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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-1839

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SC Court of Appeals

Latoya Brown, ... Respondent,

v.

Dick Smith Nissan, Inc. and Old Republic Surety Company, ...Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Latoya Brown,

Plaintiff,

v.

Dick Smith Nissan, Inc. and Old Republic
Surety Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Docket No.: 2008-CP-40-1839

ORDER ON MOTIONS TO ALTER OR
AMEND JUDGMENT

2010 DEC 10 AM 8:32
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before the Court by way of Rule 59(e) motions filed by Plaintiff and Defendants to alter or amend this Court's April 9, 2010 Order. Plaintiff seeks to amend the judgment to include attorney's fees, costs, and other payments. Defendants ask this Court to reconsider the order and judgment entered in favor of Plaintiff. A hearing on the motions was held on November 15, 2010 in Richland County. Present at the hearing were William T. Toal, Esquire, for Plaintiff and J. Gregory Studemeyer, Esquire, for Defendants.

After careful consideration of the record in this case and the submissions of counsel, for the reasons that follow, the Court denies Defendants' motion to alter or amend judgment. Plaintiff's motion to alter or amend judgment is granted in part and denied in part.

BACKGROUND

This action was initiated by the filing of a summons and complaint on March 10, 2008 alleging violations of S.C. Code Ann. § 56-15-30(a) ("Dealers Act") against Defendants Dick Smith and Dick Smith's licensing bond issued by Old Republic Surety Company. Defendants filed their answer on May 20, 2008. After a non-jury trial on September 22, 2009, the Court issued its findings of fact and conclusions of law in its April 9, 2010 Order and entered judgment in favor of the Plaintiff.

Plaintiff filed a motion to alter or amend judgment on September 1, 2010. Specifically, Plaintiff seeks to amend the judgment to include attorney's fees, costs, interest, and other payments made by Plaintiff. Defendants filed a motion to alter or amend judgment on September 3, 2010. Defendants contend that the Court overlooked several critical facts and ask

the Court to set aside its judgment for the Plaintiff and enter judgment in favor of the Defendants.

DISCUSSION

In their motion, Defendants contend that the Court overlooked several facts and the actions taken by Dick Smith did not constitute bad faith. S.C. Code Ann. § 56-15-30(a) declares unlawful any "[u]nfair methods of competition and unfair or deceptive acts or practices defined in Section 56-15-40." Section 56-15-40(a) further provides that it is unlawful for any motor vehicle dealer to "engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public."

In support of their argument that Defendants' actions did not amount to bad faith, Defendants contend that Plaintiff's decision to return the 2005 Mazda MX6 was prompted by the letter dated June 25, 2007 from Sovereign Bank to Plaintiff indicating that Plaintiff was denied financing and from Plaintiff's conversations with representatives of Sovereign. Further, Defendants insist that Hiller's representation to Plaintiff that the vehicle would be listed as a repossession should she return the vehicle to Dick Smith was an effort to discourage her from surrendering the vehicle and did not amount to bad faith. The Court remains unconvinced that Defendants' dealings with Plaintiff did not amount to bad faith.

Dick Smith received \$13,091.00 from Sovereign Bank on June 26, 2007 based on an approval for financing of a Nissan Altima not a Mazda MX6. Plaintiff received a letter from Sovereign Bank indicating she was denied financing. Upon receipt of the denial letter from Sovereign Bank, Plaintiff spoke with Hiller and attempted to verify that she did indeed receive financing for the Mazda. Dick Smith failed to verify the financing on the Mazda or provide Plaintiff with any additional information regarding the financing. Instead, Dick Smith showed Plaintiff an approval letter from Sovereign Bank based on incorrect information and correlating to a loan in a different amount, pertaining to a different vehicle, and incorrectly listing Brown's income as \$2,800 per month. Dick Smith did not inform Plaintiff that it had received the payment from Sovereign Bank. Dick Smith made no effort to assist Plaintiff regarding the paperwork on the Mazda. By failing to verify the financing of the proper vehicle and representing to Plaintiff that she was approved for financing on the vehicle she possessed, Plaintiff was treated in an unfair and deceptive manner by representatives of Dick Smith. Thus,

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irrespective of Plaintiff's interactions with Sovereign Bank, Dick Smith failed to act in good faith in its dealings with Plaintiff.

Accordingly, this Court hereby **DENIES** Defendants' motion to alter or amend the Order filed April 9, 2010.

In Plaintiff's motion to alter or amend judgment, Plaintiff asks the Court to increase the amount of the judgment to include attorney's fees of \$8,925.00, costs of \$384.38, interest through September 21, 2010 of \$2,735.34, and per diem interest of \$2.63. Additionally, Plaintiff asks the Court to increase the judgment amount by \$1,880.00 to include twice the amount of two payments Plaintiff made in connection with the sale of the vehicle that Plaintiff contends were not included in the original judgment. This includes the credited down payment for the traded vehicle and insurance payments. S.C. Code Ann. § 56-15-110(a) allows any person injured under the Dealers Act to maintain suit and to recover twice the amount of damages sustained plus costs, including reasonable attorney's fees. In its April 9, 2010 Order, the Court awarded Plaintiff \$9,280.00 plus two times the interest accrued on the \$3,843.00 balance, reasonable attorney's fees, and costs.

Plaintiff contends the testimony at trial reflects that Plaintiff made a down payment of \$800.00 and an insurance payment of \$140.00 in connection with the purchase of the Mazda and Plaintiff is entitled to twice the amount of such payments. The Court's judgment of \$9,280.00 included twice the \$3,843.00 balance and twice the down payment amount of \$800.00. The Court denies Plaintiff's motion to amend the judgment amount to include exactly twice the amount of the down payment, as the judgment amount originally included twice the amount of the down payment. In addition, the Court denies Plaintiff's motion to amend the judgment to include twice the amount of the insurance payment made in connection with the purchase of the vehicle. She received the benefit of the insurance for the period that she drove the car. She did not pay additional insurance after she surrendered the vehicle. Thus, Plaintiff is entitled to judgment in the amount of \$9,286.00, two times the amount of the balance and down payment.

Along with her motion, Plaintiff submitted an Attorney's Fee Affidavit and Verified Statement of Interest. Plaintiff is entitled to interest on the amount of damages awarded pursuant to S.C. Code Ann. § 56-15-110(a). According to Plaintiff's Verified Statement of Interest, the interest accrued on Plaintiff's account as of September 21, 2009 was \$1,367.67. Accordingly,

Plaintiff is entitled to interest in the amount of \$1,367.67, the interest accrued on the \$3,843.00 balance.

Pursuant to S.C. Code Ann. § 56-15-110(a), Plaintiff is also entitled to costs and reasonable attorney's fees. In Plaintiff's Attorney's Fee Affidavit, Plaintiff seeks to recover costs of \$384.38 and attorney's fees of \$8,925.00. South Carolina case law delineates several factors relevant to determining the amount of an award of attorney's fees. Such factors include the following: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results accomplished; and (6) the fee customarily charged in the locality for similar legal services. Atkinson v. Atkinson, 279 S.C. 454, 309 S.E.2 14 (S.C. App. 1983). In light of these factors, Plaintiff is entitled to recover reasonable attorney's fees in the amount of \$8,925.00 and costs of \$384.38.

Plaintiff also asks this court to clarify the April 9, 2010 Order to permit Plaintiff to collect the full amount of the judgment or any part thereof from either Defendant. As shown in "Exhibit A" to Plaintiff's Complaint, Defendants entered into a surety bond agreement where Old Republic agreed to indemnify any owner of a vehicle aggrieved by Dick Smith's violation of Title 56 of the S.C. Code of Laws. Accordingly, Plaintiff may recover the full amount of the judgment against Dick Smith, and in the event of Dick Smith's default, Plaintiff may recover any remaining portion of the judgment from Old Republic Surety Company.

THEREFORE, IT IS HEREBY:

ORDERED that Defendants' motion to alter or amend judgment is denied.

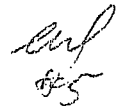
ORDERED that Plaintiff's motion to alter or amend judgment is granted in part and denied in part.

IT IS FURTHER ORDERED that Plaintiff is entitled to judgment in the amount of \$9,286.00; interest in the amount of \$1,367.67, and thereafter at the statutory rate; reasonable attorney's fees of \$8,925.00 and costs of \$384.38.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
December 9, 2010


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IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2008-CP-40-1839

ORDER

V.

Defendants.

RICHLAND COUNTY
 FILED
 2010 APR -9 PM 3:16
 JEANETTE W. McBRIDE
 C.C.P. & G.S.
 2009.
 Defendants
 22, 2009.
 Defendants

PROCEDURAL HISTORY

FINDINGS OF FACT

1. Brown and Hiller met one another while attending Allen University.
2. Brown knew that Hiller worked at Dick Smith on Beltline Boulevard as a car salesman.
3. On May 31, 2007, Brown visited Hiller at Dick Smith in order to discuss buying a car.

At that time, Hiller asked Brown questions about what type of vehicle she was interested in and

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SC Court of Appeals

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how much she could afford to pay. She informed him that she was interested in a Nissan Altima and wanted payments of no more than \$250.00.

4. Hiller provided information to Guthrie in an effort to pre-qualify Brown for financing. Guthrie then submitted the information to several lenders for preliminary approval using a Nissan Altima as the type of collateral for which financing was sought.

5. Hiller could not find a Nissan Altima within Brown's budget. He informed her that there was a 2005 Mazda 6 at a different Dick Smith location that might interest her.

6. Hiller took Brown to look at the vehicle. Brown liked the car and on June 1, 2007, she committed to purchase the 2005 Mazda.

7. On June 1, 2007, Brown signed a buyer's order, a vehicle extended service agreement, finance agreement, and a retail installment contract setting forth the financing terms including the amount financed of \$13,091.00.

8. Dick Smith gave Brown an \$800.00 credit for her a trade-in vehicle, a 1995 Mercury Tracer. She was told that she was being financed through BB&T and her payments were \$286.15 for 63 months.

9. Brown took possession of the Mazda on June 1, 2007.

10. Thereafter, Brown received a letter from BB&T indicating that she had been denied financing. Brown called Hiller to find out what had happened with the BB&T financing.

11. Hiller explained that Dick Smith was trying to arrange financing through another lender and Brown agreed.

12. Brown received numerous letters from various lenders declining to provide financing for her purchase of the Mazda.

13. On June 23, 2007, Brown called Hiller again and Hiller told her that Dick Smith was still trying to find someone to finance the vehicle. Brown told Hiller that if he did not find someone to finance the car, she was going to bring it back.

14. Later that evening, Brown received a phone call from Hiller indicating that she had been financed though Sovereign Bank. He advised her that Sovereign Bank would send her information regarding when and where her payments were to be made.

15. On June 25, 2007, Dick Smith received a letter from Sovereign Bank stating that Brown's contract had been funded for proceeds.

16. Dick Smith received \$13,091.00 from Sovereign on June 26, 2007.

17. However, on June 29, 2007, Brown received a letter from Sovereign dated June 25, 2007 stating that she was denied financing.
18. Brown then called Hiller. Hiller told Brown that she had been financed through Sovereign and if she brought the vehicle back, it would be listed as a repossession.
19. Brown went to Dick Smith and requested to speak with the General Manager, but was directed to speak with Hiller.
20. Brown met with Hiller and showed him the denial letter from Sovereign Bank.
21. Hiller and Guthrie showed Brown an approval letter from Sovereign Bank. However, the approval letter from Sovereign Bank was for a loan in a different amount, had a different application number, listed the vehicle as a Nissan Altima, and listed Brown's income as \$2,800.00 per month.
22. None of the information in the approval letter from Sovereign was correct.
23. Neither Hill nor Guthrie ever told Brown that Dick Smith had already received \$13,091.00 from Sovereign Bank.
24. Brown called Sovereign Bank. A representative from Sovereign Bank advised her that she had been approved for financing for a Nissan Altima. She was not told that the loan had been funded and paid to Dick Smith.
25. On June 30, 2007, Brown returned the Mazda to Dick Smith.
26. Brown received a notice of intent to repossess from Sovereign dated September 1, 2007. The letter indicated that she could cure the default on her account by paying \$600.90. The letter also stated that the "collateral" would be repossessed. There was no information to identify the collateral.
27. Dick Smith received a letter from Sovereign dated November 1, 2007, indicating among other things, that the Mazda purchased by Brown on June 1, 2007, had been repossessed on September 28, 2007.
28. Brown received a letter from Sovereign dated November 16, 2007, indicating that the vehicle had been sold resulting in a deficiency of \$3,843.00.
29. Thereafter, Brown received a collection letter from C.L.X. Recovery Systems dated November 21, 2007.

CONCLUSIONS OF LAW

Based upon the above findings of fact, the court makes the following conclusions of law:

1. S.C. Code Ann. Section 56-15-320(b) requires an applicant for licensure as a dealer or wholesaler to furnish a surety bond in the penal amount of thirty thousand dollars. "An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages." S.C. Code Ann. § 56-15-320(b) (2008).

2. Therefore, Plaintiff may recover up to \$30,000 from Defendant Old Republic, if Plaintiff is found to have suffered loss or damage as a result of the actions Defendant Dick Smith.

3. Under S.C. Code Section 56-15-30(a), "[u]nfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are hereby declared to be unlawful."

4. S.C. Code Ann. Section 56-15-40(1) states:

[i]t shall be deemed a violation of paragraph (a) of Section 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.

5. The term "arbitrary" had been defined for purposes of the Dealers Act to include "acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone." Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621 (1992); Estate of Carr v. Circle S Ent., 379 S.C. 31, 664 S.E.2d 83 (Ct. App. 2008).

6. Bad faith has been defined as:

The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. State v. Griffin, 100 S.C. 331, 333, 84 S.E. 876, 877 (1915) (quoting Black's Law Dictionary); Estate of Carr, *supra*.

7. Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them. Jones Leasing v. Gene Phillips and Assoc., 282 S.C. 327, 318 S.E.2d 31 (Ct. App. 1984); Fanning v. Fritz's Pontiac-Cadillac-Buick, 322 S.C. 399, 472 S.E.2d 242 (1996).

8. Plaintiff was treated in an unfair and deceptive manner. Specifically, the actions of the Defendant Dick Smith constitute bad faith.

9. Defendants contend that Plaintiff was sent a notice of intent to repossess on September 1, 2007. However, as of that date, Plaintiff had returned the car to Defendant Dick Smith and been without the car for at least two months.

10. Plaintiff had taken all measures reasonably expected of her, including making various attempts to verify that she was financed by Sovereign Bank for the proper vehicle, at the correct amount financed, and reflecting her accurate income.

11. Dick Smith did not take any steps to help Brown verify the financing or provide her with information so that she could speak with the appropriate person at Sovereign Bank.

12. "[A]ny person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee." S.C. Code § 56-15-110(1) (1976).

13. Sovereign Bank repossessed the Mazda, sold the car, and assessed a deficiency of \$3,843.00 to Plaintiff. Also, interest continues to accrue on the \$3,843.00 balance. Plaintiff also lost the use of a 1995 Mercury Tracer, which she traded for the Mazda. Therefore, this Court finds that Plaintiff is entitled to \$9,280.00 plus two times the interest accrued. Plaintiff is also entitled to reasonable attorney's fees and cost of the suit.

14. "In an action for money damages, if the jury finds that the defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages." S.C. Code § 56-15-110(3) (1976). An action is done maliciously if "either it is done intentionally, or it is done with some wrongful motive." Black's Law Dictionary (8th edition).

15. This Court finds that the actions of Defendant Dick Smith though unfair, deceptive and in bad faith, were not malicious. Therefore, this Court declines to award Plaintiff punitive damages.

and
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THEREFORE, IT IS HEREBY:

ORDERED that the Plaintiff shall receive judgment against the Defendants Dick Smith Nissan, Inc. and Old Republic Surety Company in accordance with this Court's findings.

IT IS FURTHER ORDERED that Plaintiff must elect her remedy and may only collect as to either Defendant Dick Smith Nissan, Inc. or Defendant Old Republic Surety Company.

IT IS FURTHER ORDERED that Plaintiff shall provide a verified statement of the interest accrued on the \$3,843.00 balance and an affidavit attorney's fees and the cost of the suit for a formal order of judgment.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

April 8, 2010
Columbia, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COMMON PLEAS COURT
IN THE FIFTH JUDICIAL CIRCUIT

Latoya Brown

Plaintiff,

vs.

Dick Smith Nissan, Inc. and Old Republic
Surety Company,

Defendant.

C/A Number: 2008-CP-40-

COMPLAINT

FILED
2008 MAR 10 PM 3:34
BARBARA A. SCOTT
C.C.C. & G.S.

Plaintiff complaining of defendants alleges:

1.

Defendant, Dick Smith Nissan is a corporation incorporated in the State of South Carolina with its principal place of business in the State of South Carolina and the County of Richland.

2.

Defendant, Old Republic Surety Company is a surety company doing business in the State of South Carolina.

3.

The acts complained of occurred in the State of South Carolina and the County of Richland.

4.

On or about June 1, 2007, Plaintiff went to Dick Smith Nissan, Inc. to purchase a 2005 Mazda 6.

5.

The buyer's order stated "This contract is not binding upon dealer unless accepted in writing by an officer or a sales manager of dealer and until an installment contract for any balance has been approved and funded by a third party financing service.

6.

Thereafter prior to June 29, 2007, Plaintiff received rejection letters from Bank of America, M & T Credit Services, LLC, Sovereign Bank, Wachovia Dealer Services, Wells Fargo Auto Finance, Inc., and Nissan Motor Acceptance Corporation.

7.

On June 29, 2007, with no funding approval Plaintiff withdrew her offer to purchase and returned the automobile. At the time Plaintiff was provided with a copy of an approved loan in her name on a Nissan Altima. The request for approval falsely states that Plaintiff was family of employee who has worked here 15 years. The "approval" was contingent on proof of a monthly income of \$2,800.00. The approval was from Sovereign Bank.

8.

Plaintiff had received a disapproval letter from Sovereign Bank just prior to turning the car into the dealership.

9.

Plaintiff received a repossession notice from Sovereign Bank with a deficiency amount of \$3,843.00 plus interest from November 8, 2007 at 11 ½% per annum.

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**FOR A CAUSE OF ACTION
AGAINST DICK SMITH NISSAN**

10.

The allegations of paragraphs 1 through 10 of this Complaint are re-alleged and incorporated by reference.

11.

Defendant Dick Smith Nissan, Inc. is a motor vehicle dealer.

12.

Defendant Dick Smith Nissan, Inc. committed the following arbitrary, unconscionable, malicious and fraudulent acts in bad faith:

- a) In failing to accept the return of the automobile when the loan had not been funded;
- b) In submitting a fraudulent loan application;
- c) In submitting a loan application on a car which Plaintiff had not agreed to buy;
- d) In presenting to Plaintiff a purported loan approval which had conditions and representations which were false and;
- e) In failing to refund Plaintiff's down payment.

13.

As a direct and proximate result of defendant Dick Smith Nissan, Inc. acts as set forth above, Plaintiff has lost her \$800.00 deposit and has a liability for \$3,843.00 plus interest of 11 1/2% per annum from and after November 8, 2007.

14.

On information and belief, Plaintiff is entitled to a judgment against Defendant for double her actual damages, for three times her actual damages as punitive damages, and her attorney fees and costs of this action.

**FOR A CAUSE OF ACTION
AGAINST OLD REPUBLIC
SURETY COMPANY**

15.

Paragraphs 1 through 14 of this Complaint are re-alleged and incorporated by reference.

16.

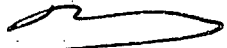
On information and belief, defendant Old Republic Surety Company issued its Bond Number LLI-1017485 in the amount of \$30,000.00. A copy of the bond is attached as Exhibit A to this Complaint is incorporated herein by reference.

17.

On information and belief, plaintiff is entitled to judgment against defendant Old Republic Surety Company by reason of the violation by Dick Smith Nissan, Inc. of the violation of Title 56 of the Code of Laws of South Carolina which can set damages to Plaintiff.

WHEREFORE, Plaintiff prays for judgment against defendant Newberry Autoplex for actual, statutory and punitive damages and for attorney's fees and costs and against defendant Western Surety Company for fifteen thousand (\$15,000.00) dollars.

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

William T. Toal
Attorney for Plaintiff
P. O. Box 1431
Columbia, SC 29202
(803) 252-9700

Columbia, South Carolina
March 7, 2008

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MAR 10 1994

DHPT Form 419D
January, 1984

Dealer Number 6542

Registration Reciprocity

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
MOTOR VEHICLE DEALER AND WHOLESALE SURETY BOND

Please read instructions on reverse side before executing bond.

BOND NUMBER L-1017485 EFFECTIVE DATE December 31, 1993 TIME _____ A.M. P.M.

KNOW ALL MEN BY THESE PRESENTS: that we Dick Smith Motors, Inc.
(Firm Name As Licensed)

Doing business at 4030 Beltline Blvd, Columbia, S.C. 29205

as Principal and Old Republic Surety Company as Surety

are duly authorized to do business within the State of South Carolina, as Surety, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesman, or representatives acting for such Principal within the scope of employment of such salesmen or representatives, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the amount of Fifteen Thousand Dollars (\$15,000.00), lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents; provided that the aggregate liability of the surety under this bond for any and all claims is limited to fifteen Thousand Dollars (\$15,000.00) or to the amount of the actual loss incurred, whichever is less.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter reissued from time to time by South Carolina Department of Highways and Public Transportation;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Highways and Public Transportation in compliance with S.C. Code Ann., 56-15-320, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law, and shall save and keep harmless any owner of a motor vehicle, or his legal representative, from any fraud practiced on him or fraudulent representation made to him by such Principal, such Principal's salesman or representatives acting for the Principal or within the scope of the employment of such salesmen or representatives, or from any loss or damage suffered by reason of the violation by such Principal or any such salesman or representatives of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year; upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Highways and Public Transportation. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

DICK SMITH MOTORS, INC.

(Principal)

By: B. K. S.

(Title)

OLD REPUBLIC SURETY COMPANY

(Surety)

By: Jane A. Greene

Attorney-in-Fact



EXHIBIT

A

0018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) CASE NO. 2008-CP-40-1839

Latoya Brown,

)
)
) Plaintiff,

ANSWER

v.

)
)
) Dick Smith Nissan, Inc. and Old Republic
) Surety Company,

)
)
) Defendants.
)

FILED
2008 MAY 20 AM 9:14
BARBARA A. SCOTT
C.C.C. & G.S.

The Defendants above-named, answering the Complaint of the Plaintiff, would respectfully show unto the Court:

FOR A FIRST DEFENSE

1. The Complaint fails to state sufficient facts to constitute a cause of action against the Defendants and should therefore be dismissed pursuant to Rule 12(b)(6), SCRCPP.

FOR A SECOND DEFENSE

2. Each and every allegation not hereinafter specifically admitted, qualified, or explained is denied and strict proof is demanded thereof.

3. The allegations contained in paragraph 1 and 2 are admitted.

4. As to the allegations contained in paragraph 3, the Defendants admit only that venue is proper in Richland County. Any allegations contained in paragraph 3 inconsistent herewith are denied.

5. The allegations contained in paragraphs 4 and 5 are admitted upon information and belief.

6. The Defendants are without sufficient information to form an opinion or belief as to the allegations contained in paragraphs 6, 7, 8, and 9 and therefore deny same and demand strict proof thereof.

7. As to the allegations contained in paragraph 10, the Defendants reiterate their previous responses thereto.

8. The allegations contained in paragraph 11 are admitted.

9. The allegations contained in paragraphs 12, 13, and 14 are denied.

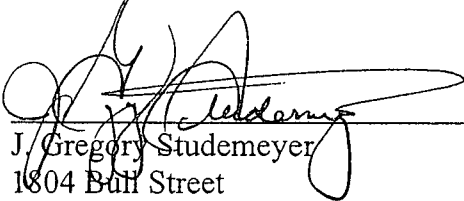
10. As to the allegations contained in paragraph 15, the Defendants reiterate their previous responses thereto.

11. As to the allegations contained in paragraph 16, the Defendants crave reference to the subject bond for its exact terms and conditions. Any allegation contained in paragraph 16 inconsistent herewith is denied.

12. The allegations contained in paragraph 17 are denied.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray that the same be dismissed with costs.

J. GREGORY STUDEMMEYER
Professional Corporation


J. Gregory Studemeyer
1804 Bull Street
Post Office Box 12201
Columbia, South Carolina 29211-2201
803-779-3363

Attorney for Defendants

Columbia, South Carolina

May 19, 2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND ___)

COURT OF COMMON PLEAS
2008-CP-40-01839

LATOYA BROWN,)
 PLAINTIFF,)
 vs.)
)
DICK SMITH NISSAN, INC., and)
OLD REPUBLIC SURETY COMPANY,)
)
_____ DEFENDANT. ___)

TRANSCRIPT OF RECORD

September 22, 2009
Columbia, South Carolina

B E F O R E:

THE HONORABLE ALISON RENEE LEE, JUDGE.

A P P E A R A N C E S:

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Official Court Reporter

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1 THE COURT: This is Docket No. 2008-CP-40-1839,
2 Latoya Brown versus Dick Smith Nissan, Incorporated and
3 Old Republic Surety Company.

4 The plaintiff is represented by Bill Toal and
5 the defendant is represented by Greg Studemeyer.

6 Is there anything that we need to take up before
7 we begin this morning?

8 MR. TOAL: Nothing from the plaintiff, Your
9 Honor.

10 MR. STUDEMEYER: None, Your Honor.

11 THE COURT: Okay. I have read Mr. Studemeyer's
12 pretrial brief, I've reviewed the pleadings that are in
13 the file, and if you would like to make opening
14 statements, that's fine. If not--

15 MR. TOAL: If Your Honor please, I've handed up
16 some principles of law --

17 THE COURT: I see those.

18 MR. TOAL: -- which would have been requests to
19 charge had we had a jury.

20 THE COURT: Okay.

21 MR. TOAL: Just briefly, Your Honor, this is an
22 action under the Unfair Motor Vehicle Practices Act. It
23 includes the definition of fraud, which is any
24 misstatement intentionally made, whether by gross
25 negligence or intentionally.

1 What happened in this case is Ms. Brown went and
2 she was to sign a contract on a Mazda automobile. There
3 was substantial difficulty in getting funding for the car.
4 She periodically called and asked what was happening.

5 The day after she got a letter from Sovereign
6 Bank saying your loan has been turned down. She called
7 back because they had told her her loan had been approved
8 by Sovereign Bank.

9 So she went back, talked to the salesman and the
10 finance manager, they said, Oh, yes, your loan has been
11 approved. And they then showed her an approval letter for
12 a different automobile with a salary that she didn't make
13 and stating that her father had worked for Dick Smith for
14 15 years.

15 At that point, she left the car at the dealer's.
16 She went back home.

17 The car was repossessed by Sovereign or some car
18 was repossessed by Sovereign. A deficiency was asserted
19 against her, and she has other expenses.

20 THE COURT: Mr. Studemeyer.

21 MR. STUDEMEYER: Your Honor, we think this is a
22 fairly simple case.

23 Ms. Brown came in and agreed to buy a car. She
24 filled out the paperwork for financing purposes. The
25 paperwork was submitted to several lenders. Some of them

1 chose not to handle the financing for her. Sovereign Bank
2 did.

3 Sovereign Bank approved the loan. Sovereign
4 Bank paid Dick Smith the money on June the 25th of that
5 year, and four days later Ms. Brown brought the car back.
6 Apparently she changed her mind.

7 So from our perspective it was a contract with a
8 conditional precedent involved, that being approval and
9 funding by a lender. That condition was satisfied and at
10 that point the vehicle was Ms. Brown's to keep. So that's
11 the way we see the case.

12 THE COURT: You may call your first witness.

13 MR. TOAL: We call Ms. Brown.

14 THE COURT: Step forward, please, ma'am, and be
15 sworn.

16 LATOYA BROWN, after being duly sworn, testified
17 as follows:

18 THE COURT: Thank you. If you'd have a seat.
19 And when you're comfortable, state your full name, please.

20 THE WITNESS: Latoya Patrice Brown.

21 THE COURT: And, Ms. Brown, if you'd just speak
22 up just a little bit. I'm having a little bit of
23 difficulty hearing you, and I just need to make sure that
24 I can hear you as well as the court reporter.

25 THE WITNESS: Yes, ma'am.

0027

1 THE COURT: Thank you. And there's a microphone
2 right there in front of you. If you'd just turn it up.
3 You don't have to speak directly into it. It should pick
4 up your voice.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Yes, sir.

7 MR. TOAL: If Your Honor please. Without
8 objection, Plaintiff's Exhibit No. 1 is the bond in this
9 matter.

10 THE COURT: And that's without objection; is
11 that correct?

12 MR. STUDEMEYER: Without objection, Your Honor.

13 THE COURT: All right.

14 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked
15 for identification and received into evidence.)

16 DIRECT EXAMINATION

17 BY MR. TOAL:

18 Q Ms. Brown, you went to Dick Smith Motors to buy a
19 car?

20 A Yes, sir.

21 Q What is this?

22 A The Mazda 6 that I was planning on purchasing.

23 MR. TOAL: All right. Without objection, Your
24 Honor.

25 THE COURT: Without objection, it's admitted.

1 (WHEREUPON, Plaintiff's Exhibits No. 2 was
2 marked for identification and received into
3 evidence.)

4 BY MR. TOAL:

5 Q Now, this is the Mazda you went to look at?

6 A Yes, sir.

7 Q And on the back, what do you have there?

8 A On the back, I just have the pricing of the vehicle
9 as well as the insurance information that I planned on
10 going through, but I ended up going through another
11 insurance company.

12 Q All right. You signed a buyer's order at that time?

13 A Yes, sir.

14 Q Is that it?

15 A Yes, sir.

16 Q And the back?

17 A Yes, sir.

18 MR. STUDEMEYER: I would like to point out she
19 testified she signed the buyer's order. There is no
20 signature on this document.

21 MR. TOAL: This is their copy; it's the only one
22 we had. If you have one with a signature on it, I will be
23 happy.

24 MR. STUDEMEYER: I don't have an objection, but
25 I did want to point out that there's no signature on that.

1 THE COURT: That's noted. It will be admitted.

2 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked
3 for identification and received into evidence.)

4 BY MR. TOAL:

5 Q And --

6 A This is the information on the vehicle that I
7 actually purchased, the Mazda 6.

8 Q All right. And you got -- you traded in a vehicle?

9 A Yes, sir.

10 Q And you were credited how much for that vehicle?

11 A Eight hundred.

12 MR. STUDEMEYER: What is that?

13 MR. TOAL: I'm sorry. I didn't even mark it.

14 MR. STUDEMEYER: Okay. I don't have an
15 objection.

16 (WHEREUPON, Plaintiff's Exhibit No. 4 was marked
17 for identification and received into evidence.)

18 BY MR. TOAL:

19 Q Exhibit No. 4, does it have a date on it?

20 A Yes, sir.

21 Q What is it?

22 A June 1st, 2007.

23 Q All right. What happened after June the 1st, 2007?

24 A After June 1st, 2007, I was told --

25 Q Hold on just--

1 A Okay.

2 MR. STUDEMAYER: I've only got three exhibits so
3 far. Do you have a fourth one?

4 THE COURT: One is the surety, two is the --

5 MR. STUDEMAYER: Oh. Okay, I'm sorry. I'm
6 wrong.

7 THE COURT: Okay.

8 MR. STUDEMAYER: I just had -- the first one was
9 the bond. I had overlooked it.

10 THE COURT: Yes.

11 MR. STUDEMAYER: I'm sorry.

12 MR. TOAL: That's all right. I would rather get
13 it straight.

14 THE WITNESS: All right. After June--

15 BY MR. TOAL:

16 Q After June?

17 A After June 1st, I was told I was going to be
18 financed through BB&T. That was fine with me. It was a
19 local bank, I was able to make my payments there.

20 After approximately a week or so, I received a
21 letter from BB&T stating I had been denied. At this point
22 in time I called Mr. Hiller, the salesman, and I asked him
23 in reference to I thought you told me I was financed by
24 BB&T. What happened?

25 He said, Well, as of right now, we're looking

1 for another finance company for you.

2 At this time, I said okay.

3 Within approximately two weeks, I received
4 several other denial letters from different banks.

5 I called Mr. Hiller I want to say around maybe
6 the 23rd of June, if I'm not mistaken, and I asked him
7 what was wrong with the financing and he told me they were
8 still looking for someone for me -- to finance me.

9 And I was like, well, it has been approximately
10 about a month now that I have been riding around and I'm
11 not financed. You told me at first I was financed through
12 BB&T and now I got several denial letters saying I'm not
13 financed through no one yet.

14 So then I told him, I said, Well, if you don't
15 find no one to finance me, I'm not going to continue to
16 ride around like this, so I'll just bring the vehicle back
17 because you told me that was who I was financed through.

18 At this time, he was like, Well, you're not
19 going to be able to bring the vehicle back because it will
20 go down as a repossession. And I was like, how, because
21 it's not financed through no one.

22 So I, like I said, I kept the car.

23 I received a phone call later on that evening
24 from Mr. Hiller stating I was financed through Sovereign
25 Bank. I said, Okay, no problem. Do you have any other

1 information for me so I can make my payments ahead of
2 time?

3 He said, No, they will send you the information
4 you need in order to make your payments.

5 Two days later, on the 25th, I received a denial
6 letter from Sovereign Bank.

7 Q Okay. Let's stop right there.

8 A Okay.

9 Q Is this a letter from--

10 A Wachovia.

11 Q Wachovia Dealer Services. What's that?

12 A Wachovia. And it's a denial letter as well from
13 Wachovia.

14 MR. STUDEMEYER: I was trying to listen, I
15 didn't quite look at these, okay?

16 MR. TOAL: All right.

17 MR. STUDEMEYER: Okay. I don't have an
18 objection to any of these.

19 (WHEREUPON, Plaintiff's Exhibits Nos. 5-10 were
20 marked for identification only.)

21 BY MR. TOAL:

22 Q Is this a Wells Fargo denial letter?

23 A Yes, sir.

24 MR. TOAL: Without objection, Your Honor.

25 THE COURT: Is this Exhibit 5?

1 MR. TOAL: This is Exhibit 6. Wachovia's 5.

2 BY MR. TOAL:

3 Q Bank Of America is Exhibit 7.

4 A That is a denial letter as well.

5 Q Nissan Motors, No. 8. And South Carolina Federal
6 Credit Union, No. 9.

7 You said you got a rejection letter from
8 Sovereign Bank?

9 A Yes, sir.

10 Q Is that it?

11 A Yes, sir.

12 Q What is the date of that letter?

13 A June 25, 2007.

14 Q When did you receive that letter?

15 A Approximately June 29, 2007.

16 Q And when did you go back?

17 A June 29, 2007.

18 MR. TOAL: I offer this as Exhibit 10, I think,
19 without objection.

20 THE COURT: All of those are without objection,
21 correct?

22 MR. STUDEMAYER: Yes, Your Honor.

23 THE COURT: They are all admitted.

24 (WHEREUPON, Plaintiff's Exhibit Nos. 5,6,7,8,9,
25 AND 10 were admitted into evidence.)

1 BY MR. TOAL:

2 Q Read the first paragraph for me, please.

3 A "Thank you for the application. We regret that we are
4 unable to approve your request for credit from Dick Smith
5 Nissan Beltline at this time for the following reasons:
6 insufficient credit file."

7 Q All right. Now, you went back, did you not?

8 A Yes, sir.

9 Q And what took place when you went back?

10 A When I went to return the vehicle, I actually went in
11 and asked them to speak to the general manager. At this
12 time, I was then directed to Mr. Hiller's office by Mr.
13 Hiller, as well as Mr. Kent.

14 I then proceeded to talk to Hiller and I was
15 asking him, I told him, I said, Well, you told me I was
16 financed through BB&T, you told me I was financed by
17 Sovereign Bank, and I received denial letters from both of
18 those companies.

19 He was like, Well, you have been approved.

20 And so I was like, Can you show me the approval
21 letters since you continue to say I have been approved?

22 At this time, Mr. Hiller showed me an approval
23 letter, but it was for a 2005 Nissan Altima.

24 Q Did you have anything else on there that concerned
25 you?

0035

1 A As far as my income, that concerned me.

2 Q Do you recall about what it said about your income?

3 A It said I made 2,800 per month.

4 Q And you had been working at Allen University?

5 A Yes, sir, as well as Shoney's.

6 Q And how much had you been making there?

7 A I was making 800 every two weeks.

8 Q Is that what he showed you?

9 A Yes, sir.

10 Q And what kind of automobile does it say is financed?

11 A It says a used 2004 Nissan Altima V6 Sedan 4VS.

12 Q All right then. What does it say with respect to
13 what's needed in order to prove income?

14 A It says, "Kelly, I need a favor on this deal. She is
15 family of an employee of Dick Smith who has worked here
16 for 15 years. Customer wants no more than 275 per month.
17 Please help. Thanks, Kent."

18 Q Did you have anybody who worked at Dick Smith Nissan?

19 A No, sir.

20 Q Would you be able to furnish proof that you made
21 \$2,800 per month?

22 A No, sir.

23 Q Did you consider this an approval of your loan on the
24 vehicle that you originally wanted to purchase?

25 A No, sir.

0036

1 MR. TOAL: I offer this as 11.

2 THE COURT: Any objection?

3 MR. STUDEMEYER: None.

4 (WHEREUPON, Plaintiff's Exhibit No. 11 was
5 marked for identification and admitted into
6 evidence.)

7 BY MR. TOAL:

8 Q All right. Tell me what your coversation was when
9 you left.

10 A When I left, speaking to Mr. Hiller?

11 Q Yes.

12 A After I had received the approval letter, I then
13 asked him -- actually he had to go get my file from
14 upstairs to show me everything, but that's what he
15 presented me with, the approval letter. After that I then
16 left the letter stating that I will be seeking legal
17 advice and he would be hearing from my lawyer.

18 Q Thereafter, did you get correspondence from Sovereign
19 Bank?

20 A I actually got a letter from Sovereign Bank as far as
21 saying that I owed them money for a vehicle that I
22 actually never had. Once I called Sovereign Bank, they
23 had a totally different vehicle on file and that's when
24 the representatives there let me know if they was to
25 actually come--

0037

1 MR. STUDEMAYER: Your Honor, I'm going to object
2 to that as hearsay.

3 BY MR. TOAL:

4 Q Did you receive this letter?

5 A Yes, I did.

6 Q What is that?

7 A This is a deficiency letter.

8 Q And what is the deficiency they have assessed against
9 you?

10 A They -- repossession expenses of 9,248 and the
11 balance, the deficiency balance is \$3,843.

12 Q 3,843?

13 A Yes, sir.

14 Q And then shortly thereafter you got from CLX Recovery
15 Systems representing Sovereign Bank another deficiency
16 letter, did you not?

17 A Yes, sir.

18 Q And what was the amount of that letter?

19 A The amount of this letter is actually \$4,603.88 plus
20 interest.

21 MR. TOAL: And No. 12 is the November 16, 2007
22 deficiency letter without objection.

23 THE COURT: Without objection, all these are
24 admitted?

25 MR. STUDEMAYER: Yes, Your Honor.

1 (WHEREUPON, Plaintiff's Exhibits Nos. 12 and 13
2 were marked for identification and received into
3 evidence.)

4 MR. TOAL: And 13 is the November 21, 2007 --
5 and if Your Honor please, we will be asking only for this
6 amount plus the interest from that date.

7 THE COURT: Which is the \$3,843?

8 MR. TOAL: Yes, ma'am. I don't think anybody
9 would have had that much expense in 16 days. I'm willing
10 to fight that battle if necessary.

11 BY MR. TOAL:

12 Q Now, the interest rate, what was the interest rate?

13 A 12.49 percent.

14 Q That is off Exhibit 11?

15 A Yes.

16 Q Did you purchase insurance for this car?

17 A Yes, sir.

18 Q How much did you pay for it?

19 A One forty.

20 Q All right. What is the interest from
21 November 16th, 2007 to September 21st, 2009 on \$3,843?

22 A \$1,367.67.

23 Q So you are asking the Court, then, to recover your
24 down payment?

25 A Yes, sir.

1 Q Your insurance?

2 A Yes, sir.

3 Q The deficiency?

4 A Yes, sir.

5 Q The interest?

6 A Yes, sir.

7 Q Interest after today at the rate of 1.315 cents per
8 day?

9 A Yes, sir.

10 Q And that total, including the interest through today,
11 is how much?

12 A \$6,150.67.

13 Q And under the statute, it would be required to be
14 doubled; is that correct?

15 A Yes, sir.

16 Q And you're asking the judge to award you up to
17 \$18,452.01 in punitives, as allowed by the statute?

18 A Yes, sir.

19 Q And you're asking for attorney's fees and costs?

20 A Yes, sir.

21 MR. TOAL: Please answer any questions
22 Mr. Studemeyer has.

23 MR. STUDEMEYER: Thank you.

24 CROSS-EXAMINATION

25 BY MR. STUDEMEYER:

0040

1 Q Ms. Brown, what do you do for a living?

2 A I'm currently a residential counselor at Three Rivers
3 Behavioral Health Center.

4 Q How long have you worked there?

5 A A year.

6 Q What did you do before that?

7 A I was working at Department of Health and
8 Environmental Control as an administrative specialist.

9 Q And how long did you do that?

10 A I did that for approximately maybe two or three
11 months.

12 Q Okay. What did you do before that?

13 A I was working at Allen University as a mathematics
14 tutor.

15 Q And how long did you do that?

16 A I did that for approximately three months as well.
17 That was my summer internship.

18 Q Okay. Do you know somebody named Tammy Bolton?

19 A Uh-huh.

20 Q Who is that?

21 A That is actually one -- well, at the time she was one
22 of my co-workers at Allen University.

23 Q Okay. Did she sign a letter for you to prove your
24 income?

25 A Yes, sir.

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- 1 Q Okay. And was that letter -- was your income
2 accurate in the letter she signed?
- 3 A Eight hundred every two weeks.
- 4 Q Okay. Now, you know Robert Hiller seated right here?
- 5 A Uh-huh.
- 6 Q You went to school with him at Allen University?
- 7 A Correct.
- 8 Q He's a friend of yours?
- 9 A Correct.
- 10 Q Okay. And you knew at the time he was working at
11 Dick Smith Nissan as a car salesman?
- 12 A Correct.
- 13 Q Okay. You graduated from Allen University?
- 14 A Yes, sir.
- 15 Q What is your degree in?
- 16 A Mathematics.
- 17 Q Okay. Mathematics?
- 18 A Yes, sir.
- 19 Q Okay. You sought out Robert Hiller when you decided
20 to buy a car?
- 21 A Correct.
- 22 Q Okay. And he was working at Dick Smith Nissan on
23 Beltline Boulevard?
- 24 A Correct.
- 25 Q The Exhibit No. 2, which you have already had marked

1 in evidence, shows a Mazda automobile?

2 A Correct.

3 Q And this Mazda automobile was actually, according to
4 this document, was located at Dick Smith on Fernandina
5 Road?

6 A Yes, sir.

7 Q Okay. And this document is actually dated
8 May 31st, 2007?

9 A Yes, sir.

10 Q Okay. Now, did you go online and find this document?
11 Is that how you got this picture?

12 A Actually, no, I didn't.

13 Q Okay.

14 A I didn't get it off line. That's what they -- well,
15 Mr. Hiller presented to me.

16 Q Okay.

17 A And he told me it was at Fernandina and the lady had
18 just returned it.

19 Q Okay. So you sought out Robert Hiller on Beltline
20 Boulevard?

21 A Correct.

22 Q And when you came there, he helped you try to find a
23 car?

24 A Correct.

25 Q Okay. And one of the cars that he showed you was

1 this Mazda at another location?

2 A Yes.

3 Q Okay. And you and Mr. Hiller got in a car at Dick
4 Smith on Beltline and went out to Fernandina Road to see
5 this car?

6 A No, sir.

7 Q No?

8 A No, sir.

9 Q Was the car brought to you at Beltline?

10 A It was brought to the Beltline -- to the Dick Smith
11 dealership on Beltline.

12 Q Okay. Now, that was on the following day; is that
13 right?

14 A I'm not sure if it was the following day or not.

15 Q But there's no doubt -- this is dated May 31st,
16 right?

17 A Correct.

18 Q Okay. And you actually agreed to buy the car on the
19 following day, June 1st?

20 A Correct.

21 Q Now, Robert didn't choose this car for you?

22 A No. That was one I was looking for for myself.

23 Q Okay. And I notice that you have identified Exhibit
24 3 as, I'm not exactly sure, apparently it's a buyer's
25 order, but your signature is not on there; is that right?

1 A Correct.

2 Q Now, was this -- whose handwriting is that, do you
3 know?

4 A I'm not sure if it's Mr. Hiller or Mr. Kent.

5 Q Okay. And as far as you know, was this information
6 on here, the numbers, what vehicle did that apply to?

7 A It was supposed to be applied to the Mazda 6.

8 Q Okay. Is there any reason -- is the Mazda automobile
9 identified on this document at all?

10 A No, it's not, but they knew that was the vehicle that
11 I was looking for. I didn't actually look at no other
12 vehicle.

13 Q Okay. Let me see that, please.

14 Do you know if this document was prepared on the
15 first day when you went to see Mr. Hiller, May 31st?

16 A No, I'm not sure.

17 Q Had you even seen the Mazda at the time this document
18 was prepared?

19 A Uh-huh.

20 Q You sure about that?

21 A Yes.

22 Q But it's not dated?

23 A Right.

24 Q And it doesn't have your signature on it?

25 A No.

0045

1 Q How many times did you come to Dick Smith all
2 together with regard to buying a car?

3 A Within that time period? Approximately -- probably
4 no more than three or four.

5 How many times I probably contacted Mr. Hiller
6 in reference to it? That was probably approximately about
7 ten times maybe in reference to as far as my financing and
8 everything.

9 Q You were concerned about getting financed; is that
10 right?

11 A Correct.

12 Q You knew your credit was not good?

13 A Well, I knew I didn't have much on it as far as which
14 makes it still look bad, but yes, sir.

15 Q Had you been any place else trying to buy a car?

16 A I had went to Dodgeland.

17 Q Okay. And what happened at Dodgeland?

18 A They actually -- I had a Saturn, a 2001 Saturn Ion.
19 Everything was fine. They first approved me for
20 everything as far as the interest rate and everything was
21 good, then I received a letter saying that it was still
22 approved but at the time the interest rate went up. The
23 guy there, the salesman there had told me it was a
24 possibility, so, therefore, after I'd seen how much the
25 interest rate was and how much I actually was paying in

1 the interest rate, I was like, I prefer to go for what I
2 really want then.

3 Q And that was something other than a Saturn?

4 A Correct.

5 Q How long before you came to Dick Smith did you go
6 through that experience?

7 A It was approximately -- I think that was about within
8 that month of May I want to say.

9 Q Okay. Now, did you receive some rejection letters as
10 a result of your transactions at Dodgeland?

11 A I received those, yes.

12 Q You did?

13 A Uh-huh.

14 Q How many of those did you receive?

15 A I'm not certain how many of those I received.

16 Q Do you have copies of those?

17 A No.

18 Q What happened to those?

19 A I'm not sure if I even still have those, to be
20 honest. I may still have them because I kept pretty much
21 everything together.

22 Q Let me hand you a document and ask if you recognize
23 that document.

24 A Yes, sir.

25 Q And what is that?

0047

- 1 A A buyer's order.
- 2 Q Okay. And this is a buyer's order for a 2005 Mazda
- 3 6?
- 4 A Correct.
- 5 Q All right. And it has the same numbers on it as your
- 6 Exhibit No. 3?
- 7 A Yes, sir.
- 8 Q Pardon me?
- 9 A Yes, sir.
- 10 Q Okay. And this shows -- this has got your signature
- 11 on it?
- 12 A Uh-huh. Yes, sir.
- 13 Q Is that yes?
- 14 A Yes, sir.
- 15 Q And it shows that it's accepted and someone's name is
- 16 signed for Dick Smith down on the bottom right?
- 17 A Yes, sir.
- 18 Q Okay. And it shows that you traded in a 1995
- 19 Mercury?
- 20 A Yes, sir.
- 21 Q It shows that that car had 147,728 miles on it?
- 22 A Yes, sir.
- 23 MR. STUDEMEYER: Your Honor, we would ask this
- 24 be admitted into evidence as Defense Exhibit No. 1.
- 25 MR. TOAL: Without objection.

1 THE COURT: It's admitted.

2 (WHEREUPON, Defendant's Exhibit No. 1 was marked
3 for identification and received into evidence.)

4 BY MR. STUDEMEYER:

5 Q Now, Ms. Brown, when you signed Defense Exhibit No.
6 1, you committed to buy the 2005 Mazda 6?

7 A Yes, sir.

8 Q And you agreed to cooperate with Dick Smith to
9 arrange financing for you, correct?

10 A No, sir. I was told I was financed through BB&T.

11 Q Well, you agreed to cooperate with them to help you
12 get financing, didn't you?

13 A Through the time from when I got the denial letter up
14 until the day I returned it?

15 Q Let me back up.

16 A Okay.

17 Q I'm not being clear.

18 When you decided to buy the car from Dick Smith

19 --

20 A Yes, sir.

21 Q -- you were willing to cooperate with them to help
22 you get financing?

23 A Correct.

24 Q Okay. And you really wanted that Mazda?

25 A Yes, I did.

1 Q And your dealings with regard to the Mazda were, to
2 begin with, with Mr. Robert Hiller?

3 A Yes, sir.

4 Q Okay. He helped you find the car?

5 A Yes.

6 Q And did he ask you some questions about what kind of
7 car you were looking for?

8 A Yes, he did.

9 Q Okay. Did he try to find out some information from
10 you about what you could afford to buy?

11 A Yes, he did.

12 Q Okay. And what did you tell him?

13 A I told him I didn't want payments no more than two
14 fifty.

15 Q Okay. Did you tell him that you were specifically
16 looking for a Mazda or were you looking for a four-door
17 car?

18 A No, I told him specifically what I was looking for,
19 for a Mazda 6.

20 Q Had you been anyplace else looking for a Mazda 6?

21 A I actually looked at Dodgeland but they didn't have
22 one, so I just went ahead with the Saturn.

23 Q Okay. Did you go to Wray Mazda?

24 A No.

25 Q Okay. But you were specifically looking for a Mazda

1 automobile?

2 A Correct.

3 Q Is there any reason why you wouldn't go to a Mazda
4 dealer?

5 A No. To be honest with you, no reason.

6 Q Okay. Now, after you spoke with -- was he a
7 classmate of yours at Allen University or did you just
8 know him from going to school?

9 A I knew him from going to school. He was in my
10 classes.

11 Q Okay. But after you met with Robert and you gave him
12 some information about what you were interested in, what
13 kind of car and what you could afford, that's when you
14 committed to buy this Mazda that was brought to Beltline
15 from the Fernandina location?

16 A Correct.

17 Q Okay. And then after you spoke with Robert, did you
18 meet with Kent Guthrie?

19 A Yes.

20 Q And you knew that Kent Guthrie was the finance
21 manager?

22 A Correct.

23 Q And it was his job to try to help you get financing
24 for the car that you wanted to buy?

25 A Yes, sir.

0051

1 Q All right. Now, you and Kent also talked about
2 getting some type of an extender service contract on this
3 Mazda, right?

4 A The warranty, yes.

5 Q You did?

6 A Yes.

7 MR. TOAL: No objection.

8 BY MR. STUDEMEYER:

9 Q Let me ask if you recognize this document.

10 A Yes.

11 Q Okay. And what is that?

12 A This is the extended warranty agreement.

13 MR. STUDEMEYER: Okay. Let's mark that as -- I
14 move to put this in evidence, Your Honor, as Defense
15 Exhibit No. 2.

16 THE COURT: Without objection?

17 MR. TOAL: Without objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, Defendant's Exhibit No. 2 was marked
20 for identification and received into evidence.)

21 BY MR. STUDEMEYER:

22 Q Ms. Brown, this used vehicle extended service
23 agreement on the Mazda that you agreed to buy shows that
24 the lienholder was Sovereign Bank right here; is that
25 correct?

0052

1 A Yes, that's correct. With that -- okay.

2 Q Did you want to say something?

3 A With that being said, I see it says Sovereign Bank on
4 there. But that was actually done the same -- well, the
5 next day -- well, the day that I actually purchased the
6 vehicle, with me being told at the time I was financed
7 through BB&T. It's kind of hard for actually Sovereign
8 Bank to be on there at the time because at the time
9 Sovereign Bank was actually nowhere in the picture,
10 because that's when I was told I was financed through
11 BB&T.

12 Q Let me ask you something. Did it matter to you what
13 bank financed you?

14 A No. BB&T was fine because it was local. But then
15 once I received the denial letter, it was like, okay,
16 that's who you told me I was financed through, so what
17 happened?

18 Q Okay. I guess the point I was trying to make was,
19 this is a -- Mazda's the car you really wanted?

20 A Uh-huh.

21 Q And it was a car that you could afford?

22 A Correct.

23 Q And it wouldn't matter to you whether you were making
24 payments every month to Bank of America or BB&T or any
25 bank?

1 A I mean, it matters because that's who he told me I
2 was financed through from the beginning.

3 Q Right.

4 A But, I mean --

5 Q It's the same amount of money; it shouldn't matter,
6 should it?

7 A I mean, it's the same amount of money, but like I was
8 saying, if you told me I was financed through BB&T, that's
9 who I was looking forward to paying, BB&T.

10 Q All right. And you say, who was it, Robert told you
11 he could get you financing through BB&T?

12 A He told me I was financed through BB&T, yes.

13 Q That's what Mr. Hiller told you?

14 A Correct.

15 Q Did you authorize Dick Smith to submit your credit
16 information to BB&T?

17 A No, I did not.

18 Q You didn't?

19 A No, I did not.

20 Q Well, who did you --

21 A Well, what he told me, he said, We're going to try to
22 get you financed through Dick Smith. Then he told me he
23 tried that and he said that didn't work.

24 So that's when he said, Okay, we have you
25 financed through BB&T. I said, Okay, no problem, fine,

1 it's a local bank, I can go there and make the payments,
2 no problem at all.

3 Once the other denial letters came into play, I
4 didn't know nothing about those actually being ran because
5 at the time, like I said, it was BB&T.

6 Q Okay. But from the beginning, you agreed to
7 cooperate with Dick Smith to arrange financing for the car
8 you chose to buy?

9 A Correct.

10 Q And you didn't place any limits on them as far as who
11 they could talk to about trying to get you financing?

12 A No, but I didn't expect for it to take a month or two
13 neither.

14 Q Now, let me ask you, after you spoke with -- tell me
15 about when you spoke with Mr. Guthrie. He was the finance
16 manager, right?

17 A Correct.

18 Q And he talked to you about the extended service
19 agreement?

20 A No. Actually the only time I think I talked to
21 Mr. Guthrie -- is it Eddie, your first name?

22 Okay. No, I think I spoke to a gentleman named
23 Eddie.

24 Q Okay. But you met with Mr. Guthrie?

25 A No, I did not.

0055

1 Q You didn't?

2 A No, I didn't.

3 Q Okay. You signed -- did you sign a contract, an
4 installment contract to make payments on the Mazda?

5 A Two eighty-six?

6 Q Let me hand this to you and see if you recognize it.

7 A Okay.

8 Q What is that?

9 A This is the finance charge, the -- I guess the
10 statement of exactly how much my payments would have been
11 and everything.

12 Q Okay. This is an installment contract between you
13 and Dick Smith?

14 A Uh-huh.

15 Q And it's dated June 1st, 2007?

16 A Yes.

17 Q And you signed it?

18 A Yes.

19 MR. STUDEMEYER: All right. We'd move this into
20 evidence as Exhibit No. 3.

21 MR. TOAL: Without objection, Your Honor.

22 THE COURT: It's admitted.

23 (WHEREUPON, Defendant's Exhibit No. 3 was marked
24 for identification and received into evidence.)

25 BY MR. STUDEMEYER:

0056

1 Q Now, Exhibit No. 3 is the installment contract. This
2 shows that you are buying a used 2005 Mazda MX-6, correct?

3 A Yes, sir.

4 Q And the annual percentage rate is 12.54 percent?

5 A Yes, sir.

6 Q And the amount financed is \$13,091; is that right?

7 A Yes, sir.

8 Q And that you're going to make 63 payments of \$286.15
9 per month?

10 A Yes, sir.

11 Q And those were going to begin on July 16th of 2007?

12 A Yes, sir.

13 Q And you signed it?

14 A Yes, sir.

15 Q Okay. And it also included an itemization of amount
16 financed is an \$800 allowance for your old car?

17 A Yes, sir.

18 Q And the extended service contract; is that right?

19 A Yes, sir.

20 Q Okay. Now, at the time you signed this, there was a
21 stamp on the contract indicating that it was conditioned
22 upon approval by a third-party financing source, correct?

23 A Yes, sir.

24 Q Okay. So you knew the day that you signed this
25 document that there was a contingency involved?

1 A Yes, sir.

2 Q And you signed that stamp as well, correct?

3 A I don't recall actually signing the stamp.

4 Q Is your signature on there?

5 A It's there, but I don't recall signing it.

6 Q Okay. As long as it's there, that's what matters,
7 right?

8 Now, on the day that you signed that installment
9 contract with the stamp on it you took possession of the
10 Mazda?

11 A Correct.

12 Q That was June 1st?

13 A Correct.

14 Q And you kept the car for 29 days?

15 A Correct.

16 Q Is that right?

17 A Yes.

18 Q One day short of a month?

19 A Yes.

20 Q And one day short of a month you changed your mind?

21 A It wasn't that I changed my mind. It was just that I
22 wasn't financed yet.

23 Q Well, one day short of a month you brought the car
24 back?

25 A Correct.

0058

1 Q Okay. Do you think that's fair, to bring the car
2 back after you've had it for 29 days?

3 A Well, I mean, after I had done been told I was going
4 to be financed and then I was financed through Sovereign
5 Bank, I don't feel as though it was fair for me to ask to
6 keep the car after they had done told -- well, after
7 Mr. Hiller had done told me I was financed with several
8 different companies and I wasn't. So, I mean, I told him
9 I'm no longer going to keep the car because I'm not
10 financed. And he said, Sometimes you can go two months
11 without being financed. I said, Well, I'm not going to be
12 one of them.

13 Q Now, let me ask you this.

14 A Uh-huh.

15 Q At the time you bought the car, were you living with
16 your parents?

17 A No.

18 Q Where were you living at the time?

19 A At my current address, 525 Alcott Drive.

20 Q Okay. Did your parents know that you were going to
21 buy this car?

22 A Yes.

23 Q Did they agree with you to buy the car?

24 A Uh-huh.

25 Q Is that yes?

0059

1 A Yes.

2 Q Okay. Did your father want you to go to graduate
3 school?

4 A Yes.

5 Q Okay. Did he tell you it was a mistake to buy the
6 car?

7 A No.

8 Q Are you sure about that?

9 A I'm positive.

10 Q Let me ask you this. After you -- let me back up a
11 minute. Let's change the scenario here a little bit.

12 You had the car for 29 days?

13 A Uh-huh.

14 Q And then you brought it back?

15 A Yes, sir.

16 Q And you think that's fair?

17 A Yes, because I was not yet financed.

18 Q Okay. Now, let's suppose that this is a car that you
19 still wanted just as badly on the 29th day as you did on
20 the first day and Dick Smith said, We've changed our mind,
21 we want you to give the car back. Would you think that
22 would be fair?

23 A I mean, I can't stop them from taking the car back if
24 I'm not financed or if I don't have the credit for them to
25 actually be able to finance it. I can't get mad because

1 they want the car back.

2 Q All right. But after 29 days you wouldn't think that
3 would be unfair?

4 A No. Just the way they want the car back is the same
5 way I wanted to keep the car, but I decided to return it.

6 Q Okay. Now, Defense Exhibit No. 1 that you signed,
7 right here at the bottom just above your signature, can
8 you read that paragraph starting with this contract?

9 A "This contract is not binding upon dealer unless
10 accepted in writing by an officer or a sales manager or
11 assistant sales manager of dealer and until a retail
12 installment contract for any deferred balance has been
13 approved and funded by a third-party financial source."

14 Q Okay. Now, there's no doubt that the contract was
15 accepted because there's a signature there, right?

16 A Correct.

17 Q And do you have any information -- let me ask you
18 this: Can you contest that the installment contract was
19 not funded before you brought your car back? No? Can you
20 --

21 A No. I'm sorry.

22 Q You have no information about that?

23 A No, besides than what they told me, I was with BB&T I
24 mean.

25 Q Right. But as far as when Dick Smith was funded --

1 A No.

2 Q -- you don't know anything about that?

3 A No.

4 Q So Dick Smith could have been funded before you
5 brought the car back?

6 A No, I know they weren't because that's what
7 Mr. Hiller told me, they wasn't yet. They were still
8 waiting on the check, which means they were still waiting
9 on the finance company, from what he told me.

10 Q When you were going to Allen University, had you
11 worked there for four years?

12 A I was a work-study student there.

13 Q For four years?

14 A Uh-huh.

15 Q What did you do -- after you brought the Mazda back,
16 what did you do for transportation?

17 A I had to catch a ride back and forth.

18 Q Well, did you end up getting another car?

19 A I ended up purchasing one, but that wasn't until
20 probably about August, I think.

21 Q Okay. And where did you buy that car?

22 A I actually bought it from the manager at Precision
23 Tune.

24 Q Okay. And did you buy it or did your father buy it?

25 A I bought it.

1 Q What kind of car was that?

2 A A Honda Accord.

3 Q How old a car was it?

4 A It was a '96, if I'm not mistaken. Yeah, I think
5 it's '96.

6 Q A much older car?

7 A Uh-huh.

8 Q Because you didn't want a payment?

9 A No, I didn't mind making the payments.

10 Q Now, when you brought the Mazda back, you were told
11 that Dick Smith had already been funded on the contract by
12 Sovereign Bank?

13 A I was told -- no, I was not told that. At that time
14 I was actually told that I was not able to leave the car
15 there because, like he told me on the phone, it would go
16 down as a repossession.

17 Q Okay. You were told that?

18 A Correct.

19 Q You knew if you left the car there it was going to
20 constitute a repossession?

21 A Correct. And I asked them how would it be a
22 repossession if I'm not financed.

23 Q And you were told you had been financed?

24 A I was told by Mr. Hiller I was financed already.

25 Q Okay. Did you -- what, if anything, did you do

1 knowing -- Mr. Hiller told you, Don't leave the car here,
2 it's going to become a repossession, you've already been
3 financed, you just decided to go ahead and leave the car
4 anyway?

5 A Because I wasn't financed.

6 Q But he told you that you were.

7 A Okay. But I have papers stating in front of me from
8 the bank that I'm not financed and I just can't go by -- I
9 mean, he had done told me I was financed through BB&T, so
10 --

11 Q Okay. So you knew there was some confusion, for lack
12 of a better word?

13 A Correct.

14 Q What, if anything, did you do to try to address the
15 confusion?

16 A Actually, I tried to call them in reference to
17 changing the paperwork after I spoke to a representative
18 from Sovereign Bank. They stated they had the paperwork
19 for an Altima, a 2004 Altima, and the lady told me if she
20 was to come and repossess the car they would be looking
21 for an Altima, not a Mazda 6. I called in reference to
22 them changing the paperwork and they told me they was not
23 changing the paperwork.

24 Q Okay. So you knew there was some confusion with
25 Sovereign Bank?

1 A Correct.

2 Q And Robert told you, if you leave that car here, it's
3 going to be a repossession? He told you that?

4 A He told me that.

5 Q Okay. And you decided to leave it there?

6 A Correct.

7 Q Okay. Now, you have identified a number of letters,
8 I think they're marked Plaintiff's Exhibits 5 through 10,
9 they're letters from various banks; one was from Wachovia
10 Dealer Services that turned you down?

11 A Yes, sir.

12 Q Okay. You never objected to Dick Smith submitting
13 your credit information to Wachovia, did you?

14 A No. Actually, once I started receiving the letters,
15 I asked Mr. Hiller in reference to all the letters I was
16 receiving, and I didn't know they were actually going to
17 run all of those. I didn't know that.

18 Q Yes. But you never tried to limit them as to who
19 they could call to try to arrange financing for you, did
20 you?

21 A No, sir.

22 Q Now, I think you said that whenever you brought the
23 car back, someone gave you Exhibit No. 11; is that right?

24 A Yes.

25 Q Okay. And Exhibit No. 11 is called Sovereign Bank

1 Application Status?

2 A Yes, sir.

3 Q Is that right?

4 A Yes, sir.

5 Q And it does have a checkmark on there next to
6 something called "approved"?

7 A Yes, sir.

8 Q Okay. And that's dated -- it looks like this was
9 printed out on June 9th?

10 A Yes, sir.

11 Q Is that correct?

12 A Yes, sir.

13 Q Okay. Now, there was no representation in this
14 document by Dick Smith that you actually made \$2800 a
15 month, is there?

16 A No, sir.

17 Q So the bank is asking Dick Smith to provide that?

18 A Yes, sir.

19 Q Okay.

20 MR. TOAL: What's that exhibit number, please?

21 MR. STUDEMEYER: It's Exhibit No. 11.

22 MR. TOAL: Thank you.

23 BY MR. STUDEMEYER:

24 Q Let me hand you this document and ask you if you
25 recognize this document.

1 A Yes, sir.

2 Q Okay. What is that?

3 A A Notice of Intent to Repossess.

4 Q This is a letter from Sovereign Bank, correct?

5 A Yes, sir.

6 Q And it's dated when?

7 A September 1st, 2007.

8 Q And it's addressed to you?

9 A Yes, sir.

10 Q And can I see it, please. And you received this?

11 A Yes, sir.

12 MR. STUDEMEYER: Okay. Let's mark this as
13 Defense Exhibit No. 4.

14 Is that right, Your Honor?

15 THE COURT: Four.

16 MR. TOAL: Without objection.

17 THE COURT: It's admitted.

18 (WHEREUPON, Defendant's Exhibit No. 4 was marked
19 for identification and received into evidence.)

20 BY MR. STUDEMEYER:

21 Q Now, this letter from Sovereign Bank notifies you
22 that you're late in making your payments, correct?

23 A Correct.

24 Q It tells you that you can cure your default; is that
25 right?

1 A Right.

2 Q That you are behind on your payments?

3 A Correct.

4 Q And if you make your payments up, you can continue
5 with the contract as though there was no default; is that
6 right?

7 A Yes, sir.

8 Q What did you do about that?

9 A At the time I didn't have the car, so what do you
10 mean what did I do about that?

11 Q What did you do about curing your default?

12 A I didn't have the car at the time, so I asked my
13 lawyer.

14 Q Is that what you did, you gave it to your lawyer?

15 A Because at the time I didn't have the vehicle.

16 Q Okay. All right. Now, Robert told you about a month
17 before that, Don't leave the car here, Ms. Brown; if you
18 do, there's going to be a train wreck. He warned you
19 about leaving the car, right?

20 A Yes, he warned me.

21 Q He told you it was going to become a repossession and
22 you decided to leave the car anyway, right?

23 A Yes.

24 Q And then about a month later, just as Robert
25 predicted, you got a letter from Sovereign Bank telling

1 you that they're going to repossess the car?

2 A Yes, but which car would they be repossessing?

3 Q Well, how many cars did you buy?

4 A I only bought one.

5 Q Okay. So Sovereign Bank tells you, just as Robert
6 predicted, we're going to repossess the car?

7 A Correct.

8 Q And you only bought one car?

9 A Correct.

10 Q And you weren't confused about which car it was?

11 A I know which car I brought, but the paperwork
12 Sovereign Bank had was for an Altima.

13 Q Okay. You knew what car you bought?

14 A Uh-huh.

15 Q Okay. And Sovereign Bank in this letter to you, this
16 notice to cure, tells you, listen, you can avoid the train
17 wreck, just make up the payments and it's water under the
18 bridge, right?

19 A Correct.

20 Q And you didn't do that?

21 A Correct.

22 Q So you didn't listen when Robert tried to warn you
23 and didn't listen when the bank tried to warn you?

24 A How did the bank try to warn me?

25 THE COURT: I'm sorry, I didn't hear what you

1 said.

2 THE WITNESS: I said, "How did the bank try to
3 warn me?"

4 But how did the bank actually try to warn me
5 when they sent me a denial letter?

6 Again, Robert Hiller had done told me previous
7 before I was financed through BB&T, so I mean, how can I
8 actually go by what he says as well?

9 BY MR. STUDEMEYER:

10 Q Read the letter that you got. You've already
11 testified you received this letter, right?

12 A I received it.

13 Q Okay. Read it out loud.

14 A "Your account is delinquent for all payments due
15 since June of 2016 "-- I mean June 16th, 2007.

16 "The total of the delinquent payments is \$572.30
17 plus late charges amounting to \$28.60.

18 You may cure your debt default and your
19 installment loan by paying \$600.90 to Sovereign Bank, P.O.
20 Box 4020, Rocky Hill, Connecticut, 06067, within 20 days
21 of the date of this letter.

22 If you pay this amount within the time allowed,
23 you are no longer in default and may continue with the
24 loan as though no default has occurred.

25 If you do not cure your default within the time

1 allowed, Sovereign Bank may sue you to obtain a judgment
2 for the amount of the debt or may take possession of the
3 collateral.

4 If Sovereign Bank takes possession of the
5 collateral, you may get it back by paying the full amount
6 of your debt plus any reasonable expenses incurred by
7 Sovereign if you make the required payment within 20 days
8 after repossession. Sincerely, M. Roberts."

9 Q Did you have any -- you understood what the letter
10 meant at the time you received it, didn't you?

11 A I understood what it meant, but I was just stuck on
12 the fact that I actually didn't have the car, and which
13 vehicle.

14 Q Okay. And you did nothing other than give this
15 letter to your lawyer when you got it?

16 A Correct.

17 Q You didn't try to cure the default?

18 A No, sir.

19 Q You didn't contact Sovereign Bank?

20 A No, sir. The last time I contacted Sovereign Bank
21 was in reference to trying to get my paperwork changed so
22 everything would be correct.

23 Q So Sovereign Bank told you that you could have cured
24 your default for less than \$600?

25 A Correct.

0071

1 Q But you didn't do that and now you want the judge to
2 give you \$18,000?

3 A Because I would have actually been still paying on
4 something I never had.

5 Q Now, before you got this notice to cure that we just
6 talked about, did you get a payment booklet from Sovereign
7 Bank?

8 A No, sir.

9 Q You never did?

10 A No, sir.

11 Q Okay. Did you get any other letters from Sovereign
12 Bank after you got the notice to cure?

13 A Not that I know of.

14 Q Did you get a letter from them saying they were going
15 to repossess the car?

16 A No, that's the letter I got.

17 Q Did you get a letter from them saying that they had
18 repossessed the car?

19 A (Witness shaking head.)

20 Q Is that no?

21 A No, sir. I'm sorry.

22 Q But you did get this letter in November of 2007
23 marked as Plaintiff's Exhibit 12 saying that they've taken
24 the car and sold it, correct?

25 A Yes, sir.

0072

1 Q Okay. And did you do anything about that?

2 A Take it to my lawyer.

3 THE COURT: I'm sorry.

4 THE WITNESS: Took it to my lawyer. I'm sorry.

5 BY MR. STUDEMEYER:

6 Q Ms. Brown, have you paid Sovereign Bank anything?

7 A No, sir.

8 Q Nothing?

9 A No, sir.

10 Q Do you have any intention of paying them anything?

11 A No, sir.

12 Q Now, as I understand it, your contention is the harm
13 you've suffered, if any, is that Sovereign Bank claims
14 \$3,800 from you which you have no intention of paying?

15 A I mean, I have no problem with paying that.

16 Q But you have no intention of paying it?

17 A No, I'll pay it, but I mean, I have no problem with
18 that.

19 Q All right. Well, a few minutes ago you said you had
20 no intention of paying it.

21 A Well, I mean, I thought you was talking about as far
22 as what the letter said before, the 600, and then going on
23 after that. I didn't know you was talking about as far as
24 the 3,000, the deficiency part.

25 Q So the harm you claim is that you received a letter

1 from Sovereign Bank that claims you owe them \$3,800?

2 A Right.

3 Q And you could have avoided that claim by paying the
4 \$600 when you received the notice of right to cure?

5 A Correct.

6 Q Okay. Now -- and before you received the notice of
7 right to cure, Robert Hiller told you not to leave the car
8 because that is what was going to happen?

9 A Yes, he did.

10 Q And you left it anyway?

11 A Yes, I did.

12 Q Okay. Now, have you brought any action whatsoever
13 against Sovereign Bank?

14 A No, sir.

15 Q Let me hand you what is marked as Plaintiff's
16 Exhibit 10. This is the letter from Sovereign Bank to you
17 dated June 25th, 2007.

18 A Yes, sir.

19 Q Now, was it your testimony that you received this
20 letter on June 29th of 2007?

21 A Yes, sir.

22 Q Okay. And your decision to return the car was based
23 upon the letter that you received from Sovereign Bank?

24 A Correct, and some of the representatives I spoke to
25 from Sovereign Bank.

0074

1 Q Okay. So is it your contention that you were misled
2 in some way by what Sovereign Bank had done?

3 A I wouldn't say misled by Sovereign Bank, because they
4 only get the information from Dick Smith.

5 Q Okay.

6 A So I wasn't misled by them because they only know
7 about the information that they actually have.

8 Q But Sovereign Bank sent you a letter telling you that
9 your application for credit had been denied?

10 A That's correct.

11 Q Right. And that was the basis for you bringing the
12 car back?

13 A Correct.

14 Q Okay. And you don't know what Sovereign Bank did
15 with regard to Dick Smith as far as funding your contract?

16 A They told me they didn't have -- at the time they
17 didn't have anything on file for me when I called them
18 prior to that date once I received that letter. Once I
19 called them after that date, they had a 2004 Nissan Altima
20 on file for me.

21 Q Okay.

22 A And that's when they told me I would have to go to
23 the dealership to get the paperwork changed. Then once I
24 contacted the dealership, they refused to change the
25 paperwork.

1 MR. STUDEMEYER: Your Honor, I think I'm just
2 about finished. If you'll bear with me just a moment.

3 BY MR. STUDEMEYER:

4 Q Now, Ms. Brown, where did you get a contact number
5 for Sovereign Bank? You said you called to speak with
6 them. And where did you get that number?

7 A From off the denial letter.

8 Are you talking previously or -- previously
9 before I received the denial letter or once I received the
10 denial letter?

11 Q Well, let's kind of do this one at a time here.

12 Let me hand you Plaintiff's Exhibit No. 10.

13 Now, what number did you call Sovereign Bank?

14 A I'm not sure what number I called.

15 Q Do you know who you spoke with?

16 A I spoke to a guy named Jimmy Bonner.

17 Q Jimmy Bonner?

18 A Uh-huh.

19 Q Do you know where he was?

20 A Which --

21 Q Do you know what state he was in or what city he was
22 in?

23 A I believe Connecticut.

24 MR. STUDEMEYER: Your Honor, I don't have any
25 further questions.

1 THE COURT: Any redirect?

2 MR. TOAL: Certainly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. TOAL:

5 Q Let's assume that you had made the payment to
6 Sovereign Bank in the amount of \$650. Would you have had
7 any more payments to them after that?

8 A Yes, sir.

9 Q And would you be looking for, say, \$14,000 worth of
10 payments from Dick Smith instead of three thousand had you
11 done that?

12 A Yes, sir.

13 Q All right. Now, did you speak to a Valerie Whitman
14 at (888)421-8458, Extension 603865, at the bank?

15 MR. STUDEMEYER: Objection. Leading.

16 THE COURT: Rephrase the question.

17 BY MR. TOAL:

18 Q Who did you talk to at the bank?

19 A Valerie Whitman.

20 Q What was her number?

21 A (888)421-8458, Extension 603865.

22 Q And you said you spoke to someone else?

23 A Jimmy Bonners.

24 Q What was his extension?

25 A 418817.

0077

1 Q Do you recognize this as your copy of the extended
2 warranty?

3 A Yes, sir.

4 Q Is that the one you received?

5 A Yes, sir.

6 MR. TOAL: Without objection, Your Honor, that
7 would be Plaintiff's 14.

8 THE COURT: Admitted.

9 (WHEREUPON, Plaintiff's Exhibit No. 14 was
10 marked for identification and admitted into
11 evidence.)

12 BY MR. TOAL:

13 Q I'd ask you to compare Defendant's Exhibit No. 2 with
14 Plaintiff's Exhibit No. 14 with respect to the lienholder.

15 A Sovereign Bank.

16 MR. TOAL: Excuse me, I picked up your copy that
17 you gave me, see? I'm going to ask you that you mark this
18 as 15. I already marked this as 14.

19 THE COURT: Is this just another copy?

20 MR. TOAL: That is just a--

21 THE COURT: Well, I don't have any problem if
22 you all don't object to just substituting the exhibit
23 number.

24 MR. STUDEMAYER: That's fine with me.

25 THE COURT: And instead of making it 15, make it

1 14 since it's just the wrong copy.

2 MR. TOAL: All right.

3 BY MR. TOAL:

4 Q All right. Now, for the comparison. Lienholder on
5 the one you got?

6 A It's blank.

7 Q And the one introduced?

8 A Sovereign Bank.

9 Q All right. With respect to No. 11, Plaintiff's
10 Exhibit 11, was this what they gave you as proof of the
11 fact that there was an approved loan?

12 A Yes, sir.

13 Q And then they told you they hadn't gotten the money
14 yet?

15 A Yes, sir.

16 MR. TOAL: That's all I have, Your Honor.

17 THE COURT: You may step down. Thank you.

18 MR. TOAL: That would be plaintiff's case.

19 THE COURT: Ready to present defense witnesses
20 or are you going to make motions?

21 MR. STUDEMEYER: Yes, Your Honor, I do have a
22 motion to make.

23 I would move for a directed verdict at this
24 time. I believe the complaint is based upon an allegation

25 --

0079

1 MR. TOAL: I'm stealing your exhibits, Your
2 Honor.

3 THE COURT: Don't steal my exhibits.

4 MR. STUDEMEYER: I thought I was completely
5 prepared, Your Honor. Excuse me for being a little slow
6 here.

7 THE COURT: It's all right.

8 MR. STUDEMEYER: The plaintiff's complaint is
9 based upon an allegation that the defendant violated the
10 act regulating manufacturers and dealers. And
11 specifically paragraph 12, I think, is the meat of the
12 complaint, where it accuses Dick Smith of doing certain
13 things that are arbitrary, unconscionable, and malicious,
14 and even fraudulent. It says in bad faith.

15 There's no proof that's been presented with
16 regard to subparagraph A saying -- there's no proof that
17 Dick Smith failed to accept the return of the automobile
18 when the loan had not been funded. There's no proof of
19 that.

20 B, there's no proof that Dick Smith submitted a
21 fraudulent loan application.

22 I think Counsel is relying upon a document that
23 was generated by Sovereign Bank that's called a Sovereign
24 Bank Application Status, and I believe it's contingent --
25 his opening statement was that Dick Smith misrepresented

1 Ms. Brown's income to the bank, but that's not what
2 Exhibit 11 says.

3 Exhibit 11 is basically a request from Sovereign
4 Bank saying submit proof to us that she makes this much
5 money to get this approval.

6 With regard to Exhibit C, excuse me, paragraph
7 C, there's no proof that's been presented that Dick Smith
8 submitted a loan application on any vehicle other than the
9 Mazda. There has been no loan application even discussed,
10 mark, or presented.

11 With regard to exhibit -- to paragraph D, it
12 says that Dick Smith presented the plaintiff with a
13 purported loan approval which had conditions and
14 representations which were false.

15 Well, this is not a loan approval. It is termed
16 to say Sovereign Bank Application Status, where they are
17 asking under stipulations, asking for certain information.

18 And in the final paragraph E, failing to refund
19 the plaintiff's down payment. I don't think there's any
20 proof that she made a down payment. I think she said she
21 traded in her old car that she was given an \$800 allowance
22 on, but Dick Smith's position is that this contract was
23 contingent upon funding. Dick Smith's position is the
24 contract was funded, so she wouldn't be entitled to
25 recover her trade-in.

0081

1 I know it's the role of the plaintiff's counsel
2 in any case against a car dealer to create as much noise
3 as possible, because usually in my limited experience,
4 there's usually a very tiny issue as to whether or not an
5 automobile dealer is liable at all. There's all kinds of
6 noise that people try to point to to say this wasn't fair,
7 that wasn't fair, this was wrong. None of that should
8 really matter, that's all noise.

9 The issue in this case, Your Honor, I believe,
10 is did Mrs. Brown -- Ms. Brown bring the vehicle back
11 before the contract was funded. That's the issue.

12 This act regulating manufacturers, distributors,
13 and dealers basically says in 56-15-40, Subsection 1, that
14 it prohibits action which is arbitrary, in bad faith, or
15 unconscionable, and which causes damage to any of the
16 parties.

17 Well, with regard to -- I don't believe there
18 has been any, any testimony presented of anything -- let's
19 take the easy ones.

20 There's been no testimony presented as to
21 anything unconscionable. I don't think Ms. Brown ever
22 complained about the price, she didn't complain about the
23 payments, she didn't say that they charged her too much
24 for the car. I mean there's no testimony, no proof
25 whatsoever about anything unconscionable.

1 I don't think she's presented any proof that
2 anything was done in bad faith. She testified that she
3 wanted to buy a car, she sought out the salesman, he had
4 helped her pick out the car she wanted, and she signed the
5 contract-- college graduate, signed the contract to buy
6 the car she picked out that she wanted. I don't believe
7 she's presented anything saying that anybody did anything
8 in bad faith other than try to help her get what she
9 wanted.

10 And then with regard to the issue of was
11 anything done that was arbitrary --

12 THE COURT: Well, let me stop you right there,
13 Mr. Studemeyer.

14 I would agree with you based upon just that
15 information. The question is, what happened after she
16 signed it in an effort to obtain the funding and the
17 financing for the vehicle.

18 I would agree with you she picked up the car,
19 she went to the dealership, she selected what she wanted,
20 she negotiated the price, she signed the documents.

21 The question is what happened with the funding,
22 particularly in light of the documentation that has been
23 presented that she was not approved.

24 And so I think the question is not about
25 necessarily the making of the contract that she signed,

1 it's a question of fulfilling the terms of the contract.
2 with respect to the funding and the financing. And that's
3 where I think the plaintiff is making the claim that
4 something went wrong here and something was-- that there
5 were some activities, whether they were representations
6 that were orally made or whether they were made in
7 writing, or documents that were presented to her, which
8 seemed to indicate that she had been approved for funding
9 when she's holding a document that she was not approved.

10 The documents that they show her are relating to
11 a different vehicle, one that she did not purchase. And
12 so I think that's really the issue to focus, is what
13 happened after the documents were signed.

14 MR. STUDEMEYER: Okay. All right. And I
15 understand, Your Honor, and maybe I'm putting the cart
16 ahead of the horse here, but I think part of what the
17 plaintiff's theory is here is that somehow that Dick Smith
18 maybe misrepresented something to the bank.

19 THE COURT: I think that's what she -- I think
20 that's what she's stating. And I think based upon -- and
21 I understand I have not seen the defendant's case.

22 MR. STUDEMEYER: All right.

23 THE COURT: But based upon what's been presented
24 to me at this particular point, I think that she's at
25 least made a prima facie case that there were some

1 irregularities and some misrepresentations that were made,
2 and the documents seem to bear that out.

3 MR. STUDEMEYER: Right.

4 THE COURT: You know, whether it rises to the
5 level of being arbitrary, capricious, or bad faith, I
6 would say that she's made a prima facie case, but I
7 haven't heard the defense, so I'm trying and required to
8 keep open mind.

9 MR. STUDEMEYER: Okay.

10 THE COURT: And I'm just-- that's why I asked
11 you if you want to make a motion, that was fine.

12 MR. STUDEMEYER: Right.

13 THE COURT: And if you've got -- I mean if
14 there's something I'm overlooking that you can point me to
15 as it relates to a hole in the plaintiff's case, I'll be
16 happy to consider it, but I think it really becomes a
17 question of -- as of right now, I assume there's going to
18 be a factual issue that will come up.

19 MR. STUDEMEYER: There will be. But there is
20 one other legal matter that I do want to bring to the
21 Court's attention.

22 THE COURT: Sure.

23 MR. STUDEMEYER: And that is with regard to any
24 purported irregularity or misrepresentation to the bank by
25 Dick Smith.

0085

1 THE COURT: And it doesn't necessarily have to
2 be the bank. I mean, I think what she is saying is there
3 appears to be some -- the bank was told one thing. It
4 appears what the bank was actually told, I don't know, she
5 doesn't know, but based upon the information that has been
6 presented at least, there was some information presented
7 to the bank. You know, what happens from that particular
8 point, I'll be happy to hear you about your arguments.

9 MR. STUDEMEYER: The one thing I wanted to bring
10 to the Court's attention with regard to any purported
11 misrepresentation to Sovereign Bank, I think it's really
12 important to keep in mind that in this act regulating
13 manufacturers, distributors, and dealers, it's really
14 nothing more than a statutory form of fraud.

15 I think the Ferguson versus Charleston Lincoln
16 Mercury case points that out. But whenever you plead and
17 attempt to prove fraud or fraudulent representation, it's
18 not enough to prove that a fraudulent representation was
19 made to somebody else because there's-- in order for a
20 person to recover based on fraud, the representation has
21 to be made to them, and there's a case that is directly on
22 point with regard to that. It's Moore, M-O-O-R-E, versus
23 Dew. It's a South Carolina case. I've got the cite that
24 I can point out for the Court. The cite is 358 -- oh,
25 that's not it; sorry, wrong case. It's amazing how these

1 things turn out right in front of you when you're looking
2 for them.

3 The case is Moore versus Dew and the cite is 38
4 SE2nd 258. It's an old case, it's a 1946 case, but just
5 let me point out for the Court, I know we're going to
6 proceed further, but the Moore versus Dew case, this is
7 what that case was about: Two warehousemen got into a
8 dispute. I think these were tobacco warehousemen over in
9 Dillon and Florence, over in that area.

10 Mr. Moore -- this dispute occurred during -- I
11 think it occurred during World War II. Now there was a
12 time whenever the federal government restricted the
13 availability of building materials because things were
14 needed to promote the war or to fund the war, and so what
15 happened was back in World War II, Mr. Moore had a tobacco
16 warehouse and he was competing with Mr. Dew for the sale
17 of tobacco over in the Pee Dee. And what Mr. Moore found
18 out was that Mr. Dew had applied and had kind of shaded
19 the facts, he'd applied to get some building materials.
20 He got approval through the federal government to get
21 these materials because they were going to be used to
22 build a factory that would manufacture tents that could be
23 used in the war effort, and that what he really intended
24 to do was to use those building materials to build another
25 tobacco warehouse. And Mr. Moore thought that that's not

1 fair, he lied to the federal government to get these
2 materials and he's using these materials to compete
3 against me, and that's not fair, that's fraud.

4 Well, the Supreme Court said, you know, it
5 probably wasn't right for him to do what he did, but he
6 didn't misrepresent anything to you. You didn't rely on
7 anything he said so you have no cause of action for fraud
8 against him.

9 So it's just an issue that I think is kind of
10 floating around here in the noise, and I just want to make
11 sure the Court was aware of that.

12 THE COURT: Do you want to respond, Mr. Toal?

13 MR. TOAL: No, ma'am, I'm satisfied with your
14 ruling.

15 THE COURT: Okay. Thank you, Mr. Studemeyer. I
16 made a note of it and the citation, and I'll make sure
17 that I read it.

18 MR. STUDEMEYER: Okay.

19 THE COURT: If you're ready to present your
20 first witness.

21 MR. STUDEMEYER: Okay. Mr. Robert Hiller,
22 please.

23 ROBERT HILLER, after being duly sworn, testified
24 as follows:

25 THE COURT: If you would please have a seat and

1 state your full name and spell your last name for me,
2 please.

3 THE WITNESS: My name is Robert Hiller,
4 H-I-L-L-E-R.

5 THE COURT: Thank you.

6 DIRECT EXAMINATION

7 BY MR. STUDEMEYER:

8 Q Mr. Hiller, what do you do for a living?

9 A I sell cars for Honda, Midlands Honda.

10 Q That's out on I-77, Killian Road?

11 A I-77 and Killian Road.

12 Q And how long have you been doing that?

13 A This will be my second month.

14 Q Okay. Before that what did you do?

15 A I worked for AT&T.

16 Q What did you do for them?

17 A I sold U-verse.

18 Q You sold?

19 A U-verse.

20 Q What is that?

21 A It's a new product competing with Time Warner.

22 Q Okay. All right. And how long did you do that?

23 A I did that for about four months.

24 Q And before that what did you do?

25 A Worked for Dick Smith.

0089

1 Q And how long did you work for Dick Smith?

2 A Almost 16 years.

3 Q Okay. How much education do you have?

4 A I just graduated from college in '08. Got my
5 master's in business administration.

6 Q From?

7 A Allen University.

8 Q Okay. Now, do you know Ms. Brown?

9 A Yes, sir.

10 Q Okay. Tell the judge how you know Ms. Brown.

11 A I met her at Allen University. She's a sorority
12 sister of mine. I'm her frat brother. So that's where
13 the family part comes in.

14 No one ever said that her father worked there
15 for 15 years. When I went to Kent Guthrie to explain to
16 him, being the finance guy, that she was a friend of mine
17 from college, I wanted to make sure she got a good deal.
18 I explained to him that she was my sorority sister, I was
19 her frat brother, and we needed to see what we could do to
20 get her the best financing available.

21 Q Okay. Tell-- were you over at Allen University
22 trying to sell cars or did she come to you or how did that
23 work?

24 A I wasn't soliciting any business at Allen University.
25 I guess she heard that I sold cars and one day she just

1 happened to stop by. I didn't know she coming. I just
2 happened to be there when she came.

3 Q And where were you working at the time?

4 A Dick Smith on Beltline.

5 Q Okay. And tell the Court, if you would, what kind of
6 conversation did you have with Ms. Brown.

7 A Well, when she came in the dealership, she explained
8 that she was looking for a vehicle and she didn't want her
9 payments to be anything more than 250. Well, being I
10 worked for Nissan, I'm real partial to Nissan, so I
11 actually told her, you know, maybe we can try to find her
12 a reasonable Altima. And that wasn't out of the question
13 for her at the time. Her question was, she liked the
14 Altima, she just had to have a 250 payment.

15 Q Okay. And an Altima is a Nissan product?

16 A Yes, sir. And it's not normally a 250 payment, so
17 therefore we went to maybe a used one. I showed it to her
18 on the computer. She said she liked it. So at this time
19 we didn't even really know if we could even get her
20 financed.

21 Q Did she indicate any concern about getting financing?

22 A Being a college grad, I told her that possibly
23 there's the college grad program that we may have for her,
24 just depending on if she had any derogatory credit. So we
25 proceeded to try to find her a car and get her some

1 financing.

2 Q Let me back up just a minute.

3 When you're an automobile salesman, tell me what
4 information you need when you first meet with a customer
5 to help fulfill the customer's needs, what kind of
6 information?

7 A Well, we just kind of try to feel for what they're
8 looking for, you know, what they want to pay a month,
9 whether they want to trade or put any cash down, you know,
10 we try to make it comfortable for the customer so that
11 they can get what they want and everything else they need.

12 Q Okay. So you're looking for what they want and what
13 they can afford?

14 A Right.

15 Q Okay. It would have done you no good whatsoever to
16 have taken her out and showed her a \$60,000 Infiniti,
17 would it?

18 A No, sir.

19 Q She would have been disappointed, right?

20 A Based on the payment she wanted, yes, sir.

21 Q All right. Okay. So tell the Court what you did in
22 an effort to help her find --

23 A Well, we sat down at the computer and tried to, you
24 know, find some reasonable vehicles, but like I said, you
25 know, and in the process, an Altima was like my first

1 choice for her because, like I said, I'm partial to
2 Nissan. I work for Nissan. They sell used cars of other
3 name brand, but the first thing I'm going to do is I'm
4 going to try to sell a Nissan because I know once
5 something goes wrong, I'm going to be able to get it fixed
6 at my place.

7 Q Okay.

8 A So at the time I told her, I said, What we need to do
9 is kind of work it a little backwards. Let's try to get
10 the financing done. Let's try to get the financing done.
11 What we'll do is we'll just pick out a cheap car, let's
12 see what the bank says, and once the banks say, hey, we'll
13 do whatever we'll do for her, then we can always change
14 cars.

15 Q Okay. So you were trying to qualify her as far as
16 financing?

17 A Exactly.

18 Q Okay.

19 A Right.

20 Q Okay.

21 A So there may have been a possibility, and I can't
22 quite remember, but there may have been a possibility
23 where I said, Hey, let's just submit it. So I just wrote
24 up maybe a buyer's order and give it to the finance guy so
25 he can do what he do to get it financed.

0093

1 Q Okay.

2 A In the meanwhile, he said, Well, there's another car
3 that will work for the payments she wants. If she like
4 it, we can probably put the deal together.

5 I said okay, I presented it to her with the
6 Mazda 6. And she said, Yeah, I like that, that's nice.

7 So I proceeded to -- once I found out she liked
8 it, I proceeded to, Hey, it's not at my dealership, I need
9 to go get it before someone else sell it. So she said
10 that if I brought the car back and then she saw it, but
11 the way it went down was we got in the car, we drove to
12 Lexington and we picked the car up.

13 Q Who's "we"?

14 A Me and her.

15 Q Okay. You and Mrs. Brown?

16 A Yeah. We got in the car, we went to Lexington, not
17 Fernandina, picked the car up. What reason it was at
18 Lexington I don't know, but we went to Lexington, we
19 picked the car up. We brought the car back, she drove it,
20 she liked it.

21 We had actually been, I guess, talking to her
22 dad over the phone about insurance and whatnot because I
23 don't think she had full coverage on the Mercury. So,
24 therefore, she wasn't going to be able to take it home
25 that day.

1 So, and I can't quite remember, I believe she
2 came back the next day to pick the vehicle up because she
3 did have full coverage insurance.

4 So after, you know, she come back the next day,
5 I think her and Kent got together and they worked out the
6 payments to her satisfaction and she was happy, everything
7 was fine. I had no idea she didn't want the car anymore.

8 Actually, the day she brought the car back, she
9 didn't tell me she was bringing it back. I came to work
10 and found the keys at the receptionist's desk. It was
11 probably there two days before I even realized it was
12 there. She didn't give me the keys and said the car is
13 parked outside. She must have given them to somebody when
14 I was off.

15 Q All right. The car that she traded in, what kind of
16 car was that?

17 A Mercury Tracer.

18 Q What kind of shape was it in?

19 A It had 140,000 miles. I would imagine it was on its
20 last leg. Giving her \$800 would have been being gracious,
21 you know.

22 Q What do you think it was actually worth?

23 A Hundred dollars.

24 Q A hundred dollars? Okay.

25 Did you ever have any discussion with Ms. Brown

1 about her being approved by BB&T or any other bank?

2 A I can't quite remember what bank we talked about, but
3 I told her that we had it all worked out. And somewhere
4 close to before she got ready to turn it in, she stated to
5 me that she talked to someone at the bank and they kept on
6 saying they have an Altima or they couldn't find records
7 or something to that effect.

8 And I said, Well, I mean, we deal with dealer
9 finance which is going to be a different department than
10 any bank that's here. So they may not have anything on
11 file because dealer finance is a different department.

12 So I took her in an office that wasn't even
13 mine, if she can recall, I sat her down and we called
14 people. The lady said, Yes, sir, Mr. Hiller, we have it
15 on file, it's a Mazda 6. Her first payment is due such
16 and such and such, and she heard it. She didn't say
17 anything about that. She heard it. She sat right there
18 and listened to the lady on the phone tell her that they
19 had it on the file.

20 Q Okay. This is before she brought the car back?

21 A Yes.

22 Q Okay.

23 A That still didn't mean nothing to her, I guess, for
24 her to actually hear the lady say yes, sir, Mr. Hiller,
25 we have it on file, it's a Mazda 6, 2005, her first

1 payment is due such and such day.

2 Q Now, did you have a discussion with Ms. Brown about
3 what the consequences--

4 A Oh, yeah, I told her. I said, you know, they don't
5 teach us how to repo cars. That ain't something they
6 teach us. They teach us how to sell them and give good
7 customer service. They don't teach us that when they
8 bring them back, after they ain't been funded, what we
9 supposed to do with them. That's not car sales.

10 I explained to her that if you leave that car
11 here, it's going to be a repossession. At that time, she
12 didn't leave the car there. She took the car. I believe
13 her sister and maybe one other person was with her at the
14 time.

15 And I tried not to talk in front of the sister
16 because, you know, this was her business, you know, but
17 she brought her sister and somebody else, you know, she
18 wanted to discuss.

19 She told me personally, herself, that her dad
20 was buying her a car, cash, and that he thought that she
21 may have made a bad decision because he wanted her to go
22 to grad school in Atlanta somewhere and that it would be
23 best for her just to bring it back so he could pay cash
24 and she wouldn't have a payment and now she could continue
25 her education.

1 I said, Well, that might be a bad decision
2 considering you already signed up for a car.

3 Q Whose role was it to handle the financing? Is that
4 yours or is that the finance manager?

5 A The finance manager.

6 Q Your role is to help find the customer a car that
7 they want and they can afford?

8 A That's right.

9 Q And everything else is up to the finance manager?

10 A Yes, sir.

11 Q Did you have any -- did you submit any paperwork to
12 Sovereign Bank or any other lender?

13 A No, sir.

14 Q Okay. Let me ask you this: Did you lie to Ms. Brown
15 in any way, shape, or form?

16 A No, sir.

17 Q Did you ever tell her any lies?

18 A No, sir.

19 Q Did you deceive her in any way?

20 A No, sir.

21 Q Did you do anything other than help her get the car
22 she wanted?

23 A No, sir.

24 After, you know, after she decided the car was
25 going to-- she elected to leave the car in the lot, some

1 guy called me up one day, and it didn't sound like you,
2 but he says this is her attorney.

3 MR. TOAL: Objection, Your Honor. Relevance.

4 THE WITNESS: He said--

5 THE COURT: I will sustain as to hearsay.

6 THE WITNESS: I mean, he said this is--

7 THE COURT: I sustain the objection.

8 BY MR. STUDEMEYER:

9 Q Let me -- I want to back up a little bit.

10 After Ms. Brown met with you and picked out the
11 car she wanted and so on, did you ask her to provide any
12 other information or any other documents to help you?

13 A Well, being a college grad, most college grad
14 programs require -- because sometimes they don't have a
15 job right out of college, so a lot of times all they need
16 is a letter of intent showing that they're going to be
17 working. So I asked her to provide me some kind of letter
18 showing that she's going to be working. I think she
19 brought it in and it had taken a couple of days or two,
20 maybe three. She brought it in in an envelope and I gave
21 it to Kent and that's the only document and proof of
22 insurance.

23 Q Okay. So she cooperated?

24 A Oh, yeah.

25 Q At the beginning.

1 What attention, if any, do you pay to the actual
2 funding of a contract by a lender?

3 A Well, I've been doing this for a long time and I
4 wouldn't consider myself to be the average salesman. Most
5 salesman would just sell a car and go ahead. But I follow
6 my deal all the way to the buisness office, all the way to
7 the accounting office, all the way to the-- because it's
8 not a deal until it's funded.

9 Q That's the final step?

10 A Yes, sir.

11 Q Okay. Did you get paid a commission if the deal is
12 not funded?

13 A No, sir.

14 Q Okay. So you have an interest to follow the funding
15 process?

16 A Oh, yes. It's not a deal until it's funded. I don't
17 care how long they drive it, you don't get paid on it
18 until the dealership gets paid on it.

19 Q All right. Now, is there any doubt in your mind that
20 on the day that Ms. Brown brought the car back, the deal
21 had already been funded by Soveriegn?

22 A Yes, sir.

23 Q Any doubt in your mind?

24 A None.

25 Q Okay. It had been funded?

1 A Yes, sir.

2 Q Dick Smith had the money?

3 A Yes, sir.

4 Q Let me ask you, after you said Ms. Brown brought the
5 car back and left it and left the keys with the
6 receptionist --

7 A Like I said, I don't know who she left it with.

8 Q Okay.

9 A She could have gave them to another salesman and he
10 could have gave them to the receptionist, I don't know.

11 Q Okay.

12 A But that's where I got them from.

13 Q Okay. But she didn't -- she didn't come to you and
14 say, Robert, here's the keys, I'm out of here, no?

15 A I didn't even realize the car was sitting there but
16 maybe two days had passed.

17 Q Okay. And this was your little sister from
18 fraternity, sorority, whatever?

19 A Yes, sir.

20 Q And you knew her well?

21 A I didn't know her that well. I mean, you know, in
22 passing we'd speak and, you know, we'd conversate here and
23 there, but, you know, it wasn't like we was going to
24 church or--

25 Q Okay.

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1 A -- hanging out or nothing, you know.

2 Q All right. But she wasn't a complete stranger?

3 A Right.

4 Q Did you ever have any conversations with her after
5 she brought the car back?

6 A None.

7 Q Good. Do you know, was any contract other than a
8 contract to buy a Mazda ever presented to Ms. Brown?

9 A No.

10 Q Can you think of any reason why she would have been
11 misled about whether she was getting an Altima or a Mazda
12 based on what contract she signed?

13 A Well, like I said in the beginning, you know, the
14 preliminary part of buying the car, we may have submitted
15 a different car.

16 Q Okay.

17 A You know, just to get an approval. Once you get an
18 approval, you can always change cars.

19 Q Okay. But was any contract ever given to her saying
20 here, you are buying an Altima?

21 A No, no.

22 Q Okay. Did you ever set out to mislead her about what
23 car she was going to buy?

24 A No, sir.

25 MR. STUDEMEYER: I don't have any other

1 questions, Your Honor.

2 THE COURT: You may cross.

3 CROSS-EXAMINATION

4 BY MR. TOAL:

5 Q Do you have any familiarity with Plaintiff's Exhibit
6 No. 11?

7 A It's the application status?

8 Q Yes, sir. And did you have anything to do with the
9 application status?

10 A No, sir. I actually had the financial guy print me
11 up one, just so I could show her where she was approved.

12 Q All right. And when did you do that?

13 A I guess when doubt came in her mind about whether she
14 was approved or whether -- because sounds like to me she
15 just continued to want out of the deal, regardless of
16 application status.

17 Q When did you do that?

18 A It's been years ago. I really can't put my hand on a
19 time frame. I mean, my memory ain't as great when it
20 comes to putting my hand on an exact date.

21 Q All right. But you are the person who handed
22 Exhibit 11 to Ms. Brown; is that correct?

23 A Yes, sir. I gave it to her before she gave the car
24 back.

25 Q Yes, sir. And you said, This is your approval, is

1 that what you told her?

2 A I was trying to show her where it was approved.

3 Q All right, sir. And what did you explain to her
4 about the car that was approved?

5 A I don't understand what you're saying.

6 Q Well, what car was approved?

7 A It says here an '04 Altima.

8 Q Yes, sir. And when did you explain to her about the
9 '04 Altima?

10 A I explained to her that we submitted a car just to
11 get an approval.

12 Q Well, why did you submit an Altima to get an approval
13 when she'd signed the contract--

14 A Because we had --

15 Q -- on a different car?

16 A -- never landed on a car that she wanted to buy yet.
17 If I can't get an approval, there's no need to even pick
18 out a car.

19 Q All right. Now --

20 A So it wouldn't have mattered if I'd picked out a
21 buggy at the back of the dealership.

22 Q All right. What did you tell her about having to
23 have that much income?

24 A We didn't talk about income from my understanding. I
25 told her she was going to need a letter of intent from

1 Allen University, where she said she was going to be
2 working.

3 Q Well, did this inform you that you needed proof of
4 \$2,800 a month?

5 A I don't know what this informs me of.

6 Q Well, look at it and see. Doesn't it say it needs
7 proof of \$2,800 a month?

8 A That's what it says, yeah.

9 Q All right. So at the time that you had this talk,
10 the loan was not in fact approved, was it?

11 A At the time that we had a talk and I explained to her
12 that the loan was approved, it was approved.

13 Q Did you have anything to show her that it was
14 approved?

15 A This was all I could show her.

16 Q And she asked you for what you had, right?

17 A And I gave it to her.

18 Q All right. Was that before or after the 25th?

19 A It would have been before she brought that car back.
20 I don't know the dates.

21 Q Would it have been a week before?

22 A It could have been. I don't know, but it was before
23 she brought the car back.

24 Q Was it before she got a letter saying that she wasn't
25 approved?

1 A Well, she never brought me any letters saying she
2 wasn't approved.

3 Q She never called you and talked to you about that?

4 A She never brought that to my attention.

5 Q How many loans did you know had been rejected?

6 A How many-- no, sir, I didn't know of any of them that
7 was rejected.

8 Q You were--

9 A That's not my job as a salesman to know who turned
10 her down.

11 Q I thought you said you followed up on it.

12 A I followed--

13 Q That is not one of the things you followed up?

14 A I followed up on whether it was getting funded.
15 Things are electronically funded these days.

16 Q Yes, sir.

17 A And so with things being electronically funded, you
18 know, there's a -- all we have to do is get with the
19 accounting office and they can go into the computer and
20 tell us whether it has been funded.

21 Q Well, you could have done that that particular day,
22 could you have not? You could have gone into the
23 accounting office--

24 A I didn't need to.

25 Q -- pushed the little button there and said here's--

1 A I didn't need to.

2 Q -- here's your funding.

3 A I called the bank right there in front of her.

4 Q Called which bank?

5 A The one that she say funded her, that she got the
6 loan with. We called them right there in front of her.

7 Q She told you she'd gotten a loan?

8 A The people at the bank said we have received
9 everything on a Mazda 6 and her first payment is due on
10 such and such date.

11 Q What? Who knew to call this bank?

12 A She -- when I printed this.

13 Q Yes, sir.

14 A It said right there, Sovereign Bank.

15 Q Yes, sir.

16 A So, I mean, all I had to do was dial the number.

17 Q And did you dial that number?

18 A I dialed that number.

19 Q And did you speak to Kelly?

20 A No, I don't necessarily remember who I spoke to, but
21 it was a woman.

22 Q Well, let me see if I understand you correctly. On
23 whatever date it is you had this conversation, you could
24 have gone to your accountant and have them push a button
25 on the computer --

1 A I wanted her to make sure --

2 Q -- and push a button and have a printout that we have
3 received the funds, you could have done that? Isn't that
4 your testimony?

5 A I guess I could have done that.

6 Q Yes, sir.

7 A But--

8 Q And you didn't, you didn't do that?

9 A Once I printed this, she didn't believe it. So I
10 figured--

11 Q Well, let's--

12 A -- best thing to do was to get someone on the phone
13 that was a neutral party, put it on loud speaker and we
14 could hear it together.

15 Q The fact of the matter is there was good reason not
16 to believe that, was there not?

17 A I guess if you're trying to get out of the loan, then
18 I guess you'll try to find every reason to get out of the
19 loan.

20 Q Well, if I had--

21 A Her wanting to get out of the loan wasn't because she
22 received all these letters. Her wanting to get out of the
23 loan was so that she could go get a car for cash and not
24 have a payment.

25 Q Well --

1 A -- which she should have thought about 30 days before
2 she came to see me.

3 Q Well--

4 A I've been working for free.

5 Q You don't think she had any reason at all to be
6 concerned about what you say was proof she'd been funded?
7 Is that your testimony?

8 A Excuse me?

9 Q You don't think she had any reason at all to be
10 concerned about that document?

11 A Not if she wanted the car, no. If she wanted the
12 car, the last thing she should have been concerned with,
13 after I told she's been approved and funded, was her
14 keeping the car and knowing when her first payment was
15 due.

16 MR. TOAL: No further questions.

17 MR. STUDEMEYER: I don't have any further
18 questions of this witness, Your Honor.

19 THE COURT: You may step down. Thank you.

20 MR. STUDEMEYER: Your Honor, can he be excused?
21 I think he's working today.

22 THE COURT: Do you have any objection?

23 MR. TOAL: No objection.

24 THE COURT: You may be excused. Thank you very
25 much.

1 Before we call the next witness, let's just take
2 a brief break.

3 MR. STUDEMEYER: Okay. Thank you, Your Honor.

4 (A break was taken.)

5 THE COURT: Mr. Studemeyer, you may call your
6 next witness.

7 MR. STUDEMEYER: Russ McFall.

8 RUSSELL MCFALL, after being duly sworn,
9 testified as follows:

10 THE COURT: Thank you. If you'd have a seat and
11 state your full name, please.

12 THE WITNESS: Russell Andrew McFall.

13 DIRECT EXAMINATION

14 BY MR. STUDEMEYER:

15 Q Okay. Russ, how old are you?

16 A Forty-nine.

17 Q And what do you do for a living?

18 A I'm the treasurer at Dick Smith Automotive Group.

19 Q Okay. What professional licenses do you hold?

20 A I'm a certified public accountant.

21 Q Okay. And how long have you been with Dick Smith?

22 A A little over 20 years.

23 Q Okay. What are your duties and responsibilities at
24 Dick Smith?

25 A Well, as I said, I'm the treasurer. I help oversee

1 accounting. We have six stores around the city and the
2 state and I help manage the bank account. I help manage
3 officer managers at the stores.

4 Q Okay.

5 A We have a corporate office staff, I help manage them,
6 too.

7 Q All right. And where is your office physically
8 located?

9 A Beltline Boulevard.

10 Q Okay. Are you familiar with this transaction
11 involving Ms. Latoya Brown?

12 A Yes.

13 Q Okay. Are you familiar with when the funding by
14 Sovereign Bank was given to Dick Smith?

15 A Yes.

16 Q Can you tell the Court when that was?

17 A The money actually was put into our bank account by
18 Sovereign Bank on June 26, 2007.

19 Q Okay. Now, I want to back up for a minute and ask
20 you if you can tell the Court how the receivable is
21 tracked from the time that a vehicle is delivered, like it
22 was to Ms. Brown, until the time that you receive funding,
23 can you do that?

24 A Sure. Well, from upstairs, I meant -- well,
25 downstairs they sell the vehicle. If it's a financed

1 deal, which this was, then the package of documents comes
2 upstairs. We have four ladies assigned to different
3 stores and they take the package of documents, break it
4 down, send the documents necessary to get the deal funded
5 at the bank, send that to the bank.

6 At that point we enter the deal in an Excel
7 spreadsheet. It's also in our -- we use an ADP computer
8 system, so it's kind of a dual control, and at that point
9 we keep an eye on that deal until we get our funding
10 notice.

11 Q Okay.

12 A At which point, we post it into our accounting
13 system. We take it out of the Excel spreadsheet.

14 We have what we call an unfunded list, which is
15 a list of deals we have submitted to the bank, and as we
16 get funded, we take them off of the list.

17 Q All right. And who is the unfunded list given to?

18 A It's given to the -- it's given to ownership. It's
19 given to the store manager. It's given to the finance
20 managers.

21 Q Okay. In this case, that would have been Kent
22 Guthrie?

23 A Kent Guthrie.

24 Q Okay. And there's a shared responsibility to watch
25 the money, see that the money's coming in?

1 A Yes.

2 Q Okay. Now, at what point is the company notified or
3 how is the company notified that a deal has been funded?

4 A Well, we have, I don't know the exact number but 25
5 or 30 different sources being BB&T, Wachovia, Sovereign,
6 M&T, just numerous banks. Some are funded -- the money's
7 actually -- we sign up agreements with these finance
8 sources and as they fund them, they put the money in our
9 account and send us a confirmation through via fax
10 usually, and some sources actually pay by check.

11 Q Okay. Let me ask you if you recognize this document.

12 A Yes.

13 Q And what is that?

14 A This is the funding notice.

15 Q On this transaction?

16 A On this transaction.

17 Q And for how much money?

18 A \$13,091.

19 Q Is that the amount financed on this contract?

20 A Yes.

21 Q And this is a funding notice from whom?

22 A Sovereign Automotive Group.

23 MR. STUDEMEYER: All right. I would offer this
24 in evidence, Your Honor, as Defense Exhibit No. -- I don't
25 know where I am -- 5.

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1 THE COURT: Without objection?

2 MR. TOAL: Without objection.

3 THE COURT: It's admitted.

4 (WHEREUPON, Defendant's Exhibit No. 5 was marked
5 for identification and received into evidence.)

6 BY MR. STUDEMEYER:

7 Q So, Russ, would it be fair to say that if Ms. Brown
8 has already testified that she returned the car on
9 June 29th of 2007, that you had been given notice of
10 funding four days before that?

11 A The money was actually in our bank account June 26th.

12 Q Okay. And can you explain why there is a difference
13 between the date you received funding notice and the date
14 it actually hit your bank account?

15 A I assume that -- I didn't check the date. I assume
16 the date was the 25th or the 26th.

17 Q Okay.

18 A There is a day.

19 Q Okay.

20 A A day lag just for the money to move.

21 Q All right. What accounting entries, if any, do you
22 make in the ordinary course of business when you receive
23 funding on a contract?

24 A In that instance, we -- that's the funding letter --
25 we make an entry, an accounting entry, debit, cash, and

1 credit the customer receivable.

2 Q Okay. And have you printed out from your computer
3 screen an entry where this funding took place?

4 A Yes.

5 Q Do you have that with you?

6 A It's in my folder.

7 Q Would your records show the date and time that you
8 made that entry?

9 A Yes, sir.

10 Q Okay. Can you show that to us?

11 A Yes. The entry was made June 26th, '07 at 10:22 a.m.

12 Q All right. Now, what are you referring to?

13 A The funding from Sovereign Bank for Latoya Brown for
14 \$13,091.

15 Q All right. But what are the two documents that you
16 have in your hand?

17 A This is an AEP that our computer system -- it's just
18 a print screen from my desk of the entry we made. Is that
19 what you're asking?

20 MR. STUDEMEYER: I think so. All right. Can we
21 mark those, then?

22 And I would offer these, Your Honor, as Defense
23 Exhibits No. 6 and 7.

24 THE COURT: Any objection?

25 MR. TOAL: I don't know, Your Honor.

1 Without objection, Your Honor.

2 THE COURT: They're admitted.

3 (WHEREUPON, Defendant's Exhibits Nos. 6 AND 7
4 was marked for identification and received into
5 evidence.)

6 BY MR. STUDEMEYER:

7 Q Now, is there any other documentation that you have
8 showing when you received this funding?

9 A I've given you the bank statement, I've given you the
10 confirmation.

11 Q What bank statement are you talking about?

12 A I mean, have I not given it to you? I'm sorry. We
13 actually have a copy of the June 26th entry in our bank
14 statement.

15 Q And do you have that with you?

16 A Yes, sir.

17 MR. TOAL: No objection.

18 MR. STUDEMEYER: Defense Exhibit 8 without
19 objection.

20 (WHEREUPON, Defendant's Exhibit No. 8 was marked
21 for identification and received into evidence.)

22 BY MR. STUDEMEYER:

23 Q Russ, let me show you what's been marked as Defense
24 Exhibit No. 8 that's in evidence. What specifically on
25 that document addresses funding in this particular

1 instance?

2 A Well, it's June 26th, it's \$13,091, and it states
3 Sovereign Bank.

4 Q Thank you. Russ, can you explain to the Court what
5 has to happen before a contract like the Latoya Brown
6 contract in this case is actually funded and you receive
7 the money? What process does the dealership have to go
8 through before you get the money?

9 A Well, the deal and all the paperwork comes upstairs.
10 We have office staff, three or four ladies, they take the
11 deal, they pull out the documents that are pertinent that
12 the bank needs, they package it up, we send it to the bank
13 and wait for approval.

14 MR. STUDEMEYER: Okay. That's all the questions
15 I have, Your Honor.

16 THE COURT: Any cross?

17 CROSS-EXAMINATION

18 BY MR. TOAL:

19 Q Do you care to tell us which automobile was financed?

20 A According to this piece of paper, it says a 2005
21 Nissan Altima V6.

22 Q Did you ever get funding for a Mazda?

23 A Yes, we did.

24 Q Okay. And when was that?

25 A June 26th, 2007, as it says on that bank statement.

1 Q Well, you got funding for an Altima according to this
2 Exhibit No. 5. Did you get two checks? Let's see.

3 A Well, it wasn't a check.

4 Q Okay. How many times do you see an entry for
5 \$13,091?

6 A One time.

7 Q And your records show you got that for an Altima?

8 A Actually, no. Our records show that we got 13,091
9 for a Mazda. This isn't our record.

10 Q I thought you just introduced that as proof of what
11 Sovereign Bank did? Was I wrong?

12 A Is that a question?

13 Q Yes, sir.

14 A Ms. Brown bought a Mazda --

15 Q She certainly did.

16 A -- for \$13,091 and we were funded June 26th.

17 Q And you were funded for what sort of automobile
18 according to the letter that's in your records?

19 A According to this letter, it does say an Altima.

20 Q And do you have a letter that says her Mazda has ever
21 been funded?

22 A Do I have a letter? No, sir.

23 Q From Sovereign?

24 A I don't have a letter.

25 Q Do you have any other bank entry for \$13,091 which

1 would represent a Mazda deposit?

2 A No, sir. But this 13,091 was for a Mazda.

3 Q Well, let me show you Plaintiff's 11. Did this come
4 out of your office?

5 A This is a Sovereign Bank application status.

6 Q Yes, sir. Does your office get those status letters?

7 A This actually goes to the finance manager.

8 Q Well, you're familiar with that? You're over all of
9 that, aren't you?

10 A I'm looking at it now, yes, sir.

11 Q And it talks about finance on what kind of
12 automobile?

13 A It says a '04 Nissan Altima.

14 Q And whose name does it have on it as the person who's
15 being financed?

16 A Latoya Brown.

17 Q And Latoya Brown is the one who they confirmed a loan
18 on an Altima; is that correct?

19 A This piece of paper says an Altima.

20 MR. TOAL: I don't have any further questions.

21 MR. STUDEMEYER: Nothing further, Your Honor.

22 Can this witness be excused as well?

23 MR. TOAL: No objection.

24 THE COURT: You may be excused. Thank you.

25 Just make sure you leave any documents that have stickers

1 on them.

2 You may call your next witness.

3 MR. STUDEMEYER: Kent Guthrie, Your Honor.

4 KENT GUTHRIE, after being duly sworn, testified
5 as follows:

6 THE COURT: Have a seat and state your full name
7 and spell your last name, please.

8 THE WITNESS: Kent Campbell Guthrie,
9 G-U-T-H-R-I-E.

10 THE COURT: Thank you.

11 DIRECT EXAMINATION

12 BY MR. STUDEMEYER:

13 Q Kent, let me start with a real easy question first.
14 Did Ms. Brown ever sign a contract to buy a Nissan Altima?

15 A No, sir.

16 Q Did you ever try to get her to buy a Nissan Altima?

17 A No, sir.

18 Q Did you ever submit any contract for funding to
19 Sovereign Bank for a Nissan Altima?

20 A No, sir.

21 Q Now, let's back up. How old are you?

22 A Thirty-four.

23 Q And where do you live?

24 A Ridgeway, 1450 Lake Road.

25 Q Where are you from originally?

- 1 A California.
- 2 Q And how long have you lived in this area?
- 3 A Seven, over seven years.
- 4 Q Married?
- 5 A Yes.
- 6 Q Got kids?
- 7 A Yes.
- 8 Q And what do you do for a living?
- 9 A I'm the finance manager at Dick Smith.
- 10 Q How long have you been there?
- 11 A With Dick Smith, three and a half years; finance, ten
- 12 years.
- 13 Q Now, do you recall Ms. Brown?
- 14 A Yes.
- 15 Q Okay. And just tell the Court about your dealings
- 16 with Ms. Brown. When was the first time you ever heard of
- 17 her?
- 18 A End of May.
- 19 Q Of?
- 20 A Of 2007.
- 21 Q Okay. And how was her name -- how did her name come
- 22 to your attention?
- 23 A Robert Hiller brought me her information to purchase
- 24 a vehicle.
- 25 Q Okay. And tell us what your duties and

1 responsibilities are as a finance manager.

2 A As a finance manager, it's my responsibility to make
3 sure we can get everybody approved on a vehicle, get the
4 documentation together for the bank, whatever they
5 require, each time's different, submit that documentation
6 to the bank and then get funded on the loan.

7 Q Okay. All right. Let me ask you, the first time you
8 heard of Ms. Brown, were any documents given to you?

9 A No.

10 Q Okay. What, if anything, were you told about
11 Ms. Brown?

12 A That she was interested in buying a vehicle. Robert
13 Hiller had taken some preliminary information to try and
14 get her approved and brought it to me. That way I could
15 submit the application to a bank to try to obtain
16 pre-approval on a vehicle. And then once they have done
17 that, he called her in and showed her some vehicles.

18 Q Okay. Now, what information would have been given to
19 you about Ms. Brown to get her pre-qualified?

20 A Her name, address, phone numbers, job information,
21 Social Security number, the type of car she's looking at,
22 or in a roundabout way, you know, four door, automatic, if
23 she wants a truck, and then we use a system called
24 DealerTrack that submits the information via
25 electronically or the Internet. And then once we do that,

1 I'll send it to more than one bank and then I start
2 talking to the banks to try to obtain financing. We have
3 to negotiate with them on different types of levels just
4 to try and get an approval.

5 Q So there's a negotiation process between you as the
6 finance manager and a lender?

7 A Oh, yes.

8 Q Okay. Tell us about that.

9 Let me back up, first of all.

10 Tell me in this particular instance as best you
11 can recall what you actually did. And what is
12 DealerTrack, by the way?

13 A DealerTrack is a system that the dealerships sign up
14 for and way back when you had to fax everything in before
15 the Internet came about.

16 Q Fax everything to this --

17 A Fax the information into the bank to initially give
18 them the information like credit app and name and address
19 and everything like that. But now DealerTrack is a system
20 where you can type it in on a web-based server and it goes
21 to multiple banks at the same time, so it speeds up the
22 process.

23 Q Okay. And is that what you did in this case?

24 A Yes.

25 Q Okay. And do you recall who you submitted

1 information to, to arrange financing?

2 A I recall based off of her letters and then a couple
3 of other banks. We have many resources to send it to, but
4 ultimately part of my job is to send it to the banks and
5 then get it approved by at least one.

6 Q Okay. Now, Ms. Brown mentioned something about BB&T.
7 Would you have had any reason to submit her credit
8 information to BB&T?

9 A Yes, she was a recent college grad and they have a
10 college grad program.

11 Q BB&T did?

12 A Right.

13 Q Okay.

14 A And we have to submit that information to each bank
15 and some will say yes and some will say no. Even though
16 she was a college grad, they have different requirements.

17 Q Okay. Now, let me ask you if you recognize what's
18 been marked as Plaintiff's Exhibit No. 11.

19 A Yes, sir.

20 Q Okay. And what is that?

21 A That's the initial application status for when we get
22 an approval.

23 When we send in an approval, we have to put some
24 sort of collateral, and being a Nissan store, we always
25 send in a Nissan or, you know, a car that fits the

1 requirement that the salesperson's talked about, you know,
2 payments, amount of money, so forth.

3 And then once they get the information, the bank
4 will either turn it down or call me and we'll negotiate.

5 In this instance, Robert had mentioned that he
6 knew her as a sorority sister and he had worked at Dick
7 Smith at the time for 15 years, so to negotiate I
8 mentioned that to Sovereign because that way, in essence,
9 that we knew where she'd be if something did go wrong and
10 we could track her down.

11 Q You were asking Sovereign for a favor to try to help
12 her get financed?

13 A Right.

14 Q Okay. Now, there's some mention in that document,
15 Exhibit No. 11, about \$2,800 a month.

16 A Uh-huh.

17 Q Tell us about that. What is that?

18 A That is them requiring, letting me know that they
19 require proof of income on the application to get it
20 funded.

21 Q All right. Did Ms. Brown have proof of \$2800 a
22 month?

23 A No.

24 Q Okay. So was this a final approval that you had?

25 A Not the final, no.

- 1 Q This was a preliminary?
- 2 A Preliminary, correct.
- 3 Q Contingent upon showing \$2,800 a month?
- 4 A Or proof of income, yes.
- 5 Q And she didn't have that?
- 6 A Correct.
- 7 Q So what, if anything, did you submit to Sovereign as
- 8 to what income she did have?
- 9 A We told her we needed her pay stubs and a job letter
- 10 for the new job that she's starting and then we fax that
- 11 into the bank up front and they'll change the status and
- 12 accept that income and then give me a final approval.
- 13 Q Okay. Do you know what her actual income was?
- 14 A Yes.
- 15 Q All right. And what was that?
- 16 A She had a job letter from Allen University stating 40
- 17 hours a week at \$10 an hour, which equates to seventeen
- 18 twenty per month and then she had a second job at Shoney's
- 19 as a waitress.
- 20 Q Okay. And about how much income did she get from
- 21 that?
- 22 A She had said with tips and everything it was about a
- 23 thousand dollars.
- 24 Q Okay. So is that the information that was submitted?
- 25 A I submitted --

1 Q Let me ask you this. What proof of income were you
2 required to submit to Sovereign?

3 A The job letter and a pay stub from Shoney's.

4 Q Is that what you submitted?

5 A Yes.

6 Q All right. Let me ask if you recognize this
7 document.

8 A Yes, it's the letter she brought me.

9 Q That is a letter from?

10 A Allen University for her new employment starting
11 June 9th, 2007 at \$10 an hour, 40 hours a week.

12 Q And this was supposed to be her proof of income?

13 A Correct.

14 MR. STUDEMEYER: Can we mark this, please?

15 MR. TOAL: Without objection.

16 THE COURT: It's admitted.

17 (WHEREUPON, Defendant's Exhibit No. 9 was marked
18 for identification and received into evidence.)

19 BY MR. STUDEMEYER:

20 Q Let me ask if you recognize this document.

21 A Yes, this is the pay stub she brought me from
22 Shoney's.

23 MR. STUDEMEYER: All right. Let's mark that.
24 This will be Exhibit No. 10.

25 THE COURT: Without objection?

1 MR. TOAL: Yes, ma'am.

2 (WHEREUPON, Defendant's Exhibit No. 10 was
3 marked for identification and received into
4 evidence.)

5 BY MR. STUDEMEYER:

6 Q Kent, let me ask you something. When you submit
7 qualifying information about a customer to a bank, do they
8 just take your word for it?

9 A Sometimes if the credit is excellent or established.

10 Q Okay.

11 A She was limited, so we needed proof.

12 Q Okay. And do you know what underwriting process
13 Sovereign or any other lender goes through?

14 A Yes.

15 Q Okay. What do they do?

16 A They verify employment, references if need be, proof
17 of insurance, documentation on all the paperwork we send
18 them, signatures, collateral, the car she brought, terms.

19 Q Okay.

20 A And they call anybody, if they have to, for
21 verification.

22 Q Okay. Now, do you recall meeting with Ms. Brown and
23 having her sign paperwork and so on?

24 A Yes, sir.

25 Q And the only contract that she signed was a contract

1 to buy a Mazda?

2 A Correct.

3 Q She never signed a contract to buy a Nissan?

4 A No.

5 Q And you never submitted a contract on a Nissan for
6 funding to any lender?

7 A No.

8 Q Okay. So there should be no confusion about what car
9 she bought?

10 A Correct.

11 Q Or any confusion about what car she got approved on?

12 A Correct.

13 Q Or any confusion about the car she got funded on?

14 A Correct.

15 Q And it would be fair to say that the only car that
16 she got funded on was the Mazda?

17 A Yes, sir.

18 Q All right. And with regard to the process, I think
19 she testified that she knew the deal was accepted because
20 it had the signature of a manager on the bottom of the
21 buyer's order, right?

22 A Yes.

23 Q And she was approved?

24 A Yes.

25 Q And she was funded?

1 A Yes.

2 Q On a Mazda?

3 A Yes.

4 Q And that was before she brought the car back?

5 A Yes.

6 Q Okay. Now, tell us, if you would, what you do to
7 track unfunded contracts from the time they're submitted
8 until the time they're actually funded.

9 A After we get all the documentation together, we put
10 it in a folder and it goes upstairs and then upstairs
11 breaks down the deals and sends the information to the
12 bank and then a list is generated that is handed to me of
13 all the deals that we have that are unfunded at that time
14 of the month. The list can be five to 30, so we monitor
15 it daily. And then once we get funded, it comes off the
16 list.

17 Q So would a contract or a funding expectancy of, say,
18 \$13,091 from Sovereign Bank been given to you on a daily
19 basis from the day she signed the installment contract to
20 buy the vehicle?

21 A As soon as they turned the deal in, yes.

22 Q Okay. And you would have gotten a statement like
23 that every day until it was funded?

24 A Uh-huh.

25 Q Is that yes?

0130

1 A Yes. Sorry.

2 Q Now, when was the first time that it was brought to
3 your attention that Ms. Brown had brought the vehicle
4 back?

5 A After Robert found it at the dealership.

6 Q Okay. So Robert told you about it?

7 A Uh-huh.

8 Q Okay. Let me ask if you recognize this document.

9 A Yes.

10 Q And what is that?

11 A It's a letter to us stating that the 2005 Mazda M6
12 from Sovereign Bank was repossessed on 9-28-2007 and it's
13 requesting us to cancel any service contracts based off
14 the date of June 1st, 2007 and mileage of 44,262.

15 MR. STUDEMEYER: I would offer this in evidence,
16 Your Honor, as Defense Exhibit No. 11, I think.

17 THE COURT: Without objection?

18 MR. TOAL: Without objection, Your Honor.

19 THE COURT: It's entered.

20 (WHEREUPON, Defendant's Exhibit No. 11 was
21 marked for identification and received into
22 evidence.)

23 BY MR. STUDEMEYER:

24 Q Kent, whenever you submit an installment contract to
25 Sovereign Bank or letters like that that's approved and

1 funded, does the lender generally send a payment book to
2 the customer?

3 A Either a monthly statement or a payment book,
4 depending on the bank.

5 Q Did you have any contact with Ms. Brown after she
6 took delivery of the car where she raised any concerns
7 about rejection letters she'd received from any lender?

8 A No.

9 Q So the first time you knew there was any issue with
10 this transaction was after she brought the car back and
11 Robert Hiller found out about it and told you?

12 A The only other time was Robert had asked me for proof
13 that the loan was approved and I gave him that, but
14 nothing about returning the vehicle. It was just concerns
15 of whether she'd been approved or not.

16 Q Okay.

17 A And then after she returned it is the first time that
18 I heard about her returning it.

19 THE COURT: I'm sorry, I didn't hear the end of
20 that.

21 THE WITNESS: I heard about her returning it.
22 Sorry.

23 MR. STUDEMEYER: That's all the questions I
24 have, Your Honor.

25 THE COURT: Any cross?

1 MR. TOAL: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. TOAL:

4 Q You say Robert came to you and asked you for proof
5 that the loan had been approved?

6 A Yes, sir.

7 Q And did you hand him what has been marked State's
8 (sic) Exhibit 11?

9 A Yes, sir.

10 Q When was that?

11 A I don't know the exact date, sometime after she took
12 delivery of the vehicle.

13 Q And was it near the time of the return of the
14 vehicle?

15 A No, it had to be at least a week or more before I
16 found out. I was the last one to find out.

17 Q All right. Now, do you find out when the banks send
18 rejection letters?

19 A No. I know how some of them, the procedures are, but
20 I don't know when they send them, no.

21 Q So you wouldn't have known that Sovereign Bank sent a
22 rejection letter on the 25th?

23 A No, I would not.

24 Q And this so-called proof of funding is funding for
25 which automobile?

1 A This is proof of the preliminary approval on this
2 document. This is not funding.

3 Q Okay. So when it's checked "approved," it's not
4 approved at all?

5 A The loan application is approved for a vehicle.

6 Q The loan application is approved?

7 A Yes. And then we have to satisfy their requirements
8 of the documentation.

9 Q At that time the loan has not been funded?

10 A Correct.

11 Q And so under the contract, if she had left it on that
12 day, it would have been all right?

13 A On what day?

14 Q On the day you presented this proof.

15 A I don't know because I don't know what day it is. It
16 could have been after the day it was funded, but there's
17 no way to verify that.

18 Q Well, I thought you said it was maybe a week ahead.

19 A And I was the last one to find out, which was well
20 after she'd dropped off the car. So I was the last person
21 to find out when she dropped it off.

22 So from that point on I have no idea when she
23 did it, and then this could have been printed after we got
24 funded.

25 Q Well, if it were printed after you got funded, why

1 didn't you show her something with the actual printing on
2 it?

3 A I wasn't asked to. Robert asked --

4 Q Weren't you asked -- excuse me. Go ahead.

5 A Robert asked me to show her that she was approved,
6 that that was the question at hand at that time and she
7 was approved for a vehicle.

8 Q She wasn't approved for the vehicle she bought?

9 A Oh, yes, she was. She was approved for more. On
10 this application status they approved up to 13,545 on a
11 2004 Altima. But whenever you submit a loan, you just
12 initially send it on the type of vehicle that she is
13 interested in, four door, amount of money, that way the
14 banks get an idea of what you're looking at. You can
15 always switch collateral. It's just a phone call. But
16 the system when you send it in, which is DealerTrack where
17 this was printed up, the DealerTrack does not change the
18 collateral. The bank changes it internally.

19 Q Was it your notion to convert fraternity acquaintance
20 to family on the request for approval?

21 A He said that she was a sister and, of course, it's my
22 job to negotiate a loan, so anything that might help, her
23 knowing somebody or knowing somebody, Robert Hiller knew
24 her friends, I guess, is what I was told and had sold
25 their family many a car.

1 Q And so you told them it was a family member who had
2 worked for 15 years?

3 A He did work for Dick Smith for 15 years at that time.

4 Q Yes, sir, but he wasn't a family member?

5 A He was a sorority sister.

6 Q He was a sorority sister?

7 A She was. I'm sorry, he was the brother. I'm sorry.

8 Q Okay.

9 A But it wasn't out of fraud or anything. It's help to
10 help out her if she wanted to buy a car and get her the
11 best approval possible.

12 I could have easily have gone to a secondary
13 bank and charged her 19, 20 percent interest, 24 percent
14 interest.

15 Q Well, now, let's see whether you could or not. If
16 you did that, she would have to sign a new contract,
17 wouldn't she?

18 A Well, we already had the approval. That's why. We
19 already had approval up front so we didn't --

20 Q You told her what her payments were going to be,
21 didn't you?

22 A We discussed them, yes.

23 Q All right. And if you changed the payments you'd
24 have had to get a new contract, correct?

25 A Yes, we'd have to have a new contract signed.

1 Q Yes, sir. So if you had changed the payments she
2 could have changed the car?

3 A If at any time she's requested to sign a new contract
4 and she doesn't sign it, then she cannot sign it and then
5 there's no deal.

6 Q Exactly. Now, we have something from Sovereign
7 saying that they repossessed a Mazda. Have you got
8 anything saying they ever funded a Mazda?

9 A The dollar amount from the funding notices from the
10 electronic wire for the 13,091.

11 Q Do you have the fax that you sent them for funding?

12 A The documentation?

13 Q No, the fax that you sent them.

14 A I don't understand the question.

15 Q Well, you said you faxed all the information to them.

16 A Right.

17 Q Do you have a copy of the fax that you sent?

18 A I have a copy in the file. There's a copy to Kelly
19 where I faxed over to them some of the information, yes.
20 We have to fax over the contract and the proof of income
21 and everything.

22 Q I was handed that. Is that what you're talking
23 about?

24 A That's the cover page, yes.

25 Q All right.

1 A That's abbreviated for documentation.

2 Q And do you have any confirmation that shows how many
3 pages you sent and what you sent?

4 A Our fax isn't set up that way, no, but there is
5 copies of the contracts that I faxed them.

6 Q How many times did you talk to Ms. Brown?

7 A I talked to her when she bought the car. I believe
8 that was the only time. And then one other time when she
9 was dropping off the documentation. That was twice I
10 would say.

11 Q And you had no conversations with her about
12 repossession?

13 A No, sir.

14 Q Did you ever talk to her about whether the loan had
15 been approved?

16 A I told her the day she bought the car it was
17 approved.

18 Q And it hadn't been?

19 A The loan application had been approved.

20 Q And she hadn't submitted any documents or anything
21 and you had a loan application approved?

22 A Yes.

23 Q Oh.

24 A That's why she was required to bring back the
25 documentation, because the bank requested it, and she

1 brought back the proof of insurance and the letter.

2 Q I'm a little confused. Are they approved or are they
3 conditionally approved or are they sort of approved?

4 A Every loan is conditionally approved.

5 Q Conditionally approved?

6 A Even if you have excellent credit or you've been
7 established a long time, because when you come in the
8 dealership can't get the money right away, so whenever
9 somebody comes in with the information, I apply for the
10 loan, they'll give us a conditional approval based on
11 whether we need to prove income or we need to do this or
12 there's a lot of different ways. And then it's our job as
13 the dealership to get the documentation together, mail it
14 off to the bank, and when the bank receives it they
15 finalize the loan and fund it, but everybody is
16 conditionally approved.

17 Q How were you able to get around the condition
18 regarding her finances? Who did you talk to about that?

19 A Finances? What do you mean?

20 Q Well, the conditional approval or whatever it is that
21 Document 11 says, that she has to have proof of a certain
22 income which she did not have.

23 A Well, that was easy: I faxed them the pay stubs.

24 Q Well, the pay stubs didn't come up to that amount.

25 A Correct. And also it's a lower amount, so they

1 accepted it, because once they get it up front, I fax it
2 in. If there's any changes then I fax it in and they look
3 at it, they accept it, and then they finalize the loan.

4 Q Well, the reason for my question is this. I find
5 that if a bank requires a certain amount of income and you
6 come in with less, they don't give you the loan. Did you
7 have to do anything to make her loan satisfactory to
8 Sovereign?

9 A Supply the documentation. I called them and told
10 them I was faxing it over and told them that we're
11 switching from a 2004 Nissan Altima to the Mazda, gave
12 them the information on the income, they made the decision
13 to accept it. Had they not made the decision to accept
14 it, they would have told me and then I would have had
15 another car.

16 Q Is your file here?

17 A I believe so, yes.

18 Q May I? Could you come get it, please, sir?

19 MR. STUDEMEYER: No, you don't have to do that.
20 Is there something in particular you want?

21 MR. TOAL: Yes. I'd like the document which
22 shows you changing from the Altima to the Mazda.

23 MR. STUDEMEYER: Your Honor, I have copies and
24 these are original documents, so whatever Mr. Toal wants
25 to look at and mark, that's fine.

1 BY MR. TOAL:

2 Q Sure. I'll bring it to you.

3 I believe you're showing me just the contract;
4 is that correct?

5 A Right.

6 Q And that's the only thing that would have --

7 A I copied this and faxed it to them with the pay stubs
8 with this page as the cover page and this shows the Mazda
9 VIN number, the terms of the contract.

10 MR. TOAL: That's all I have, Your Honor.

11 MR. STUDEMEYER: I don't have any further
12 questions, Your Honor.

13 THE COURT: At the time that she signed the
14 contract, you're telling me that funding had been
15 conditionally approved?

16 THE WITNESS: The application -- when she signed
17 the contract, the application had been approved on the
18 loan, yes.

19 THE COURT: And according to you, she was
20 approved up to?

21 THE WITNESS: \$13,545, based off Exhibit No. 11.

22 THE COURT: And at the time that she signed the
23 contract, did you discuss with her what her payments were
24 going to be?

25 THE WITNESS: Yes, ma'am.

1 THE COURT: And did she sign the documents that
2 would have reflected what those payments would have been?

3 THE WITNESS: Yes, the retail installment
4 contract.

5 THE COURT: Okay.

6 THE WITNESS: Which is -- I don't know if you
7 have that.

8 THE COURT: I don't have that document.

9 THE WITNESS: That was the last thing he just
10 asked me for.

11 THE COURT: And does the document disclose who
12 the funding would be with?

13 THE WITNESS: No.

14 THE COURT: Can you tell me where on the
15 document and maybe I'm overlooking it, it gives -- oh, I
16 see, 63 payments of \$286.16 beginning July 16th of 2007?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: And I'm looking at Defendant's
19 Exhibit No. 3.

20 Was she provided any information as to where she
21 should send her first payment and who was going to be
22 funding the loan?

23 THE WITNESS: No, ma'am. Whenever they're
24 conditionally approved and we don't have all the
25 documentation in-house via the pay stub, proof of

1 insurance, anything like that, the retail installment
2 contract is not assigned to a lender. At the bottom of
3 the page where my handwriting is, there's a section of
4 assignment, which it might be too small, but it says right
5 here in handwriting, "Sovereign Bank." Once I get the
6 documentation in and I get the final approval, I write in
7 the bank.

8 THE COURT: And -- I'm sorry, go ahead.

9 THE WITNESS: That way if something did arise
10 where income did come in short and they did not accept it,
11 I could try to get another bank to approve it without
12 having her to come in to sign another retail installment
13 contract as long as the terms match up.

14 THE COURT: Then at the time that she left --
15 and I assume that she left the dealership with the car; is
16 that correct?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: How does she know who is financing
19 her automobile?

20 THE WITNESS: She doesn't know one hundred
21 percent at the time. We tell customers that they're
22 approved and that you'll get your payments in a letter
23 mailed to you from the bank.

24 THE COURT: And so how is it communicated to
25 her -- is there any communication from Dick Smith to the

1 purchaser to formally notify them that their funding has
2 been finalized and this bank will --

3 THE WITNESS: Only if they call and ask. We
4 don't formally tell them, no. Our responsibility is to
5 make sure we get an approval and the loan gets processed
6 and funded, but we're not required to let the customers
7 know who approves them. They are given notice in the mail
8 and a statement.

9 THE COURT: You said that you were somewhat
10 familiar with the process when you submit a preliminary
11 application on the DealerTrack, that basically you submit
12 one application basically to multiple banks or lending
13 institutions?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: And in connection with that, do then
16 those banks follow up and provide them information about
17 their denials or about whether or not the loan has been
18 approved?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Do you have any knowledge as to why
21 Sovereign Bank would have sent her a letter saying her
22 loan application to Dick Smith Nissan on Beltline would
23 have been denied?

24 THE WITNESS: No, ma'am. I can assume, but I
25 don't know. I can guess, but I don't know.

1 THE COURT: I mean, the letter states why it was
2 denied, but I'm just asking in light of the fact that
3 there was a preliminary approval --

4 THE WITNESS: Right.

5 THE COURT: -- do you know why they would have
6 sent her a letter saying it was denied?

7 THE WITNESS: The only thing I can think of,
8 back then Sovereign was working from a hotel lobby because
9 the bank was out of Connecticut and they were coming into
10 South Carolina and they, you know, were still kind of
11 setting up camp, so to speak, and they had multiple
12 applications, but why she received a denial letter, I have
13 no idea, because we did get funded on the loan.

14 Actually, we got notice of funding on the loan
15 the day the letter was generated. We got notice that her
16 deal was being funded on June 25th, 2007, the same day the
17 letter was generated. So I have no answers to why she
18 received that.

19 THE COURT: When an automobile is -- there has
20 been testimony that the car was brought back and basically
21 that the keys were left with a receptionist. Are you
22 familiar with a process or is there any process for what
23 occurs when someone wants to come back and return a
24 vehicle?

25 THE WITNESS: In her instance? Or what happens

1 after the car has been left?

2 THE COURT: In her instance. I mean, is there a
3 protocol where she would have had to discuss it with
4 somebody before she just left it?

5 THE WITNESS: I mean normally if one of us would
6 have known about it we would have discussed it with her,
7 but after the fact, all we do is we move the car into a
8 location where the bank can come get it.

9 THE COURT: So how is it -- so anyone could walk
10 in and leave the keys with the receptionist and say, I'm
11 returning the car, and walk out and nobody would question
12 or ask or do anything else?

13 THE WITNESS: Unless the receptionist tells
14 somebody.

15 THE COURT: Okay.

16 THE WITNESS: I mean, people walk in and out of
17 the dealership all the time for parts, service, anything.

18 THE COURT: But if somebody's coming to get
19 their car serviced, they're not going to leave the keys
20 with the receptionist.

21 THE WITNESS: Right. And I can't answer that.
22 That's what I'm saying. I can't answer for that.

23 THE COURT: And so what you're saying is
24 basically nobody in the dealership would have known that
25 she left the keys or that she was returning the car and

1 was relinquishing all control over it, or as you call you
2 or your attorney calls it, abandoning the car?

3 THE WITNESS: I mean, if she spoke with somebody
4 else or spoke to the receptionist and then they got the
5 keys, I honestly can't answer that.

6 THE COURT: What did you do when you learned
7 that the car had been returned?

8 THE WITNESS: Once I learned, Hiller told me,
9 and then I went to my boss and told him hey, and Robert
10 also had told him hey, this lady is leaving the car here,
11 and then after that, that was it. I notified my boss and
12 I said, you know, if and when somebody leaves a car there
13 --

14 THE COURT: And who is that?

15 THE WITNESS: Eddie Maracich.

16 THE COURT: Maracich.

17 THE WITNESS: M-A-R-A-C-I-C-H, I believe.

18 THE COURT: And what is his position?

19 THE WITNESS: General sales manager.

20 THE COURT: And you did not attempt to contact
21 Ms. Brown after you learned that the car had been
22 returned?

23 THE WITNESS: No, ma'am.

24 THE COURT: Do you know if Mr. Maracich ever
25 tried to contact her?

1 THE WITNESS: I don't know.

2 THE COURT: And would you have provided
3 Ms. Brown the name and address where she could have made
4 the first payment in the event that she didn't receive any
5 documentation?

6 THE WITNESS: If she called and asked me for it,
7 I could, yes.

8 THE COURT: Okay. But you don't give it to them
9 at the time of closing?

10 THE WITNESS: No, I do not.
11 And cars, they don't require it.

12 THE COURT: I'm sorry?

13 THE WITNESS: Cars, they don't require it when
14 you buy an automobile. I know when you buy a house or you
15 refinance a house they'll give you a statement, but cars,
16 when you buy a car, they don't do that.

17 THE COURT: I don't have any additional
18 questions. Anything further from the parties?

19 MR. TOAL: Nothing, Your Honor.

20 MR. STUDEMEYER: Nothing, Your Honor.

21 THE COURT: You may step down. Thank you.

22 THE WITNESS: Thank you, ma'am.

23 THE COURT: You can just leave those documents.
24 Anything further from the defendant?

25 MR. STUDEMEYER: Your Honor, if you can give me

1 just a moment, please.

2 Your Honor, that's the defendant's case.

3 THE COURT: Any rebuttal testimony?

4 MR. TOAL: Yes, just briefly, Your Honor.

5 THE COURT: I'll remind you that you're still
6 under oath to tell the truth in this matter.

7 THE WITNESS: Yes, ma'am.

8 LATOYA BROWN, after being recalled and reminded
9 she is still sworn, testifies as follows:

10 FURTHER REDIRECT EXAMINATION

11 BY MR. TOAL:

12 Q When you took the car back, what did you do?

13 A I actually spoke to Mr. Kent and Mr. Hiller. I
14 actually asked them could I speak to the general manager.
15 At the time they wouldn't allow me to speak to the general
16 manager. I then went to Mr. Hiller's office with him, and
17 me and him spoke of the situation. That's when I asked
18 for the approval letter and that's when he showed me the
19 exhibit.

20 Q That's Exhibit 11?

21 A Yes, sir.

22 MR. TOAL: That's all I have, Your Honor.

23 FURTHER RECROSS-EXAMINATION

24 BY MR. STUDEMEYER:

25 Q Okay. And, Ms. Brown, there's no doubt in your mind

1 that that was on June 29th of 2007?

2 A No doubt.

3 Q Okay. And that was four days --

4 A After the letter.

5 Q Four days after Dick Smith has been funded?

6 A And I had still been contacting Sovereign Bank in
7 reference to the letter.

8 Q Okay.

9 A And --

10 Q Thank you very much.

11 A Okay.

12 THE COURT: I don't have any additional
13 questions.

14 MR. TOAL: That's rebuttal, Your Honor.

15 THE COURT: Thank you.

16 I'm sorry, I do still have some additional
17 questions, Ms. Brown.

18 You stated you went back to drop off the car --

19 THE WITNESS: Yes, ma'am.

20 THE COURT: -- you spoke to Mr. Kent and to
21 Mr. Hiller.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: And you said that Mr. Kent gave you
24 Exhibit No. 11?

25 THE WITNESS: Mr. Hiller.

1 THE COURT: Mr. Hiller.

2 THE WITNESS: When I went to his office.

3 THE COURT: Did anyone at that time tell you
4 that there had been final approval by Sovereign or contact
5 the bank to demonstrate that approval had been granted?

6 THE WITNESS: No, ma'am. The only thing I got
7 shown was this Exhibit 11 stating that I was approved, but
8 when I asked further on, he said I'm approved, but it's
9 says for a 2004 Nissan Altima. I didn't have that.

10 THE COURT: And so they never told you that
11 final approval had come in on the --

12 THE WITNESS: No, ma'am.

13 THE COURT: Did you have with you at the time
14 the denial letter, Exhibit No. 10?

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Did you show that to anybody while
17 you were there?

18 THE WITNESS: Yes, ma'am, I showed that to
19 Mr. Hiller.

20 THE COURT: Did you ever show it to Mr. Kent?

21 THE WITNESS: No, ma'am.

22 THE COURT: Were you ever told that the
23 dealership had already received funding for the vehicle?

24 THE WITNESS: No, ma'am.

25 THE COURT: Were you ever shown any of the

1 documents that have been presented today showing that
2 Sovereign had paid the \$13,051 for the car?

3 THE WITNESS: The only thing I was showed --
4 well, what I received was the notice of intent to
5 repossess, I received that. And I think I received
6 another letter that was actually presented today, but that
7 was about it.

8 THE COURT: That was all after --

9 THE WITNESS: After I returned the car and
10 everything, yes, ma'am.

11 THE COURT: Did you ever receive -- after you
12 returned the car, did you ever receive a coupon or notice
13 about payments?

14 THE WITNESS: No, ma'am.

15 Actually, when I was on the phone with
16 Mr. Hiller before I returned the car, he stated I was
17 financed through Sovereign Bank. I asked him did he have
18 any other information for me so I can go ahead and make my
19 payments up ahead of time. He said he had no other
20 information for me, they was going to send me something in
21 the mail. That's when I received the denial letter in the
22 mail. I've never received a payment book or anything.

23 THE COURT: So after July you never received any
24 payment book or anything?

25 THE WITNESS: No, ma'am.

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1 THE COURT: Okay. Do you remember when you had
2 that conversation with Mr. Hiller?

3 THE WITNESS: As far as which one?

4 THE COURT: About the payments or the
5 information you just told me about where you could make
6 the payments, your request.

7 THE WITNESS: That was probably, I want to say
8 about maybe June 20th and probably somewhere between the
9 24th.

10 THE COURT: And did you ever talk with anybody
11 in the finance department about that same information,
12 about where you could make the payments?

13 THE WITNESS: No, ma'am.

14 THE COURT: Okay.

15 THE WITNESS: The only person I had spoke to was
16 Mr. Hiller.

17 THE COURT: I don't have any additional
18 questions. Anyone else?

19 MR. TOAL: None, Your Honor.

20 THE COURT: You may step down. Thank you.
21 Anything further from the parties?

22 MR. TOAL: Nothing, Your Honor.

23 MR. STUDEMEYER: Nothing, Your Honor.

24 THE COURT: Counsel, I'm going to ask that you
25 submit to me not so much proposed orders as proposed

1 findings of fact. Well, I guess -- and to the extent that
2 there's a claim of the violation of Section 56-15-40,
3 Subsection A, which I assume that's the section we're
4 discussing because that relates to a motor vehicle dealer
5 engaged in any conduct or any action which is arbitrary or
6 in bad faith or unconscionable and which causes damage to
7 any of the parties or to the public. So to the extent
8 that there's a claim, Mr. Toal, that you're making the
9 argument that they violated that particular provision, if
10 you would specifically detail the findings that would
11 support that.

12 I think I understand the law. I mean, I think
13 it's a factual issue. It really comes down to credibility
14 and who I believe. I've got a few ideas. I'd like to be
15 able to look through the documents again.

16 It's obvious that something went very wrong
17 here. The question for me is whether or not it rises to
18 the level of violation of statute. And that's why I'm
19 interested specifically in findings of fact.

20 MR. TOAL: If Your Honor would protect his
21 motions on the record.

22 THE COURT: Yes, I will, to the extent he wants
23 to make any motions.

24 MR. TOAL: I'm sure he does.

25 MR. STUDEMEYER: You know, one thing I would ask

1 the Court to keep in mind as you take this under
2 advisement, you want proposed orders; is that what you
3 want?

4 THE COURT: Yes, sir.

5 MR. STUDEMAYER: Okay. Let me just suggest to
6 you that -- I mean, I try to be objective sometimes, you
7 know, and I know this is a tough case for Ms. Brown
8 because -- I believe what makes it tough is that she
9 received a letter from Sovereign Bank saying she had been
10 rejected. But on the same date, Dick Smith received a
11 funding notice from Sovereign Bank.

12 THE COURT: And I understand that. I guess the
13 problem I have is that nobody communicated that fact to
14 her. And I understand that the dealership may not
15 necessarily have had documents in hand to be able to show
16 her specifically that it had been approved, but the best
17 way for them to do that would be to show them the
18 documents that they had, because at least the bank
19 statement is dated the 29th --

20 MR. STUDEMAYER: Right.

21 THE COURT: -- where there's a payment for
22 \$13,000.

23 MR. STUDEMAYER: Right.

24 THE COURT: And even though there is
25 documentation about the funding that has the Nissan, at

1 least at that particular point, you know, it could have
2 been identified that there was some discrepancy as to the
3 car and to double-check all the documents and to go
4 through that process with her. And that's kind of what
5 I'm having difficulty with is whether or not there should
6 have been some additional actions taken by the dealership.

7 And everytime I've purchased a car they sure do
8 tell me who it's going to be with and they tell me where I
9 need to send my first payment just in case the paperwork
10 doesn't come through and the first payment comes due. And
11 the idea that I should -- even if I should have to call
12 them, I mean, it's given to me at the closing. I don't
13 drive off the lot without knowing where my check is going.

14 MR. STUDEMEYER: We have kind of apples and
15 oranges on that one, Your Honor.

16 THE COURT: Well, you know, and I understand --
17 as far as I'm concerned, the dealership has all the
18 technology to find out about the funding. They've got
19 everything available to them to find out what's going on.
20 And for them not to be able to communicate to them, you
21 know, sure, somebody who's calling and asking about the
22 funding and they're trying to show her it's been approved,
23 it's been approved, but they're using a different car,
24 that would create problems for me, too. I'd say exactly
25 what she said: They're talking about a different car, I

1 don't own that car.

2 MR. STUDEMAYER: Right.

3 THE COURT: That's not the car I bought. I
4 don't have to worry about it.

5 MR. STUDEMAYER: Right.

6 THE COURT: And if I'd gotten the same notice
7 saying that they were repossessing it and I had already
8 talked to the bank and the bank had told me that they're
9 going to repossess a Nissan, yeah, I think I probably
10 would have been in the same position she was in.

11 MR. STUDEMAYER: Right.

12 THE COURT: And I think there is a way that that
13 can be avoided.

14 Now whether or not that amounts to bad faith,
15 unconscionable conduct, fraud, misrepresentation, I think
16 that there's some issues and that's why I'm particularly
17 interested in Mr. Toal's argument as to how that rises to
18 that level, and I'm sure he'll make a good argument.

19 MR. STUDEMAYER: Okay.

20 THE COURT: I mean, that's where I am. There
21 was -- the dealership had all the power, and I think she
22 did everything that she could do.

23 And, you know, maybe it's not the dealership's
24 fault, maybe it's Sovereign's fault, I don't know, but in
25 light of the information that it hadn't been approved, the

1 only way for the dealership to be able to prove that had
2 been was to show we've gotten the funding, and if that
3 wasn't done, that creates a problem. And if she's
4 received all the documentation and she calls and she's
5 told by one dealer, We don't have anything else, and yet I
6 have another witness who's saying, Well, if they call me,
7 all I do is tell them, you know, when you call in, you
8 should be directed to the appropriate party.

9 MR. STUDEMEYER: But, Your Honor, please don't
10 overlook Mr. Hiller's testimony that she came in saying,
11 you know, am I approved or not, he gets on the
12 speakerphone with Sovereign Bank, yeah, we've got your
13 stuff here.

14 THE COURT: And that's why I said it's a
15 credibility call. I'm not so sure I really believe that,
16 to be honest.

17 MR. STUDEMEYER: Your Honor, I know you have a
18 lot to deal with there. I mean --

19 THE COURT: And I'm giving you the benefit of
20 what I've heard based upon hearing all the evidence at
21 this point, because it's pretty fresh right now. I mean,
22 I think I can continue to mull it over in my mind.

23 I'll be happy to read your information and I'll
24 think about it again, but honestly I found Ms. Brown more
25 credible than Mr. Hiller in the presentation, and watching

1 her on the stand and whether or not it made sense and
2 whether it was reasonable under the circumstances.

3 That's not to say that Mr. Hiller was lying.
4 I'm not trying to say that at all. I'm just saying I
5 found her testimony to be more credible about what
6 occurred because she remembered more information. And I'm
7 sure she remembered more because it deeply affected her,
8 whereas Mr. Hiller, you know, his employment is to see
9 hundreds of people and he's probably seen several since
10 that time and he may be a little fuzzier about it.

11 But there should have been some mechanism or
12 something that, you know -- and to come in and leave a car
13 and the testimony is we had no contact with anybody about
14 why the car was left, again, I just can't imagine that
15 someone could come in and drop off keys and that nobody in
16 that dealership wouldn't rush to find out what in the
17 world's going on and why a car is being returned.

18 MR. STUDEMEYER: One thing that sticks out in my
19 mind, Your Honor, and again I appreciate your willingness
20 to take it under advisement, but a couple of things that
21 stick out in my mind that I do want to mention to you is I
22 believe even Ms. Brown admitted that when she decided to
23 bring the car back, she spoke to Mr. Hiller and he told
24 her, Don't leave that car here, it's going to be a
25 repossession.

1 THE COURT: Yes. But if you can't show me that
2 I've been funded, you know, and all you've got is a
3 document that says that there was an application and by
4 all accounts it's a preliminary application on another
5 vehicle, I'd say, you know -- and I've called the bank and
6 the bank has told me no, what they've got down is a
7 Nissan, I'm not so sure I wouldn't say, Well, you all
8 figure it out, it's your car now.

9 MR. STUDEMEYER: But what about when you get the
10 notice to cure and you can still avoid the problem?

11 THE COURT: Well, she gave it to her attorney,
12 and I don't find that unreasonable. You know, I mean,
13 yeah, if I didn't already have an attorney I probably
14 would have called to find out what was going on, but she'd
15 already had an attorney and there was somebody who she had
16 turned over what I call the whole mess over to and I don't
17 think it was unreasonable at that particular point.

18 And even if I had -- I guess I could have called
19 and I could have found out what was going on, but if I'd
20 already called them and they'd already told me previously
21 that they were looking for a Nissan and I got a right to
22 cure, I would have been like, I don't know what this is
23 about, I'd take it down to the dealership.

24 I mean, and I understand your -- don't think
25 that I don't understand your position. I do understand

1 your position. But I think there's also a reasonable
2 alternative to that as well and that's why I'm saying it's
3 going to come down to a credibility issue that I'm going
4 to grapple with.

5 MR. STUDEMEYER: Thank you very much, Your
6 Honor.

7 MR. TOAL: How long?

8 THE COURT: If you all can send it to me in
9 electronic format by October 5th, or actually let's make
10 it the end of the week because I'm in a weeklong day
11 certain trial that week, so I know I won't look at it.

12 October 9th. That's a Friday. We'll go from
13 there.

14 MR. STUDEMEYER: Thank you very much.

15 THE COURT: Thank you.

16 (The proceedings were concluded.)

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF RICHLAND)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Richland County, South Carolina, on the 22nd day of
15 September, 2009.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819 April 22, 2011
2021 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

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**IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT
2008-CP-40-1839**

MOTION FOR RECONSIDERATION

NOVEMBER 15, 2010
COLUMBIA, SOUTH CAROLINA

**DICK SMITH NISSAN, INC. and)
OLD REPUBLIC SURETY COMPANY,)**

DEFENDANTS.

BEFORE: THE HONORABLE ALISON R. LEE

FOR THE PLAINTIFF

**WILLIAM T. TOAL, ESQUIRE
JOHNSON, TOAL & BATTISTE, P.A.
POST OFFICE BOX 1431
COLUMBIA, SC 29202**

FOR THE DEFENSE

J. GREGORY STUDEMEYER, ESQUIRE
POST OFFICE BOX 12201
COLUMBIA, SC 29211-2201

JO RICE
COURT REPORTER

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1 **THE COURT:** GOOD AFTERNOON, GENTLEMEN.

2 **MR. STUDEMEYER:** GOOD AFTERNOON.

3 **MR. TOAL:** GOOD AFTERNOON.

4 **THE COURT:** WE'RE HERE ON LATOYA BROWN VERSUS DICK SMITH
5 NISSAN AND THE OLD REPUBLIC SURETY COMPANY. THE PLAINTIFF IS
6 REPRESENTED BY WILLIAM TOAL. THE DEFENDANT IS REPRESENTED BY
7 GREGORY STUDEMEYER. WE'RE HERE ON A MOTION FOR RECONSIDERATION
8 THAT WAS FILED BY BOTH PARTIES AND AFTER LOOKING AT SOME OF THE
9 ISSUES, I DECIDED IT MIGHT BE BEST TO ALLOW YOU ALL TO COME AND
10 ARGUE YOUR RESPECTIVE POSITIONS AND THEN GO FROM THERE JUST TO
11 MAKE SURE THAT EVERYONE HAS THE OPPORTUNITY TO EXPRESS
12 EVERYTHING THEY WANT TO SAY. I BELIEVE THAT THE PLAINTIFF'S MOTION
13 TO RECONSIDER WAS SIMPLY TO ADD, WHAT YOU CONSIDER TO BE, SOME
14 DAMAGES THAT WERE NOT INCLUDED WITHIN THE ORIGINAL JUDGMENT. IS
15 THAT RIGHT, MISTER TOAL?

16 **MR. TOAL:** YES, YOUR HONOR. TWO OF THE ITEMS WERE INVITED BY
17 THE COURT, THAT IS: THE INTEREST AND THE ATTORNEY'S FEE AFFIDAVIT.
18 THE OTHER ONE HAD TO DO WITH THE DOWN PAYMENT ON THE INSURANCE
19 PAYMENT AND THEN FINALLY, I WANTED SOME CLARIFICATION THAT THIS IS,
20 INDEED, A JOINT AND SEVERAL LIABILITY. I WASN'T SURE FROM THE
21 WORDING OF YOUR HONOR'S ORDER. I UNDERSTAND THAT I CAN'T COLLECT
22 MORE THAN ONCE, IF I CONTINUE TO BE ABLE TO COLLECT AFTER THE
23 MOTIONS ARE HEARD.

