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STATE OF MINNESOTA

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DISTRICT COURT

COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT

Cavalry Portfolio Services, LLC,

Subject Matter Index: Civil - Other
Court File No. 82-CV-09-7943

Plaintiff,

vs.

ORDER

Brian P. Stout & Amanda M. Stout,

Defendant.

The above-entitled matter came on for hearing before the Court on October 8, 2010. The hearing was in response to Defendant's Motion to Reconsider this court's order from July 27, 2010. In that earlier order this court denied Plaintiff's motion for Summary Judgment but found that a six-year statute of limitations applied to the contract in this case.

Plaintiff was personally present in court and represented by Ms. Amy Goltz.

Defendants were personally present in court and represented by Mr. William Michelson.

Now therefore, based on all of the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. While Minnesota courts have never specifically ruled on the issue, the court is persuaded by case law in other jurisdictions that the Retail Installment Contract and Security Agreement (the Contract) that the Defendants originally entered into with Stillwater Motors for the purchase of a motor vehicle is predominantly a contract for the sale of goods.
2. The vehicle was repossessed and sold in September 2002. Following the sale a deficiency amount still existed.

- 3. The contract is governed by article 2 of the uniform commercial code.
- 4. Article 2 of the uniform commercial code has a 4 year statute of limitations for commencing actions.
- 5. Pursuant to the 4 year statute of limitations, any action to collect the deficiency judgment expired in September 2006.

CONCLUSIONS OF LAW

- 1. The contract herein is subject to article 2 of the UCC as it is predominantly a sale of goods.
- 2. The applicable statute of limitations period is 4 years (M.S. 336.2-725).

ORDER

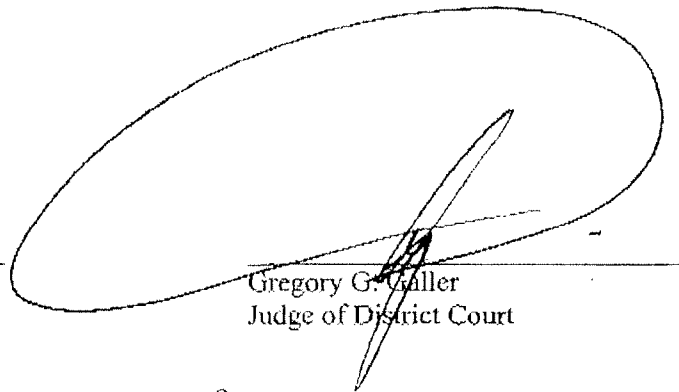
- 1. This court's prior order dated July 27, 2010 is hereby vacated.
- 2. Other issues purported to be decided at this stage by the defendants are outside the scope of the procedural posture of the motion to reconsider.
- 3. Either party may file such other or further motions as they deem appropriate.
- 4. The parties shall work to find mutually agreeable dates for mediation and/or new trial dates.
- 5. The Court Administrator of the Washington County District Court shall mail a true and correct copy of this Order to each of the parties, or their attorneys, hereto.

IT IS SO ORDERED.

BY THE COURT:

Dated: _____

Oct-8, 2010



Gregory G. Galler
Judge of District Court

STATE OF MINNESOTA

COUNTY OF WASHINGTON

Calvary Portfolio Services,

Plaintiff,

vs.

Brian P. Stout and Amanda M. Stout,

Defendants.

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File # _____
WASHINGTON COUNTY
DISTRICT COURT

FEB 11 2011

COURT ADMINISTRATOR

By KT Deputy

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Subject Matter Index: Civil Other
Court File No. 82-CV-09-7943

ORDER FOR SUMMARY JUDGMENT

The above-entitled matter came on for Summary Judgment motion hearing on February 11, 2011.

Plaintiff was represented by Ms. Goltz.

Defendants were personally present in court and represented by Mr. Michelson.

Now therefore, based on all of the files, records, and proceedings herein, the Court makes the following

ORDER & ORDER FOR JUDGMENT

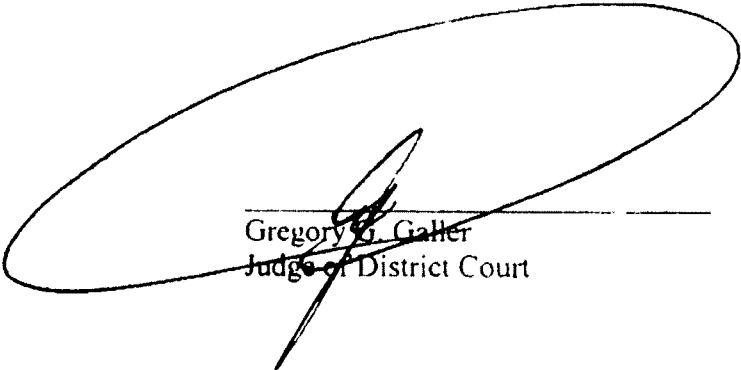
1. There are no genuine disputes of any material facts.
2. Defendants are entitled to Judgment as a matter of law.
3. Plaintiff's claims against the Defendants are hereby dismissed on the merits and with prejudice.
4. Defendants are entitled to judgment against the Plaintiff in the amount of \$1,825.00.
5. Any other relief, not specifically granted herein, is denied.

