

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

KAWASAKI MOTOR FINANCE CORPORATION

PLAINTIFF

v.

Case no. 5:09cv00270 SWW

**MILAM'S, INC. D/B/A MILAM'S HONDA CENTER
AND ARTIE A. MILAM**

DEFENDANTS

JUDGMENT

Before the Court is the complaint of Kawasaki Motors Finance Corporation ("KMFC") against Milam's, Inc. d/b/a Milam's Honda Center ("Milam's") and Artie A. Milam ("Artie Milam") (the Defendants are collectively referred to as the "Defendants"). Upon considerations of the pleadings, statements of counsel, agreement of the parties, other evidence and proof and the Court being fully advised finds and orders as follows:

1. The Court has jurisdiction over the subject matter and parties to this action.
2. On August 21, 2009, KMFC filed its complaint (the "Complaint") against the Defendants seeking the replevin of certain collateral and a money judgment. The Complaint, summons, and replevin notice were served on the Defendants within the time and in the manner required by law. The Defendants entered an appearance in the action and filed responsive pleadings.
3. The claims of KMFC against Milam's are based on a September 17, 1988, financing and security agreement (the "Contract") executed by and between KMFC and Milam's whereby KMFC offered financing to Milam's subject to the terms and conditions of the Contract for the purpose of Milam's purchasing inventory for its dealership. The Contract requires Milam's to make certain interest payments to KMFC on each item of inventory

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financed by KMFC and to pay to KMFC the full amount advanced, as each item of financed inventory is sold at retail by Milam's in accordance with the terms of the Contract. A copy of the Contract was attached to KMFC's Complaint as Exhibit 1.

4. Pursuant to the terms of the Contract and to secure the obligations of Milam's to KMFC under the terms of the Contract, Milam's granted to KMFC an interest in the property described in paragraph 5 of the Contract consisting of,

- a) A purchase money security interest in the inventory and all other inventory, equipment, or goods financed by KMFC, whether now owned or later acquired by Dealer, together with all improvements, replacements, or additions thereto, and the proceeds and receivables from the sale or disposition of any of the above (including insurance premiums and insurance payments to Dealer), wherever the same may be located, and
- b) A general security interest in all of Dealer's other inventory, equipment, goods, machinery, furniture, fixtures, vehicles, accounts receivable, notes, chattel paper, rebates, incentive payments, contracts, and all other rights to payment and general intangibles, whether now owned or later acquired by Dealer, together with all improvements, replacements or additions thereto, and the proceeds from the sale or disposition of any of the above (including insurance premiums and insurance payments to Dealer), wherever the same may be located.

A more detailed listing and description of the inventory collateral held by Milam's was attached to KMFC's Complaint as Exhibit 2. (All the collateral is collectively referred to as the "Collateral.")

5. KMFC perfected its security interest in the Collateral through the filing of a UCC-1 financing statement with the Arkansas Secretary of State's office. A copy of the UCC-1 financing statement and continuation statements filed by KMFC were attached to KMFC's Complaint as Exhibit 3.

6. On October 20, 1988, Artie Milam individually executed and delivered to KMFC a guaranty agreement (the "Guaranty") whereby Artie Milam individually guaranteed the performance and payment of the obligations of Milam's to KMFC. A copy of the Guaranty was attached hereto to KMFC's Complaint as Exhibit 4.

7. The Defendants defaulted under the terms of the Contract and Guaranty when they failed to make payments to KMFC as required by the Contract and Guaranty.

8. On September 30, 2009, the Court entered a Consent Order For Delivery whereby the Defendants agreed and the Court ordered the Defendants to immediately deliver into the possession of KMFC certain collateral described as: "all inventory of new and used motor vehicles including without limitation motorcycles, all terrain vehicles, watercraft, utility vehicles, generators and all other inventory held for sale, lease or otherwise financed by KMFC." (Referred to herein as the "Surrendered Collateral.")

9. Pursuant to the September 30, 2009 Consent Order For Delivery, the Defendants delivered to KMFC the Surrendered Collateral and KMFC proceeded to dispose of the Surrendered Collateral in a commercially reasonable manner in accordance with Arkansas law and the Contract. The proceeds received by KMFC from the disposition of the Surrendered Collateral has been applied to the balance owed on the Contract and Guaranty.

10. After the disposition of the Surrendered Collateral and the application of the proceeds to debt owed, there remains due and owing by the Defendants to KMFC under the terms of the Contract and Guaranty an amount greater than \$250,000.

11. Defendants remain in possession of additional Collateral of KMFC described in the Contract as: "other inventory, equipment, goods, machinery, furnitures, fixtures, vehicles,

accounts receivable, notes, chattel paper, rebates, incentive payments, contracts and all other rights to payment in general intangibles whether now owned or later acquired by ["Milam's"]. (The remaining collateral in the possession of Defendants is described herein as the "Remaining Collateral.")

12. KMFC and the Defendants have agreed and their agreement is incorporated into this Judgment that the Defendants shall within ninety (90) days from the entry of this Judgment sell or otherwise dispose of the Remaining Collateral on terms and conditions (including price) satisfactory to KMFC and the proceeds of the disposition of the Remaining Collateral by Defendants shall be paid to KMFC and applied to the balance owed on this Judgment. In the event the Remaining Collateral is not sold or otherwise disposed of within the ninety (90) day period or any extension thereof agreed to by KMFC in writing, KMFC shall have the right to dispose of the Remaining Collateral at a public auction at the Defendants' business premises where the Remaining Collateral is presently located or at any other location in KMFC's sole discretion. Defendants agree to allow the Remaining Collateral to remain on their business premises pending completion of the public auction at no expense to KMFC. The net proceeds obtained from the public auction of the Remaining Collateral shall be applied to the balance owed on this Judgment then owed by the Defendants to KMFC and KMFC shall file a partial satisfaction of judgment reflecting the application of the proceeds from the disposition of the Remaining Collateral.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that Kawasaki Motor Finance Corporation have and recover from the Defendants Milam's Inc. d/b/a Milam's Honda Center and Artie A. Milam, jointly and severally, judgment for immediate possession

of the Remaining Collateral on the terms and conditions stated herein and a money judgment in the amount of \$250,000 plus interest from the date of this judgment until paid at the Federal Court judgment interest rate. Upon request of KMFC, the Clerk of the Court shall issue a Writ of Possession for the Remaining Collateral should that become necessary for KMFC to seize and sell the Remaining Collateral.

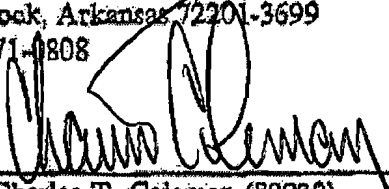
IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

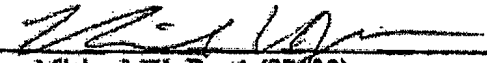
DATE: May 27, 2010


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By: 
Artie A. Milam

Judgment
USDC Case No. 5:09CV00270SWW
Kawasaki Motor Finance Corp. v. Milam's Inc., et al.

Milam's, Inc.

By: Walter R. Milam

Position: Sec - T/Kas