24 **THE COURT:** OKAY. SO, WHY DON'T I GO AHEAD -- I UNDERSTAND WHAT
25 YOU ARE ASKING FOR AS IT RELATES TO THE DOWN PAYMENT AND THE ONLY

1 QUESTION THAT I HAD WAS ABOUT THE INSURANCE COMPANY PAYMENTS
2 THAT WERE MADE TO INSURE THE CAR.

3 MR. TOAL: THAT'S CORRECT.

4 THE COURT: AND I GUESS MY QUESTION THAT I HAVE ABOUT THAT IS,
5 WHILE I UNDERSTAND THAT THE CAR WAS RETURNED AND THAT SHE NO
6 LONGER HAD POSSESSION OF IT, I THINK YOU -- DID NOT THE INSURANCE
7 PREMIUMS COVER THE TIME PERIOD THAT SHE POSSESSED THE CAR OR
8 WAS IT FOR A PERIOD A LITTLE BIT LONGER THAN THAT?

9 MR. TOAL: I SUSPECT YOUR HONOR IS CORRECT.

10 THE COURT: OKAY. AND SO THEN MY QUESTION WAS, IF SHE HAD
11 KEPT THE CAR THAT SHE TURNED IN, WOULDN'T SHE HAVE BEEN MAKING
12 INSURANCE PAYMENTS ON THAT?

13 MR. TOAL: SHE WOULD HAVE, YOUR HONOR.

14 THE COURT: AND I HAD SOME QUESTIONS AS TO WHETHER OR NOT
15 SHE WOULD BE ENTITLED TO THE INSURANCE PAYMENTS. I UNDERSTAND
16 THE DOWN PAYMENT, CERTAINLY, AND PARTICULARLY IN THE SENSE THAT I
17 BELIEVE AFTER ALL THIS WAS DONE, SHE HAD NO CAR. SO, I UNDERSTAND
18 THAT SHE WOULD EITHER HAVE HAD THE USE OF HER OLD CAR IF SHE HAD
19 BEEN ABLE TO GET THAT BACK OR SHE WOULD HAVE HAD THE MONEY FOR A
20 DOWN PAYMENT TO BE ABLE TO GO OUT AND GET ANOTHER CAR.

21 MR. TOAL: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: MY ONLY QUESTION, THEN, IS ABOUT THE INSURANCE.

23 MR. TOAL: I THINK YOUR HONOR HAS IT.

24 THE COURT: AND MY OTHER QUESTION IS ABOUT THE ATTORNEY'S
25 FEES AND I BELIEVE THE OTHER ISSUE IS ABOUT JOINT AND SEVERAL.

1 **MR. TOAL:** AND THE INTEREST, YOUR HONOR.

2 **THE COURT:** AND THE INTEREST.

3 **MR. TOAL:** YES.

4 **THE COURT:** AND I DON'T THINK I HAVE A QUESTION ABOUT THE
5 INTEREST. AND MISTER STUDEMAYER, SINCE I KNOW YOU SAID THAT I WAS
6 WRONG ALL THE WAY AROUND...

7 **MR. STUDEMAYER:** I DIDN'T SAY IT QUITE LIKE THAT, YOUR HONOR.

8 **THE COURT:** YOU SAID IT A LITTLE NICER THAN THAT. I NOTICE THAT
9 YOU DID NOT SPECIFICALLY OBJECT ABOUT THE ATTORNEY'S FEES. YOU
10 SPECIFICALLY OBJECTED ABOUT THE INTEREST PAYMENTS, AND SO I TOOK
11 THAT TO MEAN THAT IF I RULED AGAINST YOU AND ALLOWED THE JUDGMENT
12 TO STAND, THAT YOU WOULD NOT CONTEST ON THOSE PARTICULAR POINTS.
13 IS THAT A FAIR STATEMENT?

14 **MR. STUDEMAYER:** WELL, HOWEVER -- I GUESS, I MEAN, I
15 UNDERSTAND WHAT THE STATUTE SAYS, THE STATUTE SAYS THAT IF THE
16 PLAINTIFF PREVAILS, THEN THEY ARE ENTITLED TO REASONABLE
17 ATTORNEY'S FEES. TO THAT EXTENT, I...

18 **THE COURT:** AND I GUESS WHAT I WAS LOOKING FOR WAS, IF YOU
19 WERE GOING TO OBJECT TO THAT WASN'T REASONABLE. I UNDERSTAND
20 WHAT THE STATUTE SAYS. I JUST DID NOT KNOW IF YOU WERE GOING TO
21 MAKE A CLAIM THAT THE ATTORNEY'S FEES WERE NOT REASONABLE OR THE
22 INTEREST WAS NOT REASONABLE UNDER THE CIRCUMSTANCES.

23 **MR. STUDEMAYER:** WELL, I PROBABLY DO, JUDGE, ON THE INTEREST
24 PART, BUT AS TO THE ATTORNEY'S FEES CLAIM, I WOULD NOT QUESTION
25 MISTER TOAL'S SUBMISSION ON THAT.

1 **THE COURT:** MISTER TOAL, DID I MISS ANYTHING? WAS THERE
2 ANYTHING FURTHER ABOUT THE JOINT AND SEVERAL THAT I DIDN'T
3 UNDERSTAND OR DID YOU JUST WANT THE ORDER TO BE A LITTLE BIT MORE
4 CLEAR?

5 **MR. TOAL:** I JUST WANTED TO MAKE SURE THAT I COULD GO AGAINST
6 EITHER, BUT I COULDN'T DOUBLY COLLECT. I JUST WANT TO BE ABLE TO
7 COLLECT ONCE.

8 **THE COURT:** AND SO, WHETHER THAT MEANS TO THE EXTENT THAT
9 DICK SMITH POSSESSES -- FOR EXAMPLE, IF THEY ONLY POSSESS SOME
10 FUNDS, YOU WANTED BE ABLE TO THEN GET THE BALANCE OF THE FUNDS
11 FROM OLD REPUBLIC. IS THAT CORRECT?

12 **MR. TOAL:** THAT IS CORRECT.

13 **MR. STUDEMAYER:** YOUR HONOR, ON THAT PART OF THAT QUESTION, I
14 PROBABLY SHOULD SPEAK UP AND TELL YOU THAT EVERY BONDING
15 COMPANY TAKES THE POSITION THAT THEIR BOND SETS THE LIMITS OF ANY
16 RECOVERY AND THE BOND SAYS, "FOR ACTUAL DAMAGES." IT DOESN'T
17 INCLUDE DOUBLE ACTUAL DAMAGES OR ATTORNEY'S FEES. I DO WANT TO
18 PUT THAT OUT THERE.

19 **MR. TOAL:** YOUR HONOR, THAT IS INCORRECT. WHAT THE BOND SAYS
20 IS, "FOR DAMAGES UNDER THE TITLE," WHICH WE SUED. THE BOND IS IN THE
21 RECORD.

22 **THE COURT:** OKAY. THE WAY I READ THE STATUTE, I DON'T -- THE WAY
23 I READ THE STATUTE, §56-15-110(1), THE DAMAGES, THE ACTUAL DAMAGES
24 ARE BASICALLY TWO TIMES THE DAMAGES PLUS THE COSTS OF THE SUIT
25 PLUS REASONABLE ATTORNEY'S FEES, BECAUSE THEN THERE ARE OTHER

1 PORTIONS THAT TALK ABOUT PUNITIVE DAMAGES AND I BELIEVE, ALTHOUGH I
2 HAVE NOT SPECIFICALLY READ THE CASE, THERE SEEMS TO BE -- THE
3 LANGUAGE, THE WAY THE CASE DISCUSSES -- AND I'M LOOKING AT THE
4 ADAMS VERSUS GRANT CASE, WHICH IS AN OLDER ONE ACCORDING TO THE
5 HEAD NOTES, THAT DOUBLE THE AMOUNT AS ACTUAL DAMAGES WOULD BE
6 CONSIDERED TO BE ACTUAL DAMAGES AS OPPOSED TO ACCORDING TO --
7 INSTEAD OF DOUBLE, IT'S ACTUAL PLUS THE PUNITIVES, SO I'LL LOOK AT THE
8 CASE LAW ON THAT AND THEN THE TOYOTA CASE TALKS ABOUT STATUTORY
9 ENHANCED ACTUAL DAMAGES, WHICH IS WHAT I THINK DOUBLE THE
10 DAMAGES WOULD BE.

11 **MR. TOAL:** IF YOU HONOR, PLEASE, IF YOU WOULD ALSO LOOK AT THE
12 ACTUAL LANGUAGE OF THE BOND, IT SAYS, "ANY OF THE PROVISIONS OF
13 TITLE 56 OF THE SOUTH CAROLINA CODE OF LAWS RELATING TO MOTOR
14 VEHICLE DEALERS" AND, IN FACT, OF COURSE THE DOUBLE THE DAMAGES IS
15 A PART OF THAT PARTICULAR PROVISION. YOUR HONOR DID NOT IMPOSE
16 PUNITIVE DAMAGES IN THIS CASE AND THAT IS NOW NO LONGER THE CASE.

17 **THE COURT:** OKAY. I WILL LOOK AT THAT. I BELIEVE THAT WAS MADE
18 AN EXHIBIT DURING THE TRIAL. I BELIEVE THAT, THEN, WE'VE DISCUSSED
19 MISTER TOAL'S MOTION AND, MISTER STUDEMAYER, LET'S TALK ABOUT
20 YOURS AND I SEE THAT YOU'VE PUT UP HERE, I GUESS THIS IS ANOTHER
21 COPY OF YOUR MOTION.

22 **MR. STUDEMAYER:** YOUR HONOR, I BELIEVE WHAT I PUT UP THERE,
23 YOUR HONOR, IS A COPY OF THE TRANSCRIPT AND A COPY OF A PROPOSED
24 ORDER THAT I SUBMITTED LAST OCTOBER.

25 **THE COURT:** OKAY. SO, THIS WAS YOUR PROPOSED ORDER.

1 **MR. STUDEMAYER:** YES, MA'AM.

2 **THE COURT:** YES, SIR. I WILL HEAR YOU ON THAT.

3 **MR. STUDEMAYER:** THANK YOU. YOUR HONOR, I WANT TO START OFF
4 WITH THIS ISSUE OF INTEREST. THAT'S NOT WHERE I INTENDED TO START,
5 BUT SINCE IT'S BEEN BROUGHT UP. WHAT IS BEING SOUGHT HERE TODAY IS
6 INTEREST ON DAMAGES THAT WERE ORIGINALLY SPECULATIVE THAT NOW
7 DON'T EVEN EXIST AT ALL AND THE REASON I SAY THAT IS, BECAUSE THE
8 UNDERLYING CLAIM FOR DAMAGES IN THIS CASE WERE BASED UPON A
9 LETTER FROM A BANK TO MS. BROWN DEMANDING A DEFICIENCY AND THE
10 REPOSSESSION AND SALE OF THE VEHICLE, ANY SPECULATIVE CLAIM FOR
11 THOSE DAMAGES HAVE NOW EXPIRED BECAUSE THE STATUTE OF
12 LIMITATIONS HAS RUN ON ANY CLAIM BY SOVEREIGN BANK AGAINST
13 MS. BROWN. LET ME KIND OF GO BACKWARDS, BECAUSE IT'S BEEN OVER A
14 YEAR SINCE WE TRIED THIS CASE AND I KNOW THE COURT HAS HANDLED
15 MANY, MANY CASES SINCE THAT TIME. THIS IS JUST KIND OF A ---

16 **THE COURT:** I DID GO BACK AND I REVIEWED THE ORDERS WHEN I SET
17 IT JUST TO TRY TO RE-FAMILIARIZE MYSELF WITH THIS CASE.

18 **MR. STUDEMAYER:** OKAY. WELL, I THINK THAT THERE ARE THREE
19 FACTS THAT UNDERLINE THE ENTIRE CASE AND THAT IS: FACT NUMBER ONE,
20 TWENTY DAYS AFTER SIGNING THE CONTRACT AND TAKING POSSESSION OF
21 THE VEHICLE, MS. BROWN ABANDONED IT. THAT WAS FACT. FACT NUMBER
22 TWO WAS: DICK SMITH, THE SELLER, HAD ALREADY BEEN PAID FOR THE
23 VEHICLE BY THE LENDER AND BOTH OF THOSE FACTS APPEAR IN THE
24 COURT'S ORDER AND THEN FINALLY, AS A RESULT OF MS. BROWN'S
25 ABANDONMENT, THE BANK REPOSSESSED IT AND SOLD IT AT A LOSS AND

1 DEMANDED A DEFICIENCY FROM MS. BROWN. I THINK ALL THREE OF THOSE
2 FACTS ARE UNDISPUTED.

3 ABOUT SIX MONTHS AFTER THE CASE WAS PRESENTED, THE COURT
4 ISSUED AN ORDER AND AS I RECALL, I HAPPENED TO BUMP INTO YOUR
5 HONOR IN THE CLERK'S OFFICE WHENEVER I HAPPENED UPON IT AND AS I
6 READ THE ORDER, I GOT TO THE CONCLUSION THAT INDICATED THAT DICK
7 SMITH HAD ENGAGED IN BAD FAITH AND WHENEVER I READ THAT
8 CONCLUSION, I WAS COMPLETELY CERTAIN THAT THE COURT HAD
9 OVERLOOKED CERTAIN MATERIAL FACTS TO COME TO THAT CONCLUSION.

10 WHAT I DID RECALL AND STILL RECALL IS THAT AT THE CONCLUSION OF
11 THE CASE, THE COURT MADE TWO OBSERVATIONS. ONE OBSERVATION, AND
12 THIS IS IN THE TRANSCRIPT I HANDED UP, ONE OBSERVATION THAT THE
13 COURT MADE WAS THAT MS. BROWN'S TESTIMONY WAS MORE CREDIBLE TO
14 THE COURT THAN THE SALESMAN'S TESTIMONY, MISTER HILTON. AND
15 ANOTHER OBSERVATION THAT THE COURT MADE WAS THAT THE COURT HAD
16 DOUBTS ABOUT WHETHER ANYTHING THAT DICK SMITH DID OR FAILED TO DO
17 ROSE TO THE LEVEL OF ARBITRARY AND UNCONSCIONABLE OR IN BAD FAITH.

18 WHAT I DID WAS, I SUBMITTED A PROPOSED ORDER THAT I HANDED UP
19 TODAY WITH PROPOSED FINDINGS BASED SOLELY ON MS. BROWN'S
20 TESTIMONY. I INCLUDED NO FINDINGS BASED ON ANY OTHER WITNESS. THE
21 HARM THAT MS. BROWN CLAIMED WAS BASED UPON HER DECISION TO
22 ABANDON THIS VEHICLE IN THE FACE OF A NUMBER OF UNCONTROVERTED
23 FACTS AND THOSE UNCONTROVERTED FACTS ARE HIGHLIGHTED IN THE
24 PROPOSED ORDER THAT I HANDED UP. I THINK I BEGAN HIGHLIGHTING ON
25 PAGE TWO, PARAGRAPH TWO, AT THE BOTTOM OF THE PAGE. I THINK PART

1 OF MS. BROWN'S THEORY WAS THAT SHE MADE A DECISION BASED UPON
2 HER CONFUSION AND I THINK HER CONTENTION WAS THAT THAT CONFUSION
3 WAS DICK SMITH'S FAULT.

4 WHAT I'VE DONE HERE, I'VE POINTED OUT IN MY PROPOSED ORDER
5 THAT I HANDED UP, CERTAIN REASONS THAT I DON'T BELIEVE MS. BROWN
6 WAS CONFUSED, BEGINNING WITH PARAGRAPH TWO: THAT SHE WAS A MATH
7 MAJOR AT ALLEN UNIVERSITY AND, IN FACT, SHE WAS A MATH TUTOR. ON
8 THE NEXT PAGE, THE FACT THAT THIS WASN'T THE FIRST VEHICLE THAT SHE
9 LOOKED AT, THAT SHE HAD ALREADY BEEN OUT TO DODGELAND AND
10 LOOKED AT A SATURN AUTOMOBILE. SHE KNEW HER CREDIT WAS LIMITED.
11 SHE WAS CONCERNED ABOUT QUALIFYING FOR FINANCING. THAT SHE AND
12 THIS SALESMAN AT DICK SMITH, ROBERT HILTON, DISCUSSED ARRANGING
13 FINANCING FOR HER THROUGH BB&T. THAT THE ONLY CAR SHE EVER
14 CONSIDERED BUYING FROM DICK SMITH WAS THIS MAZDA 6 AUTOMOBILE,
15 THAT'S AT THE BOTTOM OF PAGE THREE. THE TOP OF PAGE FOUR, THAT
16 THIS MAZDA WAS A CAR THAT SHE REALLY WANTED, THAT IT WAS A CAR SHE
17 THOUGHT SHE COULD AFFORD TO BUY. AND IN THE MIDDLE OF PAGE FOUR,
18 SHE INDICATED THAT SHE WAS WILLING TO COOPERATE WITH DICK SMITH
19 AND PLACED NO LIMITS ON THEM AS TO WHO THEY MIGHT CONTACT TO TRY
20 TO HELP HER GET FINANCING. I HIGHLIGHTED THE LANGUAGE OF THE
21 CONTRACT THAT INDICATES THERE IS A FINANCING DEFICIENCY. ON PAGE
22 FIVE, SHE INDICATED SHE UNDERSTOOD THAT. IN FACT, POINT TWO ON
23 PAGE FIVE SAYS, "THAT SHE KNEW ON THE DAY SHE SIGNED THE CONTRACT
24 THERE WAS A CONTINGENCY." AGAIN, WHAT I TRIED TO DO IS POINT OUT IN
25 THE TRANSCRIPT, WHERE MS. BROWN SAID EACH ONE OF THESE THINGS.

1 THIS ISN'T FROM THE TESTIMONY OF ROBERT HILTON OR ANYBODY ELSE THE
2 COURT HAD A QUESTION ABOUT THEIR CREDIBILITY. AGAIN, PARAGRAPH
3 TWENTY-FOUR, MS. BROWN SAID THAT SHE WAS TOLD SOME TIME AFTER
4 JUNE 1, 2007, SHE WAS GOING TO FINANCE WITH BB&T. THE NEXT PAGE AT
5 THE TOP, SHE SAID, "OKAY. NO PROBLEM." THAT'S NOT PARAPHRASING.
6 THAT'S HER TESTIMONY AND IT'S POINTED OUT IN THE TRANSCRIPT. SHE
7 HAD NO -- SHE HAD NO WAY OF KNOWING AND DIDN'T PURPORT TO KNOW
8 WHEN DICK SMITH ACTUALLY GOT PAID. SHE DIDN'T KNOW THAT. WHAT WE
9 PRESENTED WAS THE ACCOUNTING DOCUMENTS, THE BANK STATEMENT,
10 THE TESTIMONY OF DICK SMITH'S CPA ABOUT THOSE MATTERS. AGAIN,
11 PARAGRAPH THIRTY-SIX, I POINTED OUT THE SALESMAN TOLD THE PLAINTIFF
12 SHE HAD ALREADY BEEN FINANCED THROUGH SOVEREIGN BANK. AT THE
13 TOP OF PAGE SEVEN, SHE ACKNOWLEDGED THAT SHE RECOGNIZED THAT
14 THERE WAS SOME CONFUSION BECAUSE SHE GOT A LETTER FROM THE BANK
15 SAYING ONE THING, THAT SHE HAD NOT BEEN APPROVED FOR FINANCING,
16 AND SHE HAD ASSURANCE FROM THE SALESMAN SAYING SOMETHING ELSE.
17 SHE SAID SHE RECOGNIZED THERE WAS SOME CONFUSION, BUT WHAT SHE
18 DIDN'T POINT OUT WAS THAT SHE ONLY BOUGHT ONE CAR AND SHE WASN'T
19 CONFUSED ABOUT THE CAR SHE BOUGHT AND THAT SHE HAD A TELEPHONE
20 CONVERSATION WITH ROBERT HILTON, THAT'S IN PARAGRAPH FORTY OR
21 FORTY-ONE, AND HE TOLD HER AGAIN BEFORE SHE BROUGHT THE CAR BACK,
22 "YOU'VE ALREADY BEEN FINANCED." AND IN PARAGRAPH FORTY-THREE,
23 AGAIN, MS. BROWN SAID, AND THIS ISN'T HILTON, MS. BROWN SAID MISTER
24 HILTON TOLD HER SHE HAD ALREADY BEEN FINANCED AND NOT TO LEAVE
25 THE CAR AT DICK SMITH'S BECAUSE IT WOULD GO DOWN AS A

1 REPOSSESSION. THAT CAME OUT OF MS. BROWN'S MOUTH AND MS. BROWN
2 DECIDED TO LEAVE THE CAR ANYWAY AND MOST IMPORTANTLY, IS
3 PARAGRAPH FORTY-FIVE, WHERE MS. BROWN SAID, AND I APPLAUD HER FOR
4 HER HONESTY, SHE SAID THAT SHE DECIDED TO LEAVE THE CAR OR TO
5 ABANDON THE CAR BASED UPON INFORMATION SHE GOT FROM THE BANK,
6 NOT FROM ANYTHING SHE GOT FROM DICK SMITH.

7 SHE MADE A DECISION BASED UPON WHAT THE BANK TOLD HER, NOT
8 BASED ON ANYTHING DICK SMITH DID AND AS A RESULT OF THAT, THE BANK
9 REPOSSESSED THE CAR, THEY SOLD IT, THEY ACCEPTED A LOSS AND THEY
10 SENT HER A LETTER SAYING, "WE'VE SUFFERED A LOSS. WE THINK YOU
11 SHOULD PAY IT." THE BANK NEVER SUED HER. THIS NEVER COST HER A
12 DIME. IF SHE GOT AWARDED A JUDGMENT BASED UPON TWO TIMES THE
13 AMOUNT OF A CLAIM, AN UNLIQUIDATED CLAIM BY SOVEREIGN BANK, WHICH
14 SOVEREIGN NEVER FILED SUIT ON AND NOW THAT CLAIM HAS EXPIRED. THE
15 STATUTE OF LIMITATIONS RAN SEVERAL MONTHS AGO, SO EVEN IF DICK
16 SMITH DID SOMETHING, I STILL DON'T KNOW WHAT IT WAS, BUT EVEN IF -- LET
17 ME PUT IT THIS WAY: EVEN IF SOMETHING DICK SMITH DID OR FAILED TO DO
18 WAS A PROBLEM, IT HAS NOT RESULTED IN A LOSS THAT MS. BROWN HAS
19 SUSTAINED OR EVER WILL SUSTAIN. SHE'S NOT OUT ANYTHING. IF SHE HAS
20 A JUDGMENT AWARDED TO HER AND IS NOW SEEKING INTEREST ON DOUBLE
21 THE AMOUNT OF A PREVIOUSLY SPECULATIVE AMOUNT, AN EXPIRED CLAIM,
22 AND YOUR HONOR, THAT, I BELIEVE, IS JUST NOT FAIR.

23 OUR POSITION IS THAT DICK SMITH DID NOT ENGAGE IN BAD FAITH.
24 WHAT I BELIEVE I POINTED OUT HERE IN THIS PROPOSED ORDER THAT I
25 SUBMITTED WAS, WHAT DICK SMITH DID WAS REPEATEDLY TELL MS. BROWN,

1 "DON'T LEAVE THAT CAR HERE. IT WILL BECOME A REPOSSESSION." AND IT
2 DID. BUT SHE WAS TOLD REPEATEDLY, "DON'T DO THAT." I DON'T KNOW
3 WHAT ELSE DICK SMITH COULD HAVE DONE. I GUESS AFTER SHE HAD
4 ABANDONED IT, I GUESS THEY COULD HAVE PUT IT ON A ROLLEBACK AND
5 TAKEN IT BACK TO HER HOUSE AND DROPPED IT OFF. I GUESS THEY COULD
6 HAVE DONE THAT, BUT SHE MADE A DECISION IN HER WORDS, "BASED UPON
7 INFORMATION SHE GOT FROM THE BANK."

8 THE COURT: WELL, AS I RECALL, MISTER STUDEMAYER, THE
9 TESTIMONY WAS ALSO THAT IT WAS THE AGENTS OF DICK SMITH WHO TOLD
10 HER, THE EMPLOYEES OF DICK SMITH WHO TOLD HER THAT SHE HAD
11 OBTAINED FINANCING, TOLD HER SHE HAD OBTAINED FINANCING THROUGH
12 SOVEREIGN AND THAT THERE WERE A NUMBER OF NUMBERS THAT SHE HAD
13 RECEIVED INDICATING THAT HER CREDIT OR THE APPLICATION FOR CREDIT
14 IN ORDER TO PURCHASE THE CAR HAD NOT BEEN APPROVED AND SO SHE'S
15 FACED WITH LETTERS INDICATING THAT SHE HAD NOT BEEN APPROVED AND
16 DICK SMITH WAS TELLING HER SHE HAD BEEN APPROVED AND DICK SMITH
17 NEVER TELLS HER THAT WE HAVE RECEIVED THE PAYMENT ON THE CAR AND
18 THE PAYMENT CAME FROM X-Y-Z OR THEY NEVER SAID TO HER, YOU KNOW, "I
19 DON'T UNDERSTAND WHY THEY ARE SAYING YOU HAVE NOT BEEN APPROVED
20 BECAUSE WE RECEIVED PAYMENT," AND THEY NEVER TELL HER, "LET'S SEE
21 IF WE CAN GET DOWN TO THE BOTTOM OF IT." THE LAST REPRESENTATION
22 WAS SHE HAS NEVER HAD ANY DEALINGS WITH SOVEREIGN UNTIL SHE CALLS
23 THEM IN REFERENCE TO THE LETTER AND I ASSUME IT WAS IN REFERENCE
24 TO THE LETTER. I DON'T HAVE MY NOTES FROM THE TRIAL BEFORE ME, BUT
25 AS I RECALL, THE BANK SIMPLY CONFIRMED THAT SHE HAD NOT BEEN

1 APPROVED AND THAT THERE HAD BEEN NO FINANCING ISSUED ON HER
2 BEHALF AND SO SHE'S BEEN TOLD SHE PURCHASED A CAR, AND YET SHE'S
3 NOT RECEIVED ANY INFORMATION ABOUT HOW MUCH, WHO TO MAKE
4 PAYMENTS TO, WHEN THE FIRST PAYMENT IS DUE, WHAT IS THE AMOUNT OF
5 THE PAYMENTS. SHE'S RECEIVED NO FINANCING INFORMATION DESPITE THE
6 FACT THAT SHE HAD THIS PAPERWORK FROM THE DEALERSHIP SAYING SHE
7 OWNS A CAR AND SO, WHEN SHE CONTEMPLATES LEAVING THIS CAR -- AND I
8 UNDERSTAND YOUR STATEMENT THAT, "MA'AM, IT WILL GO DOWN AS A
9 REPOSSESSION," I DIDN'T TAKE THAT AS A THREAT. I TOOK IT AS, "MA'AM,
10 THESE ARE WHAT THE FACTS ARE. IT WILL GO DOWN AS A REPOSSESSION,"
11 BUT I ALSO TOOK IT THAT HOW CAN IT GO DOWN AS A REPOSSESSION IN HER
12 MIND WHEN, "I HAVE NOTHING TO SHOW THAT I'VE BEEN LOANED MONEY
13 AND I'VE RECEIVED NOTHING TO CONFIRM THAT I OWE THEM MONEY." AND
14 SO I'M LOOKING AT IT, I'M NOT NECESSARILY LOOKING AT IT FROM THE POINT
15 OF VIEW OF WHAT DICK SMITH, WHAT KNOWLEDGE IT HAD IN ITS
16 POSSESSION AT THE TIME, THAT THEY KNEW SHE HAD BEEN FINANCED
17 BECAUSE THEY RECEIVED THE PAYMENTS, BUT I'M ALSO LOOKING AT IT
18 FROM HER STANDPOINT OF VIEW AND FROM HER STANDPOINT OF VIEW, WAS
19 THIS SOMETHING THAT UNDER THE CIRCUMSTANCES COULD HAVE BEEN
20 CORRECTED, COULD HAVE BEEN RIGHTED? WAS THERE NOT, IF NOT
21 MISLEADING INFORMATION, AT LEAST A DISREGARD FOR WHETHER OR NOT
22 SHE RECEIVED FINANCING OR WHETHER OR NOT SHE HAD THE PROPER
23 INFORMATION? MY VIEW OF THE WAY THE EVIDENCE CAME IN WAS THAT
24 DICK SMITH HAD GOTTEN THIS MONEY AND THAT WAS THE END OF IT.

25 MR. STUDEMEYER: YOUR HONOR, I REALLY DON'T BELIEVE THAT THE

1 TRANSCRIPT WILL BEAR THAT OUT, BECAUSE IF THAT WERE THE FACT, I
2 MEAN, IF THAT WERE THE CASE, THEN I WOULD NOT BE HERE ARGUING IN
3 FRONT OF YOU. WHAT I DO KNOW IS THIS: MS. BROWN WAS A COLLEGE
4 GRADUATE WITH A DEGREE IN MATH, A TUTOR IN MATH, AND SHE SIGNED
5 THE CONTRACT. SHE ACKNOWLEDGED THAT. SHE'S A BRIGHT YOUNG LADY.
6 I UNDERSTAND THAT SHE WAS GETTING DIFFERENT INFORMATION FROM THE
7 BANK THAN SHE GOT FROM DICK SMITH, BUT THE PERSON THAT SHE DEALT
8 WITH FROM DICK SMITH DIDN'T STATE, "I'M SORRY, MA'AM, THIS IS NOT MY
9 PROBLEM." HE ---

10 **THE COURT:** NOT IN THAT FORMAT.

11 **MR. STUDEMAYER:** HE WAS HER BIG BROTHER. HE WAS HER BIG
12 BROTHER IN A FRATERNITY OVER AT ALLEN UNIVERSITY. HE HAD NO
13 REASON TO MISLEAD THIS LADY AND, IN FACT, AS POINTED OUT ON PAGE
14 SEVEN OF THE PROPOSED ORDER THAT I SUBMITTED, BEFORE SHE EVER
15 BROUGHT THE CAR BACK, HE SAID, "YOU KNOW, LATOYA, DON'T DO THAT.
16 WE'VE ALREADY GOT THE MONEY. YOU'VE ALREADY BEEN FINANCED."
17 THAT'S EXACTLY WHAT SHE SAYS IN PARAGRAPH FORTY-TWO THAT I'VE
18 CITED IN THE TRANSCRIPT AND ON PAGE THIRTY-FOUR. HE ONLY TOLD THE
19 PLAINTIFF THAT SHE WAS ALREADY FINANCED AND HE TOLD HER, IN
20 PARAGRAPH TWENTY-THREE, "DON'T DO THAT BECAUSE IT'S GOING TO BE A
21 REPOSSESSION." YOUR HONOR, I DON'T KNOW WHAT ELSE HE COULD HAVE
22 DONE.

23 **THE COURT:** LET'S PUT IT THIS WAY. IF YOU HAD BEEN IN MS. BROWN'S
24 SHOES AND ONE OF HER FRIENDS HAPPENED TO HAVE BEEN A SALESMAN
25 AND SAID, "YOU KNOW, YOU HAVE BEEN FINANCED," AND YET, WHEN YOU

1 ASK WHO, YOU ARE TOLD SOVEREIGN, AND YET YOU HAVE A LETTER IN YOUR
2 HAND FROM THE BANK THAT SAYS YOUR LOAN HAS BEEN DENIED. WHAT,
3 WHAT WOULD YOU HAVE DONE OR WHAT WOULD YOU THINK? WHO WOULD
4 YOU TEND TO BELIEVE? WOULD YOU BELIEVE THE PERSON WHO'S TELLING
5 YOU YOU'VE BEEN FINANCED OR WOULD YOU BELIEVE THE LETTER THAT
6 YOU GOT FROM THE BANK SAYING, "YOU'VE BEEN DENIED"?

7 **MR. STUDEMAYER:** YOUR HONOR, I DON'T BELIEVE THAT AN EDUCATED
8 PERSON, A MATURE, EDUCATED PERSON, WILL JUST SAY I'M GOING TO TAKE
9 THE EASY WAY OUT AND I'M GOING TO MAKE A DECISION WITHOUT HAVING
10 ALL THE FACTS. I THINK A MATURE, EDUCATED PERSON WOULD HAVE
11 STAYED ON THE PHONE, WOULD WRITE A LETTER, GO SEE A LAWYER, WHICH
12 SHE DID LATER ON, UNTIL SHE FIGURED IT OUT AND AS IT TURNS OUT, WHAT
13 DICK SMITH TOLD HER WAS THE ABSOLUTE TRUTH. THE ONLY THING THAT
14 DICK SMITH COULD HAVE DONE DIFFERENTLY, THAT I KNOW OF, IS THEY
15 COULD HAVE GIVEN HER A COPY OF THE BANK'S STATEMENT, IF THAT'S A
16 REASONABLE THING A COMPANY COULD DO, GIVE HER A COPY OF THE
17 BANK'S STATEMENT THAT CAME IN THIRTY MINUTES LATER. THAT WOULD
18 HAVE WORKED. I GUESS IF SHE HAD ASKED FOR IT OR IF SOMEBODY HAD
19 DUG INTO THIS LONGER, MAYBE THEY COULD HAVE SAID, "HOW ABOUT
20 GIVING US A COPY OF THE FUNDING NOTICE, WHICH WAS PRESENTED AT
21 TRIAL THAT SHOWED THEY GOT PAID THREE DAYS BEFORE SHE MADE AN
22 ILL-ADVISED DECISION TO DEFAULT ON THE CONTRACT. I MEAN, THAT'S THE
23 WAY THAT THE WHOLE THING CAME ABOUT. IN ANY EVENT, EVEN IF DICK
24 SMITH DID SOMETHING WRONG, I DON'T KNOW THAT THEY DID, BUT EVEN IF
25 THEY DID SOMETHING WRONG, HOW WAS THIS LADY HURT? SHE HAS NO

1 DEFICIENCY JUDGMENT AGAINST HER, SHE'S NEVER GOING TO HAVE A
2 DEFICIENCY JUDGMENT AGAINST HER AND YET SHE WANTS INTEREST ON
3 DOUBLE THE AMOUNT OF THE DEFICIENCY. THAT'S JUST NOT, THAT'S JUST
4 NOT FAIR UNDER ANY, UNDER ANY – I WOULD ASK THE COURT TO TAKE A
5 CLOSER LOOK AT THAT AND AGAIN, IF YOU WOULD JUST, YOU KNOW
6 WHENEVER I READ THE CONCLUSION THAT DICK SMITH HAD ENGAGED IN BAD
7 FAITH, I COULDN'T BELIEVE IT, BECAUSE I KNEW THAT THE TESTIMONY AT
8 TRIAL WAS, THAT THAT SALESMAN, ACCORDING TO MS. BROWN, HAD
9 REPEATEDLY TOLD HER, "DON'T ABANDON YOUR CAR."

10 I NOTED – AND I THINK IT STARTS AROUND PAGE 114, I DON'T KNOW IF I
11 HIGHLIGHTED IT IN THE COURT'S COPY OF THE TRANSCRIPT OR NOT, BUT I
12 KNOW AT THE END OF THE TRIAL ON PAGE 112, AT THE TOP OF THE PAGE,
13 THAT THE COURT SAID, "IT'S OBVIOUS THAT SOMETHING WENT VERY WRONG
14 HERE. THE QUESTION FOR ME IS WHETHER OR NOT IT RISES TO THE LEVEL
15 OF A VIOLATION OF THE STATUTE" AND I THINK THAT'S A FAIR VIEW. AND
16 AGAIN, ON PAGE 114, IN THE MIDDLE OF THE PAGE WHERE THE COURT
17 OBSERVED, "NOW, WHETHER OR NOT THAT AMOUNTS TO BAD FAITH,
18 UNCONSCIONABLE CONDUCT, FRAUD, MISREPRESENTATION, I THINK THERE
19 ARE SOME ISSUES AND I'M PARTICULARLY INTERESTED IN MISTER TOAL'S
20 ARGUMENT AS TO HOW THAT RISES TO THAT LEVEL AND I'M SURE HE WILL
21 MAKE A GOOD ARGUMENT."

22 YOUR HONOR, I THINK MISTER TOAL IS AN EXCELLENT LAWYER, I'VE
23 ALWAYS THOUGHT THAT AND BEYOND THAT, HE'S A HECK OF A NICE GUY,
24 BUT I DON'T BELIEVE ANY ARGUMENT HAS BEEN PRESENTED TO THE COURT
25 THAT, YOU KNOW, AS THE TESTIMONY REFLECTS, REPEATEDLY WARNING A

1 PERSON NOT TO DO SOMETHING THAT'S ILL-ADVISED, IS BAD FAITH AND
2 EVEN IF IT WERE, THERE'S —

3 THE COURT: IT'S JUST THAT YOU AND I ARE FOCUSING ON DIFFERENT
4 CONDUCT AND I UNDERSTAND ABOUT THE WARNING TO HER AND I
5 UNDERSTAND YOUR POSITION, BUT THAT'S NOT WHAT I CONSIDER TO BE
6 THE ISSUE. THE ISSUE IS NOT WHETHER HE WARNED HER NOT TO RETURN
7 THE CAR. THE ISSUE, TO ME, WAS WHAT DUTY OR OBLIGATION THEY HAD
8 WHEN, IN FACT, THEY'VE SOLD HER A CAR AND THEY'VE TOLD HER THAT SHE
9 HAS FINANCING, BUT SHE RECEIVES DOCUMENTATION FROM THE BANK THAT
10 SAYS SHE DOES NOT HAVE FINANCING AND THEIR CONDUCT AT THAT
11 PARTICULAR POINT. NOT -- HAD THEY NEVER SAID TO HER, "YOUR CAR WILL
12 BE REPOSSESSED, DON'T BRING IT BACK, IT WILL BE REPOSSESSED," I DON'T
13 THINK THAT LANGUAGE ALONE WOULD HAVE CHANGED THE WAY I CAME
14 DOWN. IT WAS ABOUT THE CONDUCT BETWEEN HER BEING NOTIFIED BY THE
15 BANK THAT "YOU DON'T HAVE FINANCING" AND DICK SMITH SAYING, "YEAH,
16 YOU DO, YEAH, YOU DO," BUT THEY NEVER SHOWED HER, AFFIRMATIVELY,
17 INFORMATION, NOR DID THEY TRY TO ASSIST HER AS A GO-BETWEEN WITH
18 THE BANK, WHICH I THINK MIGHT HAVE BEEN PART OF THEIR OBLIGATION,
19 EVEN THOUGH THEY HAD BEEN PAID FOR IT OR, ESPECIALLY, SINCE THEY'D
20 BEEN PAID FOR IT, I THINK THERE SHOULD HAVE BEEN SOME ADDITIONAL
21 STEPS TAKEN BY DICK SMITH TO GET TO THE BOTTOM OF WHATEVER THE
22 ISSUE WAS, PARTICULARLY AFTER SHE INDICATED THAT SHE HAD TALKED TO
23 THE BANK AND I THINK THE INFERENCE WAS, AFTER SHE TALKED TO THE
24 BANK WAS, THAT, IN FACT, SHE HAD NOT BEEN FINANCED AND SO THAT PUT
25 IT BACK INTO DICK SMITH'S COURT AND THAT WAS MORE ABOUT THE WAY I

1 CAME DOWN AS OPPOSED TO ANY COMMENTS THAT WERE MADE TO HER
2 ABOUT NOT RETURNING THE CAR.

3 **MR. STUDEMAYER:** AGAIN, IF THE COURT WOULD JUST TAKE IT UNDER
4 ADVISEMENT.

5 **THE COURT:** I WILL. I DON'T INTEND TO RULE ON IT TODAY, BUT I DO
6 WANT TO HEAR YOUR ARGUMENT MISTER TOAL. IS THERE ANYTHING THAT
7 YOU WOULD LIKE TO...

