

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RHONDA MACK,	§	
	§	No. 515, 2006
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
PENNMARK AUTO GROUP, LP,	§	
	§	
Plaintiff Below,	§	C.A. No. 06C-04-211
Appellee.	§	

Submitted: August 24, 2007  
Decided: November 20, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 20<sup>th</sup> day of November 2007, upon consideration of the briefs of the parties, it appears to the Court that:

(1) The *pro se* appellant, Rhonda Mack, entered into an agreement and sixty-month installment contract to purchase a 2005 Mercedes Benz (“the vehicle”) from the appellee, Penmark Auto Group, LP (Penmark). On August 22, 2006, the Superior Court determined that Mack was in default of the contract. Mack’s appeal followed.

(2) Mack and Penmark entered into the agreement and contract on August 16, 2004. Mack made a cash down payment of \$3,500.00 on the vehicle. When completing the contract documents, however, Penmark

mistakenly credited Mack with a cash down payment of \$24,500.00. With \$24,500.00 deducted from the sale price of the vehicle, the contract reflected an unpaid balance of \$20,294.66 and monthly payments of \$366.45.

(3) Pennmark discovered the error after Mack left the dealership with the vehicle. Pennmark contacted Mack and asked that she return the vehicle or sign a corrected agreement. Mack refused, and she began making monthly payments of \$366.45 on the vehicle.

(4) In October 2004, Pennmark brought an action for reformation. By order dated November 25, 2005, the Court of Chancery reformed the contract to reflect Mack's cash down payment of \$3,500.00. With \$3,500.00 deducted from the sale price of the vehicle, the reformed contract reflected an unpaid balance of \$41,294.66,<sup>1</sup> and Mack's monthly payments increased to \$740.17.<sup>2</sup>

(5) Mack did not appeal the Court of Chancery's November 25, 2005 decision reforming the contract. Nonetheless, Mack continued to make monthly payments of only \$366.45 on the vehicle.

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<sup>1</sup> See *Pennmark Auto Group v. Mack*, Del. Chan., C.A. No. 756-N, Noble, V.C. (Nov. 17, 2005) (granting summary judgment as unopposed).

<sup>2</sup> Hr'g Tr. at 7-9 (Aug. 22, 2006), *Pennmark v. Mack*, Del. Super., C.A. No. 06-04-211, Cooch, J. (Aug. 22, 2006).

(6) In April 2006, Pennmark filed a replevin action seeking return of the vehicle for Mack's default of the reformed contract. The Superior Court held a hearing on August 22, 2006.

(7) Mack appeared and testified at the hearing. At the conclusion of the hearing, the Superior Court entered judgment for Pennmark "for two independent reasons."<sup>3</sup> First, the Superior Court determined that Mack had waived her right to contest the action because she had failed to file a required "notice of intention to appear."<sup>4</sup> Second, the Superior Court determined on the merits that Mack was in default of the reformed contract.<sup>5</sup> This appeal followed.

(8) The Court has carefully considered the parties' briefs and the record and has concluded that the Superior Court's judgment should be affirmed. The transcript of the August 22, 2006 hearing belies Mack's conclusory assertions that she did not understand the purpose of the hearing and was not in default of the reformed contract. Having affirmed the judgment on the merits, we do not reach the alternative ground for affirming the Superior Court's judgment.

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<sup>3</sup> Hr'g Tr. at 11 (Aug. 22, 2006).

<sup>4</sup> *Id.* at 12. See *Pennmark Auto Group v. Mack*, Del. Super., C.A. No. 06C-04-211, Cooch, J. (May 31, 2006) (scheduling motion hearing and ordering that opposition must file Notice of Intention to Appear at least five days before hearing date).

<sup>5</sup> Hr'g Tr. at 11-12 (Aug. 22, 2006). See *Pennmark Auto Group v. Mack*, Del. Super., C.A. No. 06C-04-211, J. Docket No. 05J-11-734, Cooch, J. (Aug. 22, 2006) (awarding possession of vehicle to Pennmark).

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment  
of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice