumers' alleged misrepresentations in the credit application process

materially contributed to the collapse of the financing transaction. From the dealership's standpoint, it was being forced to retain a transaction that it believed never satisfied the lender's underwriting requirements.

These concerns are not trivial. Fraudulent or inaccurate credit applications can materially distort underwriting decisions and expose dealerships and lenders alike to significant financial losses. Likewise, the modern assignment and securitization structure underlying vehicle finance transactions depends on rapid transferability of retail paper. Dealers therefore argue that the practical realities of the industry necessarily require some mechanism for unwinding transactions when financing fails shortly after delivery.

The difficulty for dealerships, however, is that these commercial realities do not alter the governing statutory framework. Chapter 348 of the Texas Finance Code reflects a legislative decision to prioritize certainty and consumer protection once a RISC is executed and the vehicle delivered. The *McCarthy II* court did not reject the dealership's concerns as irrational; rather, it concluded that the existing statutory scheme allocates the risk of failed assignment to the dealer rather than the consumer.

In that respect, *McCarthy II* may be understood less as a rejection of the practical realities of dealership financing and more as a reaffirmation that industry custom cannot override statutory consumer protections. Regardless of how dealerships operationally structure modern financing transactions, the enforceability of the RISC ultimately remains governed by Texas law rather than by informal assumptions regarding future assignment. Those competing policy concerns ultimately framed the court's analysis of the governing statutory framework.

IV. THE STATUTORY FRAMEWORK UNDER THE TEXAS FINANCE CODE

The *McCarthy II* decision is significant not merely because of its factual outcome, but because of the statutory framework underlying the court's reasoning. The opinion reflects a careful application of Chapter 348 of the Texas Finance Code, which governs motor vehicle installment sales. The relevant statutes demonstrate that Texas law treats a retail installment transaction as complete upon execution of the RISC and delivery of the vehicle. The statutory scheme leaves little room for the concept of "conditional financing" as it is commonly asserted in practice.

A. Section 348.1015 and the Prohibition Against Conditional Assignment

The most important provision discussed by the court was Texas Finance Code section 348.1015, which provides:

"A retail installment contract may not be conditioned on the subsequent assignment of the contract to a holder."

Section 348.1015(b) further provides that any provision violating the statute "is void."

This language is direct and unambiguous. A dealer cannot condition the enforceability of a RISC on whether a third-party lender ultimately agrees to purchase the contract. The Legislature could have allowed such a structure. It did not.

The policy reasons underlying the statute are apparent. Consumers entering into vehicle transactions are rarely in equal bargaining positions with dealerships. The consumer typically signs lengthy preprinted agreements prepared entirely by the dealer or its finance sources. The consumer trades in an existing vehicle, pays a



down payment, obtains insurance, and takes delivery of the replacement vehicle with the understanding that a completed transaction has occurred.

Permitting the dealer to later declare the transaction void based on financing problems would create substantial instability and invite abuse. The consumer may already have surrendered title to the trade-in vehicle, incurred insurance costs, or altered employment and transportation arrangements in reliance on the transaction. The Legislature's prohibition against conditional assignment protects against precisely this type of uncertainty. *McCarthy II* reinforces that the statute means what it says.

B. Section 348.013 and the Limited Role of Conditional Delivery Agreements

The court also relied on Texas Finance Code section 348.013 governing conditional delivery agreements. That section allows temporary delivery arrangements under limited circumstances but expressly states that the CDA becomes void upon execution of a retail installment contract for the vehicle.

This statutory structure is important because many dealerships attempt to use conditional delivery agreements as a mechanism to preserve a unilateral right to rescind. *McCarthy II* confirms that such agreements cannot survive the execution of the RISC itself.

The statutory framework therefore distinguishes between temporary possession of a vehicle before a completed financing agreement exists and a completed retail installment transaction memorialized in a signed RISC. Once the latter occurs, the statutory protections governing retail installment sales attach.

C. Section 348.408 and the Dealer's Obligations Regarding Trade-In Vehicles

The court also addressed Texas Finance Code section 348.408, which requires a retail seller to pay off the outstanding balance on a traded-in vehicle within a specified time after execution of the RISC and delivery of the new vehicle. This provision became central in *McCarthy II* because Bayway failed to timely satisfy the lien on the McCarthys' trade-in vehicle after taking possession of it. The resulting repossession and deficiency balance became part of the damages alleged by the McCarthys.

Bayway attempted to justify its conduct by arguing that the transaction was never final because financing failed. The court rejected that reasoning because the statute imposes obligations triggered by execution of the RISC and delivery of the vehicle, not by successful assignment to a lender.

This aspect of the opinion may have particularly broad consequences in future litigation. In many spot-delivery disputes, dealerships attempt to reverse the transaction while still retaining the trade-in vehicle or delaying payoff of the prior loan. *McCarthy II* clarifies that the statutory duties governing the trade-in arise once the RISC is executed.

V. PRACTICAL IMPLICATIONS FOR DEALERSHIPS

The *McCarthy II* opinion creates substantial practical con-

sequences for Texas dealerships engaged in spot-delivery transactions. For years, many dealerships have operated under the assumption that they may unwind transactions if third-party financing cannot ultimately be secured. *McCarthy II* calls that assumption into serious doubt.

