

Ford Motor Credit, LLC v. Porter, No. 86-2-08 Rdev (Teachout, J., Sept. 2, 2008)

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**STATE OF VERMONT
RUTLAND COUNTY**

FORD MOTOR CREDIT, LLC)	
)	
v.)	Rutland Superior Court
)	Docket No. 86-2-08 Rdev
)	
EDWARD PORTER)	

**DECISION
Request for Judgment, filed June 17, 2008**

This is a collection action in which plaintiff Ford Motor Credit, LLC alleges that defendant Edward Porter defaulted on a motor vehicle lease agreement, and seeks to recover the deficiency remaining. According to the complaint and the affidavit, the principal amount of the debt is \$4,260.17. Mr. Porter is unrepresented, and filed an answer contesting the amount in dispute. Mr. Porter’s answer also appeared to state a counterclaim for conversion of personal property, but no filing fee was paid.

On June 17, 2008, Ford Motor Credit filed a proposed judgment order based on a Stipulation to Judgment signed by the parties. The stipulation proposes that the total judgment be \$6,037.32, as follows:

Principal Amount Owed:	\$4,522.86
Costs (Court and Sheriff):	\$ 262.69
Attorney’s Fees:	\$ 450.00
Pre-Judgment Interest:	\$1,064.46
Total Judgment:	\$6,037.32

Stipulation to Judgment, ¶ 1.

The stipulation also includes a schedule of monthly payments that Mr. Porter must make to Ford Motor Credit, *id.* ¶ 2, and appears to provide for a stay of execution in the event that the scheduled monthly payments are made: “Plaintiff reserves the right to commence post judgment actions against the Defendant for the total amount then due, plus legal costs and attorney’s fees for post-judgment collection activities.” *Id.* ¶ 5. The proposed judgment order does not mention

the scheduled monthly payments or provide for a stay of execution as long as payments are made, although this is a reasonable interpretation of the agreement, as the purpose of ¶ 2 is otherwise unclear.

The stipulation also includes a partially pre-printed, partially handwritten paragraph that appears to allow Plaintiff (Ford Motor Credit) to unilaterally increase the monthly payments after six months, based upon a review of Mr. Porter's finances. *Id.* ¶ 4. With the handwritten portion in italics, the paragraph states that "Plaintiff shall review the Defendants financial status is six (6) months to determine if *there is a substantial change in income which would justify a change in payment terms less prejudgment interest.*" *Id.* ¶ 4.

Finally, the stipulation contains a handwritten paragraph stating that "[i]n the event the Defendant pays \$4,000 in accordance with the terms of this agreement, the judgment shall be deemed satisfied." *Id.* ¶ 6. This paragraph is not referenced in the proposed judgment order.

The issue before the court is whether to approve the Stipulation to Judgment and proposed judgment order. The court has four specific concerns, as follows:

First, both the stipulation and the proposed judgment order state that the principal amount owed is \$4,552.86, but this amount is not supported by the record. The principal amount supported by the record is \$4,260.17, as shown in the complaint and the "Affidavit of Amounts Due" filed April 10, 2008. An explanation of the basis for the increase in principal is needed before the court can approve the stipulation.

Second, the stipulation appears to provide for a stay of execution so long as the scheduled payments are met, based on ¶ 5. If the parties meant for the court to order a stay of execution (which means an order preventing Ford Motor Credit from commencing post-judgment collection activities) so long as scheduled payments are met, the court requires the stay to be included in the final judgment order, for three reasons. First, a stay is an order of the court. Black's Law Dictionary 1453 (8th ed. 2004). If the stay is to be operative, it should be signed and ordered by the judge as part of final judgment. Second, failure to include the stay provision in the final judgment could be misleading under Vermont procedure, because writs of execution are issued by the clerk "so long as the judgment remains unsatisfied," V.R.C.P. 69, and the clerk may not necessarily become aware of stay provisions contained within a separate document. Finally, since final judgments may be enforced in other jurisdictions, including the stay provision within the final judgment order ensures that the stay will be given effect as a court order, thereby also ensuring that both parties receive the benefit of the bargain. See 30 Am. Jur. 2d Executions § 20 (noting that some states do not give effect to stipulated stays unless ordered by court) (citing, e.g., *Seaporcel Metals, Inc. v. Ciccone*, 166 A.2d 130 (R.I. 1960)).

Third, for the same reasons as above, the parties' handwritten stipulation in ¶ 6 (that the judgment will be deemed satisfied if Mr. Porter pays \$4,000 in accordance with the terms of the agreement) shall be included in the final judgment order.

Finally, the court does not approve ¶ 4 of the Stipulation, which could be interpreted as permitting Ford Motor Credit to unilaterally increase the amount of payment without judicial

oversight, and thereby change the material terms of the Stipulation. In other words, Mr. Porter's ability to stay execution by paying \$100 per month under the Stipulation is illusory because Ford Motor Credit has unchecked discretion to increase the payment amount after six months, and then proceed to execution even if Mr. Porter continues to pay \$100 per month. This would amount to a change in the terms of the court order without the issuance of a modified order, and the court cannot approve a term that could lead to such a result. See *Ford Motor Credit v. Parker*, No. 761-12-06 Wncv (Teachout, J., Apr. 23, 2007) (attached).

ORDER

For the foregoing reasons, the request for judgment is denied. If the parties submit a revised stipulation to judgment that responds to the above concerns, the court will approve the stipulation and enter judgment. If no such stipulation is filed by October 1, 2008, the court will schedule a hearing.

Dated at Rutland, Vermont this ____ day of August, 2008.

Hon. Mary Miles Teachout
Superior Court Judge