ACTION MANAGEMENT, INC.,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 00-01,463
	:	
LISA JARELL,	:	CIVIL ACTION - LAW
	:	
Defendant	:	NON-JURY TRIAL ADJUDICATION

Date: March 20, 2003

NON-JURY TRIAL ADJUDICATION ORDER

I. ***Findings of Fact***.

1. Plaintiff instituted an action to recover the alleged amount due before District Justice McRae, who found in favor of Plaintiff.

2. Following a timely appeal by Defendant to the Court of Common Pleas of Lycoming County, an arbitration hearing was held to decide Plaintiff's claim as well as Defendant's counter-claim.

3. The Board denied both claims, after which Plaintiff timely filed its appeal to this Court.

4. On June 20, 1995, Defendant entered into a motor vehicle installment sales contract with Bucktail Bank and Trust Co., (later merging with Sun Bank) for the purchase of a 1992 Dodge Daytona automobile.

5. The total payment under the sales contract, including interest, penalties and late charges, amounted to $12,925.00.

6. Defendant defaulted on said contract by failing to make the payments due June 6, 1999 and July 6, 1999.

7. On July 9, 1999, a Notice of Repossession was mailed to Defendant indicating the amount necessary to redeem as being $3,509.57.

8. The motor vehicle was repossessed by Bucktail Bank and Trust Company and then sold at Central Pa. Auto Auction on August 5, 1999.

9. At the time of repossession, the amount due and owing was $3,108.00 indicating a total payment of $9,817.00 by Defendant towards the total contract obligation; Defendant had paid approximately 75% of her total obligation. After credit for the sale price plus expenses, the total claim of Plaintiff, as of the date of disposition, was $2,846.42.

10. By letter dated August 27,1999, Defendant was notified that the auto was sold at auction on August 5,1999, for the gross sale amount of $700.00.

11. Defendant was notified on August 27, 1999 that there was a deficiency balance of $1,846.42.

12. Interest has accrued since August 27, 1999.

13. By virtue of an Assignment dated May 5, 2000, SunBank, d/b/a Bucktail Bank and Trust Company and SunBank Dealer Center assigned to Plaintiff, Action Management, Inc. all of its rights, title and interest to certain loan accounts, including Defendant's account.

14. In the pleadings, Defendant has admitted all of the allegations of Plaintiff's Complaint, including paragraph 8, "As of June 14, 2000, defendant owed Plaintiff the amount of $3,183.02, representing the deficiency balance from the sale of the vehicle, plus costs incurred and interest, as set forth in the installment sales contract."

15. Defendant has filed New Matter and a Counterclaim alleging that plaintiff (or its Assignor) denied Defendant's rights under Article 9-505 of the Uniform Commercial Code [13

Pa. C.S.A. §9505]). Defendant also asserted she had not renounced any of her rights prior to or following repossession.

16. Defendant's pleadings also assert a counterclaim in the amount of $4,000 for the wrongful depreciation of her car by Plaintiff. At trial Defendant conceded her counterclaim.

II. ***Discussion***

As Plaintiff contends the only issue before the Court whether Plaintiff (or its Assignor) has complied with §§9505 and 9504 of the Uniform Commercial Code, 13 Pa. C.S. §§9504, 9505, with regard to the transaction between Plaintiff and Defendant. The Court finds that Plaintiff has not met its burden of showing compliance with the requirements of the Uniform Commercial Code. This case is controlled by the Pennsylvania Supreme Court decision of ***Savoy v. Beneficial Consumer Discount Co.,*** 468 A.2d 465 (Pa. 1983). In ***Savoy,*** the plaintiff/debtor's (Savoy) car had been repossessed by the creditor/defendant (Beneficial) after a loan default. Subsequently, the care was resold to a used car dealer by private sale. The sale price did not satisfy the debt, thereby resulting in a deficiency. Beneficial then instituted an action similar to the case before us to recover the deficiency. In affirming the Superior Court's vacating of the deficiency judgment, the Supreme Court held that "when there has been a commercially unreasonable disposition of collateral by a secured creditor, a presumption arises that the value of the collateral was equal to the amount of the indebtedness." ***Id.*** at 467. The Supreme Court stated that when the repossessed collateral is sold at a private sale the burden is on the party seeking the deficiency judgment to demonstrate that the sale was commercially reasonable, stating:

