

COURT OF APPEALS
DIVISION II

2013 JUN 25 PM 1:34

No. 44773-8-H

STATE OF WASHINGTON

BY C. [Signature]
DEPUTY

COURT OF APPEALS, SECOND DIVISION
OF THE STATE OF WASHINGTON

FORD MOTOR CREDIT dba
PRIMUS FINANCIAL SERVICES
Respondent,

v.

RAYMOND BRENNEMAN and
VALERIE BRENNEMAN,
Appellants.

APPELLANTS' OPENING BRIEF

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Pro Se

Valerie Brenneman
Pro Se

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1 **I. INTRODUCTION**

2 This appeal presents only two related issues for the Court's determination:
3 In U.C.C. §9-504 cases involving creditor's claims for deficiency judgments, is summary
4 judgment appropriate when questions of fact exist? And what effect does failure to
5 meet the notice requirements of U.C.C. §9-504 have upon a creditor's claim for a
6 deficiency judgment?

7 The challenging economic struggles that our region continues to endure makes
8 these two questions of vital importance. As foreclosures and repossessions continue in
9 abundance, the courts, as gatekeepers of justice, must be wary that the corporate
10 machinery of efficiency does not --in pursuing and collecting against this debt--
11 transgress the procedural and legal protections that the law so jealously clothes
12 consumers with.

13
14 **II. ASSIGNMENTS OF ERROR**

15 Assignments of Error

16 1. The trial court erred in entering the order of March 27, 2013, granting plaintiff's
17 motion for summary judgment in the amount of \$14,389.07.

18
19 Issues Pertaining to Assignments of Error

20 1. Respondent, Ford Motor Credit, sold the appellant's vehicle at a dealer-only
21 auction. The appellants, Raymond and Valerie Brenneman (herein the
22 Brennemens) claim that the vehicle was either non-functioning or poorly
23 functioning at the time of sale due to a manufacturer's defect. Does a dispute
24 over the condition of the vehicle at the time of sale present a valid question of
25 fact, thus precluding summary judgment? (Assignment of Error 1.)

- 1 2. The Brennemens argue that proper notice requirements under the provisions
2 of U.C.C. §9-504 concerning default, acceleration of the amount due, and
3 sale of the vehicle were not met. Does such a dispute present a valid
4 question of fact, thus precluding summary judgment? (Assignment of Error 1.)
- 5 3. If Ford Motor Credit has failed to properly notify the Brennemens that they
6 were considered to be in default, that the contract amount due was being
7 accelerated, and that their vehicle was being sold at auction, then what effect
8 does this failure have upon any potential deficiency judgment? (Assignment
9 of Error 1.)

10

11 **III. STATEMENT OF THE CASE**

12 Procedural History

13 Plaintiff, Ford Motor Credit, filed a complaint for monies due under a motor vehicle
14 retail installment contract against the defendants, Raymond and Valerie Brenneman on
15 October 27, 2009. CP at 3. The Brennemens having filed a timely answer, Ford Motor
16 Credit moved for summary judgment on December 16, 2009. CP at 8, 19. Hearings
17 before the lower court concerning the plaintiff's summary judgment motion were held on
18 January 15th and March 19th, 2010. CP at 59, 107. After a period of greater than three
19 years of inactivity, Ford Motor Credit made an *ex parte* motion for and was eventually
20 granted summary judgment on March 27, 2013 in the amount of \$14,389.07. CP at
21 141. The Brennemens were never provided a copy of the judgment issued on March
22 27, 2013 but were put on notice of it upon receiving a collection letter on April 3, 2013
23 from the plaintiff's counsel, Bishop, White, Marshall & Weibel, P.S. The Brennemens
24 subsequently filed this appeal on April 22, 2013.

25 ///

1 Factual History

2 The Brennemans purchased a 2004 Volvo XC90 passenger vehicle from Barrier
3 Volvo in Bellevue, Washington on December 6, 2007. The vehicle was equipped with
4 an automatic transmission. In connection with the purchase, the Brennemans entered
5 into a retail installment sales contract (herein the Contract) with the plaintiff, Ford Motor
6 Credit which required the Brennemans to make forty-eight regular monthly payments.
7 CP at 40-41.

8 The Contract appears as a boiler-plate motor vehicle installment sale contract that
9 is nearly two feet long filled with small-print writing front and back. The box on the top
10 of the front page of the Contract entitled "Buyer (and Co-Buyer) Name and Address"
11 lists the names Raymond Brenneman and Valerie Brenneman and provides an address
12 of 4369 Beach Dr. E., Port Orchard, WA 98366. CP at 40.

13 On or about late-August to early-September 2008 a serious mechanical problem
14 developed with the automatic transmission in the Brenneman's Volvo which prevented
15 the vehicle from driving in all but one gear. As a result, it was taken at that time to a
16 Volvo authorized dealer, Barrier Motors, for repair. Upon the dealer's inspection they
17 determined that improper seals had caused grease from the axles to leak into the
18 transmission which caused the transmission to fail. Raymond Brenneman was
19 informed that this was a factory defect and that the transmission would be replaced by
20 the factory at no cost. CP at 49-50.

21 After what was perhaps up to a month of waiting, Raymond Brenneman contacted
22 Barrier Motors and asked for an update on the repair of his vehicle. He was told by the
23 representative at Barrier Motors that a replacement transmission had not yet arrived
24 from the factory and that there was a back-order for these transmissions. CP at 50.

25

1 Raymond Brenneman had further discussions with Volvo Car Finance North
2 America and Barrier Motors that he was concerned that his vehicle may qualify as a
3 lemon under the applicable Lemon Laws of Washington State and that he was unhappy
4 with continuing to make monthly payments on a vehicle that was sitting at Barrier
5 Motors waiting for repair. Accordingly, arrangements were made in late-September or
6 early-October 2008 to give possession of the vehicle up to Barrier Motors by providing
7 them the spare keys which were still in the Brenneman's possession and allowing them
8 to take their personal belongings out of the vehicle. CP at 50. The Brenneman's
9 understanding of this transaction was that their voluntarily giving up possession of the
10 vehicle and foregoing any potential Lemon Law claim they had against Volvo Car
11 Finance N.A., amongst others, was in exchange for satisfaction of the retail installment
12 sale contract between Volvo Car Finance N.A. and themselves.

13 At all times while their vehicle was waiting for repair at Barrier Motors, the
14 Brennemens were current in the payments due in accordance with the Contract,
15 including up to the time they gave possession of the vehicle to Barrier Motors.

16 The Brennemens have never received evidence that the defective transmission
17 was repaired or replaced.

18 According to documents submitted by Ford Motor Credit, the vehicle was sold by
19 Manheim Seattle, an auctioneer, on or about January 15, 2009 for \$13,000.00. CP at
20 24, 28-29. Data from the National Automobile Dealer Association (NADA) and Kelly
21 Blue Book (KBB) suggest that the market value at the time of disposition was
22 \$23,123.17 if the vehicle was in "clean retail" condition. CP at 75-85.

23 The Brennemens lived at 4369 Beach Dr. E., Port Orchard, WA at the time they
24 entered into the Contract and maintained that address for billing purposes at all times
25 while they owned the vehicle. CP at 49. In fact, the billing statement from the plaintiff

1 dated August 31, 2008, which is the final statement the Brennemans received and paid
2 prior to returning possession of the car to Barrier Motors, properly reflects the
3 Brenneman's mailing address on 4369 Beach Dr. E. in Port Orchard.

4 On or about January 30, 2008, the Brennemans purchased a property at 10327
5 SE **Olympiad** Dr. in Port Orchard. While the Brennemans occupied the Olympiad Drive
6 property from July to October, 2008, they continued to maintain their home on Beach
7 Drive and receive mail there, including their monthly billings from Ford Motor Credit.

8 Ford Motor Credit purports that two separate documents, a "Notice of Our Plan to
9 Sell Property" and a "Statement of Sale" were mailed to the Brennemans on November
10 5, 2008 and January 27, 2009, respectfully, to the following address: 10327 SE
11 **Olympia** Drive, Port Orchard, WA.

12 An Olympia street address does exist in Port Orchard, Washington.

13 The Brennemans never received either the "Notice of Our Plan to Sell Property" or
14 the "Statement of Sale" from Ford Motor Credit. Furthermore, the Brennemans also
15 never received any notice of any sort informing them that they were in default under the
16 Contract or that Ford Motor Credit was accelerating the debt.

17 18 **IV. SUMMARY OF ARGUMENT**

19 Case law, particularly that of the 2nd district, has established a clear precedent that
20 a) a dispute over the condition of a vehicle at the time of sale creates a clear question of
21 fact that prevents summary judgment, b) that a dispute as to whether notice was
22 properly given in accordance with U.C.C. §9-504 and RCW 62A.9A-611 constitutes a
23 question of fact that prevents summary judgment, and c) the remedy for failure to
24 properly provide the required notice under U.C.C. §9-504 and RCW 62A.9A-611 is the
25 forbearance of any deficiency amount that may result from the subsequent sale.

1 **V. ARGUMENT**

2 Standard of Review

3 When reviewing a grant of summary judgment, the appellate court engages in the
4 same inquiry as the trial court, considering facts and reasonable inferences therefrom in
5 the light most favorable to the nonmoving party and reviewing questions of law *de novo*.
6 *Bishop v. Miche*, 137 Wash.2d 523, 973 P.2d 465 (1999).

7
8 Disputes of fact shall be determined by the fact finder, not by summary judgment

9 As the Court is well aware, a motion for summary judgment is properly granted
10 only when “there is no genuine issue as to any material fact and... the moving party is
11 entitled to a judgment as a matter of law.” CR 56(c).

12 What constitutes a “genuine issue of material fact” has been clearly defined by this
13 Court: “A genuine issue of material fact exists where reasonable minds could differ on
14 the facts controlling the outcome of the litigation.” *Realm, Inc. v. City of Olympia*, 168
15 Wash.App. 1, 4, 277 P.3d 679 (2012) quoting *Ranger Ins. Co. v. Pierce County*, 164
16 Wash.2d 545, 552, 192 P.3d 886 (2008). Thus, a court must deny summary judgment
17 when a party raises a material factual dispute. *Smith v. Safeco Insurance Co.*, 150
18 Wash.2d 478, 485, 78 P.3d 1274 (2003). “Even where the evidentiary facts are
19 undisputed, if reasonable minds could draw different conclusions from those facts, then
20 summary judgment is not proper.” *Security State Bank v. Burk*, 100 Wash.App. 94, 102,
21 995 P.2d 1272 (2000) quoting *Chelan County Deputy Sheriff's Assoc. v. County of*
22 *Chelan*, 109 Wash.2d 282, 295, 745 P.2d 1 (1987).

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25

1 Whether Ford Motor Credit disposed of the Brenneman's vehicle in a commercially
2 reasonable manner is a question of fact

3 The standard of this Court is definitive: "[W]hen the propriety of the disposition of
4 collateral by the secured party is contested, the issue of commercial reasonableness is
5 a question of fact to be determined by the trier of fact." *Burk*, 100 Wash.App. 94, 101
6 quoting *Mount Vernon Dodge, Inc. v. Seattle-First Nat'l Bank*, 18 Wash.App. 569, 587,
7 570 P.2d 702 (1977). This strong sentiment voiced originally by the *Mount Vernon*
8 *Dodge* court, was later echoed by the Court in *Service Chevrolet, Inc. v. Sparks* which
9 held that "[s]uch traditionally factual questions should be determined as a matter of law
10 only in the 'clearest of cases.'" *Service Chevrolet, Inc. v. Sparks*, 99 Wash.2d 199, 205,
11 660 P.2d 760 (1983).

12 The duty to recondition repossessed collateral has been clearly defined by courts
13 across the nation as being an essential component of 'commercial reasonableness'.
14 *Westgate State Bank v. Clark*, 231 Kan. 81, 642 P.2d 961 (1982); *Union Nat'l Bank v.*
15 *Schmitz*, 853 P.2d 1180, 21 UCC Rep.Serv 2d 403 (1993).

16 The importance of the commercial reasonableness requirement is an obvious one
17 since the amount of any deficiency judgment will be inversely proportional to the sale
18 price. "The burden of proving commercial reasonableness is on the creditor, who is in
19 the better position to know and control the nature of the resale, and is the one asserting
20 the deficiency judgment." *Rotta v. Early Indus. Corp.*, 47 Wash.App. 21, 24, 733 P.2d
21 576 (1987).

22 ///

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1 to determine that a valid and material dispute over this fact exists. The veracity and the
2 weight of the facts shall be left for a fact finder to determine at trial.

3 It should be noted that Ford Motor Credit has previously argued that the sale of
4 the Brenneman's vehicle was "commercially reasonable" under RCW 62A.9A-627(b)
5 simply because it was sold at a dealer-only auction by Manheim Seattle. This is
6 incorrect. RCW 62A.9A-610(b) states: "Every aspect of a disposition of collateral,
7 including the method, manner, time, place, and other terms, must be commercially
8 reasonable." So then, the duty of commercial reasonableness requires much more than
9 simply selling the vehicle through a commercially-recognized avenue. The duty of a
10 creditor to ensure that every aspect of the sale is commercially reasonable thus also
11 includes the duty to recondition or repair the asset, the duty to timely sell the asset, and
12 the duty to properly notify the debtor of the sale. "[T]he secured party is required to
13 utilize his best efforts to sell the collateral for the best price and to have a reasonable
14 regard for the debtor's interest." *Mt. Vernon Dodge, Id.* at 586. The Court in *Burk*,
15 commented that despite the fact that "[t]he record shows that the [creditor] adequately
16 advertised the sale of [debtor's] assets... there is a reasonable inference that the
17 [creditor] did not handle the goods and their sale in a commercially reasonable manner."
18 *Id.*, at 102. Clearly, selling damaged or defective goods, even by commercially
19 acceptable means, does not meet the "commercial reasonableness" standard required
20 by U.C.C. §9-504 and RCW 62A.9A-610(b).

21
22 Whether Ford Motor Credit gave proper notice to the Brennemens of the sale of their
23 vehicle in accordance with UCC §9-504 & RCW 62A.9A-611 is a question of fact

24 Both UCC §9-504(3) and RCW 62A.9A-611 require that a secured party must
25 provide notice to the debtor when a sale of collateral after default is intended. As

1 previously noted, the creditor has the burden of proving commercial reasonableness,
2 *Rotta infra* at 24, and reasonableness is a question of fact for the trier of fact. *Sparks*
3 *infra* at 204-205. This Court, in *McChord*, confirmed that, "One ingredient of commercial
4 reasonableness is sufficient notice both to the debtor and the public at large". *McChord*
5 *Credit Union v. Parrish*, 61 Wash.App. 8, 16, 809 P.2d 759 (1991) citing *Rotta infra* at
6 25. Thus, when a dispute over notice arises, it touches upon the issue of commercial
7 reasonableness and therefore necessarily involves questions of fact and so is not
8 suitable for disposition by summary judgment.

9
10 The Brennemens properly raised the issue of Ford Motor Credit's lack of notice and a
11 material dispute over this fact presently exists

12 The Brennemens have timely and properly asserted that Ford Motor Credit has
13 failed to meet the requirements of U.C.C. §9-504 and RCW 62A.9A-611 in providing
14 proper notice of the sale of their vehicle, notice of default, and notice of acceleration of
15 any alleged debt. See Defendants' Answer to Plaintiff's Complaint, p.2-3 (CP at 9-10);
16 Defendants' Reply to Plaintiff's Motion for Summary Judgment, p.1-2 (CP at 42-43);
17 Defendant's Motion for Reconsideration, p.6 (CP at 66).

18 Ford Motor Credit purports that two separate documents, a "Notice of Our Plan to
19 Sell Property" and a "Statement of Sale" were mailed to the Brennemens on November
20 5, 2008 and January 27, 2009, respectfully. CP at 26-29. The Brennemens contend
21 however that they never received either the "Notice of Our Plan to Sell Property" or the
22 "Statement of Sale" from Ford Motor Credit because these notices were sent to an
23 incorrect address that the Brennemens did not provide. Furthermore, the Brennemens
24 also never received (and Ford Motor Credit never claims to have provided) any notice of
25

1 any sort informing them that they were in default under the Contract or that Ford Motor
2 Credit was accelerating the debt.

3 Ford Motor Credit asserts that despite mailing the notices to the wrong address,
4 they have met their burden under U.C.C. §9-504 and RCW 62A.9A-611(b) –which is the
5 corresponding state code that specifically requires that: “a secured party that disposes
6 of collateral under RCW 62A.9A-610 shall send to the persons specified in subsection
7 (c) of this section a reasonable authenticated notification of disposition.” (emphasis
8 added). Whether Ford Motor Credit provided “reasonable notification” and thus fulfilled
9 that component of a “commercially reasonable sale” hinges largely on the definition of
10 the word “sent” in RCW 62A.9A-611(b).

11 RCW 62A.1-201(36) defines the word “send” as follows: “ ‘Send’ in connection
12 with a writing, record or notice means: to deposit in the mail or deliver for transmission
13 by any other usual means of communication with postage or cost of transmission
14 provided for and properly addressed and, in the case of an instrument, to an address
15 specified thereon or otherwise agreed...”

