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Case No. 99-CV-0326

Dept. No. II

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DEC 11 2001  
DISTRICT COURT CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

WFS FINANCIAL, INC., a California corporation, fka WESTERN FINANCIAL SAVINGS BANK, F.S.B.,

Plaintiff,

vs.

ORDER

ROGER W. HOLCOMBE and DOES I through V,

Defendants.

On September 20, 2001, the court granted WFS Financial, Inc.'s (WFS) Motion for Summary Judgment against Defendant Roger W. Holcombe (Holcombe), in which the court awarded WFS a deficiency judgment and attorney's fees. On October 9, 2001, Holcombe submitted an Opposition to WFS's Motion for Attorney's Fees arguing that WFS is not the prevailing party as it has failed to establish that the vehicle was auctioned in a commercially reasonable manner. On November 7, 2001, the court directed WFS to submit evidence of the procedure used in arriving at the deficiency amount awarded by the court.

In the interim, the court received Notice of Appeal from Holcombe filed on October 22, 2001, and subsequently ruled that

MICHAEL P. GIBBONS  
DISTRICT JUDGE  
DOUGLAS COUNTY  
P.O. BOX 218  
MINDEN, NV 89423

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BK0902PG05057

1 it was appropriate to submit the documentation ordered by the  
2 court on November 7, 2001, in light of the pending appeal to  
3 the Nevada Supreme Court. The court has already ruled on its  
4 authority to receive further evidence regarding the vehicle  
5 auction and amount received therefrom. On November 29, 2001,  
6 the court received Holcombe's authority regarding Jurisdiction  
7 of Court Pending Appeal in which he concurs in the court's  
8 decision to allow submission of further evidence during the  
9 pendency of the appeal.

11 WFS submitted affidavits and other documentary evidence on  
12 November 28, 2001, attesting to the propriety of the procedures  
13 employed and the amount applied to Holcombe's deficiency under  
14 the contract after the costs of holding the auction.

15 The 1994 Ford Explorer was sold at auction on March 28,  
16 2000, by Brasher's Sacramento Auto Auction for the high bid of  
17 \$6,900. The Blue Book value for personal sale was \$6,485.  
18 Particularly relevant here is the fact that the vehicle had  
19 over 104,000 miles on it; it also had mechanical problems and  
20 damage to its exterior, including an inoperable four-wheel-  
21 drive system. Hence, the value was reduced by \$407.00. After  
22 deducting the costs of sale, the plaintiff received \$6,507,  
23 which was credited toward the amount he owed under the  
24 installment contract. The remaining deficiency amount owed by  
25 Holcombe plus simple interest at the rate of 15.898% was  
26 \$3,169.25 as of March 28, 2001.  
27  
28

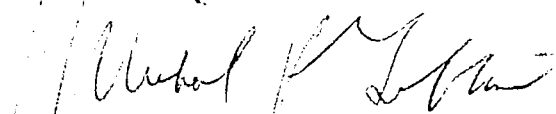
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It is quite clear that the methods employed by WFS and the sum credited to Holcombe pursuant to the sale of the Explorer at auction were appropriate and resulted in the crediting of the fair market value of the auto in question to Holcombe. As the methods utilized by WFS were in conformity with recognized, established procedures and the sum obtained reflected the fair market value of the automobile. No opposition has been filed. No further hearing is necessary. It was and remains appropriate for the court to find that Holcombe was in default of the installment contract and did owe a deficiency amount to WFS. It is also beyond cavil that WFS is the prevailing party in accordance within the terms agreed to by both parties in the installment contract for the purchase of the Explorer, thereby entitling it to reasonable attorney's fees and court costs.

Therefore, IT IS HEREBY ORDERED in accordance with NRS 18.010 (3) that Holcombe pay WFS reasonable attorney's fees in the amount of \$3,975 as documented and supported in WFS Motion for Attorney's Fees.

IT IS SO ORDERED.

DATED this 11 day of December 2001.

  
MICHAEL P. GIBBONS  
DISTRICT JUDGE

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Copies served by mail this 11 day of December, 2001; Robert C. Herman, Esq., 301 West Fourth Street, Carson City, NV 89703; Jeffrey A. Dickerson, Esq., 101000 Old Virginia Road, Reno, NV 89511.

*Ursula K. McManus*  
Ursula K. McManus



**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: September 13, 2002  
Clerk of the 9th Judicial District Court  
of the State of Nevada, in and for the County of Douglas,

By *Sherry* **SEAL** Deputy

REQUESTED BY  
Robert C. Herman  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2002 SEP 17 AM 10:00

LINDA SLATER  
RECORDER

\$ 17.00 PAID kg DEPUTY