STATE OF SOUTH CAROLINA	)IN THE COURT OF COMMON PLEAS
	)
COUNTY OF RICHLAND	)Civil Action No.: 2016-CP-40-6794
	)
MATHES AUTO SALES, INC.,	)
	)
Plaintiff,	)
	)
vs.	) **ORDER FOR JUDGMENT**
	)
OTIS MORRIS, JR., PRO BOWL MOTORS, INC., TRAVELERS CASUALTY & SURETY CO. OF AMERICA, INC., GERALD SCOTT DIXON, MICHAEL TYRONE MOORE, and DIXON'S AUTOMOTIVE, LLC,	)
Defendants.	

This matter came before me for a bench trial pursuant to an Order of Reference issued by the Honorable L. Casey Manning filed on October 30, 2017. The trial began on February 8, 2018, recessed for February 9, 2018, and resumed and concluded on February 12, 2018.

John N. Mathes ("Mathes") appeared on behalf of the Plaintiff ("MAS") which was represented by J. Gregory Studemeyer and Ryan G. Studemeyer, both of Columbia. Defendant, Otis Morris, Jr. ("Morris"), appeared on behalf of Defendant, Pro Bowl Motors, Inc. ("Pro Bowl"), and both of them were represented by H. Ronald Stanley of Columbia. Gerald Scott Dixon ("Dixon") and Michael Tyrone Moore ("Moore") appeared on behalf of Defendant, Dixon's Automotive, LLC ("Dixon's Automotive"), which was represented by Leland B. Greeley of Rock Hill.

PROCEDURAL HISTORY

This action was initiated by the filing of a summons and complaint on November 4, 2016. Therein, the Plaintiff alleged that its account with NextGear Capital, Inc. ("NextGear") had been inappropriately charged the sum of $35,368.00 for a vehicle purchased in its name by Morris without its consent from Dixon's Automotive. The Plaintiff further alleged that Morris had previously sold the same vehicle to Ms. Tarica Worthy ("Worthy") and that she was the rightful owner. The Plaintiff

sought a declaratory judgment that it had no liability to NextGear for any sums advanced to anyone in connection with the fraudulent transaction between Dixon's Automotive and Morris.

On February 1, 2017, the Plaintiff filed an Amended Complaint. Therein, the Plaintiff added Morris, Pro Bowl, Travelers Casualty & Surety Co. of America, Inc. ("Travelers"), Worthy, S.C. State Credit Union ("State Credit Union"), Dixon's Automotive, Auto-Owners Insurance, Inc. ("Auto-Owners"), and Manheim Remarketing, Inc. ("Manheim Remarketing") as additional Defendants. In addition to the initial declaratory relief sought, the Plaintiff sought an award of actual, treble, and punitive damages against Morris, Pro Bowl, Dixon's Automotive and their respective statutory sureties, Travelers and Auto-Owners, and against Manheim Remarketing. The Plaintiff asserted causes of action for violation of the Unfair Trade Practices Act, the Act Regulating Manufacturers, Distributors and Dealers ("the Dealers Act"), conversion, and negligence.

Morris, Pro Bowl, State Credit Union, Worthy, and Dixon's Automotive all filed answers denying the material allegations of the amended complaint. Subsequently, the Plaintiff settled its claims with NextGear and Manheim Remarketing and dismissed its claims against Worthy, State Credit Union, and Auto-Owners without prejudice. The Plaintiff also agreed to settle its claims against Travelers shortly before trial.

Before taking any testimony, counsel for Dixon's Automotive sought to make an oral motion for summary judgment, suggesting that Dixon's Automotive had done nothing wrong. Over the objection of counsel for the Plaintiff, the Court agreed to entertain the motion as counsel for the Plaintiff could show no prejudice. However, after considering arguments of counsel, the Court determined that the motion was premature and, perhaps, could be presented under Rule 41(b), SCRCP at the appropriate stage of trial.

The Plaintiff then presented testimony from Worthy, Daniel Harms ("Harms"), a representative of State Credit Union, excerpts of the deposition of Morris, testimony from Donald W. Deese

("Deese"), excerpts of the depositions of Dixon and Moore, and testimony from Investigator C.B. Duckett ("Duckett") of the Columbia Police Department. The Plaintiff testified as the final witness and was cross-examined by counsel for Morris and Pro Bowl. Numerous exhibits were admitted, many of which were premarked and admitted without objection.

Before the Plaintiff rested its case, its counsel moved to amend the complaint to conform to the evidence pursuant to Rule 15(b), SCRCP to add Dixon and Moore as Defendants. That motion was taken under advisement and counsel for the Plaintiff and counsel for Dixon's Automotive were directed to brief the issue.

Counsel for Dixon's Automotive then moved for dismissal pursuant to Rule 41(b), SCRCP. After considering the arguments of counsel, that motion was denied.

Neither Morris nor Dixon offered a single word of testimony. In fact, the Defendants presented no defense at all.

On February 16, 2018, the Plaintiff filed a supplemental motion to amend the complaint to conform to the evidence to add Dixon and Moore as parties. In addition to reiterating the grounds argued before resting at trial, the Plaintiff raised an alternative basis for adding Dixon and Moore, ie, both are "dealers" as defined by S.C. Code Ann. Section 56-15-10(h) and "persons" as defined by S.C. Code Ann. Section 56-15-10(n). On February 23, 2018, the Plaintiff filed a memorandum in support of its motions.

In accordance with Rule 52, SCRCP, after considering the testimony presented and reviewing the exhibits admitted, I make the following:

FINDINGS OF FACT

1. Mathes is a resident of Florence, South Carolina. He owns MAS. (Tr. p. 53, lines 13 - 22).

2. Morris is a resident of Blythewood, South Carolina. He is currently employed by BMW of Columbia. (Morris Depo. p. 9, lines 19 – 21 and Moore Depo. p. 89, lines 5 – 7).

3. Dixon is a resident of Fort Mill, South Carolina. (Dixon Depo. p. 11, lines 5 – 12).

4. Moore is a resident of Rock Hill, South Carolina. (Moore Depo. p. 8, lines 14 – 16).

5. Dixon and Moore were childhood friends and Moore was like a little brother to Dixon. (Dixon Depo. p. 13, lines 7 – 8 and Moore Depo. p. 19, lines 2 – 10).

