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DIVISION II
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No. 44773-8-II
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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' REPLY BRIEF

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12

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1 **I. SUMMARY OF ARGUMENT**

2 Ford Motor Credit's (herein Ford) Reply Brief does not contest that a dispute over
3 the condition of a vehicle at the time of sale or a dispute as to whether notice was
4 properly given both constitute a question of fact that prevents summary judgment. In
5 concluding that a dispute exists, the evidence need not be weighed; rather, this Court
6 must determine only that a valid dispute as to the condition of the vehicle or as to notice
7 was properly raised. Such a finding, with nothing more, should provide the necessary
8 basis for setting aside the summary judgment and allowing this case to proceed to trial.
9 While a large portion of Ford's Reply Brief asks this Court to consider the weight of the
10 evidence in misdirection, the Brennemans will address their contentions.

11
12 **II. ARGUMENT**

13 Ample evidence exists to support the Brenneman's assertion that the subject vehicle
14 may have been defective when disposed of by Ford

15 Ford's assertion that the factual record offered by the Brennemans concerning the
16 defective nature of the subject vehicle consists solely of the declaration of Raymond
17 Brenneman in opposition to Ford Motor Credit's motion for summary judgment is false
18 and is a red herring.

19 Ford makes much of the fact that this declaration is not made under penalty of
20 perjury as required by GR 13 and RCW 9A.72.085. However, a later Declaration of
21 Defendant Raymond Brenneman filed on March 15, 2010 clearly does meet the
22 requirements of GR 13 and RCW 9A.72.085 and again states the same assertions of
23 fact as the earlier declaration that Ford takes issue with. Additionally, the lower court
24 questioned Mr. Brenneman concerning this very issue during the hearing on the motion
25 for summary judgment which occurred on January 15, 2010 where he made the same

1 assertion of facts. CP 128-140. No objections were raised by Ford during the hearing
2 or in response to Mr. Brenneman's March 15, 2010 declaration.

3
4 The Brenneman's evidence regarding value of the vehicle is appropriate

5 Ford asserts that the memorandum of value submitted by the Brennemens should
6 be afforded no consideration because it was not accompanied by either a personal
7 declaration or authentication of the exhibits attached.

8 Ford describes the attached exhibits as documents that "appear to have been
9 obtained from the internet" in an apparent effort to belittle their value. In fact, the
10 exhibits are printouts of the value of the subject vehicle as published by the National
11 Automobile Dealers Association (NADA) and Kelly Blue Book (KBB)-- the two
12 recognized authorities in vehicle valuation. The remaining exhibits pertain to
13 depreciation schedules as an aid to calculate a historical value.

14 Both NADA and KBB publish periodic reports of vehicle values that can be
15 accessed in print or online. As a periodical, they shall be considered self-authenticating
16 under E.R. 902(f) and do not require extrinsic evidence of authenticity as a condition
17 precedent to admissibility. Thus, their use in the Brenneman's memorandum of value is
18 valid despite the lack of any authentication.

19 Further, this Court specifically found the NADA valuation to be "convincing
20 evidence' of the car's fair and reasonable value at the time of sale." *McChord Credit
21 Union v. Parrish*, 61 Wash.App. 8, 809 P.2d 759, 763 (1991).

22 *///*

23 *///*

24 *///*

25 *///*

1 retail installment sale contract, not the vehicle registration paperwork. A plain rendering
2 of the statute makes sense-- it is most sensible to notify a party concerning a
3 contractual matter at the address that is specified on the contract, absent notice of a
4 change of address. For reasons unknown, Ford failed to mail the statutory notices to
5 the address specified on the contract and so they did not "send" notice in accordance
6 with RCW 62A.1-201(36) and by extension, RCW 62A.9A-611.

