

STATE OF MICHIGAN
COURT OF APPEALS

GMAC, L.L.C.,

Plaintiff-Appellant,

v

DAWN FOSTER,

Defendant-Appellee.

UNPUBLISHED

October 23, 2007

No. 272356

Wayne Circuit Court

LC No. 06-603485-PD

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right a default judgment for \$3,000 entered in circuit court in favor of plaintiff. Plaintiff claims that the amount of the judgment was too low and that, pursuant to the parties' contract, plaintiff was also entitled to attorney fees and costs. We vacate the amount of the judgment and remand for recalculation of damages and the award of costs and attorney fees in accordance with the parties' agreement. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

According to the complaint, defendant purchased a used 2001 Cadillac DeVille and signed a retail installment contract, which was assigned to plaintiff. She failed to make the necessary payments. At the time of the complaint, a balance of \$19,562.32 remained. In February 2006, the court granted plaintiff's motion for possession and title of the motor vehicle, and entered an order dated March 17, 2006, for custody of the vehicle. On April 4, 2006, plaintiff applied for entry of a default. The affidavit portion of the default application indicated that plaintiff claimed damages of \$19,562.32, interest of \$355.66, \$210 in costs, and \$850 in attorney fees, for a total of \$20,977.98. Plaintiff also moved for entry of a default judgment, an award of attorney fees, and for an order to seize property. The motion asserted that defendant had not filed an answer or taken other action although more than 21 days had elapsed since the date of service. The motion was supported by an affidavit indicating that defendant owed \$19,562.32 plus interest, another affidavit and itemized statement indicating incurred attorney fees of \$850 (five hours at \$170 an hour), and a third affidavit and supporting documentation indicating that defendant was not in the military service.

At the July 21, 2006, hearing on the motion, plaintiff's counsel advised the court that the car had been sold, leaving a total balance of \$12,958.96. Defendant, who had not filed an answer or any other pleading, appeared in propria persona at the hearing. She did not claim that she had complied with the contract. She asserted that plaintiff did not give her a chance to make her

account current. She claimed that the reason her payments were five months overdue “was because I was not able to contact anyone to make any arrangements or do anything. They would not talk with me or make any type of arrangement.” Plaintiff’s counsel noted that the contract did not require GMAC to give her an opportunity to make arrangements. The court stated, “I said I don’t quite agree with that kind of contract. But the problem, Ms. Foster, is that you signed it. And while they’re supposed to be written in plain English, they never are. But the problem is people never read them. They just sign it.” The court continued:

Well, you know, there’s some water over the dam in the sense that the car is gone.

The question is how much more do you owe? You understand that I can’t bring the car back?

[DEFENDANT]: Yes.

THE COURT: I’ll reduce the Judgment to three thousand dollars (\$3,000).

The court entered a default judgment in favor of plaintiff for \$3,000 “for the reasons stated by the Court on the record.”

This Court reviews for clear error a trial court’s determination of the amount of damages. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 177; 530 NW2d 772 (1995).

The court did not provide any explanation for the reduction in damages and for disregarding plaintiff’s request for costs and fees. To the extent that the court reduced the amount of the judgment from approximately \$12,000 to \$3,000 based on sympathy toward defendant, this was improper. “Stability of contract obligations must not be undermined by judicial sympathy.” *Jaarda v Van Ommen*, 265 Mich 673, 677; 252 NW 485 (1934). “The rights and duties of parties to a contract are derived from the terms of the agreement. . . . [I]n most circumstances, it is beyond the authority of courts to interfere with the parties’ agreement.” *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 62-63; 664 NW2d 776 (2003). “[U]nless a contract provision violates law or one of the traditional [contract] defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written.” *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005).

In the absence of any apparent legal basis for the court’s reduction of the amount of the default judgment, we vacate the damages award in the default judgment and remand the case to the trial court for a determination of damages, costs, and attorney fees in accordance with the contract. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood