

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Founders Federal Credit Union,

Plaintiff,

vs.

Kyle Anthony Tracy,

Defendant.

IN THE CIRCUIT COURT

Case No. 2023-CP-42-02216

ORDER GRANTING SUMMARY
JUDGMENT

RECEIVED

NOV 25 2024

SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT upon the *Motion for Summary Judgment* (the “Motion”) filed by Plaintiff Founders Federal Credit Union (the “Plaintiff” or “Founders”) on August 22, 2024. The Court conducted a hearing on the Motion on October 22, 2024. Present at the hearing was Suzanne Taylor Graham Grigg, Esq., attorney for the Plaintiff. Defendant Kyle Anthony Tracy (“Defendant Tracy”) did not attend the hearing despite receiving due and proper notice.

Based on the Motion, Affidavit in support of the Motion, pleadings filed in this case and arguments presented at the hearing, the Court finds and orders as follows:

FINDINGS OF FACT

1. On or about November 5, 2021, Defendant Tracy submitted that certain Consumer Lending Plan (the “Lending Plan”) executed by Defendant Tracy in favor of the Plaintiff. As provided in the Lending Plan, Defendant Tracy agreed to pay all collection costs incurred by the Plaintiff in collecting any amounts owed to it by Defendant Tracy, including reasonable attorneys’ fees and litigation costs. The Lending Plan enabled Defendant Tracy to incur the debt set forth herein below.

2. On or about November 5, 2021, Plaintiff made a loan to Defendant Tracy

referenced as Loan No. XXXX34-3000 (the “BMW Loan”), as evidenced by that certain Security Agreement and Advance Receipt (the “BMW Note”) executed by Defendant Tracy in favor of Plaintiff. The BMW Loan was secured by a 2011 BMW 5 Series automobile VIN # WBAFR7C57BC605969 (the “BMW”) owned by Defendant Tracy. Plaintiff perfected its security interest in the BMW by recording its lien on the face of the Certificate of Title (the “Title”) for the BMW.

3. Defendant Tracy defaulted on the BMW Loan, and after proper notice to Defendant Tracy, Plaintiff exercised its state law rights and obtained possession of the BMW. After further notice to Defendant Tracy regarding the right of redemption of the BMW, the BMW was sold in a commercially reasonable manner to the person or entity making the highest offer for the BMW, and Plaintiff applied the net proceeds from the sale to reduce the amount of the indebtedness due and owing by Defendant Tracy to Plaintiff under the BMW Note.

4. On June 21, 2023, Plaintiff filed this action alleging a debt collection cause of action against Defendant Tracy for balance owed on the BMW Note.

5. On August 2, 2023, Defendant Tracy filed his Answer in this case.

6. On August 22, 2024, Plaintiff filed the Motion asserting there is no genuine issue of material fact, and Plaintiff is entitled to summary judgment. In support of the Motion, Plaintiff also filed the Affidavit of Joseph McCain, evidencing the amount owed to Plaintiff on the BMW Note.

7. As a result of Defendant Tracy’s breach of the terms and conditions of the BMW Note, there is now due and owing to Plaintiff, as of October 22, 2024, the sum amount of Nine Thousand Five Hundred Fifty-Six and 64/100 Dollars (\$9,556.64) of principal, accrued interest and late fees.

8. In order to pursue these causes of action, Plaintiff retained the law firm of Maynard Nexsen PC. During the prosecution of the case, Plaintiff has incurred attorneys' fees and costs in the amount of Five Thousand Three Hundred Seventy-Two and 99/100 Dollars (\$5,372.99). Counsel for Plaintiff filed the Supplemental Affidavit of Attorneys' Fees and Costs on October 15, 2024. The contract documents for the BMW Loan provide that Defendant Tracy shall reimburse Founders for its reasonable attorneys' fees and costs incurred as a result of Defendant Tracy's default.

CONCLUSIONS OF LAW

1. Pursuant to Rule 56, SCRCF, no genuine issue of material fact exists, and Plaintiff is entitled to summary judgment in this debt collection action.

2. Plaintiff is entitled to a monetary judgment against Defendant Tracy for his breach of the terms and conditions of the BMW Note in the amount of Nine Thousand Five Hundred Fifty-Six and 64/100 Dollars (\$9,556.64), as of October 22, 2024, plus post-judgment interest that will accrue at the contract rate until the judgment is paid in full.

3. Plaintiff is also entitled to a monetary judgment against Defendant Tracy for attorneys' fees and costs in the combined amount of Five Thousand Three Hundred Seventy-Two and 99/100 Dollars (\$5,372.99).

4. The total combined amount in which Plaintiff is entitled to a monetary judgment against Defendant Tracy for his breach of the terms and conditions of the BMW Note plus attorneys' fees and costs is Fourteen Thousand Nine Hundred Twenty-Nine and 63/100 Dollars (\$14,929.63), as of October 22, 2024.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff is granted summary judgment in this case;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is hereby awarded a monetary judgment against Defendant Tracy in the total combined amount of \$14,929.63, as of October 22, 2024. Post-judgment interest will continue to accrue on this judgment at the contract rate until the judgment is paid in full;

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE TO FOLLOW]

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-42-02216

Founders Federal Credit Union

Kyle Anthony Tracy

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: Suzanne Taylor Graham Grigg, Esquire Maynard Nexsen PC P.O. Box 2426 Columbia, SC 29202</p>	<p>Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : This is an Order for Summary Judgment in this case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Founders Federal Credit Union	Kyle Anthony Tracy	\$14,929.63
		\$

		\$
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p>		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date
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For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Spartanburg Common Pleas

Case Caption: Founders Federal Credit Union VS Kyle Anthony Tracy
Case Number: 2023CP4202216
Type: Order/Summary Judgment

IT IS SO ORDERED!

s/J. Derham Cole 2053

Electronically signed on 2024-11-13 14:23:17 page 7 of 7