

STATE OF VERMONT
WINDSOR COUNTY, SS.

DaimlerChrysler Financial Services : Windsor County Superior Court
North America, LLC :
 :
 : Docket No. 553-11-03 Wrcv
v. :
 :
 :
Michael Allen and :
Penny Hershel :

ENTRY RE: PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Plaintiff DaimlerChrysler Financial Services North America, LLC (DaimlerChrysler) seeks to collect a deficiency remaining on a motor vehicle retail installment sales contract. Plaintiff served defendants with process on November 13, 2003, filed the complaint on November 24, 2003, and then filed a motion for default judgment on December 11, 2003. However, the complaint raises a question about whether the statutory limitation period has run.

According to the complaint, defendants entered into a retail installment sales contract for the purchase of a 1997 Dodge Neon, on or about May 15, 1997. Defendants later defaulted on the terms of the contract. DaimlerChrysler repossessed the car and sold it in a commercially reasonable manner on January 7, 1998. Defendants have made \$741.06 in payments following the default, with the last payment being made on June 19, 2003. Daimler Chrysler claims that defendants still owe \$5,190 plus interest, costs, and attorney's fees.

Recently, under somewhat similar circumstances, the Vermont Supreme Court affirmed the denial of a request for default judgment in DaimlerChrysler Services North America, LLC v. Quimette, 2003 VT 47, 14 Vt.L.W. 133 (2003). The Court held (1) that the applicable limitations period is four years under 9A V.S.A. § 2-725, and (2) that a trial court may dismiss the complaint sua sponte when it is apparent from the face of the complaint that the statute of limitations has run.

The allegation that distinguishes this case from Quimette is that defendants have made \$741.06 in payments following the date of default, with the last payment being made on June 19, 2003. Under some circumstances, the part payment of a debt may renew the limitation period.

It is true that voluntary part payment of a debt, whether barred by the statute or not, if made without protestation of further liability, is a recognition of such debt by the debtor, from which the law not only implies an admission of the existence of the balance as a subsisting debt, but also a promise to pay it which prevents the operation of the statute. . . .

Putnam v. Swain, 102 Vt. 90, 93 (1929) (citing Robinson v. Doolittle, 12 Vt. 246 (1840), Ayer v.

FILED
JAN 16 2004

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Hawkins, 19 Vt. 26 (1846), Wheeler v. House, 27 Vt. 735 (1855), and Robie v. Briggs, 59 Vt. 443 (1887)).

According to the above cases, part payment of a debt prevents the operation of the statute if it is made "without protestation of further liability." If general payment is made without direction, the intention of the debtor is implied. Robie at 449. However, a person paying money may accompany the payment with directions to govern its application. Ayer at 29. The payer may annex conditions as he or she sees fit. Robinson at 249.

In this case, the complaint does not indicate whether the defendants made payments following the date of default "without protestation of further liability" in whole or in part. Based on the current record, even if the court assumes that the allegations in the complaint are true, the court is still unable to conclude that the plaintiff still has a viable claim.

Because more information is needed, a hearing is scheduled pursuant to V.R.C.P. 55(b)(3). DaimlerChrysler Services North America, LLC v. Ouimette, 2003 VT 47 ¶6, 14 Vt.L.W. 133, 134 (2003).

Dated at Woodstock, Vermont, this 16th day of January, 2004.

Mary Miles Teachout
Hon. Mary Miles Teachout, Presiding Judge