6. Dixon and Moore operate Dixon's Automotive as partners and share profits and losses. (Dixon Depo. p. 9, line 12 and p. 22, line 18 – p. 23 line 17 and Moore Depo. p. 43, lines 14 - 18).

7. Over the years, Dixon's Automotive has sold over 1,000 motor vehicles. (Moore Depo. p. 79, lines 22 – 24).

8. Mathes and Morris became acquainted approximately 30 years ago when both of them were employed by Jim Hudson Mitsubishi in Columbia. (Morris Depo. p. 25, lines 16 – 21 and Tr. p. 55, line 15 – p. 16, line 15).

9. Mathes and Morris became close friends, went to football games together, played golf together, and went out to dinner together with their wives. (Morris Depo. p. 25, line 22 – p. 26, line 14 and Tr. p. 56, line 23 – p. 57, line 21).

10. Morris later established Pro Bowl, a retail motor vehicle dealership in the Congaree Vista area of Downtown Columbia.

11. According to Morris, he and Pro Bowl are the same. (Morris Depo. p. 39, lines 14 – 17).

12. Dixon was an investor in Pro Bowl. (Dixon Depo. p. 14, lines 2 – 9).

13. Mathes eventually moved back to Florence and established MAS.

14. After Morris established Pro Bowl, he authorized Mathes to purchase motor vehicles for Pro Bowl at Manheim auctions. (Plaintiff's Exhibit #22).

15. Morris and Dixon both played football at the University of South Carolina and became acquainted. (Dixon Depo. p. 14, line 23 – p. 15, line 13).

16. Moore met Morris when he accompanied Dixon on a visit to Pro Bowl approximately 10 years ago. (Moore Depo. p. 17, lines 9 – 22).

17. In 2004, Morris signed a Representative Authorization Letter authorizing Dixon to buy and sell motor vehicles for Pro Bowl at auctions. (Plaintiff's Exhibit #42).

18. Dixon and Moore established Dixon's Automotive as a retail motor vehicle dealership in 2005. (Moore Depo. p. 20, lines 5 – 8 and Plaintiff's Exhibit #41).

19. Both Dixon and Moore signed the Application For A Dealer Or Wholesaler License but Dixon had to sit for a test for the license. (Dixon Depo. p. 27, line 25 – p. 28, line 4 and Exhibit #1).

20. Dixon and Moore dealt with less expensive used cars in the $10,000 to $15,000 range. (Moore Depo. p. 23, lines 22 – 24).

21. Dixon signed a Representative Authorization Letter on May 2, 2005, authorizing himself to act on behalf of Dixon's Automotive at auctions. (Dixon Depo. p. 33, lines 3 – 18 and Plaintiff's Exhibit #44).

22. On March 23, 2006, Mathes signed a Representative Authorization Letter authorizing Morris to buy and sell motor vehicles at auctions on behalf of MAS.

23. On July 9, 2008, Dixon signed a Dealer Authorization/Removal of an Individual authorizing Morris to act on behalf of Dixon's Automotive at auctions. (Dixon Depo. p. 33, line 19 – p. 35, line 13 and Plaintiff's Exhibit #45).

24. On August 18, 2009, Morris signed a Dealer Authorization/Removal of an Individual form authorizing Dixon to act on behalf of Pro Bowl at auctions. (Plaintiff's Exhibit #43).

25. Dixon and Moore ceased operating Dixon's Automotive as a retail dealership in 2012 but continued operating as a wholesaler. (Dixon Depo. p. 18, line 5 – p. 19, line 11 and Moore Depo. p. 9, lines 8 – 17 and p. 21, lines 1 – 14).

26. Over the years, Dixon's Automotive bought motor vehicles from and sold motor vehicles to Morris at Pro Bowl. (Dixon Depo. p. 36, lines 5 – 8 and Moore Depo. p. 22, line 4 – 18).

27. Dixon and Moore had allowed Morris to inspect motor vehicles for purchase but had never consigned a single motor vehicle to Morris to sell because they understood doing so was illegal. (Moore Depo. p. 22, line 19 – p. 23, line 12).

28. Dixon's Automotive had purchased motor vehicles on several occasions and had them shipped to Morris (Moore Depo. p. 31, lines 13 – 22 and p. 109, lines 3 - 9)), but on those occasions, if Morris decided to purchase them, he always paid for them immediately. (Moore Depo. p. 32, line 1 – p. 33, line 5).

29. On May 20, 2013, Mathes signed a Fifty Thousand Dollars and Zero Cents ($50,000.00) Demand Promissory Note And Loan And Security Agreement ("Note") with NextGear with its principal office in Carmel, Indiana to secure inventory financing for motor vehicles purchased at auctions including Manheim Darlington by MAS. (Plaintiff's Exhibit #49).

30. Both Mathes and his wife personally guaranteed the obligations of MAS under the Note.

31. The Note and associated documents consumed 31 pages of fine print.

32. The Note specifically provided that MAS would be solely responsible for any unauthorized access to its account. [Plaintiff's Exhibit #49, page 4 of 12, par. 4(t)].

33. The Note also included choice of law, forum selection, and arbitration clauses providing for arbitration of any disputes under the Federal Arbitration Act and the law of the State of Indiana in Marion County or Hamilton County, Indiana. (Plaintiff's Exhibit #49, page 10 of 12, par. 20 and 21).

34. By late 2014, Morris had closed his original dealership in the Vista, opened and closed Pro Bowl Ford in Pittsburgh, and relocated Pro Bowl to 1231 Broad River Road, in Columbia. (Dixon Depo. p. 14, line 2 – p. 16, line 21).

35. Morris began negotiating with Jim Hudson Automotive Group ("Hudson") to sell the real estate where Pro Bowl was then located on Broad River Road as part of a retirement package for Donald W. Deese ("Deese"), the former CFO of Hudson who had been employed by Hudson for nearly 40 years.

36. Hudson's plan was to replace Deese as CFO and allow him to operate a used car dealership at the Broad River Road facility.

37. Hudson's arrangement with Morris included retaining him as an employee for some period of time.

38. The transaction between Hudson and Morris closed in January of 2015, and Deese began operating a Hudson entity known as Capital City Rides, Inc. ("Capital City") at the former Pro Bowl location.

39. In May of 2015, Deese, a certified public accountant and a certified fraud examiner, discovered that Morris had misappropriated approximately $104,000.00 through a scheme involving motor vehicle certificates of title at Capital City.

