

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

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Autovest, L.L.C.,)
)
Plaintiff,)

Civil Action No. 2014-CP-40-1484

MAY 29 2015

SC Court of Appeals

vs.)

**ORDER GRANTING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Portia Smith a/k/a Portia)
Sentennial Smith, for herself and)
on behalf of all other similarly)
situated individuals,)
)
Defendant.)

RICHLAND COUNTY
FILED
2015 APR 23 PM 2:48
JEANNETTE H. MORRISON
C.C.P. & S.

This matter came before the Court upon Defendant's Motion for Partial Summary Judgment on April 16, 2015. Specifically, Defendant seeks the dismissal of the debt collection claim asserted against her by Plaintiff. In support of its Motion, Defendant relied on the exhibits attached to Plaintiff's Complaint and Amended Complaint, Plaintiff's Verification of Account, and the documents provided during discovery. In opposition to the Motion, Plaintiff submitted discovery responses from Defendant. Each party also submitted a Memorandum of Law in support of their respective positions.

Having heard the arguments of counsel and after reviewing the pleadings, documents, and memoranda, I find and conclude as follows:

FINDINGS OF FACT

1. On October 29, 2006, Defendant purchased a used car from Carmax. In connection with the purchase, Defendant executed a Buyer's Order that described the car she was buying, calculated the purchase price of the car, and described the warranties provided by Carmax.

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2. Also on October 29, 2006, Defendant executed a Retail Installment Contract to finance the purchase of the car. The Retail Installment Contract set forth the terms of the financing, including the interest rate, the amount financed, the amount of the monthly payments, and the collateral for the financing. According to the Retail Installment Contract, the financing was provided by Wells Fargo Auto Finance, Inc.

3. Defendant failed to make payments when due on the Retail Installment Contract, and Wells Fargo sent notice of right to cure default in 2008.

4. Defendant failed to cure the default, and Wells Fargo repossessed Defendant's car. Wells Fargo sent Defendant notice of its intent to sell the car on January 19, 2009, and sold the car at a private sale on February 10, 2009.

5. Wells Fargo then sent Defendant a notice of deficiency balance due on February 13, 2009.

6. The Retail Installment Contract was assigned to Plaintiff by Wells Fargo on April 30, 2011.

7. Through requests for admissions served by Plaintiff, it has been established that the last payment made by Defendant on the Retail Installment Contract was on November 17, 2008.

8. This action to collect the deficiency balance due on the Retail Installment Contract was filed on March 6, 2014.

CONCLUSIONS OF LAW

1. "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is proper when there is no genuine issue as to any material fact

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and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002), *citing* Rule 56(c), SCRPC.

2. When considering a motion for summary judgment, all inferences which can be reasonably drawn from the evidence before the court are viewed in the light most favorable to the nonmoving party. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

3. The issue presented to the Court by Defendant's Motion is whether the cause of action asserted by Plaintiff is subject to the three-year statute of limitations contained in Section 15-3-530(1) of the South Carolina Code for breach of contract actions, or the six-year statute of limitations contained in Article 2 of the Uniform Commercial Code, S.C. Code Section 36-2-725.

4. It appears that the six-year statute of limitations contained in Section 36-2-725 is intended to apply to breach of warranty claims and other claims related to goods that were sold, but not to a debt collection action that arises out of a secured transaction. Section 36-2-102 of the South Carolina Code specifically provides that a contract for sale of goods that is intended to operate as a secured transaction is not subject to Article 2 of the Uniform Commercial Code. As stated in the South Carolina Reporter's Comments, "Expressly excluded [from Article 2] are transfers of a security interest in goods which are covered under Article 9, Secured Transactions." S.C. Code Section 36-2-102, S.C. Reporter's Comments.

5. The exhibits attached to Plaintiff's Amended Complaint indicate that Plaintiff's assignor, Wells Fargo, believed that this was a secured transaction governed by Article 9, as evidenced by the notice of intent to sell that it mailed to Defendant in order to comply with Section 36-9-614 of the South Carolina Code.

