

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001344-MR

JAMES S. HAMILTON, D/B/A
J & A AUTO SALES

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE JOHNNY RAY HARRIS, JUDGE
ACTION NO. 12-CI-00588

BRADLEY MUNCY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: MAZE, STUMBO, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: James S. Hamilton, d/b/a J & A Auto Sales, brings this appeal from an August 14, 2014, Judgment of the Pike Circuit Court dismissing his action for a deficiency judgment. We affirm.

The relevant substantive and procedural facts of this case are unusual and uncontroverted. On May 17, 2011, Amos Bentley purchased a motor vehicle

for his granddaughter, Ashley Muncy, from James Hamilton, who was doing business as J & A Auto Sales.¹ The vehicle was purchased under a motor vehicle retail installment sales contract. Under the terms of the installment sales contract, \$4,495 was financed directly by J & A Auto Sales with an interest rate of 10 percent per annum, and eleven monthly payments of \$446.01 to be paid by the sixth of each month. A motor vehicle lien was placed upon the motor vehicle title in the name of J & A Auto Sales. All agreements, including the sales installment contract, were signed by Bentley on May 17, 2011.

Sometime thereafter, Ashley's brother, Bradley Muncy, agreed to assume the contractual obligations of Bentley concerning the motor vehicle. As is evident upon the face of the documents, Hamilton simply covered the names and signatures of Bentley on the original agreements with correction fluid. Muncy's name was then written over Bentley's name, and on August 3, 2011, Muncy signed the original agreements, which were still dated May 17, 2011.

Muncy defaulted under the terms of the installment sales contract. On March 5, 2012, J & A Auto Sales filed a small claims complaint against Muncy in Pike District Court. At the time of the filing of the small claims action, J & A Auto Sales had neither repossessed nor sold the vehicle. Nonetheless, it sought a deficiency judgment of \$1,976.36 with the caveat that "after public sale proceeds will be applied to balance."² Shortly thereafter, Hamilton repossessed the vehicle

¹ Due to the particular facts herein, we will refer to appellant as either Hamilton or J & A Auto Sales.

² A deficiency results when collateral is sold upon default for less than the remaining indebtedness owed.

by self-help on March 13, 2012. J & A Auto Sales then accepted closed bids for the vehicle, and the vehicle was ultimately purchased for \$500 by Hamilton.³

On May 1, 2012, Muncy filed a counterclaim against J & A Auto Sales. Therein, Muncy alleged that J & A Auto Sales breached numerous provisions of the Kentucky Uniform Commercial Code (U.C.C.)⁴ as to the repossession and sale of the motor vehicle. Muncy sought damages of \$5,995 representing the value of the repossessed motor vehicle, \$500 for violation of Kentucky Revised Statutes (KRS) 355.9-629, and attorney's fees. Thereupon, the case was transferred from the Pike District Court to the Pike Circuit Court.

On June 1, 2012, Muncy filed a motion to dismiss J & A Auto Sales' claim for a deficiency judgment and filed a motion for summary judgment upon Muncy's counterclaim. Muncy argued that the action must be dismissed because J & A Auto Sales was not a corporation and could not bring an action in its name. Additionally, Muncy claimed that J & A Auto Sales violated KRS 355.9-615, KRS 355.9-611, KRS 355.9-613, KRS 355.9-616, and KRS 355.9-623. J & A Auto Sales filed a motion for evidentiary hearing and a response. In the response, J & A Auto Sales denied violating the U.C.C. and maintained that Muncy breached the terms of the sales contract.

³ The motor vehicle had been wrecked while in the possession of the granddaughter, Ashley Muncy.

⁴ The Uniform Commercial Code is codified in this Commonwealth as Kentucky Revised Statutes (KRS) 355.1-101 – 355.10-102.

On July 6, 2012, the circuit court conducted an evidentiary hearing upon Muncy's motion to dismiss and his motion for summary judgment. The entirety of the hearing lasted approximately one hour, and only two witnesses were called, Hamilton and Muncy. During the hearing, the circuit court indicated to the parties that the hearing must conclude as it had other pending matters.

Over two years later, by order entered December 30, 2014, the circuit court denied Muncy's motion to dismiss and motion for summary judgment upon his counterclaim. Thereafter, both parties filed witness and exhibit lists; the parties identified a total of five witnesses to testify at trial.

Then, on June 26, 2015, the circuit court conducted a status conference.⁵ According to Hamilton, the parties erroneously informed the circuit court that Muncy's motion to dismiss and his motion for summary judgment had not been ruled upon by the court. Hamilton asserts that he never received a copy of the December 30, 2014, order denying Muncy's motions and was unaware of the order at the time of the status conference. On the other hand, Muncy maintains that the parties stated to the court that no further evidence needed to be presented to the court and that the case was ready for a decision. The circuit court took the matter under submission based upon the pleadings and evidence previously submitted at the evidentiary hearing in 2012.

⁵ The original presiding circuit court judge, Judge Steven Combs, was replaced by Judge Johnny Ray Harris before this status conference in June 2015.

By Judgment entered August 14, 2015, the circuit court rendered findings of fact and conclusions of law. In the preface of the judgment, the circuit court recited:

This cause coming before the Court for Status Conference on June 26, 2015, with the Hon. Johnny Ray Harris presiding and the proceedings recorded on CD35-2-2015-VR-30-A-1. The parties agreed that there was no further evidence to be submitted to the Court other than that in the record and that presented at the evidentiary hearing on July 6, 2012, before the Hon. Steven D. Combs. The Court has reviewed the record and the July 6, 2012, evidentiary hearing. Based thereon, the Court makes the following Findings of Fact, Conclusions of Law & Judgment[.]

Judgment at 1. The circuit court ordered the caption of the action to be amended “to reflect James S. Hamilton, d/b/a J & A Auto Sales.” The circuit court determined that Hamilton’s notice of sale was deficient under the U.C.C. and, thus, dismissed Hamilton’s claim for a deficiency judgment. The circuit court also dismissed Muncy’s counterclaim “for lack of proof.” This appeal follows.

Hamilton contends that the circuit court erred by rendering its August 14, 2015, judgment dismissing his claim for a deficiency judgment. Specifically, Hamilton asserts that: “(a) the judge sitting in lieu of the trial judge erred in granting Muncy’s motion to dismiss Hamilton’s complaint” and “(b) even if the Court of Appeals finds that the order dismissing entered by Judge Harris was not a procedural error, the trial court erred in granting Muncy’s motion since Hamilton was not afforded the opportunity to present all of his evidence.” Hamilton’s Brief at 3, 5. For the following reasons, we disagree with Hamilton and believe the

circuit court properly decided that Hamilton was precluded from obtaining a deficiency judgment.

We begin our analysis by recognizing that this appeal involves a consumer transaction under the U.C.C.⁶ In particular, a consumer transaction is defined in KRS 355.9-102(1)(z) as:

(1) In this article:

(z) “Consumer transaction” means a transaction in which:

1. An individual incurs an obligation primarily for personal, family, or household purposes;
2. A security interest secures the obligation; and
3. The collateral is held or acquired primarily for personal, family, or household purposes.

The term includes consumer-goods transaction[.]

In a consumer transaction under the U.C.C., a security interest may be created in the consumer good or in collateral financed by the debtor. Upon default by the debtor, a secured party may repossess the collateral subject to the security interest and sale the collateral to offset the remaining debt. However, before a secured party can sale or dispose of the collateral, the secured party must send to the debtor a “reasonable authenticated notification of disposition” of such

⁶ Although not argued by either party or addressed by the circuit court, this case looks to the enforcement of an installment sales contract for a motor vehicle sale which is regulated by KRS 190.090 – 190.140 also known as “The Motor Vehicle Retail Installment Sales Act.” We observe that the sales contract in this case does not remotely comply with the provisions of KRS 190.100(2) which are mandatory for motor vehicle installment sales. A willful or intentional violation of KRS 190.100 is a misdemeanor under KRS 190.990(2).

collateral. KRS 355.9-611. And, in a consumer transaction, KRS 355.9-614 sets forth the mandatory information that must be included in such notification. It provides:

In a consumer-goods transaction, the following rules apply:

- (1) A notification of disposition must provide the following information:
 - (a) The information specified in KRS 355.9-613(1);
 - (b) A description of any liability for a deficiency of the person to which the notification is sent;
 - (c) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under KRS 355.9-623 is available; and
 - (d) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

The failure of a secured party to include all the information as set forth in KRS 355.9-614 renders the notification “insufficient as a matter of law.” KRS 355.9-614 cmt. 2. When collateral is sold without sufficient statutory notification in a consumer transaction, a secured party is precluded from recovering a deficiency judgment. KRS 355.9-626(2); KRS 355.9-626 cmt. 4; *see also* 68A Am. Jur. 2d *Secured Transactions* § 559 (2017); David Leibson and Richard Nowka, *The Uniform Commercial Code of Kentucky* § 9.07 [3][b][v] (3rd ed. 2004).

In this case, Muncy received a “Notice of Sale” from Hamilton before he sold the vehicle. The Notice of Sale, however, plainly failed to include all the information mandated by KRS 355.9-615. As a consequence, the Notice of Sale was insufficient as a matter of law and violated the terms of KRS 355.9-615. Because Hamilton failed to comply with the notification requirements of KRS 355.9-615, we conclude, as did the circuit court, that he is precluded from recovering a deficiency judgment against Muncy.

As to Hamilton’s remaining contention of error concerning the irregular procedure that prevented him from introducing additional evidence, we view any error as merely harmless. Kentucky Rules of Civil Procedure 61.01. The circuit court’s decision was appropriately based upon the undisputed facts and application of the Kentucky Uniform Commercial Code to the repossession and subsequent sale of the motor vehicle. There was no necessity for the court to hear or consider any additional evidence.

In sum, based upon the facts and evidence presented, we are of the opinion that the circuit court properly concluded that Hamilton was not entitled to a deficiency judgment against Muncy.

For the foregoing reasons, the Judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANT:

James L. Hamilton
Pikeville, Kentucky

BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

Ron Diddle
Pikeville, Kentucky