

Ford Motor Credit Co. v. Parker, No. 761-12-06 Wncv (Teachout, J., Apr. 23, 2007)

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**STATE OF VERMONT
WASHINGTON COUNTY**

FORD MOTOR CREDIT CO.,)	
Plaintiff,)	Washington Superior Court
)	Docket No. 761-12-06 Wncv
v.)	
)	
SINDI PARKER,)	
Defendant.)	

Request for Judgment filed January 22, 2007

This is a collections case in which Plaintiff Ford Motor Credit Co. (FMCC) seeks to recover the deficiency remaining after Defendant Parker’s alleged default on a motor vehicle lease agreement. Defendant is unrepresented. She filed an answer acknowledging the debt and seeking an agreement to a payment plan. On January 22, 2007, Ford filed a proposed judgment order based on a Stipulation to Judgment signed by the parties.

The Stipulation includes a schedule of monthly payments that Defendant must make to Plaintiff. It also states that “Plaintiff may review the Defendant’s financial status in six (6) months to determine if monthly payments can be increased.” Stipulation to Judgment ¶ 4. If Defendant fails to make payments according to the Stipulation, Plaintiff “reserves the right to commence post judgment actions against the Defendant for the total amount then due, plus legal costs and attorney’s fees for post-judgment collection activities.” *Id.* ¶ 5. The proposed judgment order itself contains an additional provision in permissive language: “Execution may be stayed so long as the payments as described in the underlying Stipulation are made in accordance with the agreement. Plaintiff shall certify that payments have not been made in accordance with agreement prior to issuance of a Writ of Execution.”

The immediate issue before the court is whether to approve the Stipulation to Judgment, including any terms proposed to be included in the judgment order itself. Generally, stipulated judgments are favored because they represent the parties’ settlement of issues.

Unlike an ordinary settlement agreement and voluntary dismissal, a consent judgment “embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as[] a judicial decree that is subject to the rules generally applicable to other judgments and decrees.” *Long v. State of Maryland*, 807 A.2d 1, 7 (Md. 2002) (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 368 (1992)). “[A] consent judgment is a judgment and an order of court. Its only distinction is that it is a judgment that a court enters at the request of the parties.” *Jones v. Hubbard*, 356 Md. 513, 528, 740 A.2d 1004, 1013 (1999). “In order to have a consent judgment, a party must clearly and unmistakably give consent.” 46 Am. Jur. 2d Judgments § 211, at 539. This is the standard for measuring the stipulation and proposed judgment in this case.

The Stipulation and related language on the proposed judgment order give Plaintiff discretion to increase the amount of monthly payments without judicial oversight. That is, Defendant’s ability to stay execution by paying \$100 per month under the Stipulation is illusory because Plaintiff has unchecked discretion to increase the payment amount, and then proceed to execution, even if Defendant continues to pay \$100 per month. The fact that this could occur is not readily apparent, and the court cannot conclude that Defendant unmistakably gave consent to this arrangement. The court cannot accept this portion of the stipulation, and therefore declines to approve the stipulation or enter judgment on it in the form proposed.

ORDER

For the foregoing reasons, the request for judgment is denied. If the parties submit a revised stipulation to judgment without ¶ 4, the court will approve the stipulation and enter judgment in the form proposed by Plaintiff, except that the word “may” will be changed to the word “shall.” If no such stipulation, or new stipulation with clear consent to all terms, is filed by May 15, 2007, the court will schedule a hearing.

Dated at Montpelier, Vermont this ___ day of April 2007.

Mary Miles Teachout
Superior Court Judge