

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

FORD MOTOR CREDIT COMPANY LLC, *
*
Plaintiff, *

v. *
*

CV 112-192

H.M. SMITH FORD, INC.; M. DANIEL *
SMITH; M. DANIEL SMITH, in his *
representative capacity as *
trustee of the M. Daniel Smith *
Trust; and KENNETH L. DARIEN, *
*
Defendants. *

O R D E R

On September 23, 2014, the Court closed this case for statistical purposes pending the parties' formalization of settlement agreement documents. (Doc. 38.) The parties now seek to enter as an order of this Court their Consent Decree, which condenses certain pertinent issues otherwise addressed in the parties' "Settlement Agreement and Mutual Release." (Doc. 41.) For good cause shown, therefore, the Court **DIRECTS** the Clerk to **RESTORE** this case to the Court's active docket. **IT IS HEREBY ORDERED** that said Consent Order **SHALL** constitute a final judgment in this matter, subject to the following terms:

1. Defendants agree to pay to Plaintiff, and Plaintiff agrees to accept from Defendants, a sum described more fully in the Settlement Agreement and Mutual Release executed concurrently with this Consent Order in settlement of Plaintiff's claims against Defendants in the above-styled civil action (the "Agreement"). Such sum shall be paid in installments as follows:

(a) Beginning on the 15th day of December, 2014, installments shall be paid pursuant to the Agreement on or before the 15th day of every month until Plaintiff has received the total sum described in the Agreement, plus interest. The Agreement provides that Defendants shall make 72 equal payments, however there will be no prepayment penalty should Defendants desire to pay off the settlement amount sooner than provided herein.

2. All payments Defendants make shall be made payable to Ford Motor Credit Company LLC. Defendants' first payment shall be made in certified funds, mailed or delivered to Ford Credit's counsel. All remaining payments shall be made or delivered to Ford Credit at:

Ford Motor Credit Company LLC
Dept. 194101
P.O. Box 55000
Detroit, Michigan 48255-1941

3. Time is of the essence in the performance of the obligations stated in this Consent Order and in the Agreement. Defendants agree that if they default on any term in this Consent Order, Plaintiff may immediately obtain judgment against Defendants in the amount of \$161,751.72, plus interest accruing at the per diem rate of \$27.17 from June 30, 2014, minus any amount paid pursuant to this Consent Order, and the Agreement, upon presentment to the Court of an affidavit from Plaintiff or its counsel demonstrating: (1) the breach of a term of this Consent Order or the Agreement; (2) the balance then due and owing under this Consent Order and the Agreement; (3) that Plaintiff sent M. Daniel Smith notice of its intent to request entry of a judgment pursuant to this Consent Order (the "Notice"), and provided Defendants with an opportunity to cure their default, at least ten (10) days prior to seeking judgment; and (4) the default was not cured. Plaintiff shall send the Notice to M. Daniel Smith via U.S. Mail and electronic mail at:

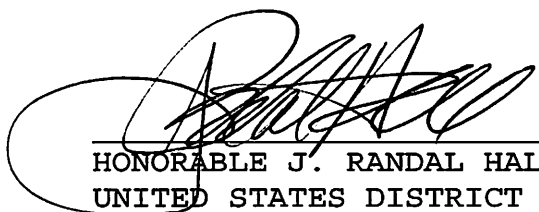
11 Palmetto Parkway, Suite 104
Hilton Head, SC 29926
dansmith@capfg.com

and to his counsel via electronic mail at the address below.

4. When the Defendants satisfy their payment obligations described herein and in the Agreement, Plaintiff agrees to immediately dismiss the above-styled civil action with prejudice.
5. Upon receiving an executed copy of the Agreement, Defendants agree to immediately dismiss any and all counterclaims made in this action with prejudice. Defendants shall take nothing on any counterclaims.
6. Subject to the Defendants filing dismissal with prejudice of all claims and counterclaims pursuant to paragraph 14 of the Agreement, the clerk is hereby directed to administratively close this case pending the Plaintiff filing an affidavit for judgment pursuant to paragraph 3 of the Agreement or a dismissal with prejudice pursuant to paragraph 4 of the Agreement.

Defendants **SHALL** have until 5:00 PM on THURSDAY, JANUARY 15, 2015 to file their stipulation of dismissal of counterclaims pursuant to Paragraph 5 of the parties' Consent Order. The Court further **DIRECTS** Defendants to move for administrative closure of this case at that time pursuant to Paragraph 6 of the parties' Consent Order. This Court **SHALL** retain jurisdiction over this matter and the parties as may be necessary to enforce the terms of the parties' Consent Order should either party so move at a later date.

ORDER ENTERED at Augusta, Georgia, this 16th day of December, 2014.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA