

APN # not applicable



KAREN ELLISON, RECORDER

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ORDER FOR SUMMARY JUDGMENT

Affirmation Statement:

X I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons (Per NRS 239B.030)

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9
10 **IN THE NINTH JUDICIAL DISTRICT COURT**
11 **IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA**

12 FORD MOTOR CREDIT COMPANY, LLC.,
13 Plaintiff, CASE NO: 13CV0307
14 vs. DEPT NO: II
15 MATTHEW JOHN TRIGLIA,
16 LESLIE ANNA BRODERSON,
Defendant(s). /

17 **ORDER FOR SUMMARY JUDGMENT**

18 **WHEREAS:** The Plaintiff having prevailed on a Motion for Summary Judgement held on or
19 after AUGUST 28, 2014, with the Plaintiff, FORD MOTOR CREDIT COMPANY, LLC., filing their
20 motion by and through their counsel, CHRISTOPHER ERIC MUMM, ESQ., and the Defendant,
21 LESLIE ANNA BRODERSON, filing her Opposition on her own behalf, in proper person, and the
22 Defendant, MATTHEW JOHN TRIGLIA, having failed to file any opposition to the motion and the
23 Plaintiff having filed a Reply on AUGUST 19, 2014, in this matter and all other appearances having
24 been made and noted upon the record, this Court having reviewed the motion and opposition as well
25 as all pleadings, motions and documents of record and good cause appearing, this court makes the
26 following Findings of Fact and Conclusions of Law:
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28

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I. FINDINGS OF FACT

A. That on or about September 30, 2007, the Defendants, MATTHEW JOHN TRIGLIA and LESLIE ANNA BRODERSON, executed and delivered to the Plaintiff's assignor, CAPITAL FORD, INC., ("dealership"), located in Carson City, Nevada, a written instrument entitled SIMPLE INTEREST VEHICLE CONTRACT AND SECURITY AGREEMENT, (hereinafter "Contract"), evidencing the financing and the purchase of a 2008 FORD F-350 SD FX4 CREW CAB 4WD PICKUP TRUCK, a consumer motor vehicle. After said execution, the Contract was assigned to the Plaintiff. Pursuant to the terms of the Contract, the Defendants agreed to make 72 monthly payments of \$844.69. The Defendants defaulted under the Contract by not paying all amounts due and owing. Pursuant to the Contract and in accordance with NRS 104.9609, the Plaintiff repossessed the vehicle.

B. The Plaintiff then provided the Defendants with notice of a private sale pursuant to NRS 104.9611, and resold the vehicle in accordance with NRS 104.9610, at the dealer only auto auctions, recognized by case law as a commercially reasonable disposition. Daniel v. Ford Motor Credit Co., 612 So.2d 483, 20 U.C.C. Rep.2d 696, (Ala.Civ.App. 1992); Beard v. Ford Motor Credit Co., 41 Ark.App. 174, 850 S.W.2d 23, 20 U.C.C. Rep.2d 1158 (1993); McMillan v. Bank South, N.A., 188 Ga.App. 355, 373 S.E.2d 61, 7 U.C.C. Rep.2d 928 (1988); Calcote v. Citizens & Southern National Bank, 179 Ga.App. 132, 345 S.E.2d 616, 1 U.C.C. Rep.2d 1764 (1986); Union National Bank of Wichita v. Schmitz, 853 P.2d 1180, 21 U.C.C. Rep.2d 403 (Kan.Ct.App. 1993); Ford Motor Credit v. Russell, 519 N.W.2d 460, 24 U.C.C. Rep.2d 687 (Minn.Ct.App. 1994). The Plaintiff applied the sale proceeds against the debt in accordance with NRS 104.9615 entitling the Plaintiff to pursue this action for a deficiency.

C. The auction company, Brasher's Sacramento Auto Auctions sell at auction approximately 9,000 vehicles per month at the Sacramento, California location. That Brasher's has an average of 1500 dealers attend each weekly auction. That the subject vehicle had a condition report and a repair bill totaling \$2,560.69. That the subject vehicle sold on June 4, 2013, for \$6,500.00 which is more than the average selling price for a non-operational vehicle.

1 D. Pursuant to the Contract and in accordance with NRS 99.050, the Plaintiff is entitled to
2 charge and collect interest on the unpaid balance at the agreed upon contract rate from the date of
3 default. The date of default and the interest rate are specifically designated in the Complaint as
4 well as the supporting documentation attached to the Affidavit of the Plaintiff. In addition,
5 pursuant to the Contract and in accordance with NRS 18.005 and 18.010, in the event of default,
6 the Plaintiff is entitled to charge and collect the attorney's fees and costs incurred to obtain
7 judgment and collect the debt. The Defendant has refused to pay the balance due resulting in
8 Plaintiff filing this lawsuit.