> The Uniform Commercial Code confers upon a secured party the right, upon default, to dispose of collateral by sale or lease, subject

> to the requirement that "every aspect of the disposition including the method, manner, time, place and terms must be *commercially reasonable.*" When a private sale of repossessed collateral has been made, and the debtor raises the question of the commercial reasonableness of that sale, the great weight of authority holds that the burden of proof on this issue is shifted to the secured party seeking a deficiency judgment to show that, under the totality of circumstances, the disposition of collateral was commercially reasonable. (citations omitted)
>
> When there has been a commercially unreasonable disposition of collateral, the issue arises as to the effect of that disposition upon a creditor's entitlement to recovery of remaining debt. . . .

Id. at 467. The Court then held that:

> . . .failure to establish commercial reasonableness of the resale price creates a presumption that the value of the collateral equaled the indebtedness secured, thereby extinguishing the indebtedness unless the secured party rebuts the presumption.

Ibid.

Since Beneficial failed to establish that the private sale was commercially reasonable, the Supreme Court went on to consider whether Beneficial (the creditor) had sustained its burden in rebutting the presumption that the value of the collateral equaled the indebtedness secured in light of the evidence presented. The Court determined that Beneficial had not entered into evidence proof that the value of the car corresponded to the price procured at the private sale. Therefore, it held that the presumption had not been rebutted. ***Id.*** at 468.

Similarly Action admits it has sold the repossessed car at a private sale. Action has not introduced any evidence that the price procured at that sale, $700, in any way corresponded to its value. Action offered no testimony whatsoever as to the value of the car at time of repossession or that there had been any inability to sell it at a public sale.

The case, *sub judice* is also similar to one before Judge Gavin in Chester County where this same Plaintiff sought to collect an assigned deficiency judgment from another indebted car owner after repossession. In ***Action Management, Inc. v. Gross,*** the Court found that a dealer-only auction was a private sale, which, as a matter of law, did not meet the Uniform Commercial Code's requirement that the repossessed car be disposed of in a "commercially reasonable" manner, absent any proof of any other effort to market the car. 51 D&C 4th 414 (Chester Co. 2001).

Therefore, in the case *sub judice,* this Court makes the following conclusions and verdict.

III. ***Conclusions of Law***

1. Defendant, Lisa Jarell, entered into an installment sales contract pursuant to the Motor Vehicle Sales Finance Act with Plaintiff's predecessor, SunBank.

2. Jarell defaulted under SunBank's terms of the installment sales agreement.

3. SunBank lawfully repossessed Jarell's vehicle and provided the notices required by the Motor Vehicle Sales Finance Act.

4. SunBank sold the vehicle at private auction without any other effort to sell or dispose of the vehicle.

5. The disposition of Jarell's car by Action's predecessor is subject to the provisions of the U.C.C. §§9-504, 505, 13 Pa. C.S. §§9504 and 9505.

6. The disposition was at a private sale and as a matter of law was not commercially reasonable as required by 13 Pa. C.C. §9504.

7. A presumption therefore arises that the selling price procured is equal to the indebtedness which the car secured.

8. The burden of proof is upon Action to show the price of the car procured by the private sale equaled the car's value and as such the value was less than the indebtedness it secured.

9. As Action has offered no such evidence it has not met its burden to rebut the resumption that the value of the car equaled the indebtedness it secured.

10. Action has not met its burden of establishing the amount of the deficiency owed to it by Jarell.

11. Jarell has failed to establish the matters raised in her counterclaim.

IV. ***Verdict***

This Court finds in favor of Defendant, Lisa Jarell, as to Plaintiff, Action Management, Inc.'s cause of action and in favor of Plaintiff, Action Management, Inc. on the counterclaim of Defendant Lisa Jarell. No monetary award is made to either party. Each party shall pay its own costs.

BY THE COURT,

William S. Kieser, Judge

cc: Anthony D. Miele, Esquire
Richard A. Gahr, Esquire
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)