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SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Nextgear Capital, Inc.,

v.

William Dale Evans,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2026CP1500164

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF**

Defendant's Motion for Relief from Judgment filed 3/18/26 came before the Court on 7/8/26. The Court heard extensive arguments and thoroughly reviewed the filings and conducted its own research. As to defendant's argument that service of process in the underlying action was defective, the Court disagrees because service was properly effectuated on Cottageville Motor Sales, Inc. Therefore, the motion cannot be granted on that ground.

As to defendant's arguments that defendant never submitted to personal jurisdiction in Indiana and that the terms in plaintiff's financing documents and contract terms are unenforceable due to unconscionability, the Court finds that neither argument justifies grounds for relief in this motion. A review of the Demand Promissory Note and Loan Security Agreement and the Individual Guaranty clearly depict a valid, enforceable contract signed by defendant on April 15, 2014. Defendant was the president of a sophisticated and long-existing company in Colleton County. He personally signed the Individual Guaranty, thereby consenting to jurisdiction. The Court is not persuaded by defendant's statement in paragraph 27 of his Affidavit filed 3/18/26 in which he states the terms in the Individual Guaranty were never communicated to him, were not freely negotiated, and were not bargained for at any time. Defendant freely and voluntarily signed regardless, consenting to the terms of the agreement. The Court of Appeals of Indiana, Second

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District, has stated, "[e]ven though there is a disparity in bargaining power between a lender and the guarantor the contract is not unconscionable unless the disparity caused the guarantor to sign the guaranty unwillingly or caused the guarantor to be made unaware of its terms." *Vanek v. Indiana Nat. Bank*, 540 N.E.2d 81, 84 (Ind. Ct. App. 1989), aff'd, 551 N.E.2d 1134 (Ind. 1990) (citing *Houin v. Bremen State Bank* (1986), Ind.App., 495 N.E.2d 753, 758). While the Court acknowledges that plaintiff is a much larger company than Cottageville Motor Company, there's no evidence to suggest the disparity in bargaining power in any way prevented defendant from reviewing and understanding the terms of the Individual Guaranty, or from hiring counsel to do so. Defendant's argument that the contract terms were "take-it-or-leave-it" is likewise unconvincing. The United States Supreme Court has even upheld a forum selection clause in an adhesion contract where the party against whom enforcement was sought was a cruise line passenger—not someone in a business relationship with the cruise line. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991). Here, defendant was a business president who regularly conducted business with the plaintiff company. Based on the foregoing, the Court declines to find that defendant never submitted to personal jurisdiction in Indiana or that the oppressive terms are unenforceable.

IT IS SO ORDERED!

Colleton County, South Carolina
July __, 2026

The Honorable Robert J. Bonds
Presiding Judge



Colleton Common Pleas

Case Caption: Nextgear Capital Inc. VS William Dale Evans
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Type: Order/Other

So Ordered

s/ Robert Bonds, 2770