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**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(St. Louis City)**

Margaret White

VS

Murphy Auto Sales, Inc

CASE NO. 1122-AC17293-01 DIVISION 29

November 18, 2013

JUDGMENT AND ORDER

This cause was called for jury trial on November 4, 2013. Plaintiff appeared in person and through counsel Robert Swearingen. Defendant Murphy Auto Sales failed to appear. Plaintiff withdrew its request for jury trial and the case was heard by this Court. Evidence was adduced and this Court took the matter under submission. Plaintiff's action against Defendant Murphy Auto Sales' alleges that Defendant wrongfully repossessed the motor vehicle Defendant sold to Plaintiff Margaret White. Plaintiff asserts claims under the Missouri Merchandising Practices Act (Count I), conversion (Count II), violation of section 408.555 RSMo (Count III) and violation of the Uniform Commercial Code (Count IV). Having considered Plaintiff's testimony and the exhibits, arguments and proposed judgment submitted on behalf of Plaintiff, this Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court initially finds that Plaintiff has established the following facts:

1. On November 22, 2008 Gewayel A. Jewett purchased a 1995 Pontiac automobile from Defendant Murphy Auto Sales, Inc.
2. Murphy Auto presented Mr. Jewett and Ms. White with a "Bill of Sale" which contained financing terms. Pursuant to the "Bill of Sale", the purchase price was \$2,200.00 with

\$480.00 as a down payment. Murphy Auto financed the remaining \$1,720.00 with monthly payments of \$125.00 due the first of each month.

3. Mr. Jewett died shortly after he purchased the car.

4. After Mr. Jewett died, Ms. White contacted Murphy Auto and informed it that her son had died. Upon learning of Mr. Jewett's death, Murphy Auto agreed to allow Ms. White to purchase the vehicle. Murphy Auto allowed Ms. White to believe that she was being substituted as the purchaser of the vehicle. In furtherance thereof, Murphy Auto had Ms. White sign the "Bill of Sale" under decedent Jewett's name; and the *Application for Missouri Title and License* next to Jewett's name. Defendant also had Ms. White sign various other purchase documents, including the "Reassignment By Registered Dealer" section on the back of the *Certificate of Title* that was issued 5/30/03 to Mustafic Ajka for the vehicle, (the back of that *Certificate of Title* reflects that Ajka was the seller of the vehicle to Vineyard, the seller to purchaser A-1 Auto Credit, the seller to purchaser Murphy Auto). That *Certificate of Title* establishes that Murphy Auto Sales transferred ownership of the vehicle from themselves as Dealer to Jewayel Jewett and Margaret White as purchasers. Defendant had Plaintiff White sign her name above her deceased son's name as the purchaser.

5. Ms. White paid \$200.00 in sales taxes to register and title the vehicle.

6. Ms. White purchased the car for her own personal, family and household purposes. The Missouri Department of Revenue issued a new title to the vehicle on January 16, 2009. The "owner" names on this new *Certificate of Title* are listed as Jewett Jewayel A and White Margaret.

7. Murphy Auto Sales was listed on the new *Certificate of Title* as the holder of the first lien.

8. Murphy Auto Sales, 5901 S. Broadway, Saint Louis, MO 63111-2520, is listed on the Certificate of Title under "Mail To".

9. Murphy Auto did not tender the *Certificate of Title* that was issued on January 16, 2009 to Plaintiff.

10. Plaintiff never received the *Certificate of Title*, for the vehicle, that was issued on January 16, 2009.

11. White made payments on the vehicle to Murphy Auto until the vehicle was repossessed by Murphy Auto.

12. Murphy Auto mailed identical letters to Ms. White on October 11, 2010 and February 8, 2011 notifying Ms. White that she was behind in her payments.

13. Other than these letters, Murphy Auto did not send any other letter or notice to Ms. White. No other notices were mailed to Ms. White either before or after the repossession of her car.

14. At the time that the vehicle was repossessed Ms. White owed a balance of \$295.

15. After the repossession, Ms. White went to the Murphy Auto car lot in order to pay the amount due. Ms. White offered Murphy Auto \$295 to pay off and obtain her car.

16. Ms. White was told that an additional \$350 was added to her balance as a tow fee.

17. Murphy Auto's policy was that the owner had ten days to redeem the car after repossession.

18. Murphy Auto sold the vehicle on October 6, 2011 to Samuel Fowler for \$650.00.

19. Samuel Fowler the new purchaser submitted to the Missouri Department of Revenue an *Application for Missouri Title and License* dated October 6, 2011.

20. Murphy Auto signed Ms. White's name and the deceased Jewett's name to the Certificate of Title to facilitate its sale of the vehicle to Samuel Fowler.

21. Murphy Auto did not provide Ms. White with a notice of sale of the vehicle.

22. Murphy Auto did not send a post sale notice of surplus or deficiency to Ms. White.

23. Ms. White has damages for loss of use in the amount of \$1,200.00.

24. Prior to the vehicle being repossessed, Ms. White purchased four tires and had those tires installed on the vehicle, the total cost for the tires was \$288.00.