A. Increased Exposure Under Consumer Protection Statutes

One immediate implication is increased exposure under consumer-protection statutes. The court revived several claims under the DTPA, TDCA, Finance Code, and ECOA based largely on the Bayway's post-sale conduct. The opinion suggests that a dealer may face liability when it represents that a completed sale is not final despite the execution of a binding RISC, threatens criminal prosecution in connection with what is fundamentally a civil contractual dispute, undertakes aggressive repossession activity inconsistent with the governing agreement, fails to timely satisfy statutory obligations regarding trade-in vehicles, or otherwise treats consumers as lacking enforceable contractual rights after execution of the RISC.

The opinion is especially notable for its treatment of the Bayway's collection activity. Bayway allegedly contacted law enforcement, sought criminal charges, hired repossession agents, and repeatedly attempted to pressure the consumers into surrendering the vehicle. The court's reasoning strongly suggests that these actions cannot be justified merely because third-party financing failed.

B. Dealers May Be Forced to Retain Unassigned Contracts

The practical reality underlying many spot-delivery disputes is simple: dealerships often do not want to hold contracts that lenders decline to purchase. *McCarthy II* does not eliminate that business concern. Instead, it reallocates the risk. Under the court's reasoning, the dealership bears the risk that a lender may later refuse assignment of the contract.

That risk cannot simply be shifted back onto the consumer after execution of the RISC. Possible operational responses include delaying vehicle delivery until financing receives final approval, implementing more rigorous pre-delivery underwriting procedures, requiring verified funding before execution of the RISC, or restructuring dealership financing operations to better manage the risks associated with retaining unassigned contracts.



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Whether these operational changes occur remains to be seen, but *McCarthy II* substantially increases the legal risk associated with informal spot-delivery practices.

C. Potential Increase in Litigation

The opinion is also likely to increase litigation involving post-sale unwinding attempts. Plaintiffs' attorneys will likely rely heavily on *McCarthy II* in cases involving rescinded spot deliveries, repossession threats following failed financing, failures to satisfy trade-in obligations, adverse credit reporting, deceptive financing representations, and disputes concerning creditor status under federal consumer-protection statutes.

The decision may also affect settlement leverage. Dealers defending these cases can no longer confidently assume that the phrase "conditional financing" will resolve the dispute as a matter of law.

VI. PRACTICAL IMPLICATIONS FOR PLAINTIFFS' AND DEFENSE COUNSEL

The *McCarthy II* decision significantly changes the litigation landscape for both sides of these disputes.

A. Implications for Plaintiffs' Counsel

For plaintiffs' counsel, *McCarthy II* provides a roadmap for reframing spot-delivery disputes away from vague equitable arguments and toward statutory enforcement.

The opinion demonstrates the importance of obtaining and closely analyzing the RISC itself, identifying whether the dealer is designated as the "Seller/Creditor," evaluating compliance with section 348.408 regarding trade-in obligations, determining whether the dealership attempted to impose conditions prohibited by section 348.1015, analyzing collection activity under the TDCA, and evaluating whether proper ECOA notices were provided.

The opinion also highlights the importance of focusing on the dealership's conduct after financing problems arise. In *McCarthy II*, the post-sale conduct—including threats of criminal prosecution and repossession efforts—became central to the statutory claims.

B. Implications for Defense Counsel

For defense counsel, *McCarthy II* presents a more difficult challenge. Traditional defenses based on "conditional financing" may no longer carry the same persuasive force, particularly where the RISC itself lacks an enforceable financing contingency. Defense counsel will likely need to focus more heavily on alleged misrepresentations during the credit application process, fraud-based defenses, causation disputes, mitigation issues, contractual default provisions, and limitations on recoverable damages.

The opinion also demonstrates the importance of precise transactional drafting. If dealerships intend to preserve certain rights in the event financing fails, those rights must be structured in a manner consistent with Chapter 348. *McCarthy II* suggests that informal assumptions and contradictory delivery documents will not suffice.

Defense counsel must also carefully evaluate collection and repossession activity once financing complications arise. Actions that may previously have been viewed as aggressive but per-

missible collection efforts may now create substantial statutory exposure.

VII. CONCLUSION

The Fourteenth Court of Appeals' decision in *McCarthy II* represents one of the most significant Texas appellate opinions addressing spot-delivery practices and retail installment financing in recent years.

The court's reasoning fundamentally undermines the assumption that a dealership may freely unwind a completed vehicle sale merely because a third-party lender declines to purchase the contract. Under *McCarthy II*, the RISC is a binding agreement upon execution, the dealership remains the originating creditor, and the Texas Finance Code prohibits conditioning the enforceability of the contract on a subsequent assignment.

The opinion also reinforces the broader principle that statutory consumer protections cannot be avoided through informal business practices, industry custom, or contradictory delivery documents. Once the RISC is executed and the vehicle delivered, the parties' rights and obligations are governed by the contract and by Chapter 348 of the Texas Finance Code.

Equally important, the opinion demonstrates that creditor status carries both rights and responsibilities. By recognizing that a dealership may qualify as a creditor under the Equal Credit Opportunity Act, *McCarthy II* highlights a potentially significant source of federal liability in failed-financing transactions and reminds practitioners that creditor status may trigger obligations extending beyond the Texas Finance Code.

For practitioners, the lesson is clear: the phrase "conditional financing" cannot substitute for the actual language of the contract or the requirements of Texas law.

McCarthy II is therefore significant not because it creates new law, but because it rigorously applies existing law. That distinction matters. The opinion does not invent a new consumer right. Instead, it enforces protections that already existed within the Texas Finance Code but were often overlooked or minimized in practice. In Texas, the risk that a lender may later decline to purchase a retail installment contract belongs to the dealership, not the consumer.

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