8 **MR. TOAL:** WELL, YOUR HONOR HAS PUT IT VERY NICELY. WHAT YOUR
9 HONOR HAS LEFT OUT IS THE EXPLANATION SHE WAS GIVEN WHEN SHE WAS
10 TOLD THERE WAS FINANCING. SHE WAS GIVEN A DOCUMENT THAT HAD,
11 WHICH WAS NOT A FINANCING LETTER, BUT A CONDITIONAL FINANCING
12 LETTER WHICH HAD ABSOLUTE LIES ON IT; THAT HER FATHER HAD WORKED
13 FIFTEEN YEARS FOR THE COMPANY AND THEN THAT SHE HAD AN INCOME
14 FAR IN EXCESS OF THE INCOME THAT SHE HAD AND IT WAS FOR A DIFFERENT
15 AUTOMOBILE AND THAT WAS WHAT THE SALESMAN SAID -- THAT WHAT SHE
16 SAID THE SALESMAN GAVE HER TO SHOW THAT SHE WAS FINANCED AND
17 THEN SHE DECIDED TO LEAVE IT THERE AND SO THE FACTS IN THIS CASE
18 ARE NOT THAT THEY SIMPLY TOLD HER SHE HAD FINANCING. HE TOLD HER
19 EARLIER SHE HAD FINANCING WITH BB&T. THAT DIDN'T TURN OUT TO BE
20 TRUE. THEN THEY TELL HER SHE HAS FINANCING WITH THESE FOLKS AND
21 THEY SHOW HER SOMETHING THAT IS A CONDITIONAL FINANCING AND SHE'S
22 ABLE, UNDER THE CONTRACT, TO BRING THE CAR BACK AND LEAVE THE
23 CONTRACT IF FINANCING WAS NOT FINAL. SHE DID THAT. WHATEVER ELSE
24 THEY MAY HAVE HAD -- AND THE OTHER THING THEY HAD AT THAT TIME WAS
25 A TRANSFER BASED ON A DIFFERENT AUTOMOBILE. SHE WOULD HAVE BEEN

1 FOOLISH TO TAKE THAT CAR BACK.

2 THE COURT: WHAT I'LL DO, AND I UNDERSTAND THERE IS NOT A
3 CERTIFIED COPY OF THE TRANSCRIPT, BUT IT'S ONE THAT CAN AT LEAST
4 PROVIDE SOME DOCUMENTATION ALONG WITH MY NOTES TO CONFIRM WHAT
5 THE TESTIMONY WAS. I'LL LOOK AT THAT. MISTER TOAL IS THERE ANYTHING
6 AT THIS POINT OR RESPONSE THAT YOU WANT TO MAKE ABOUT THE
7 INTEREST?

8 MR. TOAL: OH, YES INDEED, YOUR HONOR. THE FACT OF THE MATTER
9 IS, THAT IF SHE DOESN'T PAY IT, IT WILL CONTINUE TO BE ON HER CREDIT
10 RECORD. THE STATUTE OF LIMITATIONS IS, OF COURSE, NOT AN ABSOLUTE
11 BAR. IT HAS TO BE PLEADED. SHE OWES MONEY, SHE CONTINUES TO OWE
12 THEM MONEY AND SHE OWES THEM MONEY BECAUSE OF WHAT DICK SMITH
13 DID.

14 THE COURT: I'LL LOOK AT THAT. I KNOW I'VE HAD IT FOR A WHILE. I'LL
15 TRY TO GET IT TO YOU VERY SHORTLY. I DO APPRECIATE YOUR COMING. IT
16 CLARIFIED SOME OF THE ISSUES THAT I HAVE AND GAVE YOU THE
17 OPPORTUNITY TO TELL ME EVERYTHING THAT YOU WANTED TO ADD TO
18 YOUR MOTIONS.

19 MR. STUDEMAYER: THANK YOU FOR HEARING IT.

20 THE COURT: NO PROBLEM.

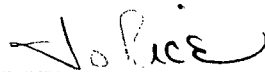
21 MR. TOAL: THANK YOU, YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING NINETEEN PAGED TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SOUTH CAROLINA ON NOVEMBER 15, 2010, AT THE RICHLAND COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

FEBRUARY 28, 2011

A handwritten signature in cursive script, appearing to read "Jo Rice", is written over a horizontal line.

JO RICE

RECEIVED

MAR 10 1994

DHPT Form 419D
January, 1984

Dealer Number

6542

Registration Reciprocity

SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION
MOTOR VEHICLE DEALER AND WHOLESALER SURETY BOND

Please read instructions on reverse side before executing bond.

BOND NUMBER L-1017485 EFFECTIVE DATE December 31, 1993 TIME _____ A.M. P.M.

KNOW ALL MEN BY THESE PRESENTS: that we Dick Smith Motors, Inc.
(Firm Name As Licensed)

Doing business at 4030 Beltline Blvd, Columbia, S.C. 29205

as Principal and Old Republic Surety Company as Surety

are duly authorized to do business within the State of South Carolina, as Surety, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesman, or representatives acting for such Principal within the scope of employment of such salesman or representatives, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the amount of Fifteen Thousand Dollars (\$15,000.00), lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents; provided that the aggregate liability of the surety under this bond for any and all claims is limited to fifteen Thousand Dollars (\$15,000.00) or to the amount of the actual loss incurred, whichever is less.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter reissued from time to time by South Carolina Department of Highways and Public Transportation;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Highways and Public Transportation in compliance with S.C. Code Ann., 56-15-320, to enable said Principal to obtain a license from the Department under the provisions of that law;

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law, and shall save and keep harmless any owner of a motor vehicle, or his legal representative, from any fraud practiced on him or fraudulent representation made to him by such Principal, such Principal's salesman or representatives acting for the Principal or within the scope of the employment of such salesman or representatives, or from any loss or damage suffered by reason of the violation by such Principal or any such salesman or representatives of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Highways and Public Transportation. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

DICK SMITH MOTORS, INC.

(Principal)

By: B. K. S.

(Title)

OLD REPUBLIC SURETY COMPANY

(Surety)

By: Jane A. Deane

Attorney-in-Fact (Title)



PLAINTIFF'S
EXHIBIT

0183

2024 #1

OLD REPUBLIC SURETY COMPANY
RIDER

TO BE ATTACHED TO AND FORM PART OF
MOTOR VEHICLE DEALER

(Type of bond)

Bond Number LLI-1017485

IN FAVOR OF SC DEPT HWY & PUBLIC TRANSP. DEALER LIC.
(Obligee)

ON BEHALF OF SMITH, DICK NISSAN
(Principal)

EFFECTIVE 12/31/1993
(Original effective date)

IT IS AGREED THAT, in consideration of the original premium charged for this bond, and any additional premium that may be properly chargeable as a result of this rider,

1. The Surety hereby gives its consent to:

- | | |
|--|--|
| ☒ INCREASE | ☐ CHANGE THE NAME OF THE PRINCIPAL |
| ☐ DECREASE | ☐ CHANGE THE ADDRESS OF THE PRINCIPAL |
| ☐ CHANGE THE EFFECTIVE DATE | ☐ CHANGE THE EXPIRATION DATE |
| ☐ OTHER _____ | |

(of) the attached bond FROM: \$15,000.00

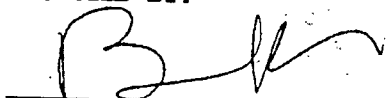
TO: \$30,000.00

EFFECTIVE: 12/29/2006

2. PROVIDED, however, that the attached bond shall be subject to all its agreements, limitations, and conditions except as herein expressly modified, and that the liability of the Surety under the attached bond and under the attached bond as changed by this rider shall not be cumulative.

3. Signed and sealed this 1st day of December, 2006.

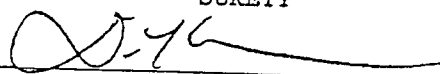
ACCEPTED BY:



(TITLE)

OLD REPUBLIC SURETY COMPANY
SURETY

By:



ATTORNEY-IN-FACT
D.K. NELSON

Dick Smith
Automotive Group
Virtual ShowroomClick Here to download this
vehicle to your PDA.[New](#) [Pre-owned](#) [Parts](#) [Service](#) [Body Shop](#) [Contacts](#) [Locations](#) [Online Credit](#)

Stock Number: CN7024B

Year: 2005

Make: MAZDA

Model: 6

Trim-Level:

Ext-Color: BEIGE

Int-Color: BEIGE

Cylinders: 4

Drive: 2WD

Transmission: AUTO

Mileage: 42887

Price or Best Offer: \$13,988

Features: CD Player

Options: Air Conditioning

Power Steering

Power Windows

Power Door Locks

Tilt Steering

Cruise Control

AM/FM Stereo

Dual Airbags

Alloy Wheels

Power Seat

* REAR SPOILER

**Location:**Dick Smith Nissan of St. Andrews
3670 Fernandina Rd.
Columbia, SC, 29210
(803)772-8700*Make Your Best Offer*[PRINT](#) [MAP](#)[Contact Us About Vehicle](#)[E-mail This Vehicle](#)[Save to Shopping Cart](#)**PLAINTIFF'S
EXHIBIT**#2
9-22-09

A

0185

Price: 13988

12.5 APR

Garden: 203.00
208.00

Savings: 2224

payment: 30 or 45 days from
sign date

11704

closing: 200

11904

VIN# 1YVEP80C355M43886
05 mazda 6 (i) model

Trade: 800

~~10000~~ 4

"Garden city"

407-9991

Tax: 300

11404

+ 25

11489

+ 12

11501

149172

4030 West Beltline Boulevard
Columbia, SC 29204
803-256-6600
800-944-8570

BUYER'S ORDER

Dick Smith Motors, Inc.

This contract is made and entered into between Dick Smith Motors, Inc., hereinafter called Dealer, and Customer. Any retail installment contract or other document executed by Customer in connection herewith is simply an effort to satisfy Customer's obligations under this contract.

CUSTOMER INFORMATION

Name _____ (FIRST) _____ (MI) _____ (LAST)
Co-Owner _____ (FIRST) _____ (MI) _____ (LAST)
Street Address _____
Mailing address if different _____
City _____ In City Limits? Y ☐ N ☐
County _____ State _____ Zip _____
Home Phone _____ Bus. Phone _____
Best Time to Call _____
Employer _____ Occupation _____
Employer's City & Zip Code _____
SSN: _____ DOB: ____/____/____
Drivers License No. _____ State _____
Referred to dealership by _____

VEHICLE INFORMATION

Date Purchased _____ Stock No. _____
☐ New ☐ Pre-Owned
Year _____ Make _____ Model _____
Body Style _____
Serial No. _____
Color _____ No. Cyl. _____
Mileage _____

EQUIPMENT & OPTIONS

☐ AM-FM ☐ AUTO ☐ 5-SPD ☐ AIR COND.
☐ POWER WINDOWS ☐ POWER LOCKS
☐ 4 CYL. ☐ 6 CYL. ☐ 8 CYL. ☐ 4WD
☐ CRUISE CONTROL ☐ CASSETTE ☐ POWER SEAT
☐ SUNROOF ☐ ALLOY WHEELS ☐ LEATHER
☐ THEFT DETERRENT

INSURANCE INFORMATION

Verified by _____
Insurance Company _____
Policy No. _____ Dates _____ to _____
Agent/Agency _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Person Contacted _____

TRADE-IN INFORMATION

Year _____ Make _____ Model _____
Body Style _____
Serial No. _____
Color _____ No. Cyl. _____
Mileage _____
License Tag No. to be transferred _____ Expires _____
Validation No. _____
Lienholder _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Person Contacted _____
Account No. _____
Payoff Amount _____ Good Until _____

SUMMARY OF SALE

PRICE OF VEHICLE \$ 13986
Dealer Installed Accessories or Additions SAVINGS <2224>
Car Care System Package _____
Tyre Care _____
Etch _____
Accessories _____ 199.00
Closing Fee _____
TOTAL PRICE \$ 11963
Less Trade-in \$ 800
DIFFERENCE \$ 11163
S.C. Sales Tax 300
License ☐ New ☐ Transfer _____ 25
Electronic Filing Fee _____ 12.00
Other _____
Balance Owed On Trade _____
Verified for 10 days ☐ Y ☐ N \$ 11500
SETTLEMENT _____
Cash Down (Receipt No.) _____
Less Rebate/Misc. _____
BALANCE \$ 11500

BALANCE OWED ON TRADE: I understand that if the balance owed on my trade is less than the amount shown, I will be refunded the difference. If the amount is greater than shown, I will pay the difference.

PAYMENT BY CHECK: I understand that any funds received in the form of a check will be held for fifteen (15) working days before a refund can be made. I must also have my copy of my receipt to obtain my deposit.

Dealer shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this order where such failure or delay is due in whole or part, to any cause beyond the control or without the fault or negligence of the dealer. Customer authorizes Selling Dealer to obtain consumer information contained herein.

Salesperson _____

THE INFORMATION YOU SEE ON THE WINDOW FORM (BUYERS GUIDE) FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THIS CONTRACT.

This contract is not binding upon Dealer unless accepted in writing by an officer or a sales manager or assistant sales manager of Dealer and until a retail installment contract for any deferred balance has been approved and funded by a third party financing source.

← **SEE ADDITIONAL TERMS AND CONDITIONS ON OPPOSITE PAGE**

CUSTOMER ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED-IN COPY OF THIS CONTRACT.

Customer's Signature _____

Accepted _____
Title _____

ALL VEHICLES SOLD "AS IS" UNLESS INDICATED OTHERWISE IN WRITING.

0187

PLAINTIFF'S
EXHIBIT

#3
9-22-09

ADDITIONAL TERMS AND CONDITIONS

1. SPOT DELIVERY. Dealer hereby conditionally delivers the vehicle to Customer subject to approval and funding of a retail installment contract by a third-party financing source. Customer will cooperate with Dealer in arranging financing by promptly providing any requested documents and information and by executing substitute retail installment contracts if requested by Dealer. Customer may arrange for his or her own financing, insurance, service contract, or any other goods or services. Dealer does not require the purchase of any other goods or services by Customer to arrange financing. If Dealer provides any goods or services, it may receive a portion of any finance charge, premium, or profit on the sale of same. Dealer may also charge a closing fee for credit investigation, preparing, handling, and processing documents necessary to satisfy or perfect a lien, and any other charges incidental to the transaction. Notwithstanding any other form, document, representation, or understanding whatsoever, title shall remain in Dealer until any retail installment contract or other instrument has been funded by a third-party financing source. Until such funding, Customer may use and enjoy the vehicle for up to 60 miles per day. Customer may not allow another person to use the vehicle nor may Customer use the vehicle to transport persons or property for hire, in any race, test, or competitive event; after drinking any alcohol or using drugs; for any illegal purpose; to carry loads beyond its capacity, for off road use; to carry hazardous or explosive substances; if further use might cause damage; to push or tow any vehicle; in violation of any of the terms or conditions of this contract; or in a reckless, abusive, or negligent manner. Regardless of fault, Customer is responsible for any loss or damage to the vehicle up to the full price together with loss of use, appraisal fees, and recovery costs. If Customer is not approved and funded by a third-party financing source within a reasonable time in Dealer's discretion, fails to keep and honor any of the terms of this contract, has obtained the vehicle by fraud or misrepresentation, or if Dealer otherwise reasonably deems itself insecure, Customer shall return the vehicle upon Dealer's demand. In any of the above events, Dealer may peacefully repossess the vehicle, without demand, and customer hereby consents to WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION.

2. DISCLAIMER OF WARRANTIES. DEALER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Any description of the vehicle contained in this contract is for the sole purpose of identifying the vehicle, and does not constitute a warranty that the vehicle shall conform to the description. Any limited warranty, specifications, or representations of the manufacturer are those of the manufacturer only and are not adopted by Dealer.

3. USED VEHICLE DISCLOSURE. USED VEHICLES MAY HAVE A HISTORY OF PRIOR DAMAGE, MECHANICAL FAILURE OR BOTH. Dealer makes no representations whatsoever as to the presence or absence of such history. DO NOT RELY UPON OPINIONS OR STATEMENTS OF DEALER'S EMPLOYEES AS TO SUCH HISTORY AS SUCH EMPLOYEES GENERALLY HAVE NO WAY OF KNOWING SUCH MATTERS. Customer may request information about prior ownership from the DMV's of the appropriate states. Customer also has the right to have the vehicle inspected at Customer's expense by any mechanic or garage of Customer's choice prior to consummation of this transaction. Dealer will also provide Customer with copies of its records relating to repairs and reconditioning, including any paint and body repairs, or otherwise preparing the vehicle for sale upon Customer's request. Customer agrees to hold Dealer harmless from any claims arising out of the prior history of the vehicle.

4. INSURANCE. Customer represents that he or she has full coverage insurance in effect and hereby releases and agrees to hold Dealer harmless from any liability in connection therewith.

5. REBATES & INCENTIVES. Customer hereby assigns all right, title, and interest in and to any manufacturer's rebates and incentives to Dealer.

6. WARRANTY OF TITLE ON TRADE-IN. For and in consideration of the trade allowance listed under SUMMARY OF SALE, Customer does hereby bargain, sell, and deliver the trade-in vehicle to Dealer. Customer warrants title to be in Customer's name and that same is free and clear of all liens and encumbrances other than those listed under TRADE-IN INFORMATION, that Customer has the right to sell said vehicle, and that Customer will warrant and defend said title against all other claims.

7. REPRESENTATIONS AS TO TRADE-IN. Unless indicated otherwise in writing, there are no existing material defects known to Customer concerning the trade-in vehicle. Customer warrants and certifies that the trade-in vehicle does not have a salvage title history.

8. DISPOSITION OF TRADE-IN VEHICLE. Since financing approval and funding may take several weeks, the trade-in vehicle could deteriorate pending same, and/or since payments may continue to accrue, Dealer may but has no obligation to satisfy any indebtedness on the trade-in vehicle and Customer authorizes Dealer to dispose of same. If Dealer can not obtain financing approval and funding, Customer shall immediately reimburse Dealer for all amounts paid. If the trade-in vehicle has already been sold by Dealer, Customer shall be credited with the actual cash value of the vehicle (which may be substantially less than the trade allowance), less any expenses incurred in holding, preparing for sale, selling, and the like. If said net value exceeds the liens and encumbrances on the trade-in, Dealer shall pay the difference to Customer upon surrender of Dealer's vehicle. If the liens and encumbrances exceed the net value of the trade-in, Customer shall immediately remit the difference to Dealer.

9. ARBITRATION. Any and all disputes, claims or controversies between Dealer or any officers, directors, agents, employees, or assignees of Dealer, and Customer arising from or relating to this contract or the relationships which result from this contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator, selected by Dealer with Customer's consent. The parties expressly waive all rights to trial by jury on such claims. Provided, however, that nothing in this contract shall require Dealer to submit to arbitration any claims by Dealer against Customer for claim and delivery, repossession, injunctive relief, or monies owed by Customer in connection with the purchase or lease of any vehicle, and any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration. The filing fees for arbitration shall be paid by the party initiating arbitration. The arbitrator may allocate the other arbitration fees as he or she deems appropriate. Any party may take one deposition of an opposing party. The parties agree to exchange all exhibits to be used in arbitration 7 days before arbitration. The arbitrator shall determine the controversy in accordance with the terms of this contract between the parties and shall not consider any parole evidence which purports to alter, modify, vary, add to, or contradict such contract. The arbitrator shall give effect to all applicable statutes of limitation. Any arbitration under this agreement shall take place in Richland County, South Carolina, and Customer agrees that the courts of Richland County, South Carolina shall have exclusive jurisdiction over enforcement of this contract and any award made by any arbitrator pursuant to this contract. In no event shall the arbitrator be authorized to award punitive, exemplary, double, or treble damages, or any other damages which are punitive in nature or effect against either party. Unless otherwise agreed in writing, claims against Dealer shall be consolidated with other claims in the nature of a class action.

10. PREJUDGMENT INTEREST. Any sums due Dealer from Customer not otherwise subject to a retail installment contract shall bear interest at 12% per annum.

11. ATTORNEY'S FEES. In the event either Dealer or Customer shall breach the terms of this contract, the parties agree that the arbitrator or court will be given the authority to award costs and expenses, including reasonable attorney's fees to one of the parties.

12. CHOICE OF LAW. This contract shall be governed by and construed under the laws of the State of South Carolina.

13. MODIFICATION. Any modification of this contract or additional obligation assumed by either party shall be in writing and signed by both parties.

14. ENFORCEABILITY. In the event any provision of this contract shall be held invalid, illegal, or unenforceable, the remaining provisions shall not be affected or impaired thereby.

15. ENTIRE AGREEMENT. This contract constitutes the entire agreement between Dealer and Customer and can only be modified or amended by a written agreement signed by both parties. No oral agreement or understanding, or any kind preceding this contract shall be binding on either party except to the extent incorporated in this agreement.

DEAL #: 149189

DICK SMITH
NISSAN STORES**Dick Smith Motors, Inc.**4030 W. Beltline Blvd., Columbia, SC 29204
803-256-6600 • 800-944-8570PHONE NO: (803)466-6015
SOLD TO LATOYA PATRICE BROWN
ADDRESS525 ALCOTT DR APT 15 E
COLUMBIA, SC 29203

NEW/USED	YEAR	MAKE	MODEL	BODY STYLE
USED	2005	MAZDA	MX6	SD

SERIAL NUMBER

1YVEP80C355M43889

MILES: 43361

SALESMAN NO.

737 HILLER, ROBERT

INSURANCE COVERAGE/LIEN INFORMATION

COMPANY

AGENT

ADDRESS

POLICY NO.

LIEN:

TO:

PH. NO.

POLICY

DATES FR: 20 TO 20

DESCRIPTION

CONTRACT DISCLOSURE STATEMENT

THE INFORMATION YOU SEE ON THE WINDOW FORM (BUYERS GUIDE) FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRACT PROVISIONS IN THE CONTRACT OF SALE

PURCHASER'S SIGNATURE X

ACCEPTED BY:

Dick Smith Motors, Inc.

"AS IS"

The only warranties, if any, applying to this vehicle are those offered by the manufacturer. The selling dealer hereby expressly disclaims all warranties, either express or implied, including any implied warranties of merchantability of fitness for a particular purpose, and neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this vehicle. Buyer shall not be entitled to recover from the selling dealer any consequential damages, damages to property, damages for loss of use, loss of time, loss of profits, or income, or any other incidental damages.

Buyer's Signature X

DATE

STOCK #

INVOICE NO.

CUSTOMER #

KEY

138290

06/01/07

DESCRIPTION

MX6

TOTAL SALES PRICE

CAR DEAL NO.

LICENSE & TITLE

ELECTRONIC FILING FEE

SALES TAX

EASYCARE GA

FIRST EXTEN

TYRECARE &

CL & AH

FIRST PLACE

DOC FEE

FINANCE CHARGES

S

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TOTAL TIME PRICE

DEPOSIT - CR #

22500

CASH ON DELIVERY - CR #

22500

ACCTS. REC.

22000

REBATE

22104

PAY OFF:

30300

USED CAR ALLOWANCE

0

NET DIFFERENCE

800.00

PAYMENTS TO

800.00

MONTHS

DOLLARS

PER MONTH

TOTAL

TOTAL

TOTAL

TOTAL

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PLAINTIFF'S EXHIBIT

#4
9.22.09
Thank You
for this opportunity
to be of service

DICK SMITH
NISSAN STORES**DICK SMITH**
NISSAN STORES

WHITE - OFFICE COPY

YELLOW - CUSTOMER COPY

PINK - BANK COPY

GOLD - FILE COPY

0189



WACHOVIA DEALER SERVICES

06/10/07

APP NO. 777-50548626

001708 XNLW2161



LATOYA BROWN
525 ALCOTT DR 15E
COLUMBIA, SC 29203

Dear LATOYA BROWN:

Thank you for your recent loan application which was submitted to Wachovia Dealer Services, Inc. on your behalf by DICK SMITH MOTORS INC. After careful consideration, we regret to inform you that we cannot extend credit to you or the co-applicant as requested at this time because of the following reason(s):

EXCESSIVE DELINQUENT PAST OR PRESENT CREDIT EXPERIENCE
AGE OF PAST OR PRESENT CREDIT EXPERIENCE
AGE OF DELINQUENT PAST OR PRESENT CREDIT EXPERIENCE
EXCESSIVE REVOLVING DEBT UTILIZATION

Disclosure of use of information obtained from an outside source:

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

EQUIFAX CREDIT INFORMATION SERVICES
5505 Peachtree Dunwoody Rd NE
Suite 600, ATLANTA, GA 30374-0241
Phone: 800-685-1111

Please see reverse side for additional information.

**PLAINTIFF'S
EXHIBIT**

#5
9.22.09 *ck*

0190

001708 161082315023 NNNNN NNNNN NNNNNNNN 000001

XNLW2161



Wells Fargo Auto Finance, Inc.
2501 Seaport Drive, Suite BH-300, Chester, PA 19013-1510
(866) 249-0452 (T.D.D. Please use relay service)

June 9, 2007

Latoya Brown
525 ALCOTT DRIVE APT 15E
COLUMBIA, SC 29203

Re: Application # 76071513031
Dealership: Dick Smith Motors Inc - Nissan

Dear Latoya Brown,

Thank you for your recent application for credit from the dealership described above submitted on May 31, 2007. After careful consideration, we regret we are unable to grant your request for credit based on the following reasons:

- Limited credit experience
- Excessive obligations in relation to income

If you have any questions regarding this letter, please write to the Chester Research Department at the address shown below:

Wells Fargo Auto Finance, Inc.
2501 Seaport Drive, Suite BH-300
Chester, PA 19013-1510

Our decision was based in whole or in part on information contained in a report furnished by the consumer-reporting agency listed below. The reporting agency played no part in our decision and is unable to supply specific reasons why we denied credit under the terms and conditions requested. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer-reporting agency. You also have a right to a free copy of your report from the reporting agency, if you request it no later than sixty (60) days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to the reporting agency named below.

TRANS UNION
Consumer Relations
1510 Chester Pike
PO Box 1000
Chester, PA 19022-1000
(800) 888-4213

It is also possible that we received information, not necessarily unfavorable, from a person other than a consumer-reporting agency. You have the right to make a written request to us within sixty (60) days after the date of this notification for disclosure of the nature of this information. See the reverse side for Important Notices.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450 Houston, TX 77010.

Sincerely,
Wells Fargo Auto Finance, Inc.

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**PLAINTIFF'S
EXHIBIT**

Bank of America, N.A.

Bank of America



June 10, 2007

LATOYA BROWN
525 ALCOTT DRIVE APT.# 15E
COLUMBIA, SC 29203

Re: Application 12296901

Thank you for your application for credit received through DICK SMITH NISSAN on MAY 30, 2007. Your request was carefully considered. However, we regret that we were unable to approve your application on the terms requested.

If you would like a statement of specific reasons why your application was denied, please call us or write to us at our number and address below within 60 days of the date of this letter. We will respond to you no later than 30 days after we receive your request.

Thank you again for considering us for your financial needs.

Sincerely,
Bank of America, N.A.
Customer Service Center
P.O. Box 45212
Jacksonville, FL 32232-5212
(800)211-3330

PLAINTIFF'S
EXHIBIT

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9-22-07

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The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-9050.



Nissan Motor Acceptance Corporation

NMAC Credit Relations Department
P.O. Box 660360
Dallas, TX 75266-0360
800.523.5763

June 09, 2007

>01988 4901489 001 008143 CAALNMX120

LATOYA BROWN
525 ALCOTT DR APT 15E
COLUMBIA, SC 29203-4426

Thank you for your recent application which was submitted to Nissan Motor Acceptance Corporation (NMAC) by your dealer for an automobile loan or lease.

We regret that we could neither grant you credit on the terms you requested, nor offer alternative terms acceptable to you.

When considering an application for credit, NMAC usually obtains and evaluates information from one or more consumer reporting agencies. If NMAC obtained such information about you, you may obtain a copy of the report(s) by directly contacting the consumer reporting agency or agencies. The name, address, and telephone number of each agency that provided information is shown below this paragraph.

CSC CREDIT SERVICES
P.O. BOX 981221
EL PASO TX 79998-1221

800.685.1111

The consumer reporting agency or agencies did not make the decision on your application for credit and therefore will not be able to provide you specific reasons why NMAC has declined to extend credit.

Pursuant to the Federal Fair Credit Reporting Act 15 U.S.C. § 1681j, you have the right to obtain, free of charge, a copy of your credit report by request to the above-listed agency or agencies within 60 days of your receipt of this notice. Pursuant to § 1681i, you also have the right to dispute with the consumer reporting agency or agencies, the accuracy or completeness of any information in a consumer report furnished by the agency or agencies.

If you would like a statement of the specific reason(s) for our decision, please write to the NMAC address shown above within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

It is also possible that we received information, not necessarily unfavorable, from a source other than a consumer reporting agency. If you would like a statement disclosing the nature of this information, please write to the NMAC address shown above within 60 days of the date of this letter.

If you would like both a statement of reasons for our decision and a statement disclosing information we may have received from a source other than a consumer reporting agency, you may make both requests in a single letter.

**PLAINTIFF'S
EXHIBIT**

9-27-09

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0193



SOUTH CAROLINA Federal Credit Union

P.O. Box 190012 N. Charleston, SC 29419-9012 * www.scfederal.org * (843)797-8300 * (800)845-0432

LATOYA BROWN
525 ALCOTT DR APT 15E

Date of Request: 5/31/2007
Dealer (if applicable): DICK SMITH MOTORS
Member Number:

COLUMBIA, SC 29203

Dear LATOYA BROWN,

Thank you for your recent application for a Used Indirect Auto. After careful consideration, we are unable to approve your request at this time.

The principal reason(s) for our decision are indicated below:

- Limited credit experience
- Delinquent past or present credit obligations with others
- Value or type of collateral not sufficient

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency list below. You have the right under the Fair Credit Reporting Act to know the information contained in your file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply reasons why we have denied credit to you.

You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

You may learn more about the information they have concerning you by contacting them directly. Credit Bureau Agency referral and information obtained from:

Equifax Credit Information Services
PO Box 740241
Atlanta, GA 30374-3200
(800) 685-1111

We thank you for the opportunity to consider your request. If you have any questions regarding any of the information on this document, please contact us at the credit union address or phone number listed.

PLEASE SEE NEXT PAGE FOR EQUAL CREDIT OPPORTUNITY ACT NOTICE

**PLAINTIFF'S
EXHIBIT**

0194

9-
9-22-07



Sovereign Bank

Sovereign Bank
P.O. Box 4020
Rocky Hill, CT 06067
(800) 333-6421

June 25, 2007
Application No. 2520051

LATOYA BROWN
525 ALCOTT DR 15E
COLUMBIA, SC 29203

Dear LATOYA BROWN :

Thank you for your application. We regret that we are unable to approve your request for credit through DICK SMITH NISSAN BELTLINE at this time for the following reason(s):

Insufficient credit file

Our credit decision was based in whole or in part on information obtained from the consumer-reporting agency(s) listed below. The agency(s) played no part in our decision and is/are unable to supply specific reasons for our decision.

You have a right under the Fair Credit Reporting Act to obtain a copy of your credit report from the agency(s) below. The report will be free if you request it within 60 days after you receive this notice. You also have the right to dispute with the agency(s) below the accuracy or completeness of any information on your report.

TRANS UNION CONSUMER RELATIONS
PO BOX 1000 2 BALDWIN PLACE
CHESTER PA 19022
(800) 888-4213
WWW.TRANSUNION.COM/DIRECT

EQUIFAX CREDIT INFORMATION SERVICES
PO BOX 740256
ATLANTA, GEORGIA 30374-0256
(180) 068-5111 1

EXPERIAN
701 EXPERIAN PARKWAY
ALLEN TEXAS 75013
(888) 397-3742
WWW.EXPERIAN.COM/REPORTACCESS

If you have any questions regarding this notice, please contact us at the address or phone number listed above.

Very truly yours,
David Jacobs
Sovereign Bank

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the OFFICE OF THRIFT SUPERVISION, HARBORSIDE FINANCIAL CENTER PLAZA FIVE, SUITE 1600, JERSEY CITY, NEW JERSEY 07311

**PLAINTIFF'S
EXHIBIT**

0195

6.27.09 #10

Sovereign Bank Application Status

Customer Information

Applicant Name:	Brown, Latoya
APS #:	2497943
Status:	Approved ✓
eContract Status:	Not Available

Financing Information

Approved Product:	Retail
Amount Approved: (incl TT&L)	\$13,545.00
Term:	72
Acquisition Fee:	
Buy Rate:	12.49%
Tier Level:	4
Fico Score:	
LTV Ratio:	92.62

Vehicle Information

N/U/D-Year:	Used 2004
Make:	NISSAN
Model:	Altima-V6
Trim:	Sedan 4D S
VIN #	
Mileage:	48433

Bureau Information

Equifax	Experian	TransUnion
---------	----------	------------

Stipulations

Buy Rate - 12.49% ---- Thank You!!!
Please include proof of \$2800/MO. Income with contract.

Comments to Credit Analyst

05/31/2007 04:57:50 PM	KELLY-I NEED A FAVOR ON THIS DEAL-SHE IS FAMILY OF EMPLOYEE OF DICK SMITH WHO HAS WORKED HERE 15 YEARS. CUST WANTS NO MORE THAN 275 PER MONTH PLEASE HELP-THANKS KENT
------------------------	---

Analyst Information

Name:	KELLY TROTTA	Fax:	
Phone Number:	(888)765-5571	Lender Cust. Service Number:	(888)765-5571

[Print Decision \(Barcoded\)](#)[Export To DMS](#)[Copy This Application](#)[Comments To Credit Analyst](#)[Add Co-Applicant](#)[Submit To Other Lenders](#)[Back to Application Status](#)**PLAINTIFF'S
EXHIBIT**

0196

11
9-22-09

cl



Sovereign Bank^{FSB}

P.O. BOX 4020
Rocky Hill, CT 06067-4020

Nov-16-2007

To: LATOYA BROWN
525 ALCOTT DR APT 15E
COLUMBIA, SC 29203

RE: Account No: 8227061499

Dear LATOYA BROWN,

The sale of the collateral on the referenced loan took place on Oct-23-2007. The proceeds from the sale, after repossession expenses amounted to \$9,248.00. As a result of this sale there remains a deficiency balance of \$3,843.00.

It is imperative that you pay this deficiency in full immediately due to the fact that interest accrues monthly which will increase this amount. Failure to pay the above amount or make satisfactory payment arrangements, may result in further collection activity at additional cost to you.

If you have any questions concerning this matter, please feel free to contact the Auto Finance Division at (877) 391-6371.

Sovereign Bank,

Recovery Department

0197

PLAINTIFF'S
EXHIBIT

9-22-09

CX

C.L.X. Recovery Systems

555 Broadhollow Road – Suite 214
Melville, NY 11747
Toll Free (800) 831-8279
Fax (800) 831-8402

November 21, 2007

LATOYA BROWN 118598
525 ALCOTT DR APT. 15 E
COLUMBIA SC 29203

RE: SOVEREIGN BANK 6017
68227061499
4603.88 (PLUS INTEREST)

This office represents the above named client. Your account with them is seriously past due, and we are writing this letter to you in an attempt to assist you in correcting the situation.

There are many reasons people fall behind in their bills. The economy, loss of job, illness, over extension of credit, reduction of income and inflation are just a few that quickly come to mind. However, we believe that given the opportunity, most people will attempt to straighten out their problems and pay their bills. That is the reason for this letter.

Unless you inform us within thirty (30) days from receipt of this notice that you dispute the validity of any portion of this debt in writing, we will assume that this debt is valid. Should you notify this office in writing of any dispute of this debt or any portion of this debt, we will obtain additional verification of the debt and mail it to you. In addition, should you request in writing within thirty (30) days, we will send to you the name and address of the original creditor if it is different from the current creditor.

Payment should be made payable to CLX RECOVERY SYSTEMS. We have enclosed a self-addressed envelope for your convenience.

This communication is from a debt collection service. This letter is an attempt to collect a debt, and any information obtained will be used for that purpose.

Sincerely,

Jack Healy (Extension 88)

**PLAINTIFF'S
EXHIBIT**

13
9-22-09

1

CUSTOMER INFORMATION / COVERED VEHICLE / SELLING DEALER

OWNER'S NAME		CITY, STATE, AND ZIP CODE	
LATOYA PATRICE BROWN		COLUMBIA SC 29203	
STREET ADDRESS		E-MAIL ADDRESS	
525 ALCOFF DR APT 15 E			
AREA CODE AND TELEPHONE NUMBER		YEAR, MAKE, AND MODEL OF VEHICLE	
(803) 466-6015			
VEHICLE IDENTIFICATION NUMBER		VEHICLE MILEAGE AT TIME OF SALE	
JYVEP80C355M43889		051242	
DATE OF SALE		ADDRESS OF SELLING DEALER	
03 JUN 2007		43361	
NAME OF SELLING DEALER		SELLING DEALER SIGNATURE	
DISCK SMITH MOTORS INC.		TURA, SC	
TELEPHONE NUMBER OF SELLING DEALER		29204	
803-256-6600			
LIENHOLDER		LIENHOLDER'S ADDRESS	
CUSTOMER'S SIGNATURE		I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.	

PLAINTIFF'S EXHIBIT

14
1-22-09

2

CHECK IF VEHICLE HAS MANUFACTURER'S WARRANTY OR ANY POWERTRAIN / MAJOR COMPONENT COVERAGE IN EFFECT

☐ YES
 ☐ NO

3

CHECK COVERAGE

See reverse side of agreement for coverages.

☐ POWERTRAIN (PT)
 ☐ BASE
 ☒ HIGH-TECH (HT)

4

CHECK APPLICABLE BOXES

DEDUCTIBLE AMOUNT PER VISIT
☐ \$0
 ☒ \$50
 ☐ \$100
 ☐ \$200

VEHICLE SURCHARGE:
☐ 4-WHEEL/ALL WHEEL DRIVE
 ☐ TURBO OR SUPERCHARGER
☒ 4-WHEEL STEERING
 ☐ DIESEL

5

CHECK TIME & MILEAGE

This agreement expires by time from Date of Sale or mileage measured from odometer reading at time of sale, whichever occurs first.

MONTHS	MILES
MAXIMUM MONTHS FROM DATE OF SALE ☐ 3 MONTHS ☐ 24 MONTHS ☐ 6 MONTHS ☒ 36 MONTHS ☐ 12 MONTHS ☐ 48 MONTHS	MAXIMUM VEHICLE MILES FROM DATE OF SALE ☐ 3,000 MILES ☐ 24,000 MILES ☐ 6,000 MILES ☒ 36,000 MILES ☐ 12,000 MILES ☐ 48,000 MILES

6

ADDITIONAL BENEFITS

Substitute Transportation: In the event of a breakdown of a covered component, you may be eligible for substitute transportation reimbursement. Such expense shall be limited to \$30.00 per calendar day, a 5 day maximum, not to exceed \$150.00 per occurrence. To qualify for reimbursement, the covered vehicle must be retained by the repairing facility overnight and the covered repair must exceed a minimum of four (4) hours labor, as defined in factory or accredited flat rate manuals. Reimbursement for substitute transportation shall not continue beyond the day on which repairs are completed and you are notified of completion. Valid rental agency receipts will be required for reimbursement.

24 Hour Roadside Assistance: In the event the covered vehicle requires any of the following services: (1) gasoline up to two gallons, (2) flat tire service (with inflated spare), (3) battery jump start, (4) locked-out assistance, or (5) towing, the cost of services not payable by your insurance will be covered up to \$80.00 per occurrence. **If the service is provided by calling 1-800-270-8447.** Roadside Assistance services are provided through Road America Motor Club, Inc. with corporate headquarters at 7300 Corporate Center Drive, Suite 601, Miami, FL 33126 and California offices located at 3580 Wilshire Blvd. Corey & Corey, 17th Floor, Los Angeles, California 90010.

7

EXTENDED SERVICE AGREEMENT PRICE

\$ 1577.00

ANY MODIFICATION, ALTERATION, OR CHANGE TO THE PREPRINTED TERMS AND CONDITIONS OF THIS EXTENDED SERVICE AGREEMENT IS INVALID AND OF NO FORCE OR EFFECT. THE PURCHASE OF THIS AGREEMENT IS NOT REQUIRED EITHER TO PURCHASE OR TO OBTAIN FINANCING FOR A MOTOR VEHICLE.

THIS AGREEMENT IS NOT AN INSURANCE POLICY. IT IS AN EXTENDED SERVICE AGREEMENT BETWEEN YOU AND THE SELLING DEALER. ALL OBLIGATIONS AND LIABILITIES FOR REPAIRS COVERED BY THIS EXTENDED SERVICE AGREEMENT ARE THOSE OF THE SELLING DEALER AND NOT FIRST EXTENDED SERVICE CORPORATION, WHICH ADMINISTERS THE AGREEMENT FOR THE SELLING DEALER. SEE REVERSE SIDE FOR ADDITIONAL INFORMATION REGARDING RESPONSIBILITY FOR BENEFITS.

MAINTENANCE RESPONSIBILITIES: If you fail to perform the manufacturer's recommended maintenance, such as oil changes and other periodic services, and your failure causes a breakdown, this will result in loss of your protection under this extended service agreement. Maintenance records from the date of sale supported by receipts indicating dates, mileage and services performed must be kept by the purchaser or subsequent owner of this extended service agreement and made available to the Selling Dealer and/or Administrator on request.

WHAT TO DO IF REPAIRS ARE NEEDED: If your vehicle is within forty (40) miles of the Selling Dealer, you must deliver your vehicle to the Selling Dealer at the address shown on the front of this extended service agreement. If your vehicle is more than forty (40) miles from the Selling Dealer, or the Selling Dealer is no longer at that address, call First Extended Service Corporation for instructions before you deliver your vehicle to a repairing facility. You must authorize the repair facility to perform necessary diagnostic work so that the repair facility can provide an accurate estimate of repair. To ensure coverage under the terms of this extended service agreement authorization must be obtained prior to repair. Call the toll free claims number listed below between the hours of 7:00 a.m. - 7:00 p.m., C.T. Monday - Friday, and 9:00 a.m. - 3:30 p.m. C.T. on Saturdays.