40. Morris signed a confession and promised to make restitution.

41. Morris' misappropriation resulted in a $10,000 per month pay cut, the loss of a demonstrator, and the loss of group health insurance for Deese.

42. Deese was also forced to discharge an employee who had worked with him for 25 years, who still has not been able to replace her former income.

43. Morris eventually came up with all but $9,143.00 owed to Capital City.

44. Deese eventually collected the remaining sums from Pro Bowl's surety bond required by S.C. Code Ann. Section 56-15-320 as indemnification for loss or damage suffered by an owner of a motor vehicle by reason of fraud or violations of the Dealers Act.

45. Mathes was unaware of Morris' caper at Capital City.

46. In early May of 2016, Worthy became interested in purchasing an Infiniti QX60 SUV to replace her Audi Q7 that had been damaged in a flood. (Tr. p. 6, lines 17 - 20).

47. Since Worthy had purchased previous vehicles from Pro Bowl, she contacted Morris about her interest in an Infiniti. (Morris Depo. p. 49, line 18 – p. 50 line 17 and Tr. p. 6, lines 4 - 20).

48. Moore and Morris began discussing the acquisition of a gold 2014 Infiniti QX60 SUV located in Tampa, Florida in May of 2016. (Moore Depo. p. 11, line 10 – p. 17, line 7 and p. 24, lines 12 – 24).

49. Moore knew that Morris had no ability to pay for the Infiniti at that time because his line of credit had been exhausted. (Moore Depo. p. 24, line 24 – p. 25, line 1; p. 26, lines 6 – 13; p. 29, line 24 – p. 30, line 6; and p. 61, lines 18 – 25).

50. Morris sent Worthy pictures of a gold 2014 Infiniti QX60 SUV. (Tr. p. 9, lines 4 - 5).

51. On May 10, 2016, Worthy met with Morris and the two of them executed a Buyers Order, a BUYERS GUIDE, a disclaimer of warranties, and a WE OWE FORM for a gold 2014 Infiniti QX60 with Vehicle Identification Number ("VIN") 5N1ALOMM6EC502540 ("the Infiniti") at Morris' office on Hampton Street in Columbia, that neither of them had ever laid eyes on other than in photographs. (Morris Depo. p. 12, lines 2 – 3 and 11 – 25; p. 13, lines 1 – 25; p. 14, lines 1 – 16; p. 16, line 24 – p. 17, line 2; p. 28, lines 2 -7; and p. 31, line 3 – p. 32, line 1 and Plaintiff's Exhibit #s 1, 12, 14, 15, and 16).

52. Worthy applied for a loan from State Credit Union for $16,026.00 and signed a Loan And Security Agreements And Disclosure Statement listing the Infiniti as Collateral, obligating herself to make 35 monthly payments of $480 and a final payment of $473.18. (Plaintiff's Exhibit #2).

53. State Credit Union issued its Check No. 1099462 in the amount of $16,026.00 dated May 12, 2016, payable to Pro Bowl bearing a restrictive endorsement. (Tr. p. 28, line 3 – p. 29, line 5 and Plaintiff's Exhibit #9).

54. The restrictive endorsement provided, "By endorsement of this check, the seller guarantees that SC State Credit Union, P.O. Box 726, Columbia, SC 29202 will be listed as first lienholder on the South Carolina title for [the Infiniti] in the amount of $16,026.00.

55. Pro Bowl endorsed the check and deposited it into an account with South State Bank on Clemson Road in Northeast Columbia. (Plaintiff's Exhibit #9).

56. On May 16, 2016, Worthy met Morris at a McDonald's restaurant in Northeast Columbia near McDaniels Acura and tendered her Check #299 in the amount of $20,000.00 payable to Pro Bowl towards payment for the Infiniti. (Tr. p. 12, lines 2 – 17 and Plaintiff's Exhibit #3).

57. On May 17, 2016, Moore purchased the Infiniti, the very same one that had purportedly already been sold by Pro Bowl to Worthy and financed by State Credit Union, on Manheim Tampa's OVE, an online vehicle exchange, either on his computer or on his cell phone on behalf of Dixon's Automotive while he was physically present in Rock Hill. (Moore Depo. p. 11, line 21 – p. 15, line 14; p. 26, lines 14 – 19; p. 38, lines 20 – 21; p. 39, lines 6 – 10; and p. 82, lines 2 – 9).

58. By that time, Dixon's Automotive no longer had a retail license for selling motor vehicles but did have a wholesaler license authorizing it to sell to dealers. (Dixon Depo. p. 18, line 5 – p. 19, line 11 and Moore Depo. p. 9, lines 8 – 17).

59. Dixon's Automotive also had an inventory financing arrangement with NextGear and when Moore purchased the Infiniti on Manheim Tampa's OVE, Dixon's Automotive's account with

NextGear was charged the total sum of $34,147.79. (Dixon Depo. p. 25, lines 2 – 4 and Moore Depo. p. 27, line 20 – p. 29, line 5 and Plaintiff's Exhibit #40).

60. NextGear immediately began charging Dixon's Automotive interest on the sums advanced for the purchase of the Infiniti. (Moore Depo. p. 30, lines 15 – 23).

61. Moore arranged for the Infiniti to be transported from Tampa, Florida directly to Morris in Columbia. (Moore Depo. p. 29, lines 6 – 23).

62. At that time, Morris had not made any commitment to purchase the Infiniti from Dixon's Automotive. (Moore Depo. p. 39, lines 11 – 19 and p. 62, line 15 – p. 64, line 25).

63. Moore had entrusted a motor vehicle in the past to another dealer under similar circumstances. (Moore Depo. p. 111, line 24 – p. 112, line 4).

64. Moore understood that it would have been illegal to entrust the Infiniti to Morris to sell without first purchasing it from Dixon's Automotive. (Moore Depo. p. 23, lines 1 – 12).

65. Moore knew that someone like Morris in the retail business could sell the Infiniti even without a certificate of title. (Moore Depo. p. 68, line 19 – p. 70, line 9).

66. After the Infiniti arrived in Columbia, Morris delivered it to Worthy. (Tr. p. 12, line 22 - p. 13, line 10).

67. Morris told Worthy that he would need to get the Infiniti back from her to get it serviced or repaired and to get a tag and registration card for her.