7
8 Ford's lack of notice has harmed the Brennemens

9 Ford claims that the Brennemens have not been harmed by their failure to provide
10 notice of the sale of the subject vehicle. This is untrue. Had the Brennemens received
11 the proper notice, they would have been alerted to the fact that their understanding that
12 they would be subject to no further liability upon the forfeiture of their vehicle was in
13 jeopardy and they could have taken measures to either exercise their right of
14 redemption or, at a minimum, ensure that the factory-defective transmission was
15 replaced so as to allow for the highest sale price possible.

16
17 Ford's duty under *McChord*

18 This Court, in *McChord*, has held that when notice is deficient there is a rebuttable
19 presumption that the value of the vehicle is at least equal to the remaining balance of
20 the debt. The burden of overcoming this presumption is upon the creditor; the debtor is
21 under no obligation to provide any evidence of value. *Id.* At 14.

22 The means of rebutting this presumption is for the creditor to obtain a "fair and
23 reasonable appraisal at or near the time of repossession or produce convincing
24 evidence of the value of the collateral." *Id.* at 14. Ford argues that it has "rebutted that
25 presumption with the introduction of competent evidence of both the vehicle's condition

1 and fair market value established by a sale to the highest bidder at a public auction.”

2 Respondent's Brief, p. 14. However, evidence of the vehicle's sale price at auction will

3 likely not constitute either an appraisal or convincing evidence that rebuts the

4 presumption; a look at *McChord* will explain why. This Court, in rendering its decision in

5 *McChord*, considered an affidavit from the creditor's collection manager as the sole

6 evidence of the car's value. The affidavit contained a) statements of the numerous bids

7 to purchase the car (the highest of which was \$3500 to the ultimate purchaser), b)

8 statements concerning the condition of the car, and c) a statement that fair market value

9 according to NADA was \$4500. The Court found that the creditor rebutted the

10 presumption *not* because they provided evidence of value based on the sale but

11 because they provided evidence of value based on NADA. In contrast, Ford has only

12 ever provided evidence of the vehicle's value based on the auction sale price and has

13 never provided the Court a value based on KBB, NADA, or a third party appraisal.

14 The *McChord* Court chose the NADA value as “convincing evidence” of the car's

15 fair market value over the actual sale price because the creditor did not sufficiently

16 pinpoint a lesser value at the time of repossession. *McChord Id.* at 15. The same is

17 true in the present case-- Ford has never offered evidence to pinpoint the lesser value

18 of \$13,000 auction sale price in contrast to the \$23,123 price predicated on KBB and

19 NADA that the Brennemens have produced to the Court (a value discrepancy of 77.8%

20 which is greater than that in *McChord* of 28.5%). In fact, Ford has claimed quite the

21 opposite-- asserting that the vehicle is in average, drivable condition while refusing to

22 acknowledge any problem whatsoever with the vehicle's transmission.

23 ///

24 ///

25 ///

1 value, the presumption that the value of the collateral is at least equal to the amount of
2 the outstanding debt should be upheld.

3
4 **III. CONCLUSION**

5 Based on all of the above evidence and analysis, the Brennemans respectfully
6 request that the Court find the following:

- 7 1) That a material dispute over the condition of the vehicle at the time of sale
8 exists and that such a dispute presents a valid question of fact concerning
9 commercial reasonableness, thus precluding summary judgment.
- 10 2) That a material dispute concerning whether or not Ford Motor Credit provided
11 proper notice as required by U.C.C. §9-504 and RCW 62A.9A-611 exists and
12 that such a dispute presents a valid question of fact concerning commercial
13 reasonableness, thus precluding summary judgment.
- 14 3) In the alternative, that Ford Motor Credit is found to have violated the notice
15 provisions of U.C.C. §9-504 and RCW 62A.9A-611 and further failed to rebut
16 the presumption that the value of the collateral is at least equal to the amount
17 of the outstanding debt.

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

22 *///*

23 *///*

24 *///*

25 *///*

1 Date: August 19, 2013

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3
4 Respectfully submitted,

5 

6 _____
7 Raymond Brenneman, *pro se*
8 Appellant, Defendant

9 

10 _____
11 Valerie Brenneman, *pro se*
12 Appellant, Defendant