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6. The exhibits attached to Plaintiff's Amended Complaint also indicate that Wells Fargo believed that this was a secured consumer credit transaction governed by the South Carolina Consumer Protection Code, Section 37-1-101, *et seq.*, as evidenced by the notice of right to cure default that it mailed to Defendant in order to comply with Section 37-5-110 of the South Carolina Code.

7. Although no South Carolina appellate court has addressed this issue, appellate courts in other jurisdictions have concluded that debt collection actions arising out of secured transactions are subject to the general statute of limitations for breach of contract, rather than the statute of limitations contained in Article 2 of the UCC. *See, NCNB v. Holshouser*, N.C. App. 165, 247 S.E.2d 645 (1978) (holding that the six-year statute of limitations in Article 2 did not apply to an action to collect a debt arising out of the purchase money financing of an automobile).

8. In support of its position that this contract is subject to the six-year statute of limitations contained in Section 36-2-275, Plaintiff relies on *Atlas Food Systems and Services, Inc. v. Crane National Vendors, Inc.*, 319 S.C. 556, 462 S.E.2d 858 (1995). However, it appears that case involved Article 2 breach of warranty claims asserted by a purchaser against the seller of vending machines. *See, Atlas Food Systems and Services, Inc. v. Crane National Vendors, Inc.*, 99 F.3d 587 (4th Cir. 1996). Therefore, the holding in *Atlas Food Systems* is not determinative of the statute of limitations in a debt collection action that arises out of an Article 9 secured transaction.

9. In this case, the contract for the sale of the car to Defendant was contained in the Buyer's Order. The Retail Installment Contract was intended to operate as a separate secured transaction governed by Article 9 of the UCC, rather than Article 2 of the UCC. Therefore, the

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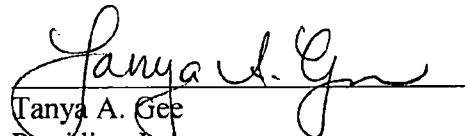
general statute of limitations for breach of contract found in S.C. Code Section 15-3-530(1) applies to Plaintiff's debt collection action against Defendant.

10. The last payment on the Retail Installment Contract was made by Defendant on November 17, 2008, and this action was not filed until March 6, 2014. Therefore, Plaintiff's claim against Defendant is barred by the three-year statute of limitations.

Based on the foregoing Findings of Fact and Conclusions of Law, it is:

ORDERED that Defendant's Motion for Partial Summary Judgment on the claim asserted against her by Plaintiff is GRANTED, and that claim is hereby DISMISSED.

AND IT IS SO ORDERED.


Tanya A. Gee
Presiding Judge
Richland County Court of Common Pleas

Columbia, South Carolina

April 20, 2015

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

JUDGMENT IN A VIL CASE

CASE NO. 2014 CP-40-1484

Autovest, LLC

Portia Smith

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Thomas E. Lydon

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

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
- 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 :

2015 APR 23 PM 2:48
 JEANETTE W. COBRIDGE
 CLERK, C.P. & C.V.
 RICHLAND COUNTY
 FILED

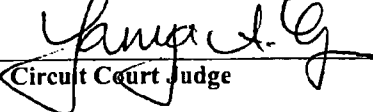
INFORMATION FOR THE JUDGMENT INDEX

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)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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.


Circuit Court Judge

2756
Judge Code

4/20/2015
Date

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

JUDGMENT IN CIVIL CASE

CASE NO. 2014 CP-40-1484

Autovest, LLC

Portia Smiht, a/ka/ Portia Sentennial Smith

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Plaintiff's Motion to Reconsider the order granting partial summary judgment to the Defendant respectfully denied.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

2015 MAY 14 PM 2:16
RICHLAND COUNTY
FILED
CLERK OF COURT
S. G. S.

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.

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Jay A. Gu
Circuit Court Judge

2756
Judge Code

5/14/2015
Date

