KEYSTONE FINANCIAL BANK, N.A., Successor by merger to NORTHERN CENTRAL BANK, Plaintiff	: IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
vs.	: NO. 99-01,883
DONNA M. BROWN FOX, Defendant	: JUDGMENT ON THE PLEADINGS

==========

Secured creditor sought a deficiency judgment against debtor after repossession and subsequent sale of an automobile at public action. Debtor filed a Motion for Judgment on the Pleadings due to creditor's failure to comply with the notice provisions of 13 Pa.C.S. §9504(c).

HELD: Motion denied. Creditor's failure to comply with the notice requirements created presumption that the value of the vehicle at sale equaled the unpaid debt. Creditor allowed to present evidence to rebut the presumption.

==========

OPINION and ORDER

Defendant Donna M. Brown Fox (hereinafter "Defendant") requests Judgment on the Pleadings[1] in the above captioned matter. The Motion was filed February 11, 2000, against Plaintiff Keystone Financial Bank (hereinafter "Plaintiff"). Although oral argument was scheduled for March 21, 2000, counsel for both requested that the Court determine the matter based upon the parties' briefs, without argument.

Plaintiff's predecessor, Northern Central Bank, financed Defendant's purchase of a 1990 Chevrolet Blazer April 17, 1995. The price of the vehicle was $17,527.18; total

---

[1] As stated by Plaintiff in its brief, the standard for a judgment on the pleadings is as follows: "Judgment on the pleadings is proper only where the pleadings evidence that there are no material facts in dispute such that a trial by jury would be unnecessary." ***Pennsylvania Financial Responsibility Assigned Claims Plan v. English***, 664 A.2d 84 (Pa. 1995).

amount financed was $15,390.91. Payments were due in the amount of $379.12 monthly for 54 months beginning May 17, 1995; total payments due equaled $20,472.48.

Subsequently, Plaintiff defaulted on the contract in that she failed to make the monthly payments. The vehicle was repossessed June 17 or 21, 1999.[2] By certified letter dated June 23, 1999, Plaintiff notified Defendant that it had repossessed the vehicle for nonpayment on the loan. The letter indicated the vehicle could be redeemed if Defendant paid the balance due within fifteen days. Plaintiff calculated the total balance owed at $6,051.77. Otherwise, the car would be sold at private or public sale, after which Defendant would be liable for any deficiency balance. No payment was made, and the vehicle was sold at auction September 1, 1999, for $3,300.00. By letter dated September 8, 1999, captioned "Statement of Sale," Plaintiff notified Defendant that the vehicle had been sold and she owed a deficiency balance of $3,282.89. Plaintiff then obtained a judgment against Defendant on November 4, 1999, for the deficiency balance before the District Justice (Magisterial District 29-1-02). Defendant appealed November 29, 1999; Plaintiff filed the instant Complaint December 20, 1999. Defendant filed her Answer and New Matter on December 30, 1999.

In her instant Motion, Defendant claims she is entitled to judgment in her favor as a matter of law as Plaintiff, a secured creditor, failed to provide Defendant, the debtor, with reasonable notification of the time and place of any public sale as required under 13 Pa.C.S. §9504(c). This subsection provides:

> **§9504. Right of secured party to dispose of collateral after default; effect of disposition**

[2] There is a discrepancy in the pleadings.

> **(c) Manner of disposition.** – Disposition of the collateral may be by public or private proceedings. . . (b)ut every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods, no other notification need be sent.

This notice requirement has been characterized as easy to understand and apply and is "inspired by the forlorn hope that the debtor if he is notified, will either acquire enough money to redeem the collateral or send his friend to bid for it." ***Indus. Valley Bank & Trust Co. v. Nash***, 502 A.2d 1254, 1263 (Pa.Super. 1985) (citation omitted).

Plaintiff responds that its notice complied with the requirements of statute as well as ***Coy v. Ford Motor Credit Company***, 618 A.2d 1024 (Pa.Super. 1993). In that case, the credit company repossessed defendant Coy's truck after he defaulted on his loan payments. The notice sent to Coy was similar to that sent to the instant Defendant, and did not inform him of the time and place of the vehicle's sale. The credit company subsequently sold the truck at an auction open exclusively to automobile dealers. Although Coy argued that the auction was public as he could have sent an automobile dealer to buy the truck on his behalf, the Superior Court found that the unpublicized sale was private, and as such the credit company was not required to notify Coy of the time and place of the sale. Therefore, the notice it sent complied with the requirements of 13 Pa.C.S. §9504(c).

