

STATE OF VERMONT
WINDSOR COUNTY, SS

People's United Bank
Plaintiff

v.

Ronald W. Bills
Defendant

SUPERIOR COURT
Docket No. 558-8-09 Wrcv

DECISION ON MOTION FOR SUMMARY JUDGMENT

This suit involves a claim by the Plaintiff against the Defendant concerning a security agreement given by the Defendant in connection with the purchase of a 2004 Chevrolet Silverado truck by Vincent Murphy. Murphy purchased the truck from Auto Mall in Springfield, Vermont. Auto Mall assigned the contract to the Plaintiff.

Plaintiff has filed for summary judgment, contending the Defendant's answer raises no legitimate defenses to the claim and that it is entitled to judgment. Defendant has filed an opposition pleading, asserting that contested issues of fact remain which preclude summary judgment.

Undisputed Facts

That the truck was purchased by Vincent Murphy from Auto Mall is not disputed. The assignment of Defendant's loan to Plaintiff is not disputed. It is likewise not disputed that Murphy has defaulted on his loan. Similarly, Defendant does not dispute that he signed a security agreement and a notice to co-signer agreeing to act as a guarantor in the event Vincent Murphy defaulted on his truck loan.

It is not disputed that the principal amount due on the note at the time of default was \$20,389.24. Plaintiff had the truck reposed and has since sold the truck, applying the proceeds of sale to the debt. Defendant contests that the sale was conducted in a commercially reasonable manner.

Defendant claims there are "disputes on numerous issues of material facts" but, other than the commercial reasonableness of the sale of the truck, amount of Plaintiff's claimed expenses, and calculation of interest, Defendant provides no explanation of what other facts might be contested.

FILED
JAN 25 2010

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Conclusions of Law

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). The party moving for summary judgment has the burden of demonstrating that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). The non-moving party has the burden of setting forth specific facts showing a genuine dispute for trial. V.R.C.P. 56(e). The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citation omitted).

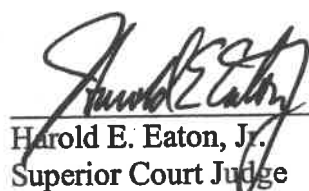
Here, the non-moving party has not established the existence of any disputed factual issues concerning liability for trial. Simply raising the specter that other facts might be contested is insufficient. As a result, Plaintiff is entitled to judgment on the issue of Defendant's liability to Plaintiff.

There exists, however, one or more issues concerning the amount of damages claimed. Central to this is the commercial reasonableness of the sale of the truck after Plaintiff repossessed it. The burden is on the secured party to establish that the disposition of the collateral was done in a commercially reasonable manner. *Will v. Mill Condominium Owner's Association*, 176 Vt. 380 (2004). The Court can not make this determination in the context of a summary judgment motion were Defendant disputes the reasonableness of the sale by raising specific facts, as he has done here.

ORDER

Plaintiff's motion for summary judgment is **GRANTED** as to Defendant's liability. Given the existence of disputed facts concerning damages the motion is **DENIED** on damages. The matter is to be set for hearing on damages after April 1, 2010 and all discovery is to be completed by that time (April 1, 2010). Unless the parties advise to the contrary, one half day will be afforded for the hearing. The parties are strongly encouraged to explore alternate dispute resolution in the interim, although the Court will not require the same in this instance.

Dated at Woodstock this 25th day of January, 2010.


Harold E. Eaton, Jr.
Superior Court Judge

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