

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION

PENNSYLVANIA STATE EMPLOYEES :
CREDIT UNION, :
Plaintiff :
vs. : NO. 16-0177
JEFFREY J. MEHLIG, :
Defendant :

Civil Law - Motor Vehicle Sales Finance Act (MVSFA) - Uniform Commercial Code (UCC) - Repossession and Resale of Motor Vehicle - Notice of Possession and Right to Redeem - Notice of Intent to Sell at Private Sale - Deficiency Judgement Hearing - Failure to Prove Whether Disposition Made at Public or Private Sale - Failure to Prove Whether Sale Complied with Notice Requirements of the UCC - UCC Requirement that all Aspects of Disposition (Including Notice of Sale) be Commercially Reasonable - Rebuttable Presumption that Value of Vehicle Equals the Indebtedness Secured When Commercial Reasonableness of Sale not Proven - Presumption Rebutted by Direct Proof of Vehicle's Value

1. The notice requirements and procedures of both the MVSFA and the UCC apply in cases of repossession and resale after default on a motor vehicle installment sale contract.
2. Pursuant to the UCC, every aspect of the disposition of a motor vehicle, including the method, manner, time, place and terms must be commercially reasonable.
3. Under the UCC, if the sale of a repossessed motor vehicle is to be made at a public sale, written notice of the time and place of the public sale must be provided to the debtor in advance of the sale. For a private sale, neither the MVSFA nor the UCC requires advance written notice to the debtor of the time and place of the sale.
4. When the debtor puts in issue the commercial reasonableness of a sale, the burden of proof is upon the secured party seeking a deficiency judgment to show either that the sale was conducted in strict accordance with the provisions of the UCC or that under the totality of the circumstances the disposition of the motor vehicle was commercially reasonable.
5. If the secured party fails to meet its burden of proving

either that the disposition of a motor vehicle was in accordance with the provisions of the UCC or was otherwise commercially reasonable, a presumption exists that the value of the motor vehicle equaled the indebtedness secured, thereby extinguishing the indebtedness and foreclosing the entry of a deficiency judgment unless the secured party rebuts the presumption.

6. Where, after repossession of a motor vehicle, the secured party properly notifies a debtor of its intent to sell the vehicle at a private sale, but fails at the time of hearing on its claim for the entry of a deficiency judgment to prove that the disposition of the vehicle was in fact made at a private sale, the secured party has failed to meet its burden of proving that the disposition of the motor vehicle was conducted in accordance with the provisions of the UCC and, therefore, was commercially reasonable *per se*.
7. Notwithstanding a secured party's failure to prove that the sale of a motor vehicle was commercially reasonable - either by proving strict compliance with the provisions of the UCC or by independent evidence of the commercial reasonableness of the sale - credible proof by the secured party that the actual value of the motor vehicle was in fact equal to the amount it received at the time of sale is sufficient to rebut the presumption that the value of the vehicle was equal to the amount of the indebtedness owed, thereby entitling the secured party to a deficiency judgment in an amount equal to the difference between the unpaid indebtedness and the amount received by the secured party on resale of the vehicle.

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Defendant :

Matthew D. Urban, Esquire Counsel for Plaintiff
Cynthia S. Yurchak, Esquire Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. - June 19, 2018

Following the repossession and resale of Defendant Jeffrey J. Mehlig's motor vehicle in which the Plaintiff, Pennsylvania State Employees Credit Union, held a security interest, Plaintiff seeks in these proceedings the entry of a deficiency judgment against Defendant for the balance remaining due on Defendant's installment sale purchase of the vehicle. Whether Plaintiff is barred from obtaining a deficiency judgment for its failure to comply with the notice provisions of the Motor Vehicle Sales Finance Act and Uniform Commercial Code applicable to the repossession and resale of Defendant's vehicle after default on the underlying motor vehicle installment sale contract, or more precisely, its failure to prove compliance with these provisions, is at issue.

PROCEDURAL AND FACTUAL BACKGROUND

On December 26, 2011, Defendant purchased a 2010 Dodge

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Challenger from Outton County Chrysler in Hamburg, Pennsylvania. At the same time, Defendant executed a motor vehicle installment sale contract with Outton County Chrysler as the seller and himself as buyer. Pursuant to this installment sale contract, Defendant was to make eighty-four installment payments of \$477.72 each with the first payment due on February 9, 2012. (Plaintiff Exhibit No.3). The installment sale contract was assigned to the Plaintiff, Pennsylvania State Employees Credit Union, on the same date.