16 The present matter involves an instrument-- the retail installment sale contract
17 which the Brennemens signed at the time of their purchase. The address specified on
18 the Contract is 4369 Beach Dr. E., Port Orchard, WA 98366. Ford Motor Credit has
19 never provided evidence or even asserted that the two disputed notices-- the “Notice of
20 Our Plan to Sell Property” and “Statement of Sale”-- were mailed to this address. Had
21 the notices been sent to this address, the Brennemens would have received them, since
22 this address has been, at all relevent times, the current billing address for the
23 Brennemens. However, because Ford Motor Credit failed to mail the notices to the
24 address specified on the Contract, they cannot be found to have “sent” reasonable
25 notice to the Brennemens and thus have failed to meet the U.C.C. §9-504 and RCW

1 62A.9A-611 notice requirements which are essential in finding a sale to be
2 "commercially reasonable".

3 Ford Motor Credit's failure to provide proper notice as required under U.C.C. §9-
4 504 and RCW 62A.9A-611 has resulted in harsh consequences for the Brennemans.
5 As previously mentioned, the Brennemans understood from communications with the
6 creditor that their voluntarily giving up possession of the vehicle and foregoing any
7 potential Lemon Law claim they had against Ford Motor Credit was in exchange for full
8 satisfaction of the retail installment sale contract. With this understanding in mind, the
9 Brennemans were not alert to the need to protect themselves against a possible
10 deficiency which could result from the sale of the vehicle. Ford Motor Credit's failure to
11 properly send the required disclosures denied the Brennemans notice that would have
12 alerted them to a need to take action. Had the Brennemans received the proper notice,
13 they could have taken measures to either exercise their right of redemption or, at a
14 minimum, ensure that the factory-defective transmission was replaced so as to allow for
15 the highest sale price possible. Instead, however, the Brennemans received no notices
16 from Ford Motor Credit and were denied the very protections that the notice provisions
17 of U.C.C. §9 are meant to provide.

18
19 The appropriate remedy for Ford Motor Credit's failure to provide the required notice
20 under U.C.C. §9-504 & RCW 62A.9A-611 is the forbearance of any deficiency amount

21 Ford Motor Credit correctly points out in its Response to Defendant's Motion for
22 Reconsideration (CP at 93) that this Court's ruling in *McChord Credit Union v. Parrish*,
23 61 Wn.App. 8, 10, 809 P.2d 759 (1991), that "failure to comply with the notice
24 requirements of the U.C.C... does not automatically forfeit the right to recover a
25 deficiency judgment." *Id* at 14.

1 However, this Court in *McChord* continues: “**A creditor who has violated the**
2 **U.C.C. faces a rebuttable presumption that the value of the collateral is at least**
3 **equal to the amount of the outstanding debt.**” *Id* at 14. This Court’s commentary
4 makes it clear that violation of the U.C.C. notice requirements is one type of violation
5 that would bring this rebuttable presumption to existence. *Id* at 15.

6 Ford Motor Credit can overcome this presumption only by a) obtaining a fair and
7 reasonable appraisal at or near the time of repossession or b) producing convincing
8 evidence of the value of the collateral that will “pinpoint” the value on the date of
9 repossession. *Id* at 14. Despite the fact that the Brennemens have raised the issue of
10 lack of notice from the time of their initial Answer, Ford Motor Credit has failed to
11 provide either an appraisal of the vehicle at the time of repossession or any “convincing
12 evidence” of the value of the collateral on the date of repossession. Because Ford
13 Motor Credit has failed to rebut the presumption, the proper remedy is for this Court to
14 follow its earlier reasoning in *McChord* and find that the value of the Brenneman’s
15 vehicle was at least equal to the amount of the outstanding debt.

16
17 **VI. CONCLUSION**

18 Based on all of the above evidence and analysis, the Brennemens respectfully
19 request that the Court find the following:

- 20 1) That a material dispute over the condition of the vehicle at the time of sale
21 exists and that such a dispute presents a valid question of fact concerning
22 commercial reasonableness, thus precluding summary judgment.
- 23 2) That a material dispute concerning whether or not Ford Motor Credit provided
24 proper notice as required by U.C.C. §9-504 and RCW 62A.9A-611 exists and
25

1 that such a dispute presents a valid question of fact concerning commercial
2 reasonableness, thus precluding summary judgment.

- 3 3) In the alternative, that Ford Motor Credit is found to have violated the notice
4 provisions of U.C.C. §9-504 and RCW 62A.9A-611 and further failed to rebut
5 the presumption that the value of the collateral is at least equal to the amount
6 of the outstanding debt.