Instantly, the vehicle was sold at the "Keystone *Public* Auto Exchange" (Brief in Opposition to Defendant's Motion for Judgment on the Pleadings, p. 2) (emphasis supplied).

In her Answer and New Matter at paragraph 24, Defendant averred the vehicle was sold at a public sale that was advertised and/or publicized. In its response to New Matter, Plaintiff admitted this averment. Accordingly, there is no question under ***Coy*** and the statute that Plaintiff was required to notify Defendant of the time and place of the public sale. It is clear that Plaintiff failed to do this.

However, this determination does not resolve the matter. Defendant would have this Court enter judgment in her favor for Plaintiff's failure to provide reasonable notification of the time and place of the public sale. This remedy is not authorized under the law of Pennsylvania. Under the applicable case law, if a creditor fails to follow the requirements of §9504 the debtor is not automatically insulated from a deficiency judgment.

In ***Beneficial Consumer Discount Co. v. Savoy***, 436 A.2d 687 (Pa.Super. 1981), a creditor repossessed a debtors' Cadillac, security for a loan, when she failed to make the payments on the loan. The creditor then sold the vehicle at private sale, and sought a deficiency judgment against debtor. Although the trial court found the notice provided to the debtor was sufficient, the trial court also found the price the creditor sold the vehicle for, $250.00, commercially unreasonable and held the creditor was not permitted to assess a deficiency against the debtor for the balance owed on the loan.

The Superior Court reversed because lower court erred in considering that the value of the car could be established by taking judicial notice of the red book valuation of the car. However, in reaching its decision the Court considered and rejected the argument that the creditor who had failed to comply with §9504 was automatically barred from seeking a deficiency judgment.

The Court stated:

> Appellant urges us to hold that when a sale is found to be commercially unreasonable under 13 Pa.C.S.A. § 9504(c), the creditor is barred from obtaining a deficiency judgment against the debtor. No Pennsylvania court has yet held that a commercially unreasonable resale bars entirely any deficiency judgment. Although other jurisdictions have adopted this position…we believe such an approach to be inequitable, especially in light of the additional remedy offered a debtor by 13 Pa.C.S.A. § 9507(a).

Id. at 689 (citations omitted).[3]

Nevertheless, the Court did find that where a creditor fails to comply with the §9504(c) provisions, a presumption would be raised that the value of the collateral equals the indebtedness secured. unless the creditor is able to rebut that presumption through the presentment of appropriate evidence. In the instant case, the Judgment on the Pleadings would not be appropriate, inasmuch as Plaintiff is entitled to go forward with evidence in an attempt to rebut the presumption that the value of the automobile equaled the unpaid indebtedness at the time of the improperly notified sale. This determination is in compliance with at least two other decisions concerning remedies available for protecting debtors when the secured party fails to comply with the §9504 requirements. *See* ***Chrysler Credit Corporation v. B.J.M., Jr., Inc.***, 834 F.Supp. 813 (E.D.Pa. 1993) (the mere fact that the secured party fails to provide proper notice of the sale will not necessarily preclude it from recovering a deficiency judgment; the burden of proving market value of the collateral and commercial reasonableness simply shifts to the secured party); ***In re Koresko***, 91 B.R. 689 (Bkrptcy.E.D.Pa. 1988) (notice protects

---

[3] 13 Pa.C.S. § 9507(a) provides that when a secured party fails to comply with the provisions of the chapter, and the sale has already occurred, the person entitled to notification has a right to recover any loss caused by the failure to comply. If the collateral is consumer goods, the debtor may in any event recover an amount not less than the credit service charge, plus 10% of the principal amount of the debt (or the time price differential) plus 10% of the

the debtor from unfair imposition of a deficiency claim by allowing them to attend or bring other potential buyers to the sale and thus prevent a sale of the collateral for less than its fair market value; a violation of §9504(c) will result in statutory damages for the debtor as provided in §9507(a)).

Accordingly, although this Court finds Plaintiff failed to provide proper notice to Defendant, Plaintiff is not required from proceeding with its deficiency claim. Defendant's Motion for Judgment on the Pleadings must be denied.

O R D E R

AND NOW, this 12th day of May 2000, Defendant's Motion for Judgment on the Pleadings is HEREBY DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator
Steven J. Schiffman, Esquire
Serratelli, Schiffman, Brown & Calhoon, P.C.
2080 Linglestown Road, Suite 201; Harrisburg, PA 17110
Marc F. Lovecchio, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)

---

cash price. Instantly, this amount would be arguably less than that currently sought by Plaintiff. However, no counterclaim under this statutory subsection has been filed to date by Defendant.