

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ALLENDALE)
)
 21st Mortgage Corporation,)
)
 Plaintiff,)
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 vs.)
)
 Robert Youmans and Tonya Stoney,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 C/A#: 11-CP-03-127

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ORDER

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This matter came before the Court on June 10, 2013, during the term of Common Pleas court in Allendale County. Both parties agree that the issues are for the Court to determine on motions for summary judgment by each side since the Defendants have agreed to dismiss without prejudice their counterclaims for restitution, abuse of process, unjust enrichment, negligence, breach of express and implied warranties, and unfair trade practices. Accordingly, this Court scheduled a hearing on June 11, 2013, to hear this matter as both sides agree that it involves undisputed facts and only questions of law.¹ Both parties were represented by their respective counsel at the hearing.

Findings of Fact

- (1) On or about March 20, 2002, the Defendants purchased a 1996 Pioneer mobile home from The Housing Group, Inc. d/b/a Schult Home Center of Orangeburg. The Defendant Youmans signed an Installment Note, Security Agreement and

¹ Although both parties filed cross motions for summary judgment, the Court is of the opinion that it can decide this matter pursuant to Rule 52, SCRPC, as well.

Disclosure Statement at the time of the sale. This contract is attached to the Complaint in this matter as Exhibit A;

(2) The installment contract lists Robert Youmans as the Debtor and Schult Home Center as the secured party and seller. Further, the purchase of the mobile home by the Defendants was a consumer credit sale;

(3) The installment contract provides:

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NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER;

(4) On or about January 22, 2003, the Defendants in this action sued The Housing Group, Inc. (d/b/a Schult Home Center of Orangeburg) in civil action #03-CP-03-20, filed in Allendale County. The complaint sought damages for problems with the mobile home and its set-up. Judgment was entered against Schult Home Center on November 8, 2004, in the total amount of \$54,657.00;

(5) To date the Defendants have never received any money on the judgment. Further, on April 30, 2008, The Housing Group, Inc. was administratively dissolved by the South Carolina Secretary of State;

(6) The judgment was enrolled on the judgment rolls in Allendale and Orangeburg counties shortly after it was obtained in November of 2004;

(7) The Plaintiff in this action purchased a bundle of consumer debt, including the debt which ~~is~~ ^{AB is} the subject of this action, on or about February 16, 2005;

- (8) Defendant Tanya Stoney is the niece of Defendant Robert Youmans. Defendant Stoney currently lives in the mobile home with her two children and one grandchild;
- (9) After the Plaintiff acquired the debt in this matter, Mr. Youmans continued to make payments on the mobile home from March 9, 2005, until December 27, 2010;
- (11) Youmans's stated reason for discontinuing payments is that the mobile home is in terrible shape as a result of the original defects and problems which prompted the suit against the seller;
- (12) Photographs of the home show the condition of the home is bad and the floor is rotten from water intrusion;
- (13) Plaintiff's payment history for the Defendant Youmans's debt shows that to date, Plaintiff has received \$21,247.60 from the Defendants;
- (14) As of the date of the hearing in this matter, the Defendant's judgment against the seller totals \$144,701.93. As of May 8, 2011, the judgment against the seller was \$114,657.71. Further, at no relevant time has the judgment ever been less than the amount owed by the Defendant to the Plaintiff (the amount claimed by the Plaintiff was \$19,709.34 on December 15, 2010, was \$23,714.37 on August 29, 2012, and was \$25,633.74 on June 15, 2013);
- (15) Plaintiff received written notice of the Defendants' claim on the judgment on or about May 8, 2011, when it received the counter claim and answer in this matter;

Findings of Law

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- (16) Because this is a consumer credit contract and because of the plain language of the contract, the Plaintiff is subject to all claims and defenses the Defendants could assert against the seller. Further, pursuant to the contract, the seller agreed to indemnify any holder or assignee of the contract from all claims and defenses of the buyer, or any of them, against the seller which any buyer asserts against the assignee, whether such claims or defenses arise out of the note or otherwise, and whether such claims or defenses are asserted in connection with the assignee's attempting to collect or otherwise enforce the note;
- (17) Both sides agree that the fair market value of the mobile home is far less than the amount claimed by the Plaintiff as being owed on the mobile home;
- (18) Plaintiff filed this action on or about April 28, 2011, seeking permanent possession of the mobile home from the Defendants, with the right to sell the property, and the right to pursue any deficiency against the Defendants; and
- (19) The Defendants timely answered and counterclaimed asserting that the claims against them were barred by the 2004 judgment, as well as other defenses.

