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IN THE CIRCUIT COURT SEP 28 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Founders Federal Credit Union,

Plaintiff,

vs.

Charles B. Mierek,

Defendant.

Case No. 2014-CP-42-3828

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT TO PLAINTIFF**

THIS MATTER COMES BEFORE THE COURT upon the *Motion for Summary Judgment* (the "Motion") filed by the Plaintiff on April 9, 2015. The Court conducted a preliminary hearing on the Motion on June 24, 2015, before the Honorable J. Mark Hayes, II,

and the Court conducted a final hearing on the Motion on July 6, 2015, before the Honorable Roger L. Couch. Present at the final hearing was Kyle A. Brannon and Suzanne Taylor Graham Grigg, attorneys for the Plaintiff, and the Defendant, Charles B. Mierek, appearing *pro se*.

Based on the Motion, the pleadings filed in this case, and the arguments of the Plaintiff's counsel and the Defendant, the Court finds and orders as follows:

FINDINGS OF FACT

1. On or about April 1, 2011, the Defendant executed and submitted to the Plaintiff that certain Consumer Lending Plan. In the Consumer Lending Plan, the Defendant agreed that in the event he defaults on any amounts owed to the Plaintiff, the Plaintiff may declare all amounts due and owing by the Defendant immediately due and payable and the Defendant will pay all costs incurred by the Plaintiff in collecting any amounts owed, including reasonable

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SPARTANBURG COUNTY

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attorneys' fees and costs. The Defendant's execution of the Consumer Lending Plan enabled the Defendant to incur the debt as set forth in this case.

2. On or about March 18, 2013, the Defendant executed and submitted to the Plaintiff that certain Security Agreement and Advance Receipt (the "Note") in the original principal amount of Eighteen Thousand Six Hundred Sixty-Five and 91/100 Dollars (\$18,665.91), secured by that certain 2005 Ford F-250 automobile VIN # 1FTSX21P45EA73829 (the "Ford").

3. The Plaintiff perfected its security interest in the Ford by recording its lien on the face of the Ford's certificate of title (the "Title"). The Plaintiff holds a first lien on the Ford as denoted on the Title.

4. The indebtedness is in default for non-payment of the monthly installment payments due to the Plaintiff under the terms of the Consumer Lending Plan and the Note.

5. The obligations of the Defendant under the terms and conditions of the Consumer Lending Plan and the Note are in default, and the Plaintiff has accelerated payment of the debt due under the Consumer Lending Plan and the Note.

6. The Plaintiff has sent written notice of the default to the Defendant in accordance with and conforming to state law. The Defendant has failed to remit the amounts due and owing to the Plaintiff in compliance with the terms of the Consumer Lending Plan and the Note.

7. There is now due and owing to the Plaintiff under the Consumer Lending Plan and the Note, as of June 24, 2015, the amount of Sixteen Thousand Three Hundred Thirty-two and 55/100 Dollars (\$16,332.55) of principal, accrued interest, and late fees.

8. In order to pursue this action against the Defendant, the Plaintiff retained the law firm of Nexsen Pruet, LLC. During the prosecution of the case, the Plaintiff has incurred and is

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entitled to attorney's fees and costs in the amount of \$3,765.00 as supported by the Affidavit of Attorney's Fees and Costs filed contemporaneously herewith.

9. The Defendant is now in control and possession of the Ford and continues to have use of the Ford without the Defendant compensating the Plaintiff for such use. The value of the Ford continues to depreciate during such use, without compensation to the Plaintiff.

10. In addition to the Plaintiff's claims for debt collection and claim and delivery for possession of personal property, the Defendant has asserted four counterclaims against the Plaintiff.

CONCLUSIONS OF LAW

11. Pursuant to Rule 56, SCRCF, no genuine issue of material fact exists as to the Plaintiff's claims against the Defendant and, therefore, the Plaintiff is entitled to summary judgment in its favor for its debt collection and claim and delivery causes of action against the Defendant.