6. The attached Memorandum is incorporated herein by reference.
7. The Court Administrator of the Washington County District Court shall mail a true and correct copy of this Order to each of the parties, and the mediator, hereto.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: Feb 11, 2011



Gregory G. Galler
Judge of District Court

Pursuant to Rule 58, Rules of Civil Procedure, I hereby certify that the above Order constitutes the judgment of this court.

Annette R. Fritz, Court Administrator
Date: 2/14/11 By: K. H. Thompson

Calvary Portfolio Services v. Brent P. Stout and Amanda M. Stout
82-CV-09-7943
Memorandum of the Court
February 11, 2011

Plaintiff brought this suit to collect the outstanding balance owed on a retail installment contract. Defendants' motion is based upon their defense of equitable estoppel.

In brief, Defendants purchased a used 1998 Ford F150 under an installment contract and then defaulted. The vehicle was repossessed. On September 11, 2002, the truck was sold at an auction. A deficiency still existed on the original debt. Through a series of assignments, Plaintiff ended up owning the debt.

Plaintiff brought suit seeking judgment as to the deficiency. The applicable statute of limitations on this type of transaction was 4 years from the date of the repossession sale. Thus, the limitations period expired on September 11, 2006.

In May 2007, Plaintiff attempted to collect the deficiency from Defendants. Specifically, Ms. Stout had three telephone conversations with a person at a law firm that was working for the Plaintiff. Ms. Stout was told that she and her husband would be sued if they did not make good on the debt. To avoid being sued, the Stouts would have to begin making payments and were asked to sign a Confession of Judgment.

The Stouts then made two payments totaling \$1,825.00. The Stouts made the payments because they feared being sued.

Plaintiff has no specific evidence to deny it threatened litigation or Defendants' reliance. Plaintiff's collector does not specifically deny Defendant's allegations and is silent as to whether she said anything that might be construed as a threat of litigation. Accordingly, there is no genuine dispute regarding that fact issue. Similarly, the Plaintiff has no evidence to show that payments were made for any reason other than the Stout's fear of being sued. Accordingly, there is no genuine dispute regarding that fact issue.

Finally, everyone agrees that the Stouts paid \$1,825.00 to the Plaintiff.

Plaintiff's commenced this suit alleging that the "voluntary" payment of \$1,825.00 from the Stouts to the Plaintiff revived the delinquency debt. The Stouts argue that the payments were not voluntary as they were deceived into making the payments.

It is not disputed that at the time Plaintiff threatened the Stouts with a lawsuit that they had no right to bring a lawsuit. The statute of limitations had expired and no suit could have been commenced. The court finds that equitable estoppel should be applied in this case. Equitable estoppel is:

an equitable doctrine addressed to the discretion of the court and * * * intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights. To establish a claim of estoppel, plaintiff must prove that defendant made representations or inducements, upon which plaintiff reasonably relied, and that plaintiff will be harmed if the claim of estoppel is not allowed.

Brown v. Minnesota Dept. of Public Welfare, 368 N.W.2d 906, 910 (Minn. 1985)(citing *Northern Petrochemical Co. v. United States Fire Insurance Co.*, 277 N.W.2d 408, 410 (Minn.1979).

Stated another way, there is no genuine dispute that: the Plaintiff misrepresented a material fact to the Stouts (i.e.. their ability to sue the Stouts on a time-barred debt): the Plaintiff knew, or should have known, that the representation was false: the Plaintiff intended that the Stouts act upon that misrepresentation: the Stouts did not have knowledge of the true facts: and the Stouts relied upon the misrepresentation to their financial detriment (the payments totaling \$1,825.00).

Threatening to sue on a time-barred debt is a violation of the FDCPA.

See, Wald v. Morris, Carlson, & Hoelscher, P.A., 2010 WL 4736829, 3 (D. Minn. 2010).

As another federal court has stated:

A debt collector's filing of a lawsuit on a debt that appears to be time-barred, without the debt collector having first determined after a reasonable inquiry that that limitations period has been or should be tolled, is an unfair and unconscionable means of collecting the debt. As previously demonstrated, time-barred lawsuits are, absent tolling, unjust and unfair as a matter of public policy.

See, Kimber v. Federal Financial Corp., 668 F.Supp. 1480, 487 (M.D.Ala.,1987).

The court finds that because Plaintiff threatened to sue the Stouts on a time-barred debt, that the Plaintiff violated the FDPCA.

Equity allows recovery of the lost value of an asset. Specifically, equity seeks to restore the injured party to the position he or she occupied before the breach or to claim the ill-gotten gains from the injuring party. *See, R.E.R. v. J.G.*, 552 N.W.2d 27, 30 (Minn. Ct. App. 1996).

Accordingly, the court finds that judgment should be rendered in favor of the Stouts and against the Plaintiff in the amount of \$1,825.00. This will restore to the Stouts the sum that they were tricked into paying to the Plaintiff.

The Stouts seek an award of attorney's fees pursuant to either the court's inherent power to impose sanctions for unconscionable conduct or under M.S. 549.211. The Court does not find that there is an adequately developed legal or factual record to justify the awarding of attorney's fees.