68. Thereafter, on several occasions, Morris provided substitute transportation from his employer, McDaniels Acura, for Worthy while representing that he was arranging for service or repairs or dealing with getting a license plate and registration certificate for her. (Tr. p. 13, line 2 – p. 17, line 23).

69. On May 19, 2016, the Infiniti was serviced at Philips Auto Tech in Columbia and the charges were billed to Pro Bowl. (Morris Depo. p. 30, line 11 – p. 32, line 10 and Plaintiff's Exhibit #26)

70. NextGear sent floor plan auditors to Moore's residence in Rock Hill once or twice per month to make sure that Dixon's Automotive was in possession of the Infiniti on which it had advanced $34,147.79 and which it claimed as collateral. (Moore's Depo. p. 35, line 20- p. 38, line 4).

71. Moore never told NextGear's representative that the Infiniti had been transported to Columbia and was in the possession of Morris who still held a retail license for selling motor vehicles. (Moore Depo. p. 60, lines 20 -24).

72. On June 6, 2016, State Credit Union received a copy of a Florida certificate of title for the Infiniti. (Tr. p. 30, lines 6 – 24 and Plaintiff's Exhibit #10).

73. On June 30, 2016, the South Carolina Department of Motor Vehicles issued an Official Order of Dealer License Cancellation addressed to Morris at a post office box maintained by Pro Bowl. (Morris Depo. p. 33, lines 1 – 24 and Plaintiff's Exhibit #27).

74. In the late summer of 2016, Morris had the Infiniti picked up again from Worthy, representing that he needed to take it to the DMV to get a license tag and registration card for her. (Tr. p. 16, lines 10 - 14).

75. Morris arranged for a driver to transport the Infiniti from Columbia to Dixon's home in Fort Mill where it remained parked in his driveway for 2 or 3 weeks. (Dixon Depo. p. 37, line 11 – p. 40, line 8 and Moore Depo. p. 34, lines 12 – 16; p. 47, lines 4 – 13; and p. 48, lines 5 – 22).

76. Moore notified Dixon that he had arranged for the Infiniti to be dropped off at his home. (Dixon Depo. p. 37, line 11 – p. 38, line 18 and Moore Depo. p. 50, lines 2 – 8).

77. Dixon stored motor vehicles for Dixon's Automotive at his home from time to time (Moore Depo. p. 50, lines 18 – 21), and on this particular occasion, the Infiniti was left at Dixon's home for a floor plan audit for the second time by NextGear. (Moore Depo. p. 59, line 22 – p. 60, line 19).

78. Moore also advised Dixon that he was going to post the Infiniti for sale online with Manheim Darlington. (Moore Depo. p. 50, lines 10 – 12).

79. On or about August 9, 2016, Morris mentioned to Mathes during a telephone conversation that he had an Infiniti that he needed to do something with. (Tr. p. 66, lines 8 - 12).

80. There was no discussion about Morris purchasing the vehicle in the name of MAS. (Tr. p. 66, line 16 – p. 67, line 3).

81. Moore then listed the Infiniti on Manheim Darlington's OVE and Morris arranged for a driver to transport it from Dixon's home to Darlington to be checked in. (Moore Depo. p. 52, line 19 – p. 53, line 14; and p. 59, lines 6 – 9).

82. Dixon knew that someone was coming to take the Infiniti to an auction. (Dixon Depo. p. 40, line 15 – p. 41, line 3).

83. Dixon knew that Morris was going to pick up the Infiniti from Dixon's home in Fort Mill. (Dixon Depo. p. 10, lines 14 -1 7).

84. Moore anticipated that Dixon's Automotive would receive less for the vehicle in August than it paid in May, especially since new vehicles would be arriving at new car dealerships soon, driving the prices of used vehicles lower. (Moore Depo. p. 35, lines 1 – 19).

85. Dixon's Automotive sold the Infiniti to MAS on Manheim Darlington's OVE, an online vehicle exchange limited to dealers, in August of 2016. (Morris Depo, p. 42, lines 7 – 19 and Moore Depo. p. 94, lines 2 – 18 and p. 95, lines 4 – 11).

86. Morris purchased the Infiniti on August 15, 2016, that he had already sold to Worthy in the name of MAS for the sum of $35,275.00, a price exceeding the price paid by Dixon's Automotive

when it purchased the Infiniti on May 17, 2016. (Morris Depo. p. 37, line 14 – p. 40, line 9; p. 43, lines 17 – 18; and p. 44, lines 13 – 19).

87. The sales price of the Infiniti caused Manheim Darlington to issue an alert reflecting that "The sale price for this vehicle is over the normal MMR range". (Morris Depo. p. 34, line 23 – p. 35, line 24 and Plaintiff's Exhibit #28)

88. MMR is an acronym for Manheim Market Report, a price listing generated by Manheim and used by dealers to estimate the value of vehicles. (Morris Depo. p. 35, line 13 – p. 37, line 7).

89. The alert was forwarded by Manheim Darlington to Moore by email. (Moore Depo. p. 91, line 4 – p. 92, line 10).

90. Thereafter, Mathes discovered that his account with NextGear had been charged the sum of $35,368.00 for the purchase of the Infiniti that he had never seen, let alone ever agreed to purchase. (Tr. p. 64, line 22 – p. 65, line 19 and Plaintiff's Exhibit #50).

91. MAS was in the "buy here/pay here" used car business of selling and financing used vehicles with a maximum price of $6,000.00 and had never purchased a $35,000.00 vehicle.

92. Mathes remembered his previous telephone conversation with Morris about an Infiniti and called him to find out if he knew anything about the charge listed on MAS' account with NextGear. (Tr. p. 66, lines 8 - 18).

93. Morris immediately claimed that he had purchased the Infiniti in the name of MAS by mistake, that he had intended to purchase the Infiniti in the name of McDaniels Acura, and that he would get it taken care of within a few days. (Tr. p. 67, lines 4 - 11).

94. On the same day, August 24, 2016, the Infiniti was serviced at Philips Auto Tech and the charges were billed to Worthy. (Plaintiff's Exhibit #31).

95. Thereafter, Mathes and Morris engaged in a series of telephone calls and text messages about the Infiniti. (Morris Depo. p. 47, lines 15 – 18 and Tr. p. 68, lines 6 – p. 74, line 13).