12. Pursuant to the Consumer Lending Plan and the Note, the Defendant is indebted to and owes the Plaintiff the amount of Sixteen Thousand Three Hundred Thirty-Two and 55/100 Dollars (\$16,332.55) of principal, accrued interest, and late fees, as of June 24, 2015, and Three Thousand Seven Hundred Sixty-Five and 00/100 Dollars (\$3,765.00) in attorneys' fees and costs.

13. The Plaintiff is lawfully entitled to possession of the Ford, and to have the Ford sold in a commercially reasonable manner, with the proceeds applied to reduce the amount of the indebtedness due and owing to the Plaintiff on the judgment granted to the Plaintiff by this Court. The judgment debt remaining due and owing after application of the proceeds realized

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from the sale of the Ford shall remain of record against the Defendant until the judgment is fully satisfied.

14. The Plaintiff is not entitled to summary judgment on the Defendant's four counterclaims against the Plaintiff at this time; however, the Court grants the Plaintiff leave to refile a Motion for Summary Judgment on the Defendant's counterclaims at a later time.

15. Because the Defendant's counterclaims currently contain no factual allegations, the Court hereby allows the Defendant thirty (30) days from July 6, 2015, to amend his counterclaims through a written pleading to be filed with the Spartanburg County Clerk of Court.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff is entitled to summary judgment in this case on all claims brought by the Plaintiff in this case;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff is hereby awarded a judgment for principal and interest as of June 24, 2015, against the Defendant in the amount of \$16,332.55, pursuant to the Consumer Lending Plan and the Note;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Plaintiff has incurred attorneys' fees and costs in the amount of \$3,765.00. The Court further finds and orders that the Plaintiff is entitled to recovery of such attorneys' fees and costs from the Defendant pursuant to the Consumer Lending Plan and the Note;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Plaintiff is entitled to entry of a judgment against the Defendant in the amount of \$20,097.55 consisting of principal, accrued interest, late fees, attorneys' fees and costs (the "Judgment Amount") and that the Judgment Amount shall accrue interest at the contract rate of 11.00% per annum from the date of entry of the judgment until it is paid in full;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Plaintiff is entitled

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to possession of the Ford pursuant to S.C. Code Ann. §15-69-10 et. seq., as against the Defendant and/or any other party in possession of the Ford;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Defendant or any other party in possession of the Ford shall turn over the Ford to the Plaintiff, and should the Defendant or any other party in possession fail to do so, the Sheriff of Spartanburg County, or his agent, shall take possession of the Ford and place the Plaintiff in possession and control of the Ford;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Plaintiff has the right to dispose of the Ford in a commercially reasonable manner, and that the Plaintiff is allowed to apply the proceeds from such sale to the judgment granted by this Court against the Defendant, as provided by law;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the proceeds from the sale of the Ford be applied to reduce the amount of the judgment granted to the Plaintiff, and should the sale proceeds be insufficient to satisfy the indebtedness due on the judgment, the judgment shall remain of record as to any outstanding balance still due and owing after application of the sale proceeds until the judgment is fully satisfied;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Plaintiff is not entitled to summary judgment on the Defendant's four counterclaims against the Plaintiff at this time; however, the Court grants the Plaintiff leave to refile a Motion for Summary Judgment on the Defendant's counterclaims at a later time;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the Defendant is afforded thirty (30) days from July 6, 2015, to amend his counterclaims through a written pleading to be filed with the Spartanburg County Clerk of Court;

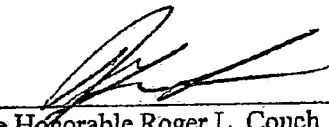
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AND IT IS SO ORDERED.

8/17, 2015
Spartanburg, South Carolina



The Honorable Roger L. Couch
Circuit Court Judge, Seventh Judicial Circuit

7th Judicial Circuit
CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-3828

Founders Federal Credit Union

Charles B. Mierek

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: Kyle A. Brannon, Esq. Nexsen Pruet, LLC P.O. Drawer 2426 Columbia, South Carolina 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
- 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 granting partial summary judgment to Plaintiff.

SPARTANBURG COUNTY
2015 AUG 26 AM 11:40
HON. JUDGE BRADLEY

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	Charles B. Mierek	\$20,097.55
		\$
		\$

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

Judge Code

Date

[Signature] 2135 8/17/15