EMERGENCY REPAIRS: If repairs to a covered component are required outside normal business hours (i.e., on a weekend or holiday), you should deliver your vehicle to a licensed repair facility and have the necessary repairs performed on your vehicle at a reasonable and customary charge. On the next business day, or as soon as reasonably possible, you should report the repairs to First Extended Service Corporation by calling the toll free claims number listed below. To obtain a reimbursement for such emergency repairs, please call the claims number below. **Emergency repairs** are defined as repairs required to enable your vehicle to be driven.

AUTHORIZATION IS REQUIRED PRIOR TO THE COMMENCEMENT OF ALL REPAIRS...PLEASE CALL:
FOR NATIONWIDE CLAIMS 1-800-527-3426
FOR ROADSIDE ASSISTANCE ONLY 1-800-270-8447

COVERED: Upon payment of the deductible amount per repair visit selected on the front of this extended service agreement and before the expiration of this extended service agreement, the Selling Dealer will make necessary repairs to components listed, based on the specific coverage selected, without additional charge to you. Replacement of any part made with new parts or with parts of like kind and quality at the time of breakdown, including remanufactured or non-original manufacturer's parts or used parts, at the option of the Selling Dealer. This service agreement covers failure of a covered component resulting from normal wear and tear. Items listed under "What Is Not Covered" are excluded.

POWERTRAIN COVERAGE

ENGINE

All internal lubricated parts, cylinder block and heads, factory installed turbocharger or supercharger units, flywheel, fuel pump, manifolds, oil pan and oil pump, seals and gaskets, timing gears and chain or belt, valve covers, water pump, engine mounts, thermostat, thermostat housing and gasket.

TRANSMISSION

All internal parts, seals and gaskets, torque converter, transfer case, and transmission case.

FRONT WHEEL DRIVE

Axle shafts, final drive housing and internal parts, front-wheel bearings, locking rings and automatic front locking hubs (four wheel drive), seals and gaskets, universal and constant velocity joints.

REAR-WHEEL DRIVE

Axle shafts, drive axle housing and internal parts, drive shaft, rear wheel bearings, retainers, seals and gaskets, universal and constant velocity joints.

BASE COVERAGE

POWERTRAIN COVERAGE ABOVE + THE FOLLOWING COMPONENTS:

FUEL SYSTEM AND ADDITIONAL COMPONENTS

Diesel injectors and lines, diesel injector pump, fuel pump, gas fuel injectors and lines, harmonic balancer and bolt, rear axle hub and bearings.

STEERING

Power steering rack and pinion, cooler and cooler lines, couplings, linkages, manual and power steering gear housing and all internal parts, power steering pump, seals and gaskets.

SUSPENSION

King pins, MacPherson struts, spindle and spindle supports, stabilizer bar and linkage, upper and lower ball joints, upper and lower control arms, shafts and bushings.

BRAKES

All lines and fittings, backing plates, calipers and wheel cylinders, clips and retainers, combination valve, master cylinder, parking brake linkage and cables, power booster, self-adjusters and springs.

FACTORY AIR CONDITIONING

Clutch and clutch bearing, compressor, compressor seals, condenser, evaporator, field coil and pulley.

ELECTRICAL

Alternator, electronic ignition module, heated back glass (electrical only — not glass damage or breakage), manually operated switches, radiator fan relay, starter motor, voltage regulator, wiper motors, wiring harnesses.

HIGH-TECH COVERAGE

POWERTRAIN COVERAGE ABOVE + BASE COVERAGE ABOVE + THE FOLLOWING COMPONENTS:

HIGH-TECH COMPONENTS

Anti-lock brake module and sensor, automatic temperature control unit, compass and thermometer readout displays, electronic air suspension, electronic instrument display (excluding dash pad, clock, radio and equalizer), heated windshield (electrical only — not glass damage or breakage), keyless entry system (excluding door handles), and cruise control.

MISCELLANEOUS COMPONENTS

Distributor assembly (including housing, shaft, cap and rotor), fuel tank, transmission vacuum, module, electronic transmission module, transmission mounts, air conditioning accumulator, heater blower motor and core assembly, radiator fan clutch and motor, timing chain cover, power seat motors, power window motors, power antenna motor, power door locks and retainer clips.

WHAT IS NOT COVERED: Any items not listed under the "What Is Covered" section of the specific plan you selected on the front of this agreement. Incidental or consequential damages or loss caused by breakdown of components (or otherwise) including property damage, personal injury, inconvenience, loss of vehicle use, damage to a covered part by a non-covered part and damage to a non-covered part by a covered part. Also not covered:

Repairs covered by any manufacturer's warranty or manufacturer's emissions warranty on the covered vehicle (whether or not transferred with the vehicle), manufacturer's recall or factory bulletins, breakdowns of components caused by a defect the manufacturer has publicly announced it would correct, but which you failed to have corrected. We will not pay for costs covered by any warranty of the manufacturer, state required dealer warranty or a repairer's guarantee regardless of whether they honor such warranty guarantee. Commercial use is excluded and will void coverage under this extended service agreement. Repairs required because of collision, abuse, or operation without proper lubrication or coolant, road conditions, misuse, negligence, racing, accidents, fires, floods, riots, acts of God, vandalism, upset, theft, lack of reasonable and proper maintenance, abuse through towing or improper load capacity, vehicles used for snowplowing, abuse through continued operation of an impaired vehicle, or any other losses normally covered by casualty insurance. Alterations made by you which cause the vehicle to be out of compliance with the manufacturers specifications. Repairs beyond those required to correct the covered failure. Repairs of components which have been modified or added to the vehicle after purchase, any repairs on vehicles whose mileage has been altered or whose odometer has been tampered with while owned by you. The total benefits payable under this extended service agreement shall not exceed the price paid for the vehicle. Repairs made outside the continental United States and Canada unless you obtain a written waiver to this condition from the Selling Dealer. Any manufacturer's required maintenance. With respect to Roadside Assistance: You are not covered when any other Roadside Coverage is in effect such as coverage from the Manufacturer with the purchase of your vehicle or as part of your personal insurance policy. Any Roadside Assistance as shown in this agreement is covered up to \$80.00 provided it is referred as a result of calling the Roadside Assistance toll free number. Any other Roadside Assistance services obtained are excluded and not covered. Towing services associated with accidents or vandalism are excluded. Other expenses associated with travel arrangements, food, lodging, and miscellaneous expenses are also excluded. Diagnostic fees for non-covered repairs. Damage caused by your failure to take, or cause to be taken, reasonable precautions to prevent further damage when an apparent problem exists.

Mechanical - Service adjustments/cleaning, throttle body assembly (except injectors), filters, contaminated fuel/fluids, a/c recharge, battery/battery packs, battery cables, belts, hoses, brake shoes and pads, brake rotors and drums, exhaust system (including catalytic converters), light bulbs, sealed beams and lenses, manual clutch assembly, strut inserts, shock absorbers, spark/glow plugs and wires, squeaks and rattles, tires, tune-ups, wheel balance, wheel alignment, wheel studs and wiper blades. All fluids, lubricants, coolants and refrigerant (except in conjunction with a covered repair), shop supplies and hazardous waste fees. Repairs, retrofits, or replacement of components made solely to meet or maintain governmental emission standards.

Exterior - Service adjustments (glass and body parts), bright metal, bumpers, body panels, door handles, hinges, glass, moldings, outside ornamentation, convertible or vinyl tops, paint, rust, sheet metal, sideview mirrors (glass and housing), air and water leaks, weatherstrip, wheel covers/ornaments and wind noise. Physical damage, alignment or bumper and body parts.

Interior - Buttons, carpet, trim, upholstery, door and window handles, knobs and rear view mirror (glass and housing). Theft deterrent systems, radar detectors, telephones, radios, CD/tape players, DVD/VCR players, TV's, graphic equalizers, speakers, navigational systems and related components.

CANCELLATION: In the event the covered vehicle is repossessed, declared a total loss, or you elect to give notice of cancellation, this extended service agreement shall terminate. In such event you or the lienholder shown on the front must submit immediately to the Selling Dealer in writing the following: the extended service agreement number, vehicle identification number, mileage, make and model of the vehicle. In determining the amount of any refund, the purchase price of the extended service agreement shall be multiplied by the greater of (A) the fraction obtained by dividing the total mileage added on the covered vehicle since the time of sale by the difference between the maximum miles covered and the vehicle mileage at the time of sale or (B) the fraction obtained by dividing the number of months the extended service agreement has been in effect since the time of sale by the difference between the maximum number of months covered under the extended service agreement and the number of months the vehicle was in service prior to the effective date of the extended service agreement. The difference between the number so obtained and the price of the extended service agreement, less a Cancellation Fee (as determined below), shall be refunded to you and/or the lienholder. In the event of repossession or total loss the lienholder will be the sole payee. If the extended service agreement is canceled within sixty (60) days of your purchase of this agreement (the Initial Period) and no claims have been made under the agreement, the amount of the refund shall be equal to the full amount paid for this agreement. After the Initial Period, or if a claim has been made under this agreement, the amount of the refund shall be a pro-rata share of the selling price of the agreement as determined above. However, if you cancel the agreement during the Initial Period, no Cancellation Fee will be charged. **Note:** In the event this extended service agreement is properly transferred to an individual person purchasing your vehicle, this agreement may not be cancelled by the new owner of the covered vehicle under any circumstance. **CANCELLATION FEE:** The Cancellation Fee is \$50.00.

TRANSFER OF VEHICLE OWNERSHIP: In the event you sell the covered vehicle, this extended service agreement shall terminate. You may apply for a transfer to the new owner. Submit immediately (within fifteen (15) days of the change in ownership) to the Selling Dealer in writing, along with the Transfer Fee of \$50.00, the following: The extended service agreement number, vehicle identification number, mileage, make and model of the vehicle, date of sale of the vehicle, and the name and address of both yourself and the new owner of the covered vehicle. This extended service agreement may not be assigned separately from the covered vehicle, nor can it be assigned to a new or used car dealer or anyone other than an individual purchasing the vehicle for personal use. Copies of maintenance records on the covered vehicle must be obtained from the original owner by a new owner. To ensure coverage under the manufacturer's warranty and under this agreement, contact the Selling Dealer or an Authorized Dealer who is franchised by the manufacturer of the covered vehicle to assure transfer of the manufacturer's warranty. **NOTE:** In the event this extended service agreement is properly transferred to a new owner of the covered vehicle, this agreement may not be transferred by the new owner of the covered vehicle to any subsequent owner under any circumstance.

RESPONSIBILITY FOR BENEFITS: ALL BENEFITS PROVIDED UNDER THIS AGREEMENT ARE SOLELY THE OBLIGATION OF THE SELLING DEALER. HOWEVER, THE SELLING DEALER'S OBLIGATIONS ARE INSURED BY VIRGINIA SURETY COMPANY, INC. IF THE SELLING DEALER FAILS TO PAY A VALID CLAIM WITHIN SIXTY (60) DAYS AFTER YOU HAVE FILED A PROOF OF LOSS COVERED BY THIS EXTENDED SERVICE AGREEMENT, THEN YOU MAY MAKE A DIRECT CLAIM AGAINST VIRGINIA SURETY COMPANY, INC., 175 W. JACKSON BLVD., CHICAGO, IL 60604-2615 AT (800) 527-3448.

In the event the Selling Dealer does not perform or pay a covered claim: (1) Purchaser authorizes First Extended, as administrator, to collect on behalf of Purchaser unpaid repair claims which may be owed by the Selling Dealer; and (2) Should First Extended or Virginia Surety Company, Inc., pay or perform Purchaser's claim for Selling Dealer, then Purchaser, as a condition to such performance hereby gives an absolute assignment of his or her claims against the Selling Dealer.

*****CUSTOMER NOTICE: SEE STATE GUIDELINES FOR DETAILS OF YOUR STATE'S SPECIAL NOTICES AND PROTECTIONS REGARDING YOUR CLAIMS AND OTHER RIGHTS PROVIDED UNDER THIS EXTENDED SERVICE AGREEMENT.**

USAR (9/06)

0200

BUYER'S ORDER

Dick Smith Motors, Inc.

4030 West Beltline Boulevard
Columbia, SC 29204
803-256-6600
800-944-8570

This contract is made and entered into between Dick Smith Motors, Inc., hereinafter called Dealer, and Customer. Any retail installment contract or other document executed by Customer in connection herewith is simply an effort to satisfy Customer's obligations under this contract.

CUSTOMER INFORMATION

Name Lotaya Brown
(FIRST) (MI) (LAST)
Co-Owner _____
(FIRST) (MI) (LAST)
Street Address 525 Alcott Dr
Mailing address if different Apt 15-3
City Cola In City Limits? ☐ Y ☐ N ☐
County Richland State _____ Zip _____
Home Phone 464-6015 Bus. Phone _____
Best Time to Call Any
Employer Shoreline Occupation Test Mgr
Employer's City & Zip Code _____
SSN: 249-81-8254 DOB: 1/23/85
Drivers License No. _____ State SC
Referred to dealership by RF

VEHICLE INFORMATION

Date Purchased _____ Stock No. CN7024B
☐ New ☐ Pre-Owned
Year 05 Make Madza Model 6
Body Style 4dr
Serial No. 01YVEP80C355M43889
Color Beige No. Cyl. 4
Mileage 43361

EQUIPMENT & OPTIONS

☒ AM-FM ☒ AUTO ☒ 5-SPD ☒ AIR-COND.
☒ POWER WINDOWS ☒ POWER LOCKS
☒ 4 CYL ☒ 6 CYL ☒ 8 CYL ☒ 4WD
☒ CRUISE CONTROL ☒ CASSETTE ☒ POWER SEAT
☒ SUNROOF ☒ ALLOY WHEELS ☒ LEATHER
☒ THEFT DETERRENT CO

INSURANCE INFORMATION

Verified by Fuller
Insurance Company GEICO
Policy No. _____ Dates _____ to _____
Agent/Agency GEICO
Mailing Address _____
City _____ State _____ Zip _____
Phone 1800 841 3000 Person Contacted _____

SUMMARY OF SALE

PRICE OF VEHICLE \$ 13988
Dealer Installed Accessories or Additions
Savings <2224>
Car Care System Package 11764
Tyre Care _____
Etch _____
Accessories _____
Closing Fee _____ 199.00
TOTAL PRICE \$ 11963
Less Trade-In 800
DIFFERENCE \$ 11163
S.C. Sales Tax 300
License ☐ New ☐ Transfer 25
Electronic Filing Fee 12.00
Other _____
Balance Owed On Trade-In
Verified for 10 days ☐ Y ☐ N
SETTLEMENT \$ 11500
Cash Down (Receipt No.) _____
Less Rebate/Misc. _____
BALANCE \$ _____

TRADE-IN INFORMATION

Year 95 Make Mercury Model Tracer
Body Style 4dr
Serial No. 3MASM10J0SR660005
Color Pink No. Cyl. 4
Mileage 147708
License Tag No. to be transferred _____ Expires _____
Validation No. _____
Lienholder _____
Mailing Address _____
City _____ State _____ Zip _____
Phone _____ Person Contacted _____
Account No. _____
Payoff Amount _____ Good Until _____

BALANCE OWED ON TRADE: I understand that if the balance owed on my trade is less than the amount shown, I will be refunded the difference. If the amount is greater than shown, I will pay the difference.

PAYMENT BY CHECK: I understand that any funds received in the form of a check will be held for fifteen (15) working days before a refund can be made. I must also have my copy of my receipt to obtain my deposit.

Dealer shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this order where such failure or delay is due in whole or part, to any cause beyond the control or without the fault or negligence of the dealer. Customer authorizes Selling Dealer to obtain consumer information contained herein.

Salesperson [Signature]

THE INFORMATION YOU SEE ON THE WINDOW FORM (BUYERS GUIDE) FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THIS CONTRACT.

This contract is not binding upon Dealer unless accepted in writing by an officer or a sales manager or assistant sales manager of Dealer and until a retail installment contract for any deferred balance has been approved and funded by a third party financing source.

SEE ADDITIONAL TERMS AND CONDITIONS ON OPPOSITE PAGE

CUSTOMER ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED-IN COPY OF THIS CONTRACT.

Lotaya Brown
Customer's Signature

Accepted
Title [Signature]

ALL VEHICLES SOLD "AS IS" UNLESS INDICATED OTHERWISE IN WRITING.

DEFENDANT'S EXHIBIT

#1
9-27-09

0201

ADDITIONAL TERMS AND CONDITIONS

1. **SPOT DELIVERY.** Dealer hereby conditionally delivers the vehicle to Customer subject to approval and funding of a retail installment contract by a third-party financing source. Customer will cooperate with Dealer in arranging financing by promptly providing any requested documents and information and by executing substitute retail installment contracts if requested by Dealer. Customer may arrange for his or her own financing, insurance, service contract, or any other goods or services. Dealer does not require the purchase of any other goods or services by Customer to arrange financing. If Dealer provides any goods or services, it may receive a portion of any finance charge, premium, or profit on the sale of same. Dealer may also charge a closing fee for credit investigation, preparing, handling, and processing documents necessary to satisfy or perfect a lien, and any other charges incidental to the transaction. Notwithstanding any other form, document, representation, or understanding whatsoever, title shall remain in Dealer until any retail installment contract or other instrument has been funded by a third-party financing source. Until such funding, Customer may use and enjoy the vehicle for up to 50 miles per day. Customer may not allow another person to use the vehicle nor may Customer use the vehicle to transport persons or property for hire; in any race, test, or competitive event; after drinking any alcohol or using drugs; for any illegal purpose; to carry loads beyond its capacity; for off road use; to carry hazardous or explosive substances; if further use might cause damage; to push or tow any vehicle; in violation of any of the terms or conditions of this contract; or in a reckless, abusive, or negligent manner. Regardless of fault, Customer is responsible for any loss or damage to the vehicle up to the full price together with loss of use, appraisal fees, and recovery costs. If Customer is not approved and funded by a third-party financing source within a reasonable time in Dealer's discretion, Customer fails to keep and honor any of the terms of this contract, has obtained the vehicle by fraud or misrepresentation, or if Dealer otherwise reasonably deems itself insecure, Customer shall return the vehicle upon Dealer's demand. In any of the above events, Dealer may peacefully repossess the vehicle, without demand, and customer hereby consents to **WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION.**
2. **DISCLAIMER OF WARRANTIES.** DEALER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Any description of the vehicle contained in this contract is for the sole purpose of identifying the vehicle, and does not constitute a warranty that the vehicle shall conform to the description. Any limited warranty, specifications, or representations of the manufacturer are those of the manufacturer only and are not adopted by Dealer.
3. **USED VEHICLE DISCLOSURE.** USED VEHICLES MAY HAVE A HISTORY OF PRIOR DAMAGE, MECHANICAL FAILURE OR BOTH. Dealer makes no representations whatsoever as to the presence or absence of such history. DO NOT RELY UPON OPINIONS OR STATEMENTS OF DEALER'S EMPLOYEES AS TO SUCH HISTORY AS SUCH EMPLOYEES GENERALLY HAVE NO WAY OF KNOWING SUCH MATTERS. Customer may request information about prior ownership from the DMV's of the appropriate states. Customer also has the right to have the vehicle inspected at Customer's expense by any mechanic or garage of Customer's choice prior to consummation of this transaction. Dealer will also provide Customer with copies of its records relating to repairs and reconditioning, including any paint and body repairs, or otherwise preparing the vehicle for sale upon Customer's request. Customer agrees to hold Dealer harmless from any claims arising out of the prior history of the vehicle.
4. **INSURANCE.** Customer represents that he or she has full coverage insurance in effect and hereby releases and agrees to hold Dealer harmless from any liability in connection therewith.
5. **REBATES & INCENTIVES.** Customer hereby assigns all right, title, and interest in and to any manufacturer's rebates and incentives to Dealer.
6. **WARRANTY OF TITLE ON TRADE-IN.** For and in consideration of the trade allowance listed under SUMMARY OF SALE, Customer does hereby bargain, sell, and deliver the trade-in vehicle to Dealer. Customer warrants title to be in Customer's name and that same is free and clear of all liens and encumbrances other than those listed under TRADE-IN INFORMATION, that Customer has the right to sell said vehicle, and that Customer will warrant and defend said title against all other claims.
7. **REPRESENTATIONS AS TO TRADE-IN.** Unless indicated otherwise in writing, there are no existing material defects known to Customer concerning the trade-in vehicle. Customer warrants and certifies that the trade-in vehicle does not have a salvage title history.
8. **DISPOSITION OF TRADE-IN VEHICLE.** Since financing approval and funding may take several weeks, the trade-in vehicle could deteriorate pending same, and/or since payments may continue to accrue, Dealer may but has no obligation to satisfy any indebtedness on the trade-in vehicle and Customer authorizes Dealer to dispose of same. If Dealer can not obtain financing approval and funding, Customer shall immediately reimburse Dealer for all amounts paid. If the trade-in vehicle has already been sold by Dealer, Customer shall be credited with the actual cash value of the vehicle (which may be substantially less than the trade allowance), less any expenses incurred in holding, preparing for sale, selling and the like. If said net value exceeds the liens and encumbrances on the trade-in, Dealer shall pay the difference to Customer upon surrender of Dealer's vehicle. If the liens and encumbrances exceed the net value of the trade-in, Customer shall immediately remit the difference to dealer.
9. **ARBITRATION.** Any and all disputes, claims or controversies between Dealer or any officers, directors, agents, employees, or assignees of Dealer, and Customer arising from or relating to this contract or the relationships which result from this contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator, selected by Dealer with Customer's consent. The parties expressly waive all rights to trial by jury on such claims. Provided, however, that nothing in this contract shall require Dealer to submit to arbitration any claims by Dealer against Customer for claim and delivery, repossession, injunctive relief, or monies owed by Customer in connection with the purchase or lease of any vehicle, and any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration. The filing fees for arbitration shall be paid by the party initiating arbitration. The arbitrator may allocate the other arbitration fees as he/she deems appropriate. Any party may take one deposition of an opposing party. The parties agree to exchange all exhibits to be used in arbitration 7 days before arbitration. The arbitrator shall determine the controversy in accordance with the terms of this contract between the parties and shall not consider any parole evidence which purports to alter, modify, vary, add to, or contradict such contract. The arbitrator shall give effect to all applicable statutes of limitation. Any arbitration under this agreement shall take place in Richland County, South Carolina and Customer agrees that the courts of Richland County, South Carolina shall have exclusive jurisdiction over enforcement of this contract and any award made by any arbitrator pursuant to this contract. In no event shall the arbitrator be authorized to award punitive, exemplary, double, or treble damages (or any other damages which are punitive in nature or effect) against either party. Unless otherwise agreed in writing,

USAR 225963

USED VEHICLE EXTENDED SERVICE AGREEMENT

1 CUSTOMER INFORMATION / COVERED VEHICLE / SELLING DEALER

OWNER'S NAME LATOYA PATRICE BROWN		CITY, STATE, AND ZIP CODE COLUMBIA SC 29203	
STREET ADDRESS 525 ALCOTT DR APT 15 E		E-MAIL ADDRESS	
AREA CODE AND TELEPHONE NUMBER (803) 466-6015		YEAR, MAKE, AND MODEL OF VEHICLE 05 MAZD MY6	
VEHICLE IDENTIFICATION NUMBER 1YVFP80C355M43889		VEHICLE MILEAGE AT TIME OF SALE	
DATE OF SALE 01 JUN 2007		ADDRESS OF SELLING DEALER 43361	
NAME OF SELLING DEALER DICK SMITH MOTORS, INC.		DEALER NUMBER 43361	
TELEPHONE NUMBER OF SELLING DEALER 803-256-6600		SELLING DEALER SIGNATURE CHEA, SC 29204	
LIENHOLDER Sovereign Bank		LIENHOLDER'S ADDRESS	
CUSTOMER'S SIGNATURE Latoya Brown			

2 CHECK IF VEHICLE HAS MANUFACTURER'S WARRANTY OR ANY POWERTRAIN / MAJOR COMPONENT COVERAGE IN EFFECT☐ YES☐ NO**3 CHECK COVERAGE**

See reverse side of agreement for coverages.

☐ POWERTRAIN (PT)☐ BASE☒ HIGH-TECH (HT)**4 CHECK APPLICABLE BOXES**

DEDUCTIBLE AMOUNT PER VISIT

☐ \$0☒ \$50☐ \$100☐ \$200

VEHICLE SURCHARGE:

☐ 4-WHEEL/ALL WHEEL DRIVE☐ TURBO OR SUPERCHARGER☐ 4-WHEEL STEERING☐ DIESEL**5 CHECK TIME & MILEAGE**

This agreement expires by time from Date of Sale or mileage measured from odometer reading at time of sale, whichever occurs first.

MONTHS

MILES

- MAXIMUM MONTHS FROM DATE OF SALE
- ☐ 3 MONTHS ☐ 24 MONTHS
- ☐ 6 MONTHS ☒ 36 MONTHS
- ☐ 12 MONTHS ☐ 48 MONTHS

- MAXIMUM VEHICLE MILES FROM DATE OF SALE
- ☐ 3,000 MILES ☐ 24,000 MILES
- ☐ 6,000 MILES ☒ 36,000 MILES
- ☐ 12,000 MILES ☐ 48,000 MILES

DEFENDANT'S EXHIBIT

#2 9-22-07

6 ADDITIONAL BENEFITS

Substitute Transportation: In the event of a breakdown of a covered component, you may be eligible for substitute transportation reimbursement. Such expense shall be limited to \$30.00 per calendar day, a 5 day maximum, not to exceed \$150.00 per occurrence. To qualify for reimbursement, the covered vehicle must be retained by the repairing facility overnight and the covered repair must exceed a minimum of four (4) hours labor, as defined in factory or accredited flat rate manuals. Reimbursement for substitute transportation shall not continue beyond the day on which repairs are completed and you are notified of completion. Valid rental agency receipts will be required for reimbursement.

24 Hour Roadside Assistance: In the event the covered vehicle requires any of the following services: (1) gasoline up to two gallons, (2) flat tire service (with inflated spare), (3) battery jump start, (4) locked-out assistance, or (5) towing, the cost of services not payable by your insurance will be covered up to \$80.00 per occurrence, if the service is provided by calling 1-800-270-8447. Roadside Assistance services are provided through Road America Motor Club, Inc. with corporate headquarters at 7300 Corporate Center Drive, Suite 601, Miami, FL 33126 and California offices located at 3580 Wilshire Blvd. Corey & Corey, 17th Floor, Los Angeles, California 90010.

7 EXTENDED SERVICE AGREEMENT PRICE

\$ 1577.00

ANY MODIFICATION, ALTERATION, OR CHANGE TO THE PREPRINTED TERMS AND CONDITIONS OF THIS EXTENDED SERVICE AGREEMENT IS INVALID AND OF NO FORCE OR EFFECT. THE PURCHASE OF THIS AGREEMENT IS NOT REQUIRED EITHER TO PURCHASE OR TO OBTAIN FINANCING FOR A MOTOR VEHICLE.

HIS AGREEMENT IS NOT AN INSURANCE POLICY. IT IS AN EXTENDED SERVICE AGREEMENT BETWEEN YOU AND THE SELLING DEALER. ALL OBLIGATIONS AND LIABILITIES FOR REPAIRS COVERED BY THIS EXTENDED SERVICE AGREEMENT ARE THOSE OF THE SELLING DEALER AND NOT FIRST EXTENDED SERVICE CORPORATION, WHICH ADMINISTERS THE AGREEMENT FOR THE SELLING DEALER. SEE REVERSE SIDE FOR ADDITIONAL INFORMATION REGARDING RESPONSIBILITY FOR BENEFITS.

MAINTENANCE RESPONSIBILITIES: If you fail to perform the manufacturer's recommended maintenance, such as oil changes and other periodic services, and our failure causes a breakdown, this will result in loss of your protection under this extended service agreement. Maintenance records from the date of sale supported by receipts indicating dates, mileage and services performed must be kept by the purchaser or subsequent owner of this extended service agreement and made available to the Selling Dealer and/or Administrator on request.

WHAT TO DO IF REPAIRS ARE NEEDED: If your vehicle is within forty (40) miles of the Selling Dealer, you must deliver your vehicle to the Selling Dealer at the address shown in the front of this extended service agreement. If your vehicle is more than forty (40) miles from the Selling Dealer, or the Selling Dealer is no longer at that address, call First Extended Service Corporation for instructions before you deliver your vehicle to a repairing facility. You must authorize the repair facility to perform necessary diagnostic work so that the repair facility can provide an accurate estimate of repair. To ensure coverage under the terms of this extended service agreement authorization must be obtained prior to repair. Call the toll free claims number listed below between the hours of 7:00 a.m. - 7:00 p.m., C.T. Monday - Friday, and 9:00 a.m. - 3:30 p.m. C.T. on Saturdays.

EMERGENCY REPAIRS: If repairs to a covered component are required outside normal business hours (i.e., on a weekend or holiday), you should deliver your vehicle to a licensed repair facility and have the necessary repairs performed on your vehicle at a reasonable and customary charge. On the next business day, or as soon as reasonably possible, you should report the repairs to First Extended Service Corporation by calling the toll free claims number listed below. To obtain a reimbursement for such emergency repairs, please call the claims number below. Emergency repairs are defined as repairs required to enable your vehicle to be driven.

AUTHORIZATION IS REQUIRED PRIOR TO THE COMMENCEMENT OF ALL REPAIRS...PLEASE CALL:

0203

Dealer Number: _____ Contract Number: _____

Buyer Name: **ATOTIA PATRICIA BROWN** Address: **4101 SHILOH BOULEVARD**
525 ALCOCK DR APT 45 **4030 BELTLINE BLVD**
COLUMBIA, SC 29203 **COLUMBIA, SC 29204**

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit by signing this contract. You choose to buy the vehicle on credit. Under the agreement on the front and back of this contract, you agree to pay the creditor. A finance charge (we call it "interest" in this contract) the amount financed and finance charge according to the payment schedule below. We will figure your finance charge on a daily basis. The truth-in-lending disclosures below are part of this contract.

New/Used/ Demo	Year	Make and Model	Vehicle Identification Number	Primary Use For Which Purchased
USED	2005	SAFARI	1J4P80G351A3989	Personal

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	MONTHLY PAYMENT	TOTAL PAYMENT
12.54	\$956.45	\$13091.00	\$16027.45	\$18827.45

Your Payment Schedule Will Be:

Number of Payments: **36** Amount of Monthly Payment: **\$522.98** First Payment Due: **06/01/07**

Late Charge: If a payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late, with a minimum charge of \$8.00. A late charge will not exceed \$45.00. If you bought the vehicle primarily for personal, family, or household use, we may charge the maximum and minimum late charge dollar amounts as allowed by S.C. Code Ann. § 37-1109 of the South Carolina Protector Code.

Prepayment: If you pay off your debt early, you will not have to pay a penalty.

Security Interest: You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date of security interest.

ITEMIZATION OF AMOUNT FINANCED

1. Cash Price (including sales tax): **\$12064.00**

2. Total Downpayment: **\$500.00**

Trade-In: **2005 MERC TRUCK**

Gross Trade-In Allowance: **\$800.00**

Less: Pay Off Made by Seller: **\$0.00**

Equals Net Trade-In: **\$800.00**

Cash: **\$0.00**

Other: **\$0.00**

If total downpayment is negative, enter "0" below: **\$0.00**

Unpaid Balance of Cash Price (minus 2): **\$11564.00**

Other Charges (including Amount Paid for items or (Sellers may enter part of these amounts):