Under Count I Plaintiff alleges that Defendant violated the Missouri Merchandising Practices Act, section 407.010 et seq. RSMo ("MMPA"). Section 407.020.1 states in its pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce...in or from the State of Missouri, is declared to be an unlawful practice.

"The MMPA is drafted broadly and there is no specific definition of deceptive practices contained in the statute. However, 15 CSR § 60-8.020, promulgated in conjunction with the MMPA, defines "unfair practice" as a practice that either: "1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or 2. is unethical, oppressive or unscrupulous and (B) presents a risk of, or causes, substantial injury to consumers." Ward v. West County Motor Co., 403 S.W.3d 82, 84 (2013). To state a claim for violation of the MMPA, Plaintiff must allege that she (1) purchased and financed a vehicle from Defendant; (2) for personal, family, or household purposes;

and (3) suffered an ascertainable loss of money or property as a result of an act declared unlawful by section 407.020.” Id. This Court finds that Defendant’s actions in failing to provide a right to cure letter; failing to provide a notice of sale; denying Plaintiff the right to redeem the vehicle; and signing of decedent Jewett’s name after his death; and the signing of Plaintiff’s name without her knowledge or consent to transfer the title to Defendant’s new purchaser, all violated public policy as established by the statutes of this state and common law. Therefore, Defendant’s actions violated the MMPA.

Under Count II Plaintiff alleges that the Defendant converted her vehicle. “Conversion is the unauthorized assumption of the right of ownership over the personal property of another to the exclusion of the owner’s rights.” *Herron v. Barnard*, 390 S.W.3d 901, 908-09 (Mo.App.W.D. 2013).

The elements of a conversion claim are: (1) the plaintiff owned the property or was entitled to possess it; (2) the defendant took possession of the property with the intent to exercise some control over it; and (3) the defendant thereby deprived the plaintiff of the right to possession.: Id. Plaintiff has established by a preponderance of the evidence that Plaintiff owned the vehicle and that Defendant’s actions amounted to conversion. (1)A Certificate of Title was issued bearing the names Jewett and White. (2) Defendant, Murphy Auto, took possession of the vehicle with the intent to exercise some control over it. Defendant, Murphy Auto, repossessed the vehicle and sold it. (3) Defendant, Murphy Auto, deprived Plaintiff of her right to possession. Defendant, Murphy Auto, repossessed the vehicle without following the requirements outlined by Missouri law as this Court discusses below concerning Counts III and IV of Plaintiff’s petition.

Under Count III Plaintiff alleges that Defendant violated the provisions of 408.555 RSMo., The evidence establishes that Defendant did not provide Plaintiff with a proper “Right to Cure” letter as required by 408.554 R.S.Mo., which provides in its pertinent part:

1. After a borrower has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of the collateral, a lender

may give the borrower and all cosigners on the credit transaction the notice described in this section.....

2. Except as provided in subsection 4 of this section, the notice shall be in writing and conspicuously state: The name, address and telephone number of the lender to whom payment is to be made, a brief identification of the credit transaction, **the borrower's right to cure the default, and the amount of payment and date by which payment must be made to cure the default.** (emphasis added).

Although the statute does not require that the lender use the notice provided within chapter 408, or that the sample notice be copied exactly, the statute does require that certain information be included in the lender's notice to the borrower. Neither the October 11, 2010, or the February 8, 2011, letter that Defendant sent to Plaintiff complied with the statute. There was no language referencing a right to cure a default, and no mention of the amount of money needed to cure, or a date by which the payment must be made. The Court finds that Defendant did not send Plaintiff a Right to Cure notice in conformity with section 408.554 R.S.Mo.

Missouri law prohibits repossession of an automobile until twenty days after the lender provides the debtor with a notice of right to cure in compliance with Section 408.554. R.S.Mo. Section 408.555 provides in its pertinent part:

1. Except as provided in subsection 2 of this section, after a default consisting only of the borrower's failure to make a required payment, a lender, because of that default, may neither accelerate maturity of the unpaid balance **nor take possession of or otherwise enforce a security interest until twenty days after a notice of the borrower's right to cure is given** both to the borrower and to all cosigners on the credit transaction....

Until expiration of the minimum applicable period after the notice is given, the borrower or cosigner may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. **Cure restores the borrower to his rights as though the default had not occurred.** (emphasis added).

There is no evidence that Defendant sent a right to cure letter as required by 408.554 RSMo. Because Defendant failed to give the notice required by section 408.554 R.S.Mo., Defendant was prohibited by 408.555 from repossessing the vehicle.

Under Count IV Plaintiff alleges that Defendant failed to give Plaintiff proper notice of sale as required by Missouri's Uniform Commercial Code Section 400.9-614. That section states in its pertinent part:

In a consumer goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in section 400.9-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 400.9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available;.....

Section 400.9-613(1) provides that the notice is sufficient if it:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made;.... (See 400.9-613 (2)-(3)).