96. Mathes discovered that the Infiniti had already been sold to Worthy when Morris inadvertently sent him an image of an Allstate South Carolina Automobile Identification Card for Worthy with an effective date of August 4, 2016, almost two weeks before Morris had "mistakenly" purchased the Infiniti in the name of MAS. (Morris Depo. p. 46, line 13 – p. 47, line 2; Tr. p. 69, line 21 – p. 70 line 17; and Exhibit #32).

97. Mathes subsequently discovered that the Infiniti had been listed on Manheim Darlington's OVE with no photographs and no condition report, an immediate red flag for a $35,000 vehicle and an indication of a prearranged sale. (Tr. p. 81, line 10 – p. 89, line 18 and Plaintiff's Exhibit #53).

98. On the same day, Mathes reported the matter to the Florence County Sheriff Office. (Tr. p. 90, line 17 – p. 91, line 19 and Plaintiff's Exhibit #60)

99. Mathes notified both Manheim Darlington and NextGear of the fraudulent transaction between Dixon's Automotive and Morris. (Tr. p. 74, line 11 – p. 75, line 2).

100. Notwithstanding Mathes' report of fraudulent activity on MAS' account, NextGear demanded that MAS pay the $35,000.00 advanced on MAS' Note for the purchase of the vehicle from Dixon's Automotive. (Tr. p. 80, lines 10 - 14).

101. Thereafter, both Manheim Darlington and NextGear refused to do business with MAS. (Tr. p. 75, lines 3 - 7).

102. On October 25, 2016, Mathes filed a Customer Complaint Form with the South Carolina Department of Motor Vehicles against Dixon's Automotive because NextGear had charged the account of MAS for the Infiniti purportedly sold by Dixon's Automotive and had paid Dixon's Automotive for the Infiniti that had been sold by Morris to Worthy on May 10, 2016. (Tr. p. 93, lines 5 - 15 and Plaintiff's Exhibit #61)

103. On October 31, 2016, State Credit Union wrote to Morris to follow up on his failure to honor the restrictive endorsement on the check for $16,026.00 for Worthy's purchase of the Infiniti. (Morris Depo. p. 48, lines 7 – 16 and Plaintiff's Exhibit #11).

104. Morris never provided State Credit Union with a certificate of title with its lien recorded as promised in the restrictive endorsement on the check he deposited. (Tr. p.29, lines 13 - 25).

105. On November 14, 2016, MAS initiated this action in an effort to avoid being haled into an arbitration proceeding in Indiana by NextGear.

106. On December 21, 2016, Worthy filed a Customer Complaint Form with the South Carolina Department of Motor Vehicles because she still did not have a license tag or a registration card for the Infiniti, requesting that the matter be investigated and that Morris be prosecuted. (Tr. p.19, line 18 – p. 21, line 7 and Plaintiff's Exhibit #5).

107. Worthy subsequently submitted a Six-Month Temporary Permit Request for the Infiniti, acknowledging certain limitations placed upon temporary registrations including use outside the State of South Carolina. (Tr. p. 21, line 18 – p. 22, line 24).

108. Worthy was prevented from operating the Infiniti outside of the State of South Carolina while the DMV investigated the matter. (Tr. p. 22, lines 1 - 7).

109. Eventually, the DMV issued a license tag and registration certificate to Worthy and provided State Credit Union with a certificate of title for the Infiniti with its lien recorded thereon without any assistance whatsoever from Morris, Dixon or Moore. (Tr. p. 22, line 25 – p. 23, line 4 and p. 33, lines 11 - 19).

110. MAS eventually settled its dispute with Manheim Darlington and NextGear but was unable to operate in the normal course of business from October 2016, until after the dispute was settled in May of 2017, because NextGear had suspended providing MAS with inventory financing and

Manheim Darlington and other Manheim auctions refused to allow MAS to participate. (Tr. p. 90, lines 1 - 9).

111. MAS' inability to replenish its accounts receivable by selling and financing vehicles as contracts with its then current customers terminated caused devastating damage to MAS' business and cash flow. (Tr. p. 76, lines 12 – p. 79, line 9 and p. 98, lines 5 - 11).

112. Not only could MAS not purchase vehicles on credit with NextGear as it had done for years, it was also prevented from purchasing vehicles from Manheim Darlington and other Manheim auctions for cash. (Tr. p. 54, lines 1 – 2 and p. 75, lines 3 -5).

113. MAS' gross receipts, which had been on an upward trajectory since 2014, declined by nearly $25,000.00 in 2016 from 2015, and by nearly $125,000 in 2017, from 2016. (Defendant's Exhibits #s 2, 3, 4, and 5).

114. What started out as a $57,701.96 profit as of August 31, 2016 (Tr. P. 112, line 19 – p. 113, line 18), evaporated and resulted in a loss of $21,091.00 for the year. (Defense Exhibit #4).

115. The following year, 2017, was even more disastrous, a loss of $51,534.00. (Defense Exhibit #5).

116. In an effort to survive, Mathes was forced to liquidate a lease for a cell tower at a tremendous discount, his wife was forced to cash in her 401K, and Mathes' elderly parents had to sell some of their stock in SCANA and loaned other sums to him to prevent his financial ruin. (Tr. p. 94, line 21 – p. 96, line 7).

117. All told, MAS suffered damages of $670,286.00 including attorney's fees in excess of $60,000.00 through January 31, 2018.

118. Neither Morris, nor Dixon, nor Moore, nor Dixon's Automotive have been charged with any crime. (Morris Depo. p. 25, lines 14 – 15 and Tr. p. 52, lines 5 - 9).

119. Moore believed that Morris and/or Pro Bowl defrauded Dixon's Automotive, causing it to lose a $250,000 line of credit with NextGear (Moore Depo. p. 113, lines 9 – 21), but no claim was ever filed by Dixon's Automotive against Pro Bowl's surety bond. (Moore Depo. p. 74, line 1 – p. 75, line 24).

120. Although Dixon and Morris have communicated about Morris's son joining the military, they have had no harsh words over this transaction. (Dixon Depo. p. 23, line 24 – p. 24, line 14).

THE LAW

Knowledge of the Law

Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests. American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181 (Ct. App. 2009).

Criminal Law

Forgery consists of the fraudulent making or altering of a writing by one intending to defraud, prejudice or damage another person. State v. Lee-Grigg, 374 S.C. 388, 640 S.E.2d 41 (Ct. App. 2007), cert. granted, (Sept. 18, 2008) and decision aff'd, 387 S.C. 310. 692 S.E.2d 895 (2010).