A. Cost of Credit: **\$0.00**

B. Insurance Company of Choice: **\$0.00**

C. Dealer's Single Interest Insurance: **\$0.00**

D. Other Insurance Paid to the Insurance Company: **\$0.00**

E. Other Fees Paid to Government Agencies: **\$0.00**

F. Government Taxes Not Included in Cash Price: **\$0.00**

G. Government License and Registration: **\$0.00**

H. Other Charges (Seller's name, title, and brand and describe purpose): **\$0.00**

Total Other Charges/Amounts Paid to Others on their behalf: **\$0.00**

Amount Financed (3 + 4): **\$11564.00**

Insurance: You may buy the physical damage insurance this contract requires from anyone you choose who is acceptable to the lender. You may also buy insurance to cover the vehicle from the following: (1) State of South Carolina; (2) State of North Carolina; (3) State of Virginia; (4) State of West Virginia; (5) State of Maryland; (6) State of Delaware; (7) State of Pennsylvania; (8) State of New Jersey; (9) State of New York; (10) State of Connecticut; (11) State of Massachusetts; (12) State of Rhode Island; (13) State of Vermont; (14) State of New Hampshire; (15) State of Maine; (16) State of New Brunswick; (17) State of Nova Scotia; (18) State of Prince Edward Island; (19) State of Saskatchewan; (20) State of Alberta; (21) State of British Columbia; (22) State of Ontario; (23) State of Quebec; (24) State of New South Wales; (25) State of Victoria; (26) State of South Australia; (27) State of Western Australia; (28) State of Northern Territory; (29) State of Australian Capital Territory; (30) State of New Zealand; (31) State of Fiji; (32) State of Tonga; (33) State of Samoa; (34) State of American Samoa; (35) State of Guam; (36) State of Northern Mariana Islands; (37) State of Puerto Rico; (38) State of Virgin Islands; (39) State of British Virgin Islands; (40) State of Cayman Islands; (41) State of Anguilla; (42) State of Antigua and Barbuda; (43) State of Aruba; (44) State of Bahamas; (45) State of Barbados; (46) State of Belize; (47) State of Bermuda; (48) State of Bolivia; (49) State of Brazil; (50) State of Canada; (51) State of Chile; (52) State of Colombia; (53) State of Costa Rica; (54) State of Cuba; (55) State of Czech Republic; (56) State of Denmark; (57) State of Dominican Republic; (58) State of Ecuador; (59) State of Egypt; (60) State of El Salvador; (61) State of England; (62) State of Estonia; (63) State of Finland; (64) State of France; (65) State of Germany; (66) State of Greece; (67) State of Guatemala; (68) State of Honduras; (69) State of Hungary; (70) State of Iceland; (71) State of India; (72) State of Indonesia; (73) State of Ireland; (74) State of Israel; (75) State of Italy; (76) State of Jamaica; (77) State of Japan; (78) State of Kazakhstan; (79) State of Korea; (80) State of Kuwait; (81) State of Kyrgyzstan; (82) State of Latvia; (83) State of Lithuania; (84) State of Luxembourg; (85) State of Macao; (86) State of Macedonia; (87) State of Malawi; (88) State of Malaysia; (89) State of Maldives; (90) State of Mali; (91) State of Malta; (92) State of Mauritania; (93) State of Mauritius; (94) State of Mexico; (95) State of Monaco; (96) State of Mongolia; (97) State of Montenegro; (98) State of Morocco; (99) State of Mozambique; (100) State of Myanmar; (101) State of Namibia; (102) State of Nepal; (103) State of Netherlands; (104) State of Nicaragua; (105) State of Niger; (106) State of Nigeria; (107) State of Norway; (108) State of Oman; (109) State of Pakistan; (110) State of Panama; (111) State of Paraguay; (112) State of Peru; (113) State of Philippines; (114) State of Poland; (115) State of Portugal; (116) State of Romania; (117) State of Russia; (118) State of Rwanda; (119) State of Saint Kitts and Nevis; (120) State of Saint Lucia; (121) State of Saint Vincent and the Grenadines; (122) State of Saudi Arabia; (123) State of Senegal; (124) State of Serbia; (125) State of Seychelles; (126) State of Singapore; (127) State of Slovakia; (128) State of Slovenia; (129) State of South Africa; (130) State of South Korea; (131) State of Spain; (132) State of Sri Lanka; (133) State of Suriname; (134) State of Sweden; (135) State of Switzerland; (136) State of Taiwan; (137) State of Tajikistan; (138) State of Tanzania; (139) State of Thailand; (140) State of Timor-Leste; (141) State of Trinidad and Tobago; (142) State of Turkey; (143) State of Turkmenistan; (144) State of Uganda; (145) State of Ukraine; (146) State of United Kingdom; (147) State of United States; (148) State of Uzbekistan; (149) State of Venezuela; (150) State of Vietnam; (151) State of Wales; (152) State of West Bank; (153) State of Western Sahara; (154) State of Yemen; (155) State of Zambia; (156) State of Zimbabwe; (157) State of Anguilla; (158) State of Antigua and Barbuda; (159) State of Aruba; (160) State of Bahamas; (161) State of Barbados; (162) State of Belize; (163) State of Bermuda; (164) State of Bolivia; (165) State of Brazil; (166) State of Canada; (167) State of Chile; (168) State of Colombia; (169) State of Costa Rica; (170) State of Cuba; (171) State of Czech Republic; (172) State of Denmark; (173) State of Dominican Republic; (174) State of Ecuador; (175) State of Egypt; (176) State of El Salvador; (177) State of England; (178) State of Estonia; (179) State of Finland; (180) State of France; (181) State of Germany; (182) State of Greece; (183) State of Guatemala; (184) State of Honduras; (185) State of Hungary; (186) State of Iceland; (187) State of India; (188) State of Indonesia; (189) State of Ireland; (190) State of Israel; (191) State of Italy; (192) State of Jamaica; (193) State of Japan; (194) State of Kazakhstan; (195) State of Korea; (196) State of Kuwait; (197) State of Kyrgyzstan; (198) State of Latvia; (199) State of Lithuania; (200) State of Luxembourg; (201) State of Macao; (202) State of Macedonia; (203) State of Malawi; (204) State of Malaysia; (205) State of Maldives; (206) State of Mali; (207) State of Malta; (208) State of Mauritania; (209) State of Mauritius; (210) State of Mexico; (211) State of Monaco; (212) State of Mongolia; (213) State of Montenegro; (214) State of Morocco; (215) State of Mozambique; (216) State of Myanmar; (217) State of Namibia; (218) State of Nepal; (219) State of Netherlands; (220) State of Nicaragua; (221) State of Niger; (222) State of Nigeria; (223) State of Norway; (224) State of Oman; (225) State of Pakistan; (226) State of Panama; (227) State of Paraguay; (228) State of Peru; (229) State of Philippines; (230) State of Poland; (231) State of Portugal; (232) State of Romania; (233) State of Russia; (234) State of Rwanda; (235) State of Saint Kitts and Nevis; (236) State of Saint Lucia; (237) State of Saint Vincent and the Grenadines; (238) State of Saudi Arabia; (239) State of Senegal; (240) State of Serbia; (241) State of Seychelles; (242) State of Singapore; (243) State of Slovakia; (244) State of Slovenia; (245) State of South Africa; (246) State of South Korea; (247) State of Spain; (248) State of Sri Lanka; (249) State of Suriname; (250) State of Sweden; (251) State of Switzerland; (252) State of Taiwan; (253) State of Tajikistan; (254) State of Tanzania; (255) State of Thailand; (256) State of Timor-Leste; (257) State of Trinidad and Tobago; (258) State of Turkey; (259) State of Turkmenistan; (260) State of Uganda; (261) State of Ukraine; (262) State of United Kingdom; (263) State of United States; (264) State of Uzbekistan; (265) State of Venezuela; (266) State of Vietnam; (267) State of Wales; (268) State of West Bank; (269) State of Western Sahara; (270) State of Yemen; (271) State of Zambia; (272) State of Zimbabwe; (273) State of Anguilla; (274) State of Antigua and Barbuda; (275) State of Aruba; (276) State of Bahamas; (277) State of Barbados; (278) State of Belize; (279) State of Bermuda; (280) State of Bolivia; (281) State of Brazil; (282) State of Canada; (283) State of Chile; (284) State of Colombia; (285) State of Costa Rica; (286) State of Cuba; (287) State of Czech Republic; (288) State of Denmark; (289) State of Dominican Republic; (290) State of Ecuador; (291) State of Egypt; (292) State of El Salvador; (293) State of England; (294) State of Estonia; (295) State of Finland; (296) State of France; (297) State of Germany; (298) State of Greece; (299) State of Guatemala; (300) State of Honduras; (301) State of Hungary; (302) State of Iceland; (303) State of India; (304) State of Indonesia; (305) State of Ireland; (306) State of Israel; (307) State of Italy; (308) State of Jamaica; (309) State of Japan; (310) State of Kazakhstan; (311) State of Korea; (312) State of Kuwait; (313) State of Kyrgyzstan; (314) State of Latvia; (315) State of Lithuania; (316) State of Luxembourg; (317) State of Macao; (318) State of Macedonia; (319) State of Malawi; (320) State of Malaysia; (321) State of Maldives; (322) State of Mali; (323) State of Malta; (324) State of Mauritania; (325) State of Mauritius; (326) State of Mexico; (327) State of Monaco; (328) State of Mongolia; (329) State of Montenegro; (330) State of Morocco; (331) State of Mozambique; (332) State of Myanmar; (333) State of Namibia; (334) State of Nepal; (335) State of Netherlands; (336) State of Nicaragua; (337) State of Niger; (338) State of Nigeria; (339) State of Norway; (340) State of Oman; (341) State of Pakistan; (342) State of Panama; (343) State of Paraguay; (344) State of Peru; (345) State of Philippines; (346) State of Poland; (347) State of Portugal; (348) State of Romania; (349) State of Russia; (350) State of Rwanda; (351) State of Saint Kitts and Nevis; (352) State of Saint Lucia; (353) State of Saint Vincent and the Grenadines; (354) State of Saudi Arabia; (355) State of Senegal; (356) State of Serbia; (357) State of Seychelles; (358) State of Singapore; (359) State of Slovakia; (360) State of Slovenia; (361) State of South Africa; (362) State of South Korea; (363) State of Spain; (364) State of Sri Lanka; (365) State of Suriname; (366) State of Sweden; (367) State of Switzerland; (368) State of Taiwan; (369) State of Tajikistan; (370) State of Tanzania; (371) State of Thailand; (372) State of Timor-Leste; (373) State of Trinidad and Tobago; (374) State of Turkey; (375) State of Turkmenistan; (376) State of Uganda; (377) State of Ukraine; (378) State of United Kingdom; (379) State of United States; (380) State of Uzbekistan; (381) State of Venezuela; (382) State of Vietnam; (383) State of Wales; (384) State of West Bank; (385) State of Western Sahara; (386) State of Yemen; (387) State of Zambia; (388) State of Zimbabwe; (389) State of Anguilla; (390) State of Antigua and Barbuda; (391) State of Aruba; (392) State of Bahamas; (393) State of Barbados; (394) State of Belize; (395) State of Bermuda; (396) State of Bolivia; (397) State of Brazil; (398) State of Canada; (399) State of Chile; (400) State of Colombia; (401) State of Costa Rica; (402) State of Cuba; (403) State of Czech Republic; (404) State of Denmark; (405) State of Dominican Republic; (406) State of Ecuador; (407) State of Egypt; (408) State of El Salvador; (409) State of England; (410) State of Estonia; (411) State of Finland; (412) State of France; (413) State of Germany; (414) State of Greece; (415) State of Guatemala; (416) State of Honduras; (417) State of Hungary; (418) State of Iceland; (419) State of India; (420) State of Indonesia; (421) State of Ireland; (422) State of Israel; (423) State of Italy; (424) State of Jamaica; (425) State of Japan; (426) State of Kazakhstan; (427) State of Korea; (428) State of Kuwait; (429) State of Kyrgyzstan; (430) State of Latvia; (431) State of Lithuania; (432) State of Luxembourg; (433) State of Macao; (434) State of Macedonia; (435) State of Malawi; (436) State of Malaysia; (437) State of Maldives; (438) State of Mali; (439) State of Malta; (440) State of Mauritania; (441) State of Mauritius; (442) State of Mexico; (443) State of Monaco; (444) State of Mongolia; (445) State of Montenegro; (446) State of Morocco; (447) State of Mozambique; (448) State of Myanmar; (449) State of Namibia; (450) State of Nepal; (451) State of Netherlands; (452) State of Nicaragua; (453) State of Niger; (454) State of Nigeria; (455) State of Norway; (456) State of Oman; (457) State of Pakistan; (458) State of Panama; (459) State of Paraguay; (460) State of Peru; (461) State of Philippines; (462) State of Poland; (463) State of Portugal; (464) State of Romania; (465) State of Russia; (466) State of Rwanda; (467) State of Saint Kitts and Nevis; (468) State of Saint Lucia; (469) State of Saint Vincent and the Grenadines; (470) State of Saudi Arabia; (471) State of Senegal; (472) State of Serbia; (473) State of Seychelles; (474) State of Singapore; (475) State of Slovakia; (476) State of Slovenia; (477) State of South Africa; (478) State of South Korea; (479) State of Spain; (480) State of Sri Lanka; (481) State of Suriname; (482) State of Sweden; (483) State of Switzerland; (484) State of Taiwan; (485) State of Tajikistan; (486) State of Tanzania; (487) State of Thailand; (488) State of Timor-Leste; (489) State of Trinidad and Tobago; (490) State of Turkey; (491) State of Turkmenistan; (492) State of Uganda; (493) State of Ukraine; (494) State of United Kingdom; (495) State of United States; (496) State of Uzbekistan; (497) State of Venezuela; (498) State of Vietnam; (499) State of Wales; (500) State of West Bank; (501) State of Western Sahara; (502) State of Yemen; (503) State of Zambia; (504) State of Zimbabwe; (505) State of Anguilla; (506) State of Antigua and Barbuda; (507) State of Aruba; (508) State of Bahamas; (509) State of Barbados; (510) State of Belize; (511) State of Bermuda; (512) State of Bolivia; (513) State of Brazil; (514) State of Canada; (515) State of Chile; (516) State of Colombia; (517) State of Costa Rica; (518) State of Cuba; (519) State of Czech Republic; (520) State of Denmark; (521) State of Dominican Republic; (522) State of Ecuador; (523) State of Egypt; (524) State of El Salvador; (525) State of England; (526) State of Estonia; (527) State of Finland; (528) State of France; (529) State of Germany; (530) State of Greece; (531) State of Guatemala; (532) State of Honduras; (533) State of Hungary; (534) State of Iceland; (535) State of India; (536) State of Indonesia; (537) State of Ireland; (538) State of Israel; (539) State of Italy; (540) State of Jamaica; (541) State of Japan; (542) State of Kazakhstan; (543) State of Korea; (544) State of Kuwait; (545) State of Kyrgyzstan; (546) State of Latvia; (547) State of Lithuania; (548) State of Luxembourg; (549) State of Macao; (550) State of Macedonia; (551) State of Malawi; (552) State of Malaysia; (553) State of Maldives; (554) State of Mali; (555) State of Malta; (556) State of Mauritania; (557) State of Mauritius; (558) State of Mexico; (559) State of Monaco; (560) State of Mongolia; (561) State of Montenegro; (562) State of Morocco; (563) State of Mozambique; (564) State of Myanmar; (565) State of Namibia; (566) State of Nepal; (567) State of Netherlands; (568) State of Nicaragua; (569) State of Niger; (570) State of Nigeria; (571) State of Norway; (572) State of Oman; (573) State of Pakistan; (574) State of Panama; (575) State of Paraguay; (576) State of Peru; (577) State of Philippines; (578) State of Poland; (579) State of Portugal; (580) State of Romania; (581) State of Russia; (582) State of Rwanda; (583) State of Saint Kitts and Nevis; (584) State of Saint Lucia; (585) State of Saint Vincent and the Grenadines; (586) State of Saudi Arabia; (587) State of Senegal; (588) State of Serbia; (589) State of Seychelles; (590) State of Singapore; (591) State of Slovakia; (592) State of Slovenia; (593) State of South Africa; (594) State of South Korea; (595) State of Spain; (596) State of Sri Lanka; (597) State of Suriname; (598) State of Sweden; (599) State of Switzerland; (600) State of Taiwan; (601) State of Tajikistan; (602) State of Tanzania; (603) State of Thailand; (604) State of Timor-Leste; (605) State of Trinidad and Tobago; (606) State of Turkey; (607) State of Turkmenistan; (608) State of Uganda; (609) State of Ukraine; (610) State of United Kingdom; (611) State of United States; (612) State of Uzbekistan; (613) State of Venezuela; (614) State of Vietnam; (615) State of Wales; (616) State of West Bank; (617) State of Western Sahara; (618) State of Yemen; (619) State of Zambia; (620) State of Zimbabwe; (621) State of Anguilla; (622) State of Antigua and Barbuda; (623) State of Aruba; (624) State of Bahamas; (625) State of Barbados; (626) State of Belize; (627) State of Bermuda; (628) State of Bolivia; (629) State of Brazil; (630) State of Canada; (631) State of Chile; (632) State of Colombia; (633) State of Costa Rica; (634) State of Cuba; (635) State of Czech Republic; (636) State of Denmark; (637) State of Dominican Republic; (638) State of Ecuador; (639) State of Egypt; (640) State of El Salvador; (641) State of England; (642) State of Estonia; (643) State of Finland; (644) State of France; (645) State of Germany; (646) State of Greece; (647) State of Guatemala; (648) State of Honduras; (649) State of Hungary; (650) State of Iceland; (651) State of India; (652) State of Indonesia; (653) State of Ireland; (654) State of Israel; (655) State of Italy; (656) State of Jamaica; (657) State of Japan; (658) State of Kazakhstan; (659) State of Korea; (660) State of Kuwait; (661) State of Kyrgyzstan; (662) State of Latvia; (663) State of Lithuania; (664) State of Luxembourg; (665) State of Macao; (666) State of Macedonia; (667) State of Malawi; (668) State of Malaysia; (669) State of Maldives; (670) State of Mali; (671) State of Malta; (672) State of Mauritania; (673) State of Mauritius; (674) State of Mexico; (675) State of Monaco; (676) State of Mongolia; (677) State of Montenegro; (678) State of Morocco; (679) State of Mozambique; (680) State of Myanmar; (681) State of Namibia; (682) State of Nepal; (683) State of Netherlands; (684) State of Nicaragua; (685) State of Niger; (686) State of Nigeria; (687) State of Norway; (688) State of Oman; (689) State of Pakistan; (690) State of Panama; (691) State of Paraguay; (692) State of Peru; (693) State of Philippines; (694) State of Poland; (695) State of Portugal; (696) State of Romania; (697) State of Russia; (698) State of Rwanda; (699) State of Saint Kitts and Nevis; (700) State of Saint Lucia; (701) State of Saint Vincent and the Grenadines; (702) State of Saudi Arabia; (703) State of Senegal; (704) State of Serbia; (705) State of Seychelles; (706) State of Singapore; (707) State of Slovakia; (708) State of Slovenia; (709) State of South Africa; (710) State of South Korea; (711) State of Spain; (712) State of Sri Lanka; (713) State of Suriname; (714) State of Sweden; (715) State of Switzerland; (716) State of Taiwan; 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1. FINANCE CHARGE AND PAYMENTS

- a. **How we will figure Finance Charge.** We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. **How we will apply payments.** We may apply each payment to the earned and unpaid part of the Finance Charge, to the Amount Financed, and to other amounts you owe under this contract in any order the law permits.
- c. **How late payments or early payments change what you must pay.** We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. **You may prepay.** You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. **You may refinance a balloon payment.** A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are paying the vehicle primarily for personal, family, or household use, you may refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. This provision does not apply if we adjusted your payment schedule to your seasonal or regular income.

2. YOUR OTHER PROMISES TO US

- a. **If the vehicle is damaged, destroyed, or missing.** You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. **Using the vehicle.** You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. **Security Interest.** You give us a security interest in:
 - The vehicle and all parts or goods put on it;
 - All money or goods received (proceeds) for the vehicle;
 - All insurance, maintenance, service, or other contracts we finance for you; and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest.
- d. **Insurance.** You must have on the vehicle:
 - Liability insurance that covers the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may choose to buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle, or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the cost of the insurance and a finance charge at the Annual Percentage Rate shown on the front of this contract. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. **What happens to returned insurance, maintenance, service, or other contract charges.** If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. **You may owe late charges.** You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

If you pay late, we may also take the steps described below.

b. **You may have to pay all you owe at once.** If you break your promises (default), we may demand that you pay all you owe at once after we give you any notice the law requires. Default means:

- You pay any payment more than 10 days late or not at all, or
- You start a proceeding in bankruptcy or one is started against you or your property, or you break any agreements in this contract, except that if you bought the vehicle primarily for personal, family, or household use, we will only treat these events as defaults if they significantly impair the prospect of payment, performance, or realization of the collateral.
- The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
- c. **You may have to pay collection costs.** If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs. The law permits the maximum attorney's fee you will pay will be 15% of the amount you owe.
- d. **We may take the vehicle from you.** If you default, we may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully without entering into a dwelling used as a current residence. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.

- e. **How you can get the vehicle back if we take it.** If we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. You right to redeem ends when we sell the vehicle.

- f. **We will sell the vehicle if you do not get it back.** If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale less allowed expenses to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.

- g. **What we may do about optional insurance, maintenance, service, or other contracts.** This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. WARRANTIES, SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. **Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contract provisions in the contract of sale.

Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

6. Applicable Law

Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

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. NO CLAIMS OR DEFENSES BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE OF DEFENSES AND CLAIMS applies to the "Primary Use for Which Purchased" section of this contract. It does not apply to the "Other Use for Which Purchased" section. You will not assert against any subsequent holder or assignee of this contract any claims or defenses that you could assert against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.



09/01/07

LATOYA BROWN
525 ALCOTT DR APT 15 E
COLUMBIA SC 29203

RE: Loan No. 00000000068227061499

Dear LATOYA BROWN :

NOTICE OF INTENT TO REPOSSESS

Your account is delinquent for all payments due since 07/16/07.
The total of the delinquent payments is \$ 572.30 , plus
late charges amounting to \$ 28.60

You may cure your default in your installment loan by paying
\$ 600.90 to Sovereign Bank, PO Box 4020, Rocky Hill, CT
06067 within 20 days of the date of this letter.

If you pay this amount within the time allowed, you are no
longer in default and may continue with the loan as though
no default has occurred. If you do not cure your default
within the time allowed, Sovereign Bank may sue you to obtain
a judgement for the amount of the debt or may take possession
of the collateral.

If Sovereign Bank takes possession of the collateral, you may
get it back by paying the full amount of your debt plus any
reasonable expenses incurred by Sovereign Bank if you make the
required payment within 20 days after repossession.

Sincerely,

M. ROBERTS
Collection Representative
800-933-9139 EXT. 776387
For the hearing impaired: 1-800-428-9121 (TTY/TDD)

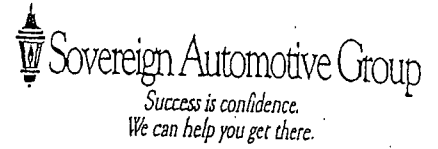
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DEFENDANT'S
EXHIBIT

9-22-09 #4

OK

HAND OUT JUNE 11th



149189

Sovereign Bank
P.O. Box 4020
Rocky Hill, CT 06067

June 25, 2007

74479
DICK SMITH NISSAN BELTLINE
4030 BELTLINE BOULEVARD
COLUMBIA, SC 29204
RE: LATOYA BROWN
Application # 2497943

Vehicle: 2005 NISSAN Altima-V6

Amount: \$13,091.00

The above contract has been funded for proceeds.

If you have any questions regarding this disbursement, please call
1-800-879-2265

Thank-you,

KIM WILLIAMS

DEFENDANT'S
EXHIBIT

9-22-07

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Confidentiality Notice:

This fax message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender and destroy the message. Thank you.

0207

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			20200 A	21,381.00	SOV625
56	SOV625	06/26/07	20500 A	13,091.00-	BL149189
			20200 A	13,091.00	SOV625
			Debits	34,472.00	
			Credits	34,472.00-	
	SOV625		Ref Tot	0.00	0
56			Jrn Tot	0.00	0
			Grand	0.00	0

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**DEFENDANT'S
EXHIBIT**

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DEFENDANT'S
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BB&T - SOUTH CAROLINA

STATEMENT DATE
06-29-07

PAGE 70

516-01-01-00 26801 2 C 001 30
DICK SMITH AUTOMOTIVE GROUP INC

30 02

0005123087110



BUSINESS REGULAR CHECKING

ACCOUNT NUMBER 0005123087110

DEPOSITS/OTHER CREDITS-

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
06-26	24,183.00	CMSI SOVEREIGN BANK XXXXXXXXXXXXXXXXXX	1766262543
06-26	24,030.69	DEPOSIT	1766262543
06-26	23,220.00	FUNDING NMAC 0005DICK SMITH MOTOR	130 600225375
06-26	22,540.00	AUTO SALE SCFCU DEALER PRO	1770123186
06-26	21,381.00	DICK SMITH CHEV-CHAS	1770123186
06-26	21,292.96	CMSI SOVEREIGN BANK XXXXXXXXXXXXXXXXXX	1764400194
06-26	20,636.00	FUNDING NMAC 0005DICK SMITH NISSA	1766262535
06-26	19,981.00	CMSI SOVEREIGN BANK XXXXXXXXXXXXXXXXXX	1770123204
06-26	18,554.60	PURCHASE WACHOVIA DEALER XXXXXXXXXXXX6772	1770123204
06-26	18,243.00	LOAN FUND WF AUTO FINANCE DICK SMITH PONT GMC CH	1766262538
06-26	18,036.00	FUNDED APP BANK OF AMERICA XXXXXXXXXXXX0847	1766318103
06-26	17,257.00	DEPOSIT	1766318103
06-26	15,775.00	LOAN FUNDI AMERICREDIT CORP DICK SMITH- LEXINGTON	1770139337
06-26	13,961.00	M&T CREDIT M&T CREDIT DEPT DICK SMITH NISSAN (SC)	1770139337
06-26	13,622.00	AUTO SALE DEALER FUNDING XXXXXXXXXXXX3952	1766325553
06-26	13,091.00	DEPOSIT	150 806721641
06-26	12,750.00	XXXXXXXXXXXX2093 CMSI SOVEREIGN BANK	1770123234
06-26	8,147.00	XXXXXXXXXXXXXXX CMSI SOVEREIGN BANK	1770123234
06-26	6,913.85	XXXXXXXXXXXXXXX FUNDING NMAC	1766247208
06-26	6,581.87	0005DICK SMITH NISSA DEPOSIT	1766247208
06-26	6,037.32	DEPOSIT TSYS MERCHANT DICK SMITH FORD	1771646660
06-26	5,521.07	DEPOSIT TSYS MERCHANT DICK SMITH NISSAN	1771646660
06-26	5,240.15	DEPOSIT	1771646858
06-26	4,234.90	DEPOSIT TSYS MERCHANT DICK SMITH INFINITI IN	1766262536
06-26	3,108.00	DEPOSIT	1766262536
06-26	3,039.02	DEPOSIT TSYS MERCHANT DICK SMITH MOTORS-SERV	1766262537
06-26	2,975.54	TELECHECK DICK SMITH MOTOR	1766262537
06-26	2,907.00	DICK SMITH MOTOR FUNDING NMAC	1770123198
		0005DICK SMITH NISSA	1770123198

DEFENDANT'S
EXHIBIT

4.22.09 8

CX

0210



ALLEN
UNIVERSITY

June 1, 2007

To Whom It May Concern:

LaToya Brown will be working at Allen University starting June 9, 2007 with the National Nuclear and Science Association. She will be paid \$10.00 per hour and she will be working 40 hours a week.

She has been working with us for the past 4 years as a work- study student.

If you have any further questions please call me at 803-223-4627.

Sincerely,

Tammie Bolton
Financial Aid Counselor

DEFENDANT'S
EXHIBIT

9-22-09 9 &

0211



November 1, 2007

DICK SMITH MOTORS INC.
4030 Beltline Blvd.
Columbia, SC 29204

Dear Business Manager:

This letter is to notify you that Sovereign Bank has repossessed the **2005 Mazda MX6** belonging to **Latoya Patrice Brown** on **9/28/07**. The mileage at the time of repossession was **44,262**. The contract date for this vehicle was **June 1, 2007**. The V.I.N. for this vehicle is **1YVFP80C355M43889**. Our loan reference number: **8227061499**.

() Along with the vehicle, Sovereign Bank financed a credit insurance premium. On behalf of the Bank please apply for the unused credit insurance premium rebatable to Sovereign Bank.

CREDIT REBATE DUE: \$

(X) Along with the vehicle, Sovereign Bank also financed a warranty premium. On behalf of the bank please apply for the unused warranty rebatable to Sovereign Bank.

WARRANTY REBATE DUE: \$ **1445.58**

TOTAL DUE: \$ **1445.58**

To ensure proper credit please remit ALL premiums to:

Sovereign Bank
P.O. BOX 4020
ROCKY HILL, CT 06067-4020
Attn: Anne Scanlon

Any premiums not received within thirty (30) days from the date of this letter will automatically be charged to your dealer reserve.

Sincerely,

Anne Scanlon
Consumer Loan Representative
(800)933-9139 ext. 776389

**DEFENDANT'S
EXHIBIT**

4-22-09 // ck

0213

Cancellation of
Wet. showing
correct coll.

0214

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE NO. 2008-CP-40-1839

Latoya Brown,)
)
Plaintiff,)
)
v.)
)
Dick Smith Nissan, Inc. and Old Republic)
Surety Company,)
)
Defendants.)

PRE-TRIAL BRIEF

Pursuant to Rule 16(c), SCRCP, the Plaintiff hereby submits this pre-trial brief:

(1) A concise, non-argumentative statement of the facts of the case.

On June 1, 2007, the Plaintiff signed a buyer's order and a retail installment sale contract to purchase a 2005 Mazda from Dick Smith Nissan. The buyer's order provided in pertinent part:

This contract is not binding upon dealer unless accepted in writing by an officer or a sales manager or assistant sales manager of Dealer and until a retail installment contract for any deferred balance has been approved and funded by a third party financing source.

On June 29, 2007, the Plaintiff brought the vehicle back to Dick Smith Nissan and abandoned it. Subsequently, Sovereign Bank repossessed the vehicle, sold it, and demanded a deficiency from the Plaintiff.

(2) An objective statement of the facts in controversy.

Dick Smith contends that the buyer's order was accepted in writing by an officer or a sales manager or assistant sales manager of Dick Smith and that the retail installment contract for

the deferred balance was approved and funded by a third-party financing source on June 25, 2007, four days before the Plaintiff abandoned the vehicle.

- (3) **The legal issues involved. This includes the law applicable to the cause of action and the defense.**

A condition precedent to a contract is "any fact other than the lapse of time, which, unless excused, must exist or occur before a duty of immediate performance arises." (citation omitted). "The question of whether a provision 'in a contract constitutes a condition precedent is a question of construction dependent on the intent of the parties to be gathered from the language they employ.'" Brewer v. Stokes Kia, Isuzu, Subaru, Inc., 364 S.C. 444, 613 S.E.2d 802 (Ct.App. 2005).

- (4) **A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called, and, if available, their address and phone number.**

EXHIBITS

BUYER'S ORDER

USAR 225963 USED VEHICLE EXTENDED SERVICE AGREEMENT

Letter from Sovereign Bank to Dick Smith Nissan dated June 25, 2007

Letter from Sovereign Bank to Dick Smith Motors, Inc. dated November 1, 2007

First Extended Service Corporation CUSTOMER CANCELLATION FORM

WITNESSES

Robert Hiller
169 Summer Pine Drive
Blythewood, SC 29016-9615
(803) 466-5381 cell
(803) 786-5168 home

Kent Guthrie
c/o Dick Smith Motors, Inc.
4030 West Beltline Boulevard
Columbia, SC 29204
(803) 479-2133 cell
(803) 251-7345 office
(803) 408-8981 home

Russ McFall
c/o Dick Smith Motors, Inc.
4030 West Beltline Boulevard
Columbia, SC 29204
(803) 251-7382

Edna Wright
c/o Dick Smith Motors, Inc.
4030 West Beltline Boulevard
Columbia, SC 29204
(803) 256-6600

- (5) **Any unusual problems relating to the evidence to be introduced, such as "Business Records as Evidence Act," hearsay, use of depositions, etc.**

It appears from the complaint that the Plaintiff intends to rely upon letters from various lenders, who are not parties, in support of her claim. Dick Smith intends to rely upon its business records in support of its defense.

- (6) **Any unusual question or matter which should be brought to the attention of the court.**

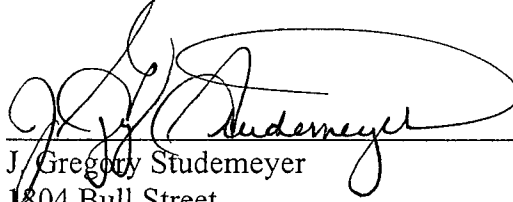
None.

- (7) **A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.**

Two successive cash offers of settlement were extended by Dick Smith to the Plaintiff and both were rejected. Thereafter, on two successive occasions, two representatives of Dick Smith and its counsel appeared for scheduled conciliation meetings with the Plaintiff and her counsel. On both occasions, the Plaintiff failed to appear.

Signature on following page.

J. GREGORY STUDEMEYER
Professional Corporation



J. Gregory Studemeyer
1804 Bull Street
Post Office Box 12201
Columbia, South Carolina 29211-2201
803-779-3363

Attorney for Defendants

Columbia, South Carolina

September 18, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COMMON PLEAS COURT
IN THE FIFTH JUDICIAL CIRCUIT

Latoya Brown)

C/A Number: 2008-CP-40-1839

Plaintiff,)

vs.)

**MOTION TO ALTER
OR AMEND
JUDGMENT**

Dick Smith Nissan, Inc. and Old Republic)
Surety Company,)
Defendant.)

JEANETTE W. HEBRIDGE
C.C.P. & G.S.

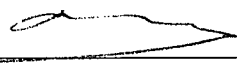
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FILED

Plaintiff moves to alter or amend the judgment a) by including attorney fees of \$ and costs of \$384.38 (See Affidavit of Attorney Fees); b) by including interest of \$2,735.34 through September 21, 2010 and per diem interest of \$2.63 (See Verification of Interest); c) by including twice the down payment of \$800.00 and twice the insurance payment of \$140.00 in the judgment amount. The testimony is clear that these amounts were expended and lost. The opinion mentions neither. If this alteration were accepted by the court the judgment amount would increase by \$1,880.00. d) to clarify the Order so that plaintiff may collect the judgment or any part thereof from either defendant but may not collect more than the judgment amount.

WHEREFORE, plaintiff prays that the order be altered or amended as set forth above.

JOHNSON, TOAL & BATTISTE, P.A.

BY: 

William T. Toal
Attorney for Plaintiff
1615 Barnwell Street
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
September 1, 2010

0219

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COMMON PLEAS COURT
IN THE FIFTH JUDICIAL CIRCUIT

Latoya Brown)

Plaintiff,)

vs.)

Dick Smith Nissan, Inc. and Old Republic
Surety Company,)

Defendant.)

C/A Number: 2008-CP-40-1839

ATTORNEY'S FEE AFFIDAVIT

2008 SEP - 1 PM 4:24
JENNIFER W. McBRIDE
CLERK C.P. & C.S.

PERSONALLY APPEARED BEFORE ME, William T. Toal, attorney at law, who being
duly sworn, does state as follows:

1. That he is the attorney in the above-entitled action.
2. That he was admitted to the South Carolina Bar in 1968 and since that time has been engaged in private practice, and presently he is a partner with the Law Offices of Johnson, Toal & Battiste, P.A.
3. That he is, and has been, an active member of the South Carolina Bar, South Carolina Trial Lawyers Association, Richland County Bar, and Columbia Lawyers Association. He has served on various committees in these organizations.
4. He is actively engaged in trial practice in all Courts.
5. That he incorporates herein Rule 32, Rule of the South Carolina Supreme Court, which contains the Canons of Professional Ethics and further calls the attention of the Court to the holdings in Nienow v. Nienow, 268 S.C. 161, 232 S.E.2d 504 (1977) and Atkinson v. Atkinson, 279 S.C. 454, 309 S.E.2d 14 (S.C. App., 1983) concerning the factors and criteria which should be considered in the setting of attorney's fees. He relies upon the discretion of this Court in the

determination of the amount of fees, based, among other things, upon the Court's knowledge of the litigation between these parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the professional standing of counsel, and fees customarily charged in this area for similar legal services.

6. That he is informed and believes that during the preparation of this case, the time spent as set forth more fully hereinafter was necessary for the protection of his client's interests.

7. That his minimum hourly rate is Two Hundred Fifty (\$250.00) Dollars per hour.

8. That the undersigned, in accordance with his time and expense records, which are maintained on a daily basis, states to the Court that the following time and expenses were necessarily expended by him in the preparation of this case through the time of the hearing.

TOTAL COMBINED HOURS	
35.7 Hours @ \$250.00	\$8,925.00
Costs	\$ 234.38
Filing Fees	\$ 150.00
TOTAL	\$9,309.38

9. The above time and expenditures have been computed as of September 1, 2010.

10. Based on the time necessarily devoted to this case; the other criteria which have been held to be relevant in the setting of attorney's fees, and costs; the undersigned, on behalf of his client, requests that this Court review the file herein, together with this Affidavit, and grant judgment in favor of the undersigned's client against the Defendants in a sum which may be

determined by the Court to be reasonable as attorney's fees, and costs, and that the Defendant be required to pay the same within a reasonable time as may be determined by this Court.

JOHNSON, TOAL & BATTISTE, P.A.

By: _____

William T. Toal
Attorney for Plaintiff
1615 Barnwell Street
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

SWORN TO AND SUBSCRIBED BEFORE ME

This 1st day of September 2010

Andray W. Shaw

Notary Public for South Carolina

My Commission Expires: 1-9-2017

JOHNSON, TOAL & BATTISTE, P.A.
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Date: August 31, 2010
Client's Name: Latoya P. Brown
Re: Latoya P. Brown vs. Dick Smith, et al.
File Number: 2008-CP-40-1839

Page: 1

STATEMENT

	Hours	Rate	Atty. Fees
Attorney	35.7	\$250.00	\$8,925.00
TOTAL			\$

Date	Description	Hours	Rate	Atty. Fees
11/29/07	Office Conference	1.4	\$	\$
12/06/07	Office Conference	0.3	\$	\$
12/06/07	Ltr to Highway Dept re: bond	0.3	\$	\$
12/06/07	Ltr to Sovereign Bank re: mortgage info	0.5	\$	\$
12/06/07	Received client papers	0.4	\$	\$
12/20/07	Bond info request return, provided additional info	0.5	\$	\$
01/30/08	T/C to Kim Ogdon	0.3	\$	\$
01/30/08	Fax to Kim Ogdon	0.1	\$	\$
01/30/08	T/C to client	0.2	\$	\$
01/31/08	Drafted Release, Office Conference w/client re: the process	1.1	\$	\$
03/11/08	Research, review file, draft Complaint	3.1	\$	\$
03/18/08	Filed Summons & Complaint	0.2	\$	\$
03/18/08	Ltr of service on Dick Smith & Brian Smith (Agent)	0.6	\$	\$
03/18/08	Ltr of service on Dept. of Insurance	0.2	\$	\$
03/20/08	Received ltr of acceptance-Dept of Insurance - filed w/Clerk	0.3	\$	\$
03/25/08	T/C to opposing counsel	0.3	\$	\$
04/16/08	Received Request for Extension	0.2	\$	\$
04/16/08	Granted Request for Extension	0.2	\$	\$
05/19/08	Received & reviewed Answer, ltr to client	0.9	\$	\$
12/15/08	T/C to client re: status	0.3	\$	\$
09/15/09	Office Conference re: preparation for trial	2.5	\$	\$
09/18/09	Drafted Requests to Charge	0.8	\$	\$
09/21/09	Roster meeting	1.0	\$	\$
09/21/09	Preparation for trial	4.6	\$	\$
09/22/09	Preparation for trial and attendance at trial	5.1	\$	\$
10/08/09	Reviewed transcript, research, drafted findings of fact	4.2	\$	\$
10/10/09	Received defendants proposed order, reviewed	1.4	\$	\$
10/10/09	Ltr to client	0.1	\$	\$
08/26/10	Received, reviewed court order	1.1	\$	\$
08/31/10	Reviewed timesheets, prepared interest verification, attorney			
	Fee and cost Affidavit, drafted Motion to Alter or Amend	3.0	\$	\$
09/01/10	Get client to sign interest verification	0.2	\$	\$
09/01/10	File Motion to Alter or Amend	0.1	\$	\$
	TOTAL	35.7		\$8,925.00

0223

JOHNSON, TOAL & BATTISTE, P.A.
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Page: 2

Date: August 31, 2010
Client's Name: Latoya P. Brown
Re: Latoya P. Brown vs. Dick Smith, et al.
File Number: 2008-CP-40-1839

TOTAL COMBINED HOURS	
35.7 Hours @ \$250.00	\$8,925.00
Filing Fees	\$ 150.00
Costs	\$ 234.38
TOTAL	\$9,309.38

08/31/2010 WTT

JOHNSON, TOAL & BATTISTE, P.A.

Attorneys at Law
1615 Barnwell Street
P.O. Box 1431
Columbia, South Carolina 29202

Phone: (803) 252-9700 Fax: (803) 252-9102

Latoya Patrice Brown
25 Kilbrannon Drive
Columbia SC 29210

* indicates work-in-process

Client #: 34211

File #: 07-351

As of Date: 08/31/2010

Last Billed / /

RE: Latoya P. Brown -vs- Dick Smith Motors
Civil/Contingency 1/3

Previous Balance 0.00

COSTS ADVANCED

DATE	DESCRIPTION	AMOUNT
* 12/11/2007	SCDMV - Bond information - Brown # 50839	12.00
* 03/07/2008	Richland County Clerk of Court - Filing fee - Latoya Brown #51449	150.00
* 03/18/2008	Director of Insurance - Process Service - Latoya Brown #51502	10.00
* 10/21/2009	Carol M. Thume, RPR - Transcript - Latoya Brown #54844	205.50
TOTAL COSTS ADVANCED:		\$377.50

EXPENSES ADVANCED

DATE	DESCRIPTION	AMOUNT
* 03/18/2008	Postage (Copies to client)	0.58
* 03/18/2008	Postage (Serve Director of Ins.)	0.92
* 03/18/2008	Postage (Certified mail to Dick Smith)	5.38
TOTAL EXPENSES ADVANCED:		\$6.88

0225

File #: 07-351

** DRAFT **

* indicates work-in-process

CURRENT CHARGES:	384.38
LESS PAYMENTS:	0.00

TOTAL AMOUNT DUE:	<u>\$384.38</u>
-------------------	-----------------

FOR YOUR CONVENIENCE, WE ACCEPT VISA, MASTERCARD AND
DISCOVER. INCLUDE FILE# & REMIT PAYMENT TO JOHNSON, TOAL &
BATTISTE, PA PO BOX 1431, COLUMBIA, SC 29202. PLEASE DIRECT
INQUIRIES TO OUR BOOKKEEPER AT (803) 252-9700 OR TOLL FREE
(866)216-9700. HAVE A GREAT DAY!

0226

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) CASE NO. 2008-CP-40-1839

Latoya Brown,

Plaintiff,

v.

Dick Smith Nissan, Inc. and Old Republic
Surety Company,

Defendants.

**DEFENDANTS' MOTION
TO ALTER OR AMEND JUDGMENT**

2010 SEP -3 PM 4:17
JENNIFER W. McBRIDE
C.C.P. & G.S.

FILED

The Defendants move to alter or amend the order issued by the Honorable Alison Renee Lee on April 8, 2010. The Defendants received written notice of entry of the order on August 25, 2010.

BACKGROUND

In its order, the court found, among other things, the following:

On June 1, 2007, Brown purchased a 2005 Mazda from Dick Smith and signed a retail installment contract setting forth the financing terms including the amount financed of \$13,091.00. On June 25, 2007, Dick Smith received a letter from Sovereign Bank stating that Brown's contract had been funded for proceeds. Dick Smith received \$13,091.00 from Sovereign on June 26, 2007.

On June 29, 2007, Brown received a letter from Sovereign dated June 25, 2007, stating that she was denied financing. Brown then called Hiller. Hiller told Brown that she had been financed through Sovereign and if she brought the vehicle back, it would be listed as repossession.

Brown met with Hiller and showed him the denial letter from Sovereign Bank. Hiller and Guthrie showed Brown an approval letter from Sovereign Bank.

On June 30, 2007, Brown returned the Mazda to Dick Smith. Brown received a notice of intent to repossess from Sovereign dated September 1, 2007. The letter indicated that she could cure the default on her account by paying \$600.90. The letter also stated that the "collateral" would be repossessed.

Brown received a letter from Sovereign dated November 16, 2007, indicating that the vehicle had been sold resulting in a deficiency of \$3,843.00.

The court concluded that Brown was treated in an unfair and deceptive manner. Specifically, the court concluded that the actions of Dick Smith constituted bad faith. The court awarded judgment to Brown against Dick Smith for double the amount of the deficiency.

ARGUMENT

In its conclusions of law, the court noted:

Bad faith has been defined as:

The opposite of good faith, generally implying or involving actual or constructive fraud, or a design to deceive or mislead another, or a neglect or refusal to [fulfill] some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. State v. Griffin, 100 S.C. 331, 333, 84 S.E. 876, 877 (1915) (quoting Black's Law Dictionary); Estate of Carr, supra.

Dick Smith submits that the court overlooked the following critical facts:

1. Brown recognized the confusion created by her receipt of the letter from Sovereign dated June 25, 2007, and the assurance provided by Hiller.
2. Brown only bought one car and she wasn't confused about which car she bought.

3. Notwithstanding her telephone conversation with Hiller, 29 days after taking possession of the Mazda, Brown returned the vehicle to Dick Smith.

4. Hiller told Brown that she was already financed.

5. Hiller told Brown not to leave the vehicle at Dick Smith because it would go down as repossession.

6. Brown decided to leave the vehicle anyway.

7. **Brown's decision to return the Mazda was based upon the letter she received from Sovereign and the conversation she had with representatives of Sovereign.**

8. Brown did not show the letter she received from Sovereign to Guthrie or anyone else in the finance department.

9. Thereafter, just as Hiller had predicted, Brown received a notice of right to cure from Sovereign dated September 1, 2007.

10. Brown understood what the notice to cure meant when she received it.

11. Brown did not attempt to cure her default.

These facts demonstrate that the actions of Dick Smith did not constitute bad faith. Rather than attempting to deceive or mislead Brown, prompted by some interested or sinister motive, Hiller told Brown the absolute truth. Rather than heeding the warning of Hiller, Brown chose to rely upon the letter she received from Sovereign and telephone conversations that she had with representatives of Sovereign.

While Brown may have been misled by representatives of Sovereign, no one at Dick Smith misled Brown. To the contrary, Dick Smith's representatives did everything reasonably possible to discourage Brown from surrendering the vehicle and suffering a deficiency.

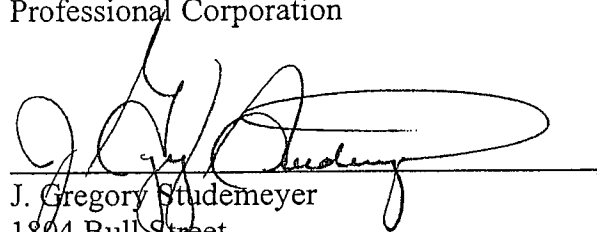
At the conclusion of the non-jury trial, the court noted that "something went very wrong here". However, the court had reservations about whether anything Dick Smith did or failed to do, rose to the level of action which is arbitrary, in bad faith, or unconscionable. The Defendants submit that those concerns were well founded.

Brown has suffered no loss as a result of anything Dick Smith did or failed to do. The deficiency claimed by Sovereign has not been reduced to a judgment and if Brown's testimony is believed, she has equitable defenses to those claims. Awarding Brown a windfall against Dick Smith of double the amount of Sovereign's unliquidated claims under these circumstances is completely arbitrary.

Based upon the foregoing, Dick Smith submits that the court should alter or amend its order and judgment should be entered in favor of the Defendants.

Respectfully submitted,

J. GREGORY STUDEMEYER
Professional Corporation

A handwritten signature in black ink, appearing to read "J. Gregory Studemeyer", is written over a horizontal line.

J. Gregory Studemeyer
1804 Bull Street
Post Office Box 12201
Columbia, South Carolina 29211-2201
803-779-3363

Attorney for Defendants

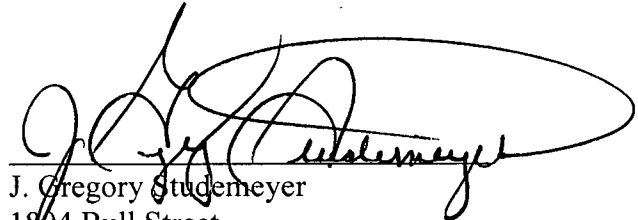
Columbia, South Carolina

September 3, 2010

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 15, 2011

A handwritten signature in black ink, appearing to read "J. Gregory Studemeyer", is written over a horizontal line. The signature is stylized with large, flowing loops.

J. Gregory Studemeyer
1804 Bull Street
Post Office Box 12201
Columbia, South Carolina 29211-2201
(803) 779-3363
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-1839

RECEIVED
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SC Court of Appeals

Latoya Brown, ... Respondent,

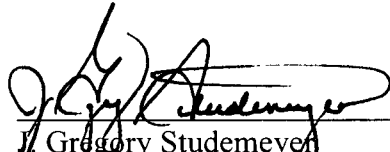
v.

Dick Smith Nissan, Inc. and Old Republic Surety Company, ...Appellants.

PROOF OF SERVICE

I certify that I have served one copy of the Record on Appeal on Latoya Brown by hand-delivery on November 22, 2011, to her attorney of record, William T. Toal, Esq., Johnson Toal & Battiste, PA, 1615 Barnwell Street, Columbia, SC 29201.

November 22, 2011


J. Gregory Studemeyer
1804 Bull Street
Post Office Box 12201
Columbia, South Carolina 29211-2201
(803) 779-3363
Attorney for Appellants