

Claim No: 284984

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Customer First Financing v. MacArthur, 2007 NSSM 67

BETWEEN:

CUSTOMER FIRST FINANCING

Claimant

- and -

GREG MacARTHUR

Defendant,

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 30, 2007

Decision rendered on November 2, 2007.

APPEARANCES

For the Claimant: Eric Corkum, General Manager

For the Defendant: self-represented

BY THE COURT:

- [1] This is a Claim by Customer First Financing for the balance owing on a promissory note, arising from its financing of a car purchase by the Defendant.

- [2] Customer First Financing is one of a number of trade names registered by 2061341 Nova Scotia Limited. Others include Customer First Service Center, Car Now Acceptance Company, Customer First Credit Management, Time out Marine and Bar None Financial. I mention this because at least two of those other names came up during the evidence. Indeed, some of the documentation was done on letterhead of Car Now Acceptance Company, and the evidence of the Defendant was that he originally thought he was dealing with Bar None Financial.

- [3] All of these business entities appear to be operating under one roof at 230 Wyse Rd. in Dartmouth. That is also the premises of Suzuki in Dartmouth, which is itself a trade name of 1937225 Nova Scotia Limited and an alter-ego of Metro Suzuki. I believe it is fair on the evidence to conclude that 2061341 Nova Scotia Limited (under its various business names) is the financing arm, or one of them, of Suzuki in Dartmouth. Whether or not the relationship between them is arms length in any real sense is an open question. It is a matter of public record that Mr. Eric Corkum who was present at trial and described himself as the General Manager of the Claimant, is a director of and the registered agent for both numbered companies, which raises questions about the distance between the two sides of the business.

- [4] The business of the Claimant includes providing financing for people with poor credit. Understandably that comes at a price reflected in a high interest rate.
- [5] The transaction before the court concerns the Defendant's September 2006 purchase of a 2000 Chevrolet Blazer. The Defendant's evidence was that he dealt initially with someone named Brad Hughes on behalf of Bar None Financial, and that it was Mr. Hughes who found the vehicle for him, told him how much it would cost and arranged the financing. The Defendant testified that he had some reservations about the price being too high, but was reassured by Hughes that once his credit was reestablished he would get him into a better vehicle. He testified that within a week of buying the vehicle he saw the very vehicle advertised in the Auto Trader for some \$6,000 less than he had paid for it. He says that he raised this with Hughes, who suggested that there was a mistake and that he should not worry about it, that he would be treated well.
- [6] The long and the short of it appears to be that the Defendant was desperate to acquire a vehicle and was willing to sign on to onerous financial obligations without doing any due diligence to assure himself that the price for the vehicle was fair or that the financing terms were the best he could get. He appears to have been either very naive or to have suspended his critical intelligence.
- [7] None of the alleged promises or representations made to him by Mr. Hughes were documented and Mr. Hughes was not in court to testify. There was no suggestion that Mr. Corkum was present when any of these alleged conversations took place.

- [8] The amount advanced by the Claimant for the vehicle was \$16,807.13, as evidenced by a copy of the cancelled cheque put into evidence. The Defendant claims that he also put up \$2,000 in cash toward the purchase, which is not referred to in any of the documents filed. The promissory note, which is clear on its face, charges interest at the rate of 29.9% and would result in total payments of \$29,720.64 over the life of the loan. The Defendant cannot have been in any doubt as to what he was undertaking to pay.
- [9] The Defendant drove the vehicle for less than a year, but fell behind in payments when his business failed in early 2007. The vehicle was eventually repossessed, though not before the Defendant was given ample opportunity to bring the account into good standing.
- [10] The Defendant testified that the unnamed individual who came to pick up (i.e. repossess) the vehicle told him that he still had an opportunity to pay the arrears and reclaim the vehicle, or he could simply walk away with no obligations. There was nothing in writing to this effect and I find it difficult to believe that someone repossessing a vehicle would say this, or that someone on the position of the Defendant would be so naive to believe such a statement, if made. The Claimant had the legal right to repossess, and did not have to offer anything to the Defendant. Such a promise, even if made, was unsupported by consideration and would be legally unenforceable.
- [11] The evidence of the Claimant was that after the requisite waiting period the vehicle was put out to wholesale bids which ranged between \$2,000 and

\$3,000, the highest of the three being from Metro Suzuki (another name for Suzuki in Dartmouth). The highest bid was accepted. There was also evidence that Metro Suzuki spent approximately \$2,000 on repairs to put the vehicle in shape to sell.

- [12] There was also evidence that the Defendant did put somewhere between 35,000 and 40,000 kilometres on the vehicle during the time he had it.
- [13] The Defendant came to court expressing a genuine though somewhat unfocused sense that he had not been fairly treated. He believed that he had been taken advantage of and made promises which never materialized. He feels he overpaid for a vehicle which was later sold for much less than it was worth.
- [14] Unfortunately for the Defendant, he did not protect his own interests when he ought to have done so. His complaints essentially focus on the business methods of Suzuki in Dartmouth and of the financing entities that he was dealing with. If everything he said or implied were true, which I am in no position to decide on the scant evidence, he might have cause to complain to the Better Business Bureau or even the government agencies that regulate these businesses.
- [15] But the loan documentation appears to be entirely in order and the Defendant signed everything that was put before him, legally binding himself to the transaction. On the evidentiary record before me, I do not have any basis in law to refuse to enforce the transaction according to its terms. The financial terms may have been onerous, but companies that provide financing to individuals with poor credit take a considerable risk to

justify the high rates that they charge. The Defendant is a grown adult who has operated several businesses, and who entered into this transaction with his eyes open, or with blinkers of his own making.

- [16] There will accordingly be judgment for the amounts owing, as claimed. Those amounts consist of:

loan balance (crediting resale of vehicle)	\$14,912.10
Cost of repossession	\$171.00
prejudgment interest	\$598.57
Filing fee	\$170.88
Cost to serve claim	\$57.00
	\$15,909.55

- [17] The total judgment will therefore be for \$15,909.55.

Eric K. Slone, Adjudicator