A false pretense is such a fraudulent representation of an existing or past fact by one who knows it to be not true, as is adapted to induce the person as to whom it is made to part with something of value. State v. Haines, 23 S.C. 170, 173, 1885 WL 3644 (1885).

Breach of trust is a form of larceny and is governed by the principles applicable to it. State v. McCann, 167 S.C. 393, 166 S.E. 411 (1932).

Entrustment

S.C. Code Ann. Section 36-2-403 provides in pertinent part:

> (1) A purchaser of goods acquires all title which his transferor had or had power to transfer . . . A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods

have been delivered under a transaction of purchase the purchaser has such power even though

* * *

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in the ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

That section [36-2-403] affords an innocent purchaser protection against the claim of an original owner who entrusts goods to a merchant who in turn transfers the goods by sale to the innocent purchaser. American Lease Plans, Inc. v. R.C. Jacobs Plumbing, Heating & Air Conditioning, Inc., 274 S.C. 28, 260 S.E.2d 712 (1979).

Certificates of Title

S.C. Code Ann. Section 56-19-320 provides:

A certificate of title issued by the Department of Motor Vehicles is prima facie evidence of the facts appearing on it.

S.C. Code Ann. Section 56-19-340 provides:

The certificate of title must be mailed to the first lienholder named in it or given to the lienholder's agent or, if none, to the owner.

Procedure for voluntary transfer; duties of transferor and transferee; effective time of transfer.

S.C. Code Ann. Section 56-19-360 provides:

If an owner, manufacturer or dealer transfers his interest in a vehicle other than by the creation of a security interest, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to transferee in the space provided therefor on the certificate or as the Department of Motor Vehicles prescribes and cause the certificate and

assignment to be mailed or delivered to the transferee or to the Department.

Except as provided in Section 56-15-370, the transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title in the space provided therefor on the certificate or as the Department prescribes and cause the certificate and application to be mailed or delivered to the Department.

Except as provided in Section 56-19-370, and as between the parties, a transfer by an owner is not effective until the provisions of this section have been complied with.

It was never contemplated that this statute (s 56-19-360) which was obviously intended to prevent fraudulent transfer of cars should be applied so as to protect one whose conduct has enabled another to commit a fraud. Clanton's Auto Auction Sales, Inc. v. Young, 239 S.C. 250, 122 S.E.2d 640 (1961); American Lease Plans, supra.

Procedures for voluntary transfer; dealer purchasing vehicle for resale.

S.C. Code Ann. Section 56-19-370 provides:

> If a dealer buys a vehicle and holds it for resale and procures the certificate of title from the owner within **forty-five days** after delivery to him of the vehicle, he need not send the certificate to the Department of Motor Vehicles, but, upon transferring the vehicle to another person other than by the creation of a security interest, promptly shall execute the assignment and warranty of title by a dealer, showing the names and addresses of the transferee and of any lienholder holding a security interest created or reserved at the time of the resale and the date of his security agreement, in the space provided on the certificate or as the department prescribes, and mail or deliver the certificate to the department with the transferee's application for a new certificate.

The Dealers Act

The conduct of motor vehicle dealers in South Carolina is regulated under the provisions of S.C. Code Ann. Section 56-15-10, et seq.

S.C. Code Ann. Section 56-15-310 provides in pertinent part:

> Before engaging in business as a dealer or wholesaler in this State, a person first must make application to the Department of Motor Vehicles for a license.
>
> * * *
>
> The license applies to only one place of business of the applicant and is not transferable to another person or place of business . . . No other exhibitions may be allowed.
>
> A person who fails to secure . . . a permanent license as required in this chapter is guilty of a misdemeanor and, upon conviction, must be fined: (1) not less than fifty dollars or more than two hundred dollars or imprisoned for not more than thirty days for the first offense . . .

For purposes of this section, the sale of each vehicle constitutes a separate offense.

S.C. Code Ann. Section 56-15-315 provides in pertinent part:

> (A) Notwithstanding another provision of law, off-site displays of automobiles or trucks are prohibited except as provided in this section. . .
>
> (B) Used automobile or truck dealers may display used automobiles or trucks off-site as provided in this section in the county in which their dealership is located.
>
> (C) Displays may be conducted only by South Carolina licensed dealers. Any automobile or truck displayed must be owned by the dealer. Any person or automobile or truck dealer who violates these provisions is subject to a five hundred dollar fine.
>
> (D) Off-site displays are for display purposes only. Sales or attempts to sell as defined in Section 56-15-10(l), or both, are not permitted off-site. An automobile or truck dealer who sells or attempts to affect the off-site sale of any automobile or truck is in violation of this section and is subject to a two thousand dollar fine. An agent of an automobile or truck dealer who sells or attempts to affect the off-site sale of an automobile or truck is subject to a five hundred dollar fine.

Section 56-15-320 provides in pertinent part:

> (B) Each applicant for licensure as a dealer or wholesaler shall furnish a surety bond in the penal amount of thirty thousand dollars on a form prescribed by the director of the department. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by

reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

S.C. Code Ann. Section 56-15-330 provides in pertinent part:

> No dealer may be issued or allowed to maintain a motor vehicle dealer's license unless:
>
> > (1) The dealer maintains a bona fide established place of business for conducting the business of selling or exchanging motor vehicles . . . **A bona fide place of business does not mean a residence . . .**

S.C. Code Ann. Section 56-15-410 provides:

> An applicant for an initial nonfranchise automobile dealer license must complete successfully at least eight hours of pre-licensing education courses before he may be issued a license. At least one shareholder listed on the application for an initial nonfranchised automobile dealer license must comply with the education requirement contained in this section.

S.C. Code Ann. Section 56-15-10 provides in pertinent part:

> As used in this chapter the following words shall, unless the text otherwise requires, have the following meanings:
>
> > (h) **"Dealer"** or **"motor vehicle dealer"**, any person who sells or attempts to effect the sale of any motor vehicle. . .
> >
> > (l) "Sale," shall include the . . . transfer, exchange, . . in any form, whether by transfer in trust or otherwise, of any motor vehicle ... and any option, . . . or other contract, or solicitation, looking to a sale, or offer or attempt to sell in any form, whether spoken or written. . .
> >
> > (m) **"Fraud,"** shall include, in addition to its normal legal connotation, the following: a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; and **an intentional failure to disclose a material fact**.
> >
> > (n) **"Person,"** a natural person, corporation, partnership, trust or other entity, and, **in case of an entity, it shall include** any

> other entity in which it has a majority interest or effectively controls as well as **the individual officers, directors, and other persons in active control of the activities of each such entity.**
>
> (p) "Wholesaler" or motor vehicle wholesaler", any person who sells or attempts to effect the sale of any used motor vehicle exclusively to motor vehicle dealers or to other wholesalers.