Defendant defaulted on his installment payments on or about February 9, 2013. (Plaintiff Exhibit No.5). In consequence, Defendant's vehicle was repossessed on April 14, 2013 by Richard & Associates, Inc. and a notice of repossession and right to redeem was sent to Defendant on the following day by certified and first-class mail. (Plaintiff Exhibit Nos.5, 7). The certified mail was accepted by Defendant on April 17, 2013. Pursuant to the notice of repossession and right to redeem, Defendant was advised that the total cost to redeem was \$28,659.94 and that the car would be sold at a private sale sometime after April 30, 2013. (Plaintiff Exhibit No.5).

Defendant's vehicle was sold to King Auto Sales, Inc. at the Harrisburg Auto Auction on June 6, 2013 for \$17,900.00. (Plaintiff Exhibit No.8). Defendant was advised of this sale by

letter dated June 13, 2013, which letter further advised Defendant that with credit for the \$17,900.00 purchase price, there was an outstanding balance still owed of \$10,588.94, which if not paid by June 23, 2013 could result in legal action. (Plaintiff Exhibit No.9). The unpaid balance included a repossession fee of \$425.00 and an auction fee of \$254.00.

Plaintiff commenced suit against Defendant with the filing of a complaint for the unpaid balance on January 29, 2016. An amended complaint was filed on August 12, 2016. In his answer and new matter to the amended complaint, Defendant averred, *inter alia*, that Plaintiff's actions violated the consumer credit and debt collection laws, both state and federal. (New Matter, paragraph 26).¹ A non-jury trial was held on October 23, 2017.

DISCUSSION

At trial, Plaintiff proved and we accepted that the unpaid principal balance on Defendant's loan as of the date of default was \$27,809.94; that the repossession and auction fees of \$425.00 and \$254.00, respectively, were billed to Plaintiff and paid by Plaintiff; and that the purchase price of Defendant's vehicle at the auction held on June 6, 2013 was \$17,900.00,

¹ Defendant has made no claim for compensatory or statutory damages for any irregularities in the repossession or resale of his vehicle. See 13 Pa.C.S.A. §§ 9625(b), (c).

leaving a deficiency balance of \$10,588.94. (Plaintiff Exhibit Nos.4, 6, 8, 9). We also accepted that the Motor Vehicle Installment Sale Contract dated December 26, 2011 was assigned to Plaintiff, that Defendant made payments under this contract to Plaintiff, that Plaintiff sent Defendant timely notice of the repossession and right to redeem by certified and first-class mail on April 15, 2013, and that notice of the sale of the vehicle on June 13, 2013, within one week of the sale held on June 6, 2013, was sent to Defendant. (Plaintiff Exhibit Nos.5, 9). Additionally, we find that it is the provisions of the Motor Vehicle Sales Finance Act (MVSFA), in particular, Sections 23 and 27 of that Act (69 P.S. §§ 623, 627), repealed effective as of December 1, 2014, rather than the provisions of Chapter 62, Title 12 of Purdon's, in particular, 12 Pa.C.S.A. §§ 6251-6261, effective December 1, 2014, which apply to these proceedings. See Stroback v. Camaioni, 674 A.2d 257, 260 (Pa.Super. 1996) ("Only where no substantive right or contractual obligation is involved may a subsequently enacted statute be applied to a condition existing on its effective date where the condition results from events occurring prior to the effective date of the statute."), *appeal denied*, 682 A.2d 306 (Pa. 1996).

Where we disagree with Plaintiff is whether Plaintiff met

its burden at trial of establishing that the sale of Defendant's vehicle at the Harrisburg Auto Auction on June 6, 2013 was at a private sale. In Industrial Valley Bank and Trust Co. v. Nash, 502 A.2d 1254 (Pa.Super. 1985), the Pennsylvania Superior Court held that the notice requirements and procedures of both the MVSA and the Pennsylvania Uniform Commercial Code (UCC), 13 Pa.C.S.A. § 9601 *et seq.* (governing the rights and obligations of a secured party following a debtor's default with respect to the disposition of collateral), apply in cases of repossession and resale after default on a motor vehicle installment sale contract. Whereas the MVSA requires only that the notice advise the buyer of the holder's intent to resell the vehicle at the expiration of fifteen days from the date of mailing the notice of repossession, making no distinction between a private or public sale, under the UCC, if the sale is a public sale, the notice must state the "time and place" of the public sale. 69 P.S. § 623D; 13 Pa.C.S.A. §§ 9610(b), 9614.² Here, the April 15,