“The purpose of statutory notice is to apprise a debtor of the details of a sale so that the debtor may take whatever action he deems necessary to protect his interest.” States Res. Corp. v. Gregory, 339 S.W.3d 591, 596 (Mo. App. S.D. 2011). (citing Chrysler Capital Corp. v. Cotlar, 762 S.W.2d 859, 861(Mo. App. E.D. 1989)). “Proper notice provides the debtor the opportunity to: (1) discharge the debt and reclaim the collateral, (2) find another purchaser, or (3) verify that the sale is conducted in a commercially reasonable manner.” *Id.* In the present case no notice of sale was provided by Defendant. Plaintiff was denied her right to notice of sale under 400.9-614.

Plaintiff next argues that Defendant violated her right of redemption as provided by Section 400.9-623 R.S.Mo which states in its pertinent part:

- (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
- (b) To redeem collateral, a person shall tender:
 - (1) Fulfillment of all obligations secured by the collateral; and
 - (2) The reasonable expenses and attorney's fees described in section 400.9-615(a)(1).
- (c) A redemption may occur at any time before the secured party:....
 - (2) Has disposed of the collateral or entered into a contract for its disposition under section 400.9-610.....

Defendant violated Plaintiff's right to redeem the automobile in a number of ways. Defendant's documents establish that Defendant had a policy of allowing consumers only ten days after repossession to redeem the collateral. Defendant provided a document at the time of sale to Plaintiff which contained the following language: "If your car is repossessed, you will have 10 days to redeem it and if you do not redeem the vehicle it will be sold." Another document provided to Plaintiff by Defendant at the time of sale stated "if the car is repossessed, the buyer will have 10 calendar days to redeem the car." Plaintiff attempted to redeem the car within a short time from the date of repossession, but was told by Defendant that she had only ten days to pay the amount due on the contract plus a tow fee of \$350.00. Under the statute, Plaintiff had until the date of sale, October 6, 2011, to redeem the car.

In addition, there is no evidence to support a finding that the \$350.00 fee was a reasonable expense. Section 400.9-615 R.S.Mo defines reasonable expenses that can be charged, it states in its pertinent part:

- (a) A secured party shall apply or pay over for application the cash proceeds of disposition under section 400.9-610 in the following order to:
 - (1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party...

The Court finds that Defendant's actions violated the provisions of Chapter 400.9-613 and 400.9-614 RSMo by failing to send plaintiff notice of her right to redemption.

Plaintiff claims that she is entitled to statutory damages pursuant to 400.9-625(c)(2) which states in its pertinent part:

(c) Except as otherwise provided in section 400.9-628:

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

Plaintiff claims that she is entitled to actual and punitive damages, and attorney fees under sections 408.562 R.S.Mo. and 407.025.1 RSMo, which provide in their pertinent parts:

408.562: In addition to any other civil remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action ...to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended....

407.025.1: Civil action to recover damages -- class actions authorized, when -- procedure

1. Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

This Court finds that Plaintiff is entitled to damages under section 408.562. RSMo. ; 407.025(1) and 400.9-625(c)(2). Judgment is hereby entered in favor of Plaintiff and against Defendant on Counts I, II, III and IV of Plaintiff's petition:

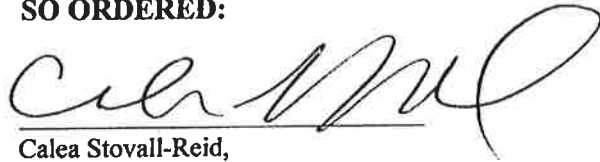
This Court finds that Plaintiff White is entitled to statutory damages and hereby enters judgment in the amount of \$220.00 pursuant to 400.9.625 (c)(2)RSMo. This Court finds that Plaintiff is entitled to actual damages in the amount of \$3,593.00. Judgment in the amount of \$3,593.00 is entered in favor of Plaintiff and against Defendant for actual damages pursuant to

408.562 and 407.025.1. Plaintiff is entitled to attorney fees pursuant to 408.562 RSMo and 407.025.1 RSMo. This Court hereby grants Plaintiff's motion for attorney fees in the amount of \$9,000.00, pursuant to 408.562 RSMo and 407.025(1).

This Court finds that Plaintiff is entitled to punitive damages pursuant to 408.562 RSMo and 407.025.1 RSMo, due to the conduct and practices Defendant engaged in as to its violations of the Missouri Revised Statutes 408.554, 408.555 and 407.020.1. Defendant repossessed the vehicle in violation of the notice provisions provided by 408.554, and; thereafter signed, the decedent Jewett's name and Plaintiff's name without her knowledge or consent, to the title which Defendant then used to transfer the vehicle to a new purchaser. This Court enters its order for punitive damages in the amount of \$1,000.00.

Wherefore, it is ordered adjudged and decreed that plaintiff shall have and recover from Defendant Murphy Auto Sales, Inc. the sum of \$13,813.00. Costs of court shall be assessed against Defendant.

SO ORDERED:



Calea Stovall-Reid,
Associate Circuit Judge