7 As such, the Brennemens pray that this Court reverse the lower court's ruling and
8 remand this case for trial in accordance with the finding of items 1) and 2) above or, in
9 the alternative, that this Court finds the Brennemens free from liability of any deficiency
10 in accordance with item 3) and dispose of this action entirely.

11
12 June 24, 2013

13
14 Respectfully submitted,

15 
16 _____
17 Raymond Brenneman, *pro se*
Appellant, Defendant

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19 Valerie Brenneman, *pro se*
20 Appellant, Defendant
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1 **VII. APPENDIX**

2
3 *U.C.C. § 9-504. Secured Party's Right to Dispose of Collateral After Default;
Effect of Disposition.*

4 (1) A secured party after default may sell, lease or otherwise dispose of any
5 or all of the collateral in its then condition or following any commercially
6 reasonable preparation or processing. Any sale of goods is subject to the
Article on Sales (Article 2). The proceeds of disposition shall be applied in
the order following to

- 7 • (a) the reasonable expenses of retaking, holding, preparing for sale or
8 lease, selling, leasing and the like and, to the extent provided for in
the agreement and not prohibited by law, the reasonable attorneys' fees
and legal expenses incurred by the secured party;
- 9 • (b) the satisfaction of indebtedness secured by the security interest
under which the disposition is made;
- 10 • (c) the satisfaction of indebtedness secured by any subordinate security
11 interest in the collateral if written notification of demand therefor is
received before distribution of the proceeds is completed. If requested
12 by the secured party, the holder of a subordinate security interest must
seasonably furnish reasonable proof of his interest, and unless he does
so, the secured party need not comply with his demand.

13 (2) If the security interest secures an indebtedness, the secured party must
14 account to the debtor for any surplus, and, unless otherwise agreed, the
debtor is liable for any deficiency. But if the underlying transaction was a
15 sale of accounts or chattel paper, the debtor is entitled to any surplus or
is liable for any deficiency only if the security agreement so provides.

16 (3) Disposition of the collateral may be by public or private proceedings and
17 may be made by way of one or more contracts. Sale or other disposition may be
as a unit or in parcels and at any time and place and on any terms but every
18 aspect of the disposition including the method, manner, time, place and terms
must be commercially reasonable. Unless collateral is perishable or threatens
19 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
20 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
21 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
22 other notification need be sent. In other cases notification shall be sent to
any other secured party from whom the secured party has received (before
23 sending his notification to the debtor or before the debtor's renunciation of
his rights) written notice of a claim of an interest in the collateral. The
24 secured party may buy at any public sale and if the collateral is of a type
customarily sold in a recognized market or is of a type which is the subject
of widely distributed standard price quotations he may buy at private sale.

1 (4) When collateral is disposed of by a secured party after default, the
2 disposition transfers to a purchaser for value all of the debtor's rights
3 therein, discharges the security interest under which it is made and any
4 security interest or lien subordinate thereto. The purchaser takes free of
5 all such rights and interests even though the secured party fails to comply
6 with the requirements of this Part or of any judicial proceedings

- 7 • (a) in the case of a public sale, if the purchaser has no knowledge of
8 any defects in the sale and if he does not buy in collusion with the
9 secured party, other bidders or the person conducting the sale; or
- 10 • (b) in any other case, if the purchaser acts in good faith.

11 (5) A person who is liable to a secured party under a guaranty, indorsement,
12 repurchase agreement or the like and who receives a transfer of collateral
13 from the secured party or is subrogated to his rights has thereafter the
14 rights and duties of the secured party. Such a transfer of collateral is not
15 a sale or disposition of the collateral under this Article.

16 As amended in 1972.

1 **RCW 62A.9A-611**

2
3 **Notification before disposition of collateral.**
4 ***(Effective until July 1, 2013.)***

5 (a) **"Notification date."** In this section, "notification date" means the
earlier of the date on which:

6 (1) A secured party sends to the debtor and any secondary obligor an
authenticated notification of disposition; or

7 (2) The debtor and any secondary obligor waive the right to
8 notification.

9 (b) **Notification of disposition required.** Except as otherwise provided in
subsection (d) of this section, a secured party that disposes of collateral
10 under RCW 62A.9A-610 shall send to the persons specified in subsection (c) of
this section a reasonable authenticated notification of disposition.

11 (c) **Persons to be notified.** To comply with subsection (b) of this section,
the secured party shall send an authenticated notification of disposition to:

12 (1) The debtor;

13 (2) Any secondary obligor; and

14 (3) If the collateral is other than consumer goods:

(A) Any other secured party or lienholder that, ten days before
15 the notification date, held a security interest in or other lien on the
collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date;

16 and

(iii) Was filed in the office in which to file a financing
17 statement against the debtor covering the collateral as of that date; and

18 (B) Any other secured party that, ten days before the
notification date, held a security interest in the collateral perfected by
19 compliance with a statute, regulation, or treaty described in RCW 62A.9A-
20 311(a).

21 (d) **Subsection (b) of this section inapplicable: Perishable collateral;**
recognized market. Subsection (b) of this section does not apply if the
collateral is perishable or threatens to decline speedily in value or is of a
22 type customarily sold on a recognized market.

23 (e) **Compliance with subsection (c) (3) (A) of this section.** A secured party
complies with the requirement for notification prescribed by subsection (c)
24 (3) (A) of this section if:

25 (1) Not later than twenty days or earlier than thirty days before the
notification date, the secured party requests, in a commercially reasonable

manner, information concerning financing statements indexed under the
debtor's name in the office indicated in subsection (c) (3) (A) of this
section; and

(2) Before the notification date, the secured party:
(A) Did not receive a response to the request for information; or
(B) Received a response to the request for information and sent
an authenticated notification of disposition to each secured party or other
lienholder named in that response whose financing statement covered the
collateral.

[2000 c 250 § 9A-611.]

1 **RCW 62A.9A-611**

2
3 **Notification before disposition of collateral.**
4 ***(Effective July 1, 2013.)***

5 (a) "**Notification date.**" In this section, "notification date" means the
6 earlier of the date on which:

7 (1) A secured party sends to the debtor and any secondary obligor an
8 authenticated notification of disposition; or

9 (2) The debtor and any secondary obligor waive the right to
10 notification.

11 (b) **Notification of disposition required.** Except as otherwise provided in
12 subsection (d) of this section, a secured party that disposes of collateral
13 under RCW 62A.9A-610 shall send to the persons specified in subsection (c) of
14 this section a reasonable authenticated notification of disposition.

15 (c) **Persons to be notified.** To comply with subsection (b) of this section,
16 the secured party shall send an authenticated notification of disposition to:

- 17 (1) The debtor;
18 (2) Any secondary obligor; and
19 (3) If the collateral is other than consumer goods:

20 (A) Any other secured party or lienholder that, ten days before
21 the notification date, held a security interest in or other lien on the
22 collateral perfected by the filing of a financing statement that:

- 23 (i) Identified the collateral;
24 (ii) Was indexed under the debtor's name as of that date;

25 and

(iii) Was filed in the office in which to file a financing
statement against the debtor covering the collateral as of that date; and

(B) Any other secured party that, ten days before the
notification date, held a security interest in the collateral perfected by
compliance with a statute, regulation, or treaty described in RCW 62A.9A-
311(a).

(d) **Subsection (b) of this section inapplicable: Perishable collateral;
recognized market.** Subsection (b) of this section does not apply if the
collateral is perishable or threatens to decline speedily in value or is of a
type customarily sold on a recognized market.

(e) **Compliance with subsection (c) (3) (A) of this section.** A secured party
complies with the requirement for notification prescribed by subsection (c)
(3) (A) of this section if:

1 (1) Not later than twenty days or earlier than thirty days before the
2 notification date, the secured party requests, in a commercially reasonable
3 manner, information concerning financing statements indexed under the
4 debtor's name in the office indicated in subsection (c) (3) (A) of this
5 section; and

6 (2) Before the notification date, the secured party:

7 (A) Did not receive a response to the request for information; or

8 (B) Received a response to the request for information and sent
9 an authenticated notification of disposition to each secured party or other
10 lienholder named in that response whose financing statement covered the
11 collateral.

12 [2011 c 74 § 724; 2000 c 250 § 9A-611.]
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1 **RCW 62A.9A-627**

2 **Determination of whether conduct was**
3 **commercially reasonable.**

4 (a) **Greater amount obtainable under other circumstances; no preclusion of**
5 **commercial reasonableness.** The fact that a greater amount could have been
6 obtained by a collection, enforcement, disposition, or acceptance at a
7 different time or in a different method from that selected by the secured
party is not of itself sufficient to preclude the secured party from
establishing that the collection, enforcement, disposition, or acceptance was
made in a commercially reasonable manner.

8 (b) **Dispositions that are commercially reasonable.** A disposition of
9 collateral is made in a commercially reasonable manner if the disposition is
made:

- 10 (1) In the usual manner on any recognized market;
11 (2) At the price current in any recognized market at the time of the
disposition; or
12 (3) Otherwise in conformity with reasonable commercial practices among
dealers in the type of property that was the subject of the disposition.

13 (c) **Approval by court or on behalf of creditors.** A collection, enforcement,
disposition, or acceptance is commercially reasonable if it has been approved:

- 14 (1) In a judicial proceeding;
15 (2) By a bona fide creditors' committee;
16 (3) By a representative of creditors; or
17 (4) By an assignee for the benefit of creditors.

18 (d) **Approval under subsection (c) of this section not necessary; absence of**
19 **approval has no effect.** Approval under subsection (c) of this section need
20 not be obtained, and lack of approval does not mean that the collection,
21 enforcement, disposition, or acceptance is not commercially reasonable.

22 [2000 c 250 § 9A-627.]
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1
2 **RCW 62A.9A-610**

3
4 **Disposition of collateral after default.**

5 (a) **Disposition after default.** After default, a secured party may sell,
6 lease, license, or otherwise dispose of any or all of the collateral in its
7 present condition or following any commercially reasonable preparation or
8 processing.

9 (b) **Commercially reasonable disposition.** Every aspect of a disposition of
10 collateral, including the method, manner, time, place, and other terms, must
11 be commercially reasonable. If commercially reasonable, a secured party may
12 dispose of collateral by public or private proceedings, by one or more
13 contracts, as a unit or in parcels, and at any time and place and on any
14 terms.

15 (c) **Purchase by secured party.** A secured party may purchase collateral:

16 (1) At a public disposition; or

17 (2) At a private disposition only if the collateral is of a kind that
18 is customarily sold on a recognized market or the subject of widely
19 distributed standard price quotations.

20 (d) **Warranties on disposition.** A contract for sale, lease, license, or other
21 disposition includes the warranties relating to title, possession, quiet
22 enjoyment, and the like which by operation of law accompany a voluntary
23 disposition of property of the kind subject to the contract.

24 (e) **Disclaimer of warranties.** A secured party may disclaim or modify
25 warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the
warranties in a voluntary disposition of property of the kind subject to the
contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract
for disposition and including an express disclaimer or modification of the
warranties.

(f) **Record sufficient to disclaim warranties.** A record is sufficient to
disclaim under subsection (e) of this section all warranties included under
subsection (d) of this section if it indicates "There is no warranty relating
to title, possession, quiet enjoyment, or the like in this disposition" or
uses words of similar import.

[2000 c 250 § 9A-610.]

3 **General definitions.**
4

5 (36) "Send" in connection with a writing, record, or notice means:

6 (A) To deposit in the mail or deliver for transmission by any other
7 usual means of communication with postage or cost of transmission provided
8 for and properly addressed and, in the case of an instrument, to an address
9 specified thereon or otherwise agreed, or if there be none to any address
10 reasonable under the circumstances; or

11 (B) In any other way to cause to be received any record or notice within
12 the time it would have arrived if properly sent.
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**If you are a current or former owner or lessee
of a model year 2003-2005 Volvo XC90 T6 vehicle,
you could receive benefits from
this class action settlement.**

A court authorized this notice. This is not a solicitation from a lawyer.

- A nationwide settlement has been reached in a class action lawsuit against Volvo Cars of North America, LLC and Volvo Car Corporation. The lawsuit concerns model years 2003-2005 Volvo XC90 T6 vehicles that came factory-equipped with automatic transmissions. The lawsuit alleges that Volvo should have known that the automatic transmissions in these models might fail after the warranty period had expired.
- The settlement provides (1) an opportunity for reimbursement for class members who have paid to repair or replace their transmission, (2) a limited extended warranty for the transmission, and (3) other benefits.
- Your legal rights are affected whether you act, or don't act, so please read this notice carefully.

LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
EXCLUDE YOURSELF	This is the only option that allows you to be part of any other lawsuit, or your own lawsuit, against the Defendants about the legal claims released in this settlement.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the settlement.
DO NOTHING	Give up rights to be part of any other lawsuit against the Defendants about legal claims released by the settlement, but you are eligible to get some of the benefits of the settlement by submitting a claim.
SUBMIT A CLAIM	Make a claim for relief.

- These rights and options -- **and the deadlines to exercise them** -- are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement, so that the benefits may be provided. Please be patient.