² The MVSA at 69 P.S. § 623(D) provides:

D. When repossession of a motor vehicle, which is the subject of an installment sale contract, is effected otherwise than by legal process, the holder shall immediately furnish the buyer with a written "notice of repossession" delivered in person, or sent by registered or certified mail directed to the last known address of the buyer. Such notice shall set forth the buyer's right as to reinstatement of the contract, if the holder extends the privilege of reinstatement and redemption of the motor vehicle, shall contain an itemized statement of the total amount required to redeem the motor vehicle by reinstatement or payment of the contract in full, shall give notice to the buyer of the holder's

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2013, notice of repossession and right to redeem sent to Defendant gave the required information about the resale of Defendant's vehicle for a private sale, however, whether the sale of Defendant's vehicle which occurred on June 6, 2013 at the Harrisburg Auto Auction was in fact a private sale was never established.

"The Uniform Commercial Code confers upon a secured party the right, upon default, to dispose of collateral by sale or lease . . . subject to the requirement that 'every aspect of the disposition, including the method, manner, time, place and terms

intent to re-sell the motor vehicle at the expiration of fifteen (15) days from the date of mailing such notice, shall disclose the place at which the motor vehicle is stored, and shall designate the name and address of the person to whom the buyer shall make payment, or upon whom he may serve notice.

The applicable section of the Uniform Commercial Code relating to the contents and form of notification before disposition of collateral in a consumer goods transaction states in pertinent part:

(1) The contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral which is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(v) states the time and place of a public disposition or the time after which any other disposition is to be made.

13 Pa.C.S.A. § 9614(1)(i) (Contents and form of notification before disposition of collateral: consumer-goods transaction), incorporating by reference 13 Pa.C.S.A. § 9613(1).

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must be *commercially reasonable.*" Savoy v. Beneficial Consumer Discount Co., 468 A.2d 465, 467 (Pa. 1983) (citing 13 Pa.C.S.A. § 9504(c) (repealed 2001) (current version at 13 Pa.C.S.A. § 9610(b)). When the debtor questions the commercial reasonableness of a sale, the burden of proof is upon the secured party seeking a deficiency judgment to establish the regularity of the sale and "to show that, under the totality of circumstances, the disposition of collateral was commercially reasonable." *Id.* (relating to an unadvertised private sale); Nash, 502 A.2d at 1263 (relating to a public auction); see also Turner v. National Bank of Olyphant, 9 Pa.D.&C.4th 614, 618 (Lack.Co. 1991) (holding that failure to give proper notice in accordance with the provisions of the UCC of a resale of collateral following default is subsumed within the requirement of the UCC that all aspects of the disposition be commercially reasonable); In re Massaquoi, 412 B.R. 702, 710 (Bankr.E.D.Pa. 2008) (noting that the purpose behind adequate notice is to ensure a commercially reasonable sale). If the secured party fails to meet this burden, a presumption exists that "the value of the collateral equaled the indebtedness secured, thereby extinguishing the indebtedness unless the secured party rebuts the presumption." Savoy, 468 A.2d at 467.

Because the vehicle which is the subject of these

proceedings was used or bought by Defendant for use primarily for personal, family or household purposes, it meets the definition of "consumer goods" in the UCC. See 13 Pa.C.S.A. § 9102 (Definitions). The pre-disposition notice Plaintiff sent Defendant after the vehicle was repossessed complied with the requirements of both the MVFRA and UCC for the "intended" disposition of a consumer good at a private sale. 69 P.S. § 623D; 13 Pa.C.S.A. §§ 9613(1), 9614. However, in his pleadings and at trial, Defendant contended, *inter alia*, that whether this notice was proper was never proven "because [Plaintiff] failed to enter any evidence as to the type of sale actually conducted." See, e.g., Defendant's Post-Trial Memorandum, p.5.