10 II. CONCLUSIONS OF LAW

11 1. SUMMARY JUDGEMENT IS APPROPRIATE

12 A. There are two controlling criteria to be considered in ruling on a Motion for Summary
13 Judgment. First, whether there exists any genuine issues of disputed material fact; and second,
14 whether the movant is entitled to judgment as a matter of law. NRCP 56(c); Bird v. Casa Royale
15 West, 97 Nev. 67, 69-70, 624 P.2d 17, 19 (1981); O'Dell v. Martin, 101 Nev. 142, 696 P.2d 996
16 (1985); Lapica v. Eighth Judicial District Court, 97 Nev. 86, 624 P.2d 1003 (1981). When a
17 motion for summary judgment is made and supported by the facts appearing in the record, a party
18 "may not rest upon the mere allegations of his pleadings, but he must by affidavit or otherwise, set
19 forth the facts demonstrating the existence of a genuine issue for trial." (emphasis added) Garvey
20 v. Clark County, 91 Nev. 127, 130, 532 P.2d 269 (1975). In other words, specific facts rather than
21 general allegations showing a genuine issue of fact must be set forth to preclude summary
22 judgment. NRCP 56(e); Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 415, 663 P.2d 1220,
23 1221 (1981); Bird v. Casa Royale Rest., 97 Nev. at 70, 624 P.2d at 19. Thus, mere denial, by
24 answer, does not create an issue of material fact. Bill Stremmel Motors, Inc. v. First National
25 Bank, 94 Nev. 131, 575 P.2d 938 (1978).

26 B. As the Nevada Supreme Court has stated, Summary Judgment is properly granted to the
27 moving party where there is no genuine issue as to material fact. Wood v. Safeway, Inc., 121
28

1 Nev. 724, 121 P.3d 1026, 1031 (2005).

2 C. In this case, there are no genuine issues remaining for trial and summary judgment is
3 appropriate. There is no dispute to the material facts which are as follows:

- 4 1. On September 30, 2007, the Defendants signed the Contract.
- 5 2. The Defendants accepted delivery of the vehicle.
- 6 3. The Defendant failed to make the required payments.

7 ~~D. The Defendants, LESLIE ANNA BRODERSON and MATTHEW JOHN TRIGLIA, raise~~
8 only generic defenses in their Answers, which merely deny the Plaintiff's allegations contained in
9 the Complaint. As set forth above, mere denial, by Answer, does not create an issue of material
10 fact. Bill Stremmel Motors, Inc., v. First National Bank, 94 Nev. 131, 575 P.2d 938 (1978).

11

12 2. NRCP PROVIDES FOR SUMMARY JUDGEMENT

13 A. NRCP 56 (a) states in pertinent part as follows:

14 *A party seeking to recover upon a claim, counter-claim, or cross-claim or to obtain a*
15 *declaratory judgement may, at any time after the expiration of 20 days from the*
16 *commencement of the action or after service of a motion for summary judgement by the*
adverse party, move with or without supporting affidavits for a summary judgement in
his favor upon all or any part thereon.

17 B. NRCP 56 (a) authorizes summary judgement where the moving party is entitled to
18 judgement as a matter of law, and where it is quite clear that no genuine issues of material
19 fact remain for trial. Short v. Hotel Riviera, Inc., 79 Nev. 94, 378 P.2d 979 (1963); Olson v.
20 Iacomtti, 91 Nev. 241, 533 P.2d 1360 (1975); Lipshie v. Tracy Inv. Co., 93 Nev. 370, 566 P.2d
21 819 (1977); Intermountain Veterinary Medical Ass'n. v. Kiesling-Hess Finishing Co., 101 Nev.
22 107, 706 P.2d 137 (1985); Van Cleave v. Gamboni Constr. Co., 101 Nev. 524, 706 P.2d 845
23 (1985); Palevac v. Mid Century Non Auto, 101 Nev. 835, 710 P.2d 1389 (1985).

24 C. NRCP 56 (c) further states:

25 *The motion shall be served at least 10 days before the time fixed for the hearing. The*
26 *judgement sought shall be rendered forthwith if the pleadings, depositions, answers to*
27 *interrogatories, and admissions on file, together with the affidavits, if any, show that*
28 *there is no genuine issue as to any material fact and that the moving party is entitled to*
a judgement as a matter of law. A summary judgement, interlocutory in character, may
be rendered on the issue of liability alone although there is a genuine issue as to the
amount of damages.