The Defendants have now moved for summary judgment, arguing that they are entitled to a judgment denying Plaintiff's action for claim and delivery and holding that they are free from any further indebtedness or obligations to Plaintiff or its successors or assigns. Similarly, the Plaintiff has now moved for summary judgment and argues that Defendants' 2004 judgment claims were asserted against another party and therefore not binding on it, that there are questions of whether or not the judgment amount to be offset can include treble damages under the UTPA,

and whether Plaintiff was on written notice of the judgment that was merely recorded.

This Court carefully listened to the arguments raised by the parties and considered this matter and in the exercise of its discretion finds that the Plaintiff's motion should be DENIED and judgment should be granted in favor of the Defendants such that they have no further obligations on the Installment Sale Contract and the subject mobile home is theirs free and clear of any further claimed indebtedness.

As in the Installment Sale Contract in this matter, S.C. Code Ann. § 37-2-404(1) provides that:

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with respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer against the seller or lessor arising from the sale or lease of property or services notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments (§ 37-2-403).

Subsection (2) then provides:

A claim or defense of a consumer specified in subsection (1) may be asserted against the assignee under this section only if the consumer has made a good faith attempt to obtain satisfaction from the sellers or lessor with respect to the claim or defense and then only to the extent of the amount owing to the assignee with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the assignee has written notice of the claim or defense.² Written notice of the claim or defense may be given before the attempt specified in this subsection. For the

² There is no similar restriction in the contract. The contract merely limits the recovery by the debtor to the amount to be paid by the debtor under the note; i.e., the "total payments" amount, defined in the contract as the "amount you will have paid after you made all payments" which is the same as the amount claimed by the Plaintiff as being owed on the debt.

purposes of this section, written notice is any written notification other than notice on a coupon billing, statement or other payment medium or material supplied by the assignee.

Clearly, the debt upon which this matter is based arises out of a consumer credit sale and the Plaintiff is an assignee of the rights of Schult Home Centers. Further, the Plaintiff is subject to all claims and defenses the Defendants have against Schult Home Center; namely, the judgment obtained against Schult³. Obviously, by bringing suit against Schult Home Center, the Defendants made a good faith attempt to obtain satisfaction from the seller. However, no satisfaction of the claims has occurred. Finally, written notice of the claim against Schult Home Center was given on or about May 8, 2011, when the answer and counterclaim was served in this matter. See, American Fed. Bank, F.S.B. v. White, 296 SC 165, 370 SE2d 923 (Ct.App.1988).

The Code and Installment Sale Contract allow the Defendants to assert any claim available against Schult Home Center offensively in a suit against the Plaintiff as well as defensively as an offset or counterclaim in a suit by Plaintiff to enforce the obligation American Fed. Bank, F.S.B. v. White, 296 SC 165, 171, 370 SE2d 923, 927 (Ct. App. 1988)(citing Rosemond v. Campbell, 288 SC 516, 343 SE2d 641 (Ct. App. 1986)). Here, the claim being asserted is the judgment of which the seller had notice and opportunity to defend. The fact that the Plaintiff was not a named party in the 2004 judgment is irrelevant, since it bought the note and obligation subject to the judgment of which all the world was on notice. The fact that the


³ It is significant to the Court that the claim of which the Plaintiff concedes it was given written notice was in fact the claim of the judgment, not the claim that the mobile home was defective. See, Defendant's Answer and Counterclaim, as well as the Second Amended Answer and Counterclaim.

Plaintiff did not exercise due diligence in this matter does not aid it. See eq., Bennett v. The Home Ins. Co., 1993 U.S. App. Lexis 16243 (4th Cir. 1993) (“an assignee’s rights are not greater than those of its assignor”); Rosemond v. Campbell, 288 S.C. 516, 343 SE2d 641 (Ct. App. 1988) (“ The common law rule than an assignee has no greater right than his assignor is subject to an important exception in case of a negotiable instrument.... [However] the Consumer Protection Act alters these rules with respect to consumer credit sales.....[and] enlarges the consumer’s rights. It permits him to assert any claim available against the seller offensively in a suit against the assignee as well as defensively as an offset or counterclaim in a suit by the assignee to enforce the obligation.”).

Accordingly, Plaintiff’s motion for summary judgment lacks merit and judgment is GRANTED in favor of the Defendants in this matter. Further, Defendants’ counterclaims for restitution and abuse of process are dismissed without prejudice by agreement of the parties.

IT IS SO ORDERED, this 10 day of July,

2013.



Perry M. Buckner
Presiding Judge

Walterboro, South Carolina

STATE OF SOUTH CAROLINA)
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COUNTY OF ALLENDALE)
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21st Mortgage Corporation,)
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WALTERBORO, S.C.

ORDER

Plaintiff's Motion to Alter or Amend my July 10, 2013 Order granting summary judgment for the Defendants is respectfully DENIED.

IT IS SO ORDERED.

July 30, 2013
Walterboro, SC



The Honorable Perry M. Buckner, III