When the debtor puts in issue whether the collection, enforcement, disposition or acceptance of collateral was conducted in accordance with the provisions of the UCC, the burden is on the secured party to show compliance. Savoy, 468 A.2d at 467 and 13 Pa.C.S.A. § 9626(b); *cf.* 13 Pa.C.S.A. § 9626(a)(1), (2) (applicable to transactions other than a consumer transaction). Consequently, since the pre-disposition notice did not comply with the requirements of the UCC for a public sale - Defendant not being advised of the time and place of the sale - we must consider whether the evidence at trial established that the sale of Defendant's vehicle at the

Harrisburg Auto Auction qualifies as a private sale.

In Coy v. Ford Motor Credit Co., 618 A.2d 1024 (Pa.Super. 1993), the notice of repossession and right to redeem sent by the assignee of a retail sales installment contract for the purchase of a Ford truck, after the truck was repossessed, informed the buyer that after fifteen days the truck would be sold at a private sale. The truck was subsequently sold at the Ebensburg Auto Auction and the question before the Superior Court was whether the sale of the buyer's vehicle at this auction qualified as a private sale. In holding that it did, the evidence of record established that the time and place of the sale of the repossessed truck was not advertised to the general public, that only automobile dealers were permitted to attend the Ebensburg Auto Auction, and that the auction was open exclusively to automobile dealers.

In the instant case, no evidence was presented as to the nature of the Harrisburg Auto Auction or manner in which it was conducted from which we can determine whether the sale of Defendant's vehicle at this auction was a private sale. Having failed to meet its burden of proving that this was a private and not a public sale - a public sale being one at which the public is invited to attend and participate, and which requires reasonable notification to the debtor of the time and place of

the sale - Plaintiff has failed to prove that the sale was commercially reasonable under the totality of the circumstances. As such, unless Plaintiff's evidence rebuts the presumption that the value of the vehicle equaled the indebtedness secured, any unpaid indebtedness owed by Defendant to Plaintiff has been extinguished and is discharged.

At trial, Plaintiff placed in evidence a condition report for the vehicle prepared by Richard & Associates, Inc. (Plaintiff Exhibit No.7) and the June 2013 NADA book value. (Plaintiff Exhibit No.10). The average trade-in value for a vehicle of the make and model of Defendant's is given as \$16,300.00, with a retail value ranging from \$15,825.00 to \$20,200.00. Since the price Plaintiff received at the Harrisburg Auto Auction, \$17,900.00, is within close proximity to these figures, we find Plaintiff has rebutted the presumption that the value of the vehicle was equal to the amount of the indebtedness, and further find and conclude that the price Plaintiff received was commercially reasonable and that Plaintiff is entitled to a deficiency judgment in the amount sought.³ Cf. Savoy, 468 A.2d at 468 (taking judicial notice of the Redbook value of a vehicle of the same make and model year

³ Pursuant to 69 P.S. § 627, the resale price is *prima facie*, but not conclusive evidence, of the reasonable value. Defendant has presented no evidence that the vehicle was sold at less than its fair market value.

as the repossessed vehicle, in the absence of any evidence as to the condition of the repossessed vehicle at the time of resale, is insufficient to rebut the presumption that the value of the repossessed vehicle equaled the amount of the indebtedness).

CONCLUSION

Underlying recognition of a rebuttable presumption that the value of a vehicle equals the indebtedness secured when there has been a commercially unreasonable disposition of the vehicle, rather than that the creditor be barred entirely from obtaining a deficiency judgment, is the rationale that it would be unfair for a debtor to receive a windfall and be relieved of his obligation while extinguishing a creditor's right to recover sums truly owed in those circumstances where the value of the vehicle is in fact substantially less than the debt owed. Savoy, 468 A.2d at 467-68. The debtor's interests are protected not only by placing on the creditor the burden of proving the reasonable value of the vehicle and providing the debtor credit for this amount against the claimed deficiency, but also by the UCC's provisions giving the debtor the right to recover any losses caused by the secured party's failure to dispose of the vehicle in a commercially reasonable manner, as well as statutory damages. *Id.* (citing 13 Pa.C.S.A. § 9507(a) (repealed 2001) (current version at 13 Pa.C.S.A. §§ 9625, 9627)).

Neither party presented live witnesses at the time of trial, but instead presented documentary evidence by agreement and pursuant to Pa.R.C.P. 1311.1(b). This evidence, as discussed above, supports the entry of a deficiency judgment against Defendant and Defendant has not proven any loss caused by the alleged failure of Plaintiff to comply with any provisions of the UCC as a set off against this deficiency.

BY THE COURT:

P.J.