1 **3. EVIDENCE SUPPORTING SUMMARY JUDGEMENT IS**
2 **AN ADMISSIBLE EXCEPTION TO THE HEARSAY RULE**

3 A. The relevant exception to the hearsay rule is NRS 51.135, Record of Regularly
4 Conducted Activity, states in full as follows:

5 *A memorandum, report, record, or compilation of data, in any form, of acts, events,*
6 *conditions, opinions, or diagnoses, made at or near the time by, or from information*
7 *transmitted by, a person with knowledge, all in the course of a regularly conducted*
8 *activity, as shown by the testimony or affidavit of the custodian or other qualified*
9 *person, is not admissible under the hearsay rule unless the source of information or the*
10 *method or circumstances of preparation indicate lack of trustworthiness.*

11 B. The proffered evidence is admissible and exempt from exclusion under the hearsay rule.

12 By affidavit it is known the Defendant was sent copies of statements and other collection requests.
13 Defendant does not offer any argument that the source of the information or the method or
14 circumstances of preparation indicate any lack of trustworthiness.

15 C. The Defendant has not rebutted the authenticity of the documents submitted with any
16 evidence or showing to the contrary.

17 **4. SLIGHTEST DOUBT EVIDENCE IS NO LONGER THE STANDARD**

18 A. The Nevada Supreme Court has adopted the reasonable man standard therefore a "what if"
19 scenario must not only be possible but evidence must show the issue exists. Wood v. Safeway,
20 Inc., 121 Nev. 724, 121 P.3d 1026, 1031 (2005).

21 B. Further, the Defendant cannot simple question the credibility of the movant or the
22 proffered evidence. Premiere Digital Access, Inc., v. Cent. Tel. Co., 360 F.Supp.2d 1161, 1164
23 (D.Nev.2005).

24 **5. JUDGEMENT IS GRANTED**

25 A. The procedures followed by the Plaintiff were routine business practices in the sale of a
26 repossessed automobile. The sale evidenced an arms length transaction. The Plaintiff's exhibits
27 reflected an accurate accounting of credits and debits applied to their automobile.

28 B. The Defendant, LESLIE ANNA BRODERSON, and the Defendant, MATTHEW JOHN

1 TRIGLIA, are jointly and severally liable for the debt. Agreements between the two defendants as
2 set forth by the Defendant, LESLIE ANNA BRODERSON, in her Opposition as to which
3 Defendant will bear the bulk of the burden is not binding on the Plaintiff.

4 **THEREFORE**


5 **IT IS HEREBY ORDERED** that the Plaintiff's Motion for Summary Judgement is hereby
6 GRANTED and in accordance therewith Judgment is hereby entered in favor of the Plaintiff, FORD
7 MOTOR CREDIT COMPANY, LLC., and against the Defendants, MATTHEW JOHN TRIGLIA
8 and LESLIE ANNA BRODERSON, in the principal amount of \$20,049.54, plus interest at the rate
9 of 7.90% per annum from JUNE 6, 2013, up through AUGUST 6, 2014, in the amount of \$1,847.89,
10 plus the Plaintiff's costs of suit in the amount of \$782.50, plus the Plaintiff's attorney's fees in the
11 amount of \$ 5,012.38, for a Total Judgement in the amount of
12 \$ 27,692.31, together with interest which shall continue to accrue against
13 the total judgement at the statutory rate until the balance is paid in full.

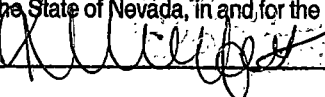
14 DATED: This 8 day of Jan, 2015

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17 _____
18 JUDGE

18 AFFIRMATION: This document does not contain any social security numbers.

19 Submitted by: 8/19/14

20 By: 
21 CHRISTOPHER ERIC MUMM, ESQ., #3314
22 ROBERT H. BROIL, ESQ. #3685
23 PAUL A. KAPITZ, ESQ. #5386
24 Attorneys for the Plaintiff

25 **CERTIFIED COPY**
26 The document to which this certificate is attached is a
27 full, true and correct copy of the original in file and of
28 record in my office.
DATE 1/23/15
BOBBIE R. WILLIAMS, Clerk of Court
of the State of Nevada, in and for the County of Douglas,
By  Deputy