S.C. Code Ann. Section 56-15-30 provides in pertinent part:

> (a) Unfair methods of competition and unfair or deceptive acts or practices as defined in Section 56-15-40 are hereby declared to be unlawful.

S.C. Code Ann. Section 56-15-40 provides in pertinent part:

> (1) It shall be deemed a violation of paragraph (a) of Section 56-15-30 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.

The term "arbitrary" has 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, 644 S.E.2d 83 (Ct. App. 2008).

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.

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).

(A dealer's failure and refusal to make repairs to a used car after expressly warranting to do so because he did not "have that much tied up in the car" could be found by the jury to constitute action which is "arbitrary, in bad faith, or unconscionable and which causes damages to any of the parties.) Adams v. Grant, 292 S.C. 581, 358 S.E.2d 142 (1986). (Failure to repair defective vehicle under warranty was conduct that was arbitrary.) Taylor, supra.

Frequently, several causes of action are joined which may be unrelated or may be alternative theories of recovery for the same conduct. Taylor, supra.

S.C. Code Ann. Section 56-15-110 entitled, **Suits for damages**, provides in pertinent part:

> (1) . . . , any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefore 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.**
>
> * * *
>
> (2) 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.**

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). (Taking a customer on a 95 m.p.h. test drive, ignoring, avoiding, joking about and laughing at customers when they took their vehicle in for service properly considered by jury in finding malice), Taylor, supra.

Punitive Damages

In South Carolina, "punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. Laird v. Nationwide Ins. Co., 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964). Moreover, they serve "as vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated." Harris v. Burnside, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973).

In BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), the United States Supreme Court provided the following guideposts for determining the reasonableness of punitive damage awards: (1) the degree of reprehensibility; (2) the ratio of the punitive damages award to the actual harm inflicted on the plaintiff; and (3) the comparison of the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct.

ANALYSIS

Liability

The relative culpability of Morris, Pro Bowl, Dixon, Moore, and Dixon's Automotive may be subject to debate. However, the facts and circumstances surrounding the acquisition, transport, possession, transfer to Worthy, reacquisition from Worthy on multiple occasions, excuses made to Dixon Automotive's floor plan auditors, and subsequent sale of the Infiniti on Manheim Darlington's OVE support Mathes' claims.

Morris testified in his deposition that he and Pro Bowl were one and the same. Morris deceived Worthy when he sold her the Infiniti that he never owned. Morris pocketed Worthy's check for $20,000.00 and has never accounted for it. Morris' behavior toward Worthy is conduct prohibited by the Dealers Act.

Additionally, Morris engaged in bad faith prohibited by the Dealer's Act when he failed to honor the restrictive endorsement on the check tendered by State Credit Union. Morris pocketed State Credit Union's check for $16,026.00 and has never accounted for it.

In addition to the lies that he told Worthy about why he needed the Infiniti back for service or repairs or getting a license tag or registration card for her, Morris deceived MAS when he purported to purchase the Infiniti, that he had already sold to Worthy, in the name of MAS. When confronted by

Mathes, Morris lied to Mathes repeatedly beginning with his contention that he purchased the vehicle in the name of MAS "by mistake".

Morris swindled NextGear out of the $35,275.00 it advanced for the fraudulent purchase by him in the name of MAS from Dixon's Automotive. The Infiniti, the subject of that transaction, had been sold by Morris to Worthy 3 months earlier.

Dixon and Moore, both of whom described themselves as partners in their depositions were complicit in Morris' serial acts of fraud.

Moore procured the Infiniti for Pro Bowl's retail sale to Worthy without a retail license in violation of S.C. Code Ann. Section 56-15-310 entitled License required; term of license; fee; **scope of license**; penalty for violation. Dixon's Automotive had no retail license. Dixon's Automotive had ceased its retail operation in years past and was only licensed as a wholesaler.

Moore's testimony was as follows:

> We always be looking on the site. Looking for different cars and I - - I told him [Morris] I was probably interested in buying this car, and he said, "That's funny. I was looking at the car, too . . ." (Moore Depo. p. 24, lines 18-21).

Moore did not randomly happen to purchase the very same Infiniti in Tampa and have it transported to Columbia to Morris, 7 days after Morris had sold it to Worthy. The only reason for doing so was to facilitate the retail sale of the Infiniti.

Moore entrusted the Infiniti to Pro Bowl, a retail licensee at the time, facilitating the fraud practiced by Morris and Pro Bowl upon Worthy. S.C. Code Ann. Section 36-2-403 empowered Pro Bowl to transfer a good title to Worthy even if Dixon Automotive's delivery of the Infiniti to Pro Bowl was procured through fraud.

Moore knew that Morris had no money to pay for the Infiniti when Dixon's Automotive purchased it on Manheim Tampa's OVE. Moore admitted that under the circumstances, it would be illegal to just turn the Infiniti over the Morris to sell, but that's exactly what he did.

Dixon and Moore knew that once the Infiniti was transported from Tampa to Columbia and placed with Morris, a merchant who dealt in goods of that kind, they gave him the power to transfer the Infiniti to someone like Worthy, if she qualified as a buyer in the ordinary course of business.

Dixon's Automotive allowed the exhibition of the Infiniti at an unauthorized place of business in violation of S.C. Code Ann. Sections 56-19-310 and 56-19-315. Dixon's Automotive's only place of business was in York County. Pro Bowl's place of business was in Richland County.

Dixon and Moore knew that they were prohibited from displaying or selling the Infiniti off-site.

Dixon's Automotive failed to execute an assignment and warranty of title to Pro Bowl in violation of S.C. Code Ann. Section 56-19-360. That did not prevent Morris from selling the Infiniti to Worthy.

Dixon and Moore knew, or should have known, that the longer the Infiniti remained in Morris' possession, the more likely it was that Morris would exercise his power under the entrustment statute. Contrary to Moore's testimony that the Infiniti was only transported to Morris to determine if Morris was interested in purchasing it, they acquiesced in his retention of the Infiniti for approximately 90 days. Moore believed that it was "illegal to just turn the vehicle over to Morris to sell" and he was right. Any such transfer "looking to a sale" was prohibited by S.C. Code Ann. Section 56-15-315.

During that 90 day period of time, Moore never told NextGear's floor plan auditors the whole truth about where the Infiniti supposedly was and who supposedly was in possession of it. An intentional failure to disclose a material fact constitutes fraud under S.C. Code Ann. Section 56-15-10(m). That was deceptive.

Neither Dixon nor Moore offered any testimony as to why the Infiniti on which they were paying interest and which was depreciating in value during the summer of 2016 was never offered to any other dealer. Somehow, eventually, after it had been sold to Worthy, it ended up parked in Dixon's driveway for 2 or 3 weeks without any paperwork but with a key in the ignition.

Dixon's Automotive listed the Infiniti, which had already been sold to Worthy, on Manheim Darlington's OVE. Dixon's Automotive had no Infiniti to sell. It had already been sold to Worthy, yet Dixon's Automotive received over $35,000 advanced by NextGear and charged against MAS' account.

After Moore placed the Infiniti on Manheim Darlington's OVE without any photographs or a condition report, miraculously, it sold for more than MMR and more than Dixon's Automotive had paid for it in May, causing Manheim Darlington to issue an "alert" and email it to Moore.

When NextGear discovered the involvement of Dixon's Automotive, NextGear terminated its $250,000.00 line of credit with Dixon and Moore. Neither Dixon, Moore, nor Dixon's Automotive have filed a claim against Pro Bowl's surety bond, sought to prosecute Morris, nor cross-claimed for any damages. In fact, according to Dixon, they haven't even had any harsh words with one another.

Damages

Mathes compared the "buy here/pay here" used car business that he had successfully operated for 20 years to the timber business. As Mathes described it, the success of his business was dependent upon maintaining a steady cash flow of receivables by replacing terminated contracts with his customers with new ones. Just like the timber business, unless a new seed is planted when a tree is harvested, eventually, both a timber business and a "buy here/pay here" used car business will end up with an empty field. That is exactly what happened to MAS.

This caper involving Morris, Pro Bowl, Dixon, Moore, and Dixon's Automotive couldn't have come at a worse time for MAS. As Mathes described it, he traditionally used his line of credit with NextGear in October, November, and December to stock up on inventory for heavy sales activity in

January, February, and March when his customer base received income tax returns and used them as down payments on the types of vehicles that he purchased for $2,000, $3,000, or $4,000 and sold for $6,000 or less. These types of vehicles would not have included a $35,000 Infiniti QX60 SUV.

MAS was locked out of all Manheim auctions, not just Manheim Darlington. Manheim wouldn't even allow MAS to participate in its auctions with cash. NextGear not only refused to allow MAS to draw on its $50,000.00 line of credit to purchase inventory, it also demanded that MAS satisfy its then current account balance of approximately $10,000 to $15,000.00 that was not in dispute.

This caper caused MAS to suffer more than just an unauthorized $35,000.00 charge against its line of credit. But for the DMV's treatment of Worthy as a buyer in the ordinary course of business, NextGear would have hauled MAS into an arbitration forum in Indiana and, in all likelihood, would have prevailed on its contention that MAS was responsible for Morris' access to its line of credit.

What Morris did interfered with MAS' cash flow. What had been a steady $7,500.00 per month cash flow declined to $2,500.00 per month when MAS, without its line of credit with NextGear, had no ability to plant new seeds as its contracts with existing customers terminated.

One can only imagine what might happen to any business which lost its ability to replace inventory. For instance, a grocery store which could not restock its shelves would still have expenses for rent, taxes, utilities, and payroll as its operations ground to a halt and eventually, would look like it was out of business, and at that point, probably would be. Even in a law practice, if the lawyer lost his ability to practice for a period of 9 months and his cash flow declined by two thirds, his practice would eventually end up on life support. If the business survived at all, how long, if ever, might it take to resume normal operations?

Mathes estimated that this caper cost him $670,286.00 but that amount included attorney's fees incurred but not fully paid. Since attorney's fees will be addressed separately, those sums should be deducted from the total losses claimed by MAS.

Based upon the facts as set forth above and the applicable law, I make the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this action.

2. The Plaintiff's motion and supplemental motion to conform the pleadings to the evidence to add Gerald Scott Dixon and Michael Tyrone Moore as party defendants is granted.

3. After deducting the attorney's fees estimated that it had incurred, I conclude that the Plaintiff suffered actual damages of $35,368.00 and that sum should be doubled to $70,736.00 as mandated by S.C. Code Ann. Section 56-15-110(1).

4. I conclude that the Plaintiff is entitled to the cost of suit, including a reasonable attorney's fee, also as mandated by S.C. Code Ann. Section 56-15-110(1).

5. I conclude that the Defendants acted maliciously and that the Plaintiff is entitled to punitive damages not to exceed three times the actual damages as provided by S.C. Code Ann. Section 56-15-110(2) and further conclude that an award of $212,208.00 three times the amount of actual damages, is appropriate under the facts and circumstances of this case.

IT IS THEREFORE ORDERED that judgment be entered in favor of the Plaintiff against the Defendants for the sum of $ 70,736.00 in actual damages and the sum of $212,208.00 in punitive damages.

IT IS FURTHER ORDERED that counsel for the Plaintiff shall submit an attorney's fee affidavit within 10 days of receipt of a filed copy of this order for the Court's consideration of the cost of suit, including a reasonable attorney's fee.

AND IT IS SO ORDERED.

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Joseph M. Strickland
Richland County Master in Equity

Columbia, South Carolina
This 20th day of June, 2018

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-40-06794

Mathes Auto Sales, Inc.

PLAINTIFF(S)

Otis Morris, Jr., Pro Bowl Motors, Inc., Travelers Casualty & Surety Co. of America, Inc., Gerald Scott Dixon, Michael Tyrone Moore and Dixon's Automotive, LLC

DEFENDANT(S)

Submitted by: J. Gregory Studemeyer, Esq.	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

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

order:

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

~~Circuit Court Judge~~ Master-in-Equity | 2097 Judge Code | June 20